

GUIDEBOOKS BY COUNTRY



SOCIALLY RESPONSIBLE LAND INVESTMENT IN TANZANIA

A Guidebook for Communities 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 Communities Considering Agricultural Investment

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

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

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 government, civil society and private sector representatives was established in each country that provided 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.

Responsible land-based investments require significant engagement and collaboration with communities, civil society, governments, businesses and experts in the field. Thus, a broad range of stakeholders was 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.

Cover photo for Tanzania Community Guidebook by Landesa.

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 Social Impact Assessment
FAO	Food and Agriculture Organization of the United Nations
FPIC	Free, Prior and Informed Consent
HRIA	Human Rights Impact Assessment
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LIU	Land Investment Unit
LEGEND	Land Governance for Economic Development Programs

M&E	Monitoring and Evaluation
MLHSD	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

Contents

1. Introduction & How to Use this Guidebook	1
Background for the RIPL Guidebooks	3
How to Use This Guidebook.....	5
2. International Standards & Best Practices	9
Comparing Tanzanian Regulatory Requirements against Best Practices	11
Important Concept for Communities: Free, Prior and Informed Consent	13
Best Practices for Holding Village Assembly Meetings.....	15
3. Themes for Responsible Investment in Tanzania	19
Land-Based Investment Experience to Date.....	20
Village Land Use Planning	21
Customary Practices and Women	22
Customary Practices and Pastoralists	24
Potential Avenues for Investment.....	24
4. Step-by-Step Guide to Agricultural Investments in Tanzania	27
Quick Glance: Phases, Tasks & Steps	28
Phase 1 Preparing for an Investment	32
Task 1: Strengthen Community Systems and Safeguards for Land Investments.....	33
Task 2: Conduct Initial Due Diligence.....	41
Phase 2 Community Engagement and Assessments	49
Task 1: Engage and Consult with Village Assembly	50
Task 2: Conduct Community Assessments	60
Phase 3 Developing an Equitable and Inclusive Contract.....	73
Task 1: Negotiate and Draft the Contract	74
Task 2: Review and Sign the Contract	81
Phase 4 Implementing and Monitoring the Investment	84
Task 1: Prevent and Address Land-Related Issues.....	85
Task 2: Develop and Implement an Ongoing Monitoring and Evaluation Plan.....	94
5. Supplemental Resources	97

SR 1: International Standards	98
SR 2: Overview of Tanzania Legal Framework	103
SR 3: Communtiy Governance Assessment.....	110
SR 4: Establishing an Interim Land Committee.....	112
SR 5: Land Rights Awareness Training Curriculum	115
SR 6: Developing Community By-Laws for Responsible Investment.....	116
SR 7: Holding a By-Law Adoption Ceremony.....	128
SR 8: Community Mapping.....	129
SR 9: Boundary Harmonization	140
SR 10: Documenting Boundaries and Land Rights.....	152
SR 11: Developing a Land Use Plan	158
SR 12: Land Valuation	162
SR 13: Consultation Meeting Notes Template	169
SR 14: Key Contract Elements.....	171
SR 15: Template for MOU	176
SR 16: Designing a Stakeholder Engagement Plan	180
SR 17: Outgrower Best Practices Literature Review.....	182

1.

Introduction & How to Use this Guidebook

Introduction

This Community Guidebook will take community members and stakeholders through the steps needed to ensure that land investments in the community are carried out inclusively and responsibly.

The goal of this guidebook is to give communities the information they need to ensure that they are equipped and prepared for any proposed land-based investment. It is important that such investors adhere to international standards, best practices and Tanzanian law as they go through the investment process in Tanzania. Investors should begin with preparing for the agricultural investment, proceed to support a community's decision to proceed or halt an investment, and ensure the investment is implemented in accordance with best practices.

The audiences for this guide are Village Councils, Village Assemblies and Village Committees that face challenges and opportunities of a new land investment. Civil society organizations (CSOs) may also find this guide useful as they work to assist communities. This section discusses:

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

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 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 Tanzania, nature of informal land governance, and the nature of the land market are all location-related factors to be considered.

- **Sophistication and functionality of the 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.
- **Opportunity of all land holders and users** – including women, pastoralists and migrant farmers – to participate, to be represented, and ensured that best practices are employed in 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 very carefully at who currently uses and claims rights to the land, and then look at how they came to use or control the land.

It should also be noted that the RIPL Guidebooks are not intended as legal advice, but rather as tools to aid stakeholders in navigating the process of creating a responsible investment. Furthermore, the best practices described in this guidebook should be seen as the basic minimum standard for responsible land-based investment, which all stakeholders should strive to exceed.

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 government and landholding communities often lack the capacity to implement them. Complicating the situation, individuals who own land rights – especially women – frequently hold their interests and rights informally. Even if their rights are formally documented, prevailing norms and traditions may mean that women may be excluded from consultation and decision-making processes even when their interests are clear. In Tanzania, laws are generally in place but government capacity to implement is lacking (particularly at the district and village level). The informal land situation is unique because it requires investors to take special care to understand what the best way is to proceed with an investment.

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.

With support from DFID's Land Governance for Economic Development (LEGEND) Programs, Landesa's RIPL Project addresses these challenges by condensing international guidelines, best practices, and national laws and policies 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.

How to Use This Guidebook

The Community Guidebook is designed for Village Councils, Village Assemblies and Land Committees to use prior to and during the land investment process. It can also be used by CSOs who directly work with villages.

Guidebook Audiences: Investment Stakeholders

There are three broad investment stakeholders: the business or investor, government, and community. 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. Although the guidebooks target specific people in each stakeholder group, they also serve the needs of other actors. For example, members of the senior management team could find the information in the Business Enterprise Guidebook useful. Likewise, national government officials could find value in the using the Government Guidebook.

The Roles 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 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 should 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, ethnic minorities 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 stakeholders (such as women, youth, elderly, ethnic and religious minorities, indigenous people, and pastoralists) in discussions where they may not normally be included.

- **Develop processes or structures to support community consultation and decision making.** Establish processes or groups within the community that share information, support community input, and assist with or guide land use planning. This will leave a community better prepared to weigh the options and engage with business on a potential investment.
- **Learn about how agricultural investments work,** such as the national and international protections the community has, the typical steps comprising a land transaction, and best practices and process 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 of the community who engage with government and business on behalf of the greater community. In Tanzania, these representatives should be the Village Land Committee and a smaller sub-group called the Negotiation Team. Because this may run counter to prevalent norms, achieving this standard will likely require special effort and attention from an investor and may require support from a CSO. Although this guidebook is specific for the Village Council and Land Committee, it also serves the needs of other actors. CSOs who directly support communities will be able to find materials in this guide that is useful to individuals and groups within the community such as farmers and women's and youth groups.

The Roles and Responsibilities of Businesses

Business enterprises must take the initiative in implementing best practices when governance frameworks are lacking, or when communities lack adequate resources or capacity. It is up to businesses to do their due diligence to understand the rights involved and risks that an investment may pose for the people affected by a potential land investment transaction. Responsibilities go beyond due diligence. Businesses

must act responsibly throughout the investment process, from negotiation to implementation.

The Business Enterprise Guidebook's intended user is a company representative tasked with facilitating an investment. Because this individual may not fully 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 Roles and Responsibilities of Government

The Tanzanian 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, safeguard legitimate tenure rights against threats, make efforts to promote and facilitate the full realization of tenure rights, improve communities' capacity to negotiate with investors, support equitable transactions, provide access to justice to deal with infringements of legitimate tenure rights, take steps to prevent tenure disputes from arising and escalating into conflicts, and respond to businesses and communities that are engaged in a land matter.

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 fully knowledgeable about Tanzania's investment process. Given this, the guidebook contains material about Tanzanian governance, the investment process and information on how to guide and support a business enterprise in achieving a responsible investment.

Guidebook Structure

Each RIPL Guidebook follows a similar structure, providing:

- An overview of **international best practices** for responsible land investment.
- **Background information** outlining 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 the relevant stakeholder can 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 (SR)** at the end of this document:
 - SR 1: International Standards
 - SR 2: Overview of Tanzania's Legal Framework
 - SR 3: Community Governance Assessment
 - SR 4: Establishing an Interim Land Committee
 - SR 5: Land Rights Awareness Training Curriculum
 - SR 6: Developing Community By-Laws for Responsible Investment
 - SR 7: Holding a By-Law Adoption Ceremony
 - SR 8: Community Mapping
 - SR 9: Boundary Harmonization
 - SR 10: Documenting Boundaries and Land Rights
 - SR 11: Developing a Land Use Plan
 - SR 12: Land Valuation
 - SR 13: Consultation Meeting Notes Template
 - SR 14: Key Contract Elements
 - SR 15: Template for MOU
 - SR 16: Designing a Stakeholder Engagement Plan
 - SR 17: Outgrower Best Practices Literature Review

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 because there are many places in national laws where it does not do enough to protect communities who have a right to use purchased agricultural land.

This section will discuss:

- ✓ Best Practices Overview,
- ✓ Free, Prior and Informed Consent (FPIC) and how it applies in Tanzania.

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, 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 applicable international standards. 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):

- Committing 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 and mitigating potential impacts of the investment,
- 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 Tanzania's regulatory requirements against best investment practices and briefly lists the supplemental activities that communities should undertake to bring an investment closer to these practices. For a more detailed look at these statutory requirements, see [Supplemental Resource 2: Overview of Tanzania's Legal Framework](#).

Each section of this guide provides more detailed guidance that describes Tanzanian regulatory requirements. It outlines the government capacity to oversee and participate in those requirements, and describes the supplemental activities that an investor will need to perform to bring an investment project up to a best practice status.

Investment best practice	Government regulatory requirement	Gap between best practices and government requirement	Recommended steps that the community can take to bring the investment closer to international best practice
Strengthen Community Systems & Safeguards	Not mandated	Not required by law. Significant gap	The Village Council should work with the National Land Use Planning Commission (NLUPC), the District Council and its selected CSO partner to evaluate the strengths and weakness of the community's existing governance structures to support preparation and engagement with

			prospective investors. The Village Assembly should also identify existing rules and practices related to responsible investment.
<u>Conduct due diligence</u>	Not mandated	Not required by law. Significant gap	The Land Committee should continue to ensure that Village Assembly members are informed about their rights and the potential benefits and risks that investments in land may bring. Individuals who hold tenure rights should know about their rights and how to ensure that those rights are respected.
<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.	The community receives an impact assessment from the business and shares it with the Village Assembly. Consultation and engagement should reach all land using women, men and pastoralists in an interactive and gender-sensitive way.
<u>Conduct community capacity and impact assessments</u>	VLUP Guidebook	Insufficiently required by law. Significant gap.	The community should strengthen its capacity to receive, use and provide information, as well as its capacity to make informed decisions about the investment project. The business should assess all investment impacts and create mitigating, accommodating measures and investment features.
<u>Negotiate inclusive contract with community</u>	Land Act	Insufficiently required by law. Significant gap.	In cooperation with the business, create an equal footing between the parties and forge 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 clauses to include and protect the rights of communities.
<u>Prevent and address land-related issues</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.	Business should conduct regular, meaningful monitoring and evaluation to verify performance and to identify and remedy implementation challenges and unanticipated impacts.

Important Concept for Communities: Free, Prior and Informed Consent

A 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.

Under UN principles, FPIC (requiring “consent”) is required for indigenous communities; and robust “consultation” is required for non-indigenous communities.² 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.³ And because businesses also understand that it is difficult to maintain a social license when surrounded by displaced land holders and users who do not consent, leading companies are treating all affected communities under the higher standard afforded to indigenous communities.⁴

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:

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 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 some provisions related 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 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 out and relies upon a fundamental principle of the National Land Policy aimed at enabling “all citizens to participate in decision making on matters connected with their occupation or use of land.”⁵

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 and process of deliberation and decision making that is locally legitimate and respects the cultural norms of the community. However, the implementation of current laws and policies fall short of best practices because the Village Land Act requires only one Village Assembly meeting for consent. 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.

For example, by law, land transfers less than 250 hectares require only one meeting of the Village Assembly to consult amongst themselves about land transfers in order to approve or reject the transfer. The Village Assembly ostensibly includes all village adults, although 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 are 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, even vote though they have a legal right to do so.

- Although single women have a legal right to own and access land, they typically aren't 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, the 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. It is therefore critical that businesses obtain the free, prior and informed consent of all relevant stakeholders in all transactions.

This means that businesses should be 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 for the business 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 that their participation is needed to contribute to 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.
- Village Council members should mobilize their 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. 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 (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 instruction.
- 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 keep track of the agenda and time.

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

Document the meetings.

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

Schedule additional meetings.

- If required, develop a schedule to hold multiple meetings with Village Assembly to inform and to provide space for dialogue.
- Village Assembly members should agree upon the time between meetings.

Obtain consent from the Village Assembly. After each meeting, the Village Assembly should vote on whether or not to proceed with the assessments in the following task.

- If 51% of participating assembly members voted in favor of the business proposal, then 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 included at every stage of the project before any decisions are made.

² 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>.

³ 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).

⁴ 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/>.

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

3.

Themes for Responsible Investment in Tanzania

Themes for Responsible Investment in Tanzania

Understanding this context will help communities evaluate the financial viability and social impacts of the project.

This information can be used to develop a strategy for ensuring that companies meet their responsible investment requirements and avoid negative impacts on the community. Below is a brief overview of some of this context, including:

- ✓ Land Based Investment Experience to Date
- ✓ Village Land Use Planning
- ✓ Customary Practices and Women
- ✓ Customary Law and Pastoralists
- ✓ Potential Avenues for Investment

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.⁶ 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.⁷ 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 an agricultural context. Additionally, the increase in land value

driven by investment and population growth may exacerbate land conflicts, especially conflicts between farmers and pastoralists.⁸

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 Village Land Use Planning (VLUP) process,⁹ the lack of available land and the complexity of the VLUP process challenges the likelihood that such conversions will take place.

This adds to the complexity of commercial agricultural investment and means that legitimate land rights holders can be left out of consultation and the decision making process of 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's not hard to imagine how conflict can erupt from this kind of situation, resulting in wrongful displacement or a failed deal.

Village Land Use Planning

According to the Land Use Planning Act of 2007, villages are supposed to engage in VLUP- a participatory land use planning process designed to help communities administer and manage their land's natural resources in a more efficient and sustainable manner.¹⁰ The NLUPC is responsible for ensuring 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 vulnerable groups.¹¹ By law, the VLUP process includes an overarching assessment 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 the ten-year planning horizon called for by VLUP 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 does not plan beyond 10 years, 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.¹² Village land is not directly

available for land investment. It must be reclassified as general land (controlled by the national government) and allocated to the TIC to be made available for investment.¹³ 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.¹⁴

The government envisions that all of the 12,000-plus villages across Tanzania 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 Certificates of Customary Right of Occupancy (CCROs), the individual or groups titles for village land that result from the VLUP process.¹⁵

Given this, 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.”¹⁶

Importantly, no mention of using the VLUP for determining the availability of land was made in the original 1998 version of the VLUP manual. Not surprisingly, some CSOs advocate against using VLUP to determine availability of land because they claim VLUP is being used as a justification for outside investments rather than being used as a tool to assess community land needs. Indeed, 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 the 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. The key to this is to conduct capacity and impact assessments to supplement the 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.¹⁷ 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.¹⁸

Discriminatory customary practices are particularly visible in marriage and inheritance. Approximately 80% of Tanzanian communities practice patrilocal and patrilineal marriage customs,¹⁹ meaning that women relocate to their husband's family land, and that land is passed down through male family members. This practice 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.²⁰

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.²¹ 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.²² 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.²³

Gender inequity that results from customary practices is also reflected in economic terms. Tanzanian women are more likely to be unemployed than men. However, when they are employed, women earn less than men across all educational and occupational scales.²⁴ 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 Region²⁵ and a comparative gender analysis of three different agribusinesses in the Arusha Region²⁶ found that income generation opportunities that do not specifically target women may increase their workloads while not providing them with the same benefits as men.²⁷

In contract farming contexts, female farmers face more barriers to entry, are typically restricted to lower value commodities, face greater challenges to growing their businesses, and have less discretion over earned income.²⁸ For waged income, women tend to be confined to gender-segregated roles, are paid less than men in similar positions, and are more vulnerable to sexual harassment by male colleagues and supervisors.²⁹

In sum, women in Tanzania are disadvantaged by customary law and practices, so communities need to ensure that companies seeking to invest in their region are acutely aware of how their actions may exacerbate or ameliorate these conditions. Given this, Village Councils and Village Assemblies should consider and address

women's issues to ensure investments don't leave them worse off. For more guidance, consult the **Gender Primer**.

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 and do not align with government land classifications, there are often conflicts between pastoralist activity and village land use management and planning.³⁰ In some cases, the tension between farming practices and grazing needs of pastoralists erupts into violent conflict.³¹ 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.³² Similarly, pastoralists and hunter-gatherers often have difficulty proving customary title to communal land, even where land has long been used for grazing.³³ Due to these factors, the VLUP process can surface longstanding tensions—and even create new conflicts—between farmers and pastoralists.³⁴

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.³⁵ Even with extensive pre-planning before conducting VLUP, however, 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 a 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 Tanzania Investment Centre (TIC) – a 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.³⁶ 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 aligned 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 that can guide it through a verifiably responsible investment process.

⁶ 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.

⁷ 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.

⁸ 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].

⁹ See *id.*

¹⁰ Land Use Planning Act (2007), §40(2).

¹¹ Ministry of Lands, Housing and Human Settlement Development (MLHSD), *Guidelines for Participatory Village Land Use Planning, Administration and Management in Tanzania* 9 (2013).

¹² See Tenga & Kironde, *supra* note 8.

¹³ Land Act (1999), §20(2).

¹⁴ Land Use Planning Act §40(2).

¹⁵ University of Michigan, “Briefing: Transformations in Poverty and Property Rights in Rural Tanzania,” (2016).

¹⁶ MLHSD, *supra* note 11, at 9.

¹⁷ 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>.

¹⁸ See Ministry of Community Development, Gender, and Children (MCDGC), *A National Gender Diagnostic Study in Tanzania: Final Report* (2012).

¹⁹ 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/>.

²⁰ Yefred Myenzi, *Women Land Rights in Tanzania* (2009) (Paper prepared by HAKIARDHI for presentation at the workshop organized by Mzumbe University DSM Campus).

²¹ 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).

²² See Marjorie J. Mbilinyi, *The State of Women in Tanzania*, 6 CAN. J. OF AFRICAN STUD. 371 (1972).

²³ See *id.*

²⁴ See MCDGC, *supra* note 18.

²⁵ 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.

²⁶ 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>.

²⁷ *Id.* at 36.

²⁸ See Dancer & Sulle, *supra* note 25; Daley & Park, *supra* note 26.

²⁹ See Dancer & Sulle, *supra* note 25, at 19; Daley & Park, *supra* note 26.

³⁰ See International Land Coalition (ILC), *Village Land Use Planning in Rangelands in Tanzania: Good Practice and Lessons Learned* 29 (Sustainable Rangeland Management Project 2013), available at <http://www.landcoalition.org/sites/default/files/documents/resources/RangelandsVillageLandUsePlanning.pdf>.

³¹ See Tenga & Kironde, *supra* note 8.

³² See ILC, *supra* note 30.

³³ *Id.* at 11.

³⁴ See *id.*

³⁵ See *id.*

³⁶ 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>.

4.

**Step-by-Step Guide to
Agricultural Investments
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 an Investment

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

Task 1: Strengthen Community Systems and Safeguards for Land Investments

1. Village Council seeks support from District Council, NLUPC, and/or a CSO to assess and strengthen community systems and safeguards for land investment.
2. Village Council establishes an interim Land Committee to prepare the community for prospective investment.
3. Interim Land Committee, with support of a CSO, builds awareness of rights and best practices among Committee and Village Assembly members.
4. Interim Land Committee leads efforts to draft community by-laws for responsible investment.
5. Village Assembly votes to adopt by-laws for responsible investment and elects permanent Land Committee members.

Task 2: Conduct Initial Due Diligence

1. Land Committee continues building awareness of rights and best practices among Village Assembly.
2. Land Committee prepares for rights identification and mapping process by consulting District Council.
3. Land Committee facilitates land rights identification and mapping with all community members, including women, pastoralists and other groups.
4. Land Committee prepares for land use planning process by consulting District Council.

5. Land Committee supports a participatory community land use planning process, including identifying if there is land available and suitable for investment.
6. Land Committee facilitates meetings with Village Assembly members to value land designated for investment.

Phase 2: Community Engagement and Assessments

Once the community is prepared for an investment, this phase provides steps for engagement and consultation with the business and includes the necessary community capacity assessment, environmental and social impact assessment (ESIA), and land valuation.

Task 1: Engage and Consult with Village Assembly

1. A Negotiation Team is identified as the community focal point and liaison to engage with the business.
2. Negotiation Team and Village Council meet with the business to receive detailed information about the business and the potential investment.
3. Negotiation Team validates information received from the business and secures permission from Village Council to engage with the broader community.
4. Land Committee assists in organizing a series of Village Assembly meetings for members to consider whether to conduct VLUP.
5. Negotiation Team ensures that the business provides notice of its intent to proceed with the investment, which is accessible to all community members.

Task 2: Conduct Community Assessments

1. Negotiation Team and the business introduce assessment process and develop assessment engagement plan with the community.
2. Negotiation Team helps the business to facilitate the community capacity assessment.
3. Negotiation Team ensures the business conducts an ESIA.
4. Negotiation Team helps organize VLUP activities conducted by national, district and village authorities.
5. National authorities conduct land valuation.

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

Task 1: Negotiate and Draft the Contract

1. With the support of a CSO, the Negotiation Team negotiates binding MOU with the business and holds a series of Village Assembly meetings to agree on the terms.
2. District and national government authorities review village-to-general land transfer request and determine how to proceed.
3. Office of Commissioner for Land provides 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. TIC issues a Derivative Right of Occupancy and final lease terms to the business.
2. Negotiation Team facilitates a final convening of the community to share the final version of the contract.

Phase 4: Implementing and Monitoring the Investment

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

Task 1: Prevent and Address Land-Related Issues

1. Village leaders take steps to strengthen community governance systems and ensure preparedness for ongoing investment accountability.
2. Land Committee helps to prevent disputes by maintaining ongoing engagement and consultation with the business and community members.

3. Land Committee works with business to establish a grievance mechanism for resolving land-related disputes.

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

1. Land Committee supports the business in establishing monitoring and evaluation practices for land related investments.
2. Land Committee ensures the business conducts follow on impact assessments to evaluate impacts on the community.

Phase 1: Preparing for Investment

This phase is about preparing the village and individual land holders and users for a land investment.

Task 1: Strengthen Community Systems and Safeguards for Land Investments

1. Village Council seeks support from District Council, NLUPC and/or a CSO to assess and strengthen community systems and safeguards for land investment.
2. Village Council establishes an interim Land Committee to prepare the community for prospective investment.
3. Interim Land Committee, with support of a CSO, builds awareness of rights and best practices among Committee and Village Assembly members.
4. Interim Land Committee leads efforts to draft community by-laws for responsible investment.
5. Village Assembly votes to adopt by-laws for responsible investment and elects permanent Land Committee members.

Task 2: Conduct Initial Due Diligence

1. Land Committee continues building awareness of rights and best practices among Village Assembly members.
2. Land Committee prepares for rights identification and mapping process by consulting District Council.
3. Land Committee facilitates land rights identification and mapping with all community members, including women, pastoralists and other groups.
4. Land Committee prepares for land use planning process by consulting District Council.
5. Land Committee supports a participatory community land use planning process, including identifying if there is land available and suitable for investment.
6. Land Committee facilitates meetings with Village Assembly members to value land designated for investment.

Task 1: Strengthen Community Systems and Safeguards for Land Investments

Best Practice

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

- Establishing a body - called a **Land Committee** (in this guidebook) – to lead efforts in preparing the Village Assembly for a possible investment and represent the community in negotiations with prospective investors.
- Drafting and adopting community rules – called **community by-laws for responsible investment** – that specifically govern land investments, particularly how decisions will be made about investors accessing and using land in the community.
- Conducting awareness-raising and training activities to ensure Village Assembly members are informed about their rights and understand benefits and risk associated with investments.

The establishment or strengthening of existing systems and safeguards should include the Village Assembly. The process will also likely generate debate and challenging discussions that will require time to resolve. Best Practices for Holding Village Assembly Meetings, located in the introduction, will promote the interests of all community members and result in:

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

Step-by-Step Guidance

A village is best positioned to benefit from a prospective investment if the Village Council takes measures to strengthen the community's governance structure, increases awareness of its rights, documents its land and resource rights, and engages in land planning exercises well before a prospective investor approaches the community. This will ensure Village Assembly members are well-equipped to make informed decisions and participate in a land-based investment process.

1. Village Council seeks support from District Council, NLUPC and/or a CSO to assess, strengthen, and safeguard community systems for land investment.

Government-Required Procedural Action

Not required by Tanzanian law.

Gap Between Best Practice and Required Procedural Action

Although many villages have governance structures in place, they may lack effective consultation, information sharing and decision-making among land rights holders.

Best Practice Supplemental Steps

The Village Council should select and work with a CSO partner to evaluate the strength and weakness of the community's existing governance structures to support preparation and engagement with prospective investors. The Village Assembly should also identify existing rules and practices related to responsible investment. In this guidebook, we will refer to this activity as a **community governance assessment**.

This process includes:

- Identifying an assessment team that will be responsible for designing and conducting the community governance assessment.
- Gaining support from the Village Council to legitimize the activity and help the assessment team to navigate interests, personalities and institutions.
- Designing and conducting the assessment in a manner that supports the participation of Village Assembly, paying special attention to include vulnerable groups such as women, youth, elderly, ethnic and religious minorities, indigenous people, and pastoralists.

- Mapping the existing village committees and looking at their current roles, responsibilities, resources and skillsets.
- Evaluating the reputation, influence, governance structure and composition of each village committee.
- Identifying and evaluating existing rules and practices, formal and informal, pertaining to land-based investment in the village.
- Documenting and sharing findings and making recommendations to the Village Assembly.

Supplemental Resource 3: Community Governance Assessment will help the Village Council understand how to implement a community governance assessment and the potential roles of a CSO partner. It will also help a CSO understand what activities should be undertaken.

2. Village Council establishes an interim Land Committee to prepare the community for prospective investment.

Government-Required Procedural Action

Not required by Tanzanian law.

Gap Between Best Practice and Required Procedural Action

Village Assembly members understand the challenges associated with land-based investments and recognize that their leaders could benefit from a CSO providing additional support.

Best Practice Supplemental Steps

The Village Council should work with the CSO partner to implement the recommendations of the community governance assessment. Based on the assessment findings, the Village Council should determine if a new body should be established or if an existing community structure should take on the responsibilities of investment preparation. For clarity in this guidebook, we are referring to this body as the *Land Committee*.

Frequently when establishing a new body, an interim body is established to help plan, draft and adopt the rules that will formally establish the new and permanent body. If the Village Council determines a new body should be established, it should work with the CSO partner to establish an **interim Land Committee** composed of representatives from key stakeholder groups in the community.³⁷ After the Village Assembly adopts the by-laws for responsible investment in Step 5 of this task, the

Village Assembly will elect members to the permanent Land Committee per the process outlined in the by-laws.

Whether newly established or built upon an existing structure, a Land Committee should be:

- Inclusive of individuals from ALL sectors of the community, including women, youth, elderly, ethnic and religious minorities, indigenous people, and pastoralists;
- Equipped to effectively share information within the community and allow for participation in dialogues and engagement by the full community;
- Vested with the appropriate authority and necessary resources to carry-out its duties;
- Sensitive to existing village committees, institutions and processes, including traditional hierarchies, community groups or associations, local (statutory) government institutions, etc.; and
- Accountable to community members.

Supplemental Resource 4: Establishing an Interim Land Committee outlines more detailed steps for establishing the roles and responsibilities of the interim Land Committee and electing/selecting its members.

3. Interim Land Committee, with support of a CSO, builds awareness of rights and best practices among Committee and Village Assembly members.

Government-Required Procedural Action

Not required by Tanzanian law.

Gap Between Best Practice and Required Procedural Action

Village Assembly members acknowledge that they would benefit from training specifically related to land rights and responsible investments.

Best Practice Supplemental Steps

An important part of establishing a foundation for responsible investment in land is ensuring that Village Assembly members are informed about their rights and the potential benefits and risks that investments in land may bring. Legal literacy and skills training can:

- Enable Village Assembly members to better understand their land rights and how to ensure that these rights are respected;
- Support the Village Assembly to develop informed, meaningful and practical by-laws for responsible investment consistent with national laws and informed by international best practices; and
- Empower individuals, particularly leaders and members of the Land Committee, with soft skills to support facilitation, negotiation and public speaking.

Before training the Village Assembly, it will be important for the CSO to first train members of the interim Land Committee. Once the Committee is trained, the CSO partner should assist and develop an appropriate training approach for the community, which may include:

- **Legal-literacy training** conducted by an expert facilitator, focused on civic education, land rights awareness, and rights and responsibilities related to land-based investments. There should be special emphasis in the training on rights of women, youth and land users with temporary or secondary rights. Separate training sessions for men and women may be needed to ensure that trainings are accessible and participatory.
- **Skills training** conducted by an expert facilitator. While all community members can likely benefit from skills training, this also offers an opportunity for targeted training with community leaders and Land Committee members on conflict resolution, facilitation, negotiation and public speaking to help them fulfill their roles in the investment process.
- **Facilitated dialogues** in safe spaces with target groups to build local understanding of relevant laws and best practices and to consider the relevance of key principles to their own lives and community.
- **Peer training** of target groups to share information about laws, policies and good practice with others in the community.
- **Public information and educational activities** about laws and best practices.

For an example training curriculum, see [Supplemental Resource 5: Land Rights Awareness Training Curriculum](#). This resource is intended to serve as a guide for a trainer to adapt for community trainings. It includes modules on civic awareness, land and property rights, land governance, women's land rights, land rights in the context of a potential investment, and skills-building.

4. Interim Land Committee leads efforts to draft community by-laws for responsible investment.

Government-Required Procedural Action

Not required by Tanzanian law.

Gap Between Best Practice and Required Procedural Action

Villages do not have by-laws that regulate investments in land.

Best Practice Supplemental Steps

Drafting community by-laws for responsible investment should be a participatory process that involves rounds of consultation, discussion and drafting. It is important that all Village Assembly members are given the opportunity to participate and shape the content of these rules to avoid formalizing rules that hurt vulnerable members of the community or unfairly benefit certain Village Assembly members. As discussed in Step 1, enlisting the support of a third-party expert, like an experienced CSO, can help empower Village Assemblies to establish systems and rules that support good governance for all.

Supplemental Resource 6: Developing Community By-Laws for Responsible Investment outlines specific considerations and recommendations for the Village Assemblies in establishing these rules. Refer to the section on Best Practices for Holding Village Assembly Meetings in the introduction for best practices on preparing, organizing, conducting and documenting the community meetings that will be integral to drafting the by-laws.

The community by-laws drafting process³⁸ should follow these steps:

- Interim Land Committee holds initial Village Assembly meeting.
- Interim Land Committee holds follow-up small group meetings and content specific meetings.
- Interim Land Committee develops first draft.
- First draft presented in a Village Assembly meeting. Village Assembly discusses revisions to first draft.
- Interim Land Committee incorporates revisions to develop second draft.
- Second draft is reviewed by outside legal expert, local government and customary leaders.
- Interim Land Committee holds Village Assembly meeting to share comments of legal expert. Village Assembly decides what to revise.

- Interim Land Committee incorporates community revisions into third draft.
- Interim Land Committee hosts a by-laws adoption ceremony. At this meeting, the final draft (usually this is the third draft) is presented to community for final review. More information on the adoption ceremony is discussed in Step 5.

The by-laws for responsible investment should include the following categories:

- Rules for the composition, authority and governance of the Land Committee;
- Rules for establishing community objectives for engaging and negotiating with the investors;
- Rules for communication channels and protocols with the Village Assembly, Village Council, local government, potential investors and other stakeholders such as CSOs; and
- Rules for compensation received from the investor on how it will be collected, stored, managed and documented.

5. Village Assembly votes to adopt by-laws for responsible investment and elects permanent Land Committee members.

Government-Required Procedural Action

Not required by Tanzanian law.

Gap Between Best Practice and Required Procedural Action

There is no gap.

Best Practice Supplemental Steps

Once a final draft is agreed upon, the interim Land Committee should host a community-wide ceremony to adopt the community by-laws for responsible investment. This is an important meeting, as these rules will determine how the community will make decisions about its land, who will represent the community in negotiations with prospective investors, and how compensation will be shared and used. The meeting should therefore be attended by at least the male and female heads of every household in the community, all Village Council Members, trusted government officials, and relevant cultural and customary leaders. The meeting should also be well-documented, including with photos and videos. [Supplemental Resource 7: Holding a By-Law Adoption Ceremony](#) outlines the extra considerations that should be taken in organizing and conducting this important community meeting.

Once the by-laws are adopted, the term of the interim Land Committee members ends. Elections for members to the permanent Land Committee should be held as

required in the newly adopted community by-laws (members of the interim committee may continue on the permanent committee, or they may not, depending on the election results).

The permanent Land Committee with its newly elected members should begin its duties with the mandate and authority provided by the adopted by-laws.

Task 2: Conduct Initial Due Diligence

Best Practice

At the outset of a potential investment process, it is imperative for a community to act with due diligence to avoid harming the community and individuals. It will be important for the Village Assembly to continue learning about and document its rights to land and natural resources, plan for how best to use them, and understand their value. By doing so, the Village Assembly will be better positioned to engage with a business by identifying and mitigating issues and risks a potential investment project may pose to the community.

For a village, acting with due diligence includes:

- Ensuring that Village Assembly members are informed about their rights and the potential benefits and risks that a land investment may bring,
- Conducting gender sensitive rights identification and mapping,
- Developing land use plans that identify development priorities and designate areas that might be suitable for investment if appropriate, and
- Understanding the monetary value of land and natural resources, particularly the area designated for investment.³⁹

Each of these activities – training, rights identification and mapping, land use planning, and land valuation – should be designed and conducted with the following principles in mind:

- **Participatory:** All Village Assembly members are invited to shape and participate in these activities. At a minimum, all socio-economic groups within the community are represented in the process.
- **Gender-sensitive:** It is particularly important to ensure processes recognize the different needs, experiences and land uses of women.
- **Equitable:** Processes should result in outcomes that benefit all socio-economic groups within the community
- **Systematic:** Processes should take particular care to map and value informal uses.
- **Sustainable:** These activities will shape the way land is used and accessed by future generations. Land use planning in particular should take care to consider the impact of decisions made today on future generations and seek to find solutions that maximize long-term sustainability.

This section primarily covers due diligence activities that the Village Assembly should complete prior to engaging with a business about a potential investment. However, **due diligence is an ongoing process**, meaning that each of these activities should be repeated.

In subsequent investment phases, which includes after an agreement is signed with a business, the community should continue to act with due diligence. Land in the area could become more valuable or attract other commercial interest. The community could also experience a transition from subsistence to commercial agricultural land use that could lead to powerful members of the Village Assembly asserting claims over land of less powerful, such as female heads of households.

To help the community prepare for such changes, it will be important for Village Assembly members to continue learning about their rights and using their maps to make better decisions about how to manage their lands and natural resources equitably and sustainably.⁴⁰

Step-by-Step Guidance

This task does not replace the VLUP process and can be skipped if the government intends to carry out land use planning activities. But it is included because the NLUPC is not able to facilitate the process throughout the entire country due to the lack of human and financial resources. Given this reality, it is important that Village Council and Village Assembly members have tools that help them proactively understand, administer and manage their land natural resources in a more efficient and sustainable manner.

1. Land Committee continues building awareness of rights and best practices among Village Assembly.

Government-Required Procedural Action

Not required by Tanzanian law.

Gap Between Best Practice and Required Procedural Action

To ensure Village Assembly members understand their land rights, land rights training may need to be an ongoing activity.

Best Practice Supplemental Steps

The Land Committee should continue to ensure that Village Assembly members are informed about their rights and the potential benefits and risks that investments in

land may bring. Individuals who hold tenure rights should know their rights and how to ensure that those rights are respected.

Supplemental Resource 5: Land Rights Awareness Training Curriculum (still in production) can serve as a guide for a trainer to adapt for community trainings. It includes modules on civic awareness, land and property rights, land governance, women's land rights, land rights in the context of a potential investment, and skills-building.

2. Land Committee prepares for rights identification and mapping process by consulting District Council.

Government-Required Procedural Action

According to the Land Use Planning Act of 2007, the NLUPC should conduct VLUP to help map and identify land rights for communities and individuals.⁴¹

Gap Between Best Practice and Required Procedural Action

The NLUPC does not have the resources to facilitate VLUP in each village across the country.

Best Practice Supplemental Steps

Before conducting any rights identification and mapping activities, the Land Committee should contact the Village Council and District Council to see if there are related ongoing or planned activities. This will help the community:

- Reduce the risk of duplicating work that might be underway by the District Council,
- Identify potential partners and resources and foster institutional buy-in from local government, and
- Ensure land rights mapping activities are conducted consistently with Tanzanian law and can be integrated into future VLUP activities.⁴²

3. Land Committee facilitates land rights identification and mapping with all community members, including women, pastoralists and other groups.

Government-Required Procedural Action

According to the Land Use Planning Act of 2007, the NLUPC should conduct VLUP to help map and identify land rights for communities and individuals.⁴³

Gap Between Best Practice and Required Procedural Action

The NLUPC does not have the resources to facilitate VLUP in each village across the country.

Best Practice Supplemental Steps

Maps that identify the land rights of Village Assembly members are important tools for communities to use throughout the investment process and in their discussions about land and resources.⁴⁴ Maps will help the Land Committee:

- Inform discussions with the Village Assembly about land and natural resources.
- Clarify boundaries between individuals and their neighbors.
- Document natural resources located within a common area.
- Reduce land and natural resource conflict.
- Identify if there is land the Village Assembly is willing to sell or lease to prospective investors, and if so, what land.
- Clarify the location of historical and cultural sites (traditional authorities/spiritual leaders may choose to map sacred sites to protect them).
- Show connection between agricultural lands and other ecosystems such as forests or wetlands.
- Promote collaborative land natural resources management within and between communities.⁴⁵

The Land Committee should work with the Village Council and its CSO partner to:

- **Identify mapping methodology and prepare schedule.** There are a number of different ways a community can map land rights. Supplemental Resource 8: Community Mapping describes two different methodologies: sketch mapping and satellite imagery mapping. The Land Committee should develop a schedule for conducting the selected approach and present the plan to the community for input.
- **Conduct the mapping exercise.** Supplemental Resource 8: Community Mapping describes the best practices and steps necessary to identify and map individual and community land rights, including those of individuals and groups that claim rights under both formal law and custom.
- **Harmonize boundaries and resolve disputes.** Supplemental Resource 9: Boundary Harmonization describes the best practices and steps necessary to harmonize boundaries and resolve disputes with participation from Village

Assembly members. The community will typically address three categories of conflict at this stage: intra-community conflicts, inter-community conflicts and conflicts between a community and outside actors.

- **Document Agreed Boundaries and Land Rights.** After boundaries are harmonized and conflicts resolved, the community should document proof of the land claims. Supplemental Resource 10: Documenting Boundaries and Land Rights provide some options for the community to consider, including memoranda of understanding (MOUs), physical land markers and technical measurements. The Land Committee should work with the local government to identify the best option.
- **Prepare a village map and present it to the community.**

The community mapping process will involve many community meetings. Refer to Best Practices for Holding Village Assembly Meetings in the introduction section for best practices on preparing, organizing, conducting and documenting all of the community meetings that are critical to successful rights identification and mapping processes.

4. Land Committee prepares for land use planning process by consulting District Council.

Government-Required Procedural Action

According to the Land Use Planning Act of 2007, villages are required to conduct VLUP to administer and manage their land natural resources in a more efficient and sustainable manner.⁴⁶

Gap Between Best Practice and Required Procedural Action

The NLUPC does not have the resources to facilitate VLUP in each village across the country.

Best Practice Supplemental Steps

Equipped with the village map (with boundaries marking settlement areas, private land, pasture lands, forest land, etc.) the Village Assembly has a better understanding of existing land uses and rights claims; through the boundary harmonization process, the community has also addressed existing boundary conflicts. The Village Assembly now has the opportunity to re-evaluate and shape the future uses of this land through a process called **land use planning**.

Before conducting any land use planning activities, the Land Committee should contact the Village Council and District Council to see if there are related ongoing or planned activities. This will help the Village Assembly:

- Reduce the risk of duplicating work that might be underway by the government. Additionally, many national and regional governments have developed existing land use plans that can provide starting points for a community's processes.
- Identify potential partners, information and resources. The District Council may have useful technical information about the community's land or have other resources to support the community in implementation.
- Foster institutional buy-in from the District Council. Government officials can help support the formal integration of the community's land use plan into their plans.

5. Land Committee supports a participatory community land use planning process, including identifying if there is land available and suitable for investment.

Government-Required Procedural Action

According to the Land Use Planning Act of 2007, villages are required to conduct VLUP to administrate and manage their land natural resources in a more efficient and sustainable manner.⁴⁷

Gap Between Best Practice and Required Procedural Action

The NLUPC does not have the resources to facilitate VLUP in each village across the country.

Best Practice Supplemental Steps

Land use planning is the systematic assessment of the current uses of land and natural resources and evaluation of alternative options to select and adopt the best land use options within a community.⁴⁸ Given competing demands on arable land – such as for agriculture, animal grazing, forestry and residential development – the Village Assembly should think carefully about the best use of limited resources now and for future generations.

Through this process, a community will be able to determine what land, if any, is suitable and available for prospective investment. The Village Assembly should think about how land planned for investment would fit within the broader picture of village land use and consider what the community would be like if it considered alternative

land uses for the area. It is ideal that the Village Assembly think about this before a business even approaches the Village Council.

The Land Committee should:

- **Develop a land use planning schedule** for conducting land use planning and present plan to the community for input.
- **Develop a land use plan with Village Assembly.** Through a series of community meetings, the Land Committee should lead a collaborative land use plan development, working with its CSO partner. Supplemental Resource 11 provides guidance on how to create a land use plan. Refer to Best Practices for Holding Village Assembly Meetings in the introduction section when organizing these meetings.
- **Finalize and share the land use plan.** The land use plan should be shared with district and regional government and be added as an attachment to the by-laws for responsible investment.

6. Land Committee facilitates meetings with Village Assembly members to value land designated for investment.

Government-Required Procedural Action

The government requires that a registered valuer certified by the Ministry of Lands, Housing and Human Settlements Development (MLHSD) conducts a valuation assessment of identified land.

Gap Between Best Practice and Required Procedural Action

Villagers do not always know the monetary value of their land and natural resources or its open market worth. Land is often sold or rented by the government for much less than the value it provides to communities. If a bad contract happens to be signed with a business, villagers may become poorer over time.

Best Practice Supplemental Steps

Villagers who know the value of their land have more bargaining power with business and are better prepared to negotiate more effectively for a fair deal. Supplemental Resource 12 provides guidance on how to value the land designated for investment. Refer to Best Practices for Holding Village Assembly Meetings.

³⁷ See Namati, *Community Land Protection Facilitators Guide* 6 (2017), available at <https://namati.org/resources/community-land-protection-facilitators-guide>.

³⁸ The process for drafting community by-laws is adapted with permission from Namati's experience working with communities in community land governance protection efforts. See *id.* at 95-112.

³⁹ *Id.* at 201.

⁴⁰ See *id.* at 13.

⁴¹ Land Use Planning Act §40(2).

⁴² See Namati, *supra* note 37.

⁴³ Land Use Planning Act at §40(2).

⁴⁴ Namati, *supra* note 37, at 143.

⁴⁵ *Id.*

⁴⁶ Land Use Planning Act §40(2).

⁴⁷ *Id.*

⁴⁸ See Food and Agricultural Organization (FAO), *Guidelines for Land Use Planning*, FAO Development Series 1 (1993), available at <http://www.fao.org/docrep/t0715e/t0715e00.htm>.

Phase 2: Community Engagement and Assessments

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

Task 1: Engage and Consult with Village Assembly

1. A Negotiation Team is identified as the community focal point and liaison to engage with the business.
2. Negotiation Team and Village Council meet with the business to receive detailed information about the business and the potential investment.
3. Negotiation Team validates information received from the business and secures permission from the Village Council to engage with the broader community.
4. Land Committee assists in organizing a series of Village Assembly meetings for members to consider whether to conduct VLUP.
5. Negotiation Team ensures that the business provides notice of its intent to proceed with the investment, which is accessible to all community members.

Task 2: Conduct Community Assessments

1. Negotiation Team and the business introduce assessment process and develop assessment engagement plan with the community.
2. Negotiation Team helps the business to facilitate the community capacity assessment.
3. Negotiation Team ensures the business conducts an ESIA.
4. Negotiation Team helps organize VLUP activities conducted by national, district and village authorities.
5. National authorities conduct land valuation.
6. Negotiation Team holds 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 Village Assembly

Best Practice

For an investment to succeed over time, a community must foster strong interactive relationships with the business through regular engagement and consultations. The process should be in accordance with FPIC. FPIC is a legal principle originating from the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP). It recognizes the right of land holders and users to say “yes” or “no” to proposed changes in their land use. Universally, this is also understood to be a legal principle of good contracting – the party being asked to enter into the contract has the right to say “no”. FPIC stands for Free, Prior and Informed Consent:

- **Free:** Village Assembly members 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:** Businesses and governments may only implement a project that involves transferring or changing the use of village land and natural resources *after* obtaining affected Village Assembly members’ explicit consent to the terms of the project.
- **Informed:** Business and governments must provide Village Assembly members with all material information needed to make an informed decision about whether to consent to a project that affects their land rights and uses.
- **Consent:** Village Assembly members 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 to implement projects.

FPIC is an important concept to guide the entire investment process, as the parties move from initial sensitization and consultation to negotiation and contract signature. For more information, see the **FPIC Primer**, as well as FAO’s guide, *Respecting Free, Prior, and Informed Consent* and USAID’s *Operational Guidelines for Responsible Land-Based Investment*.

Principles for meaningful engagement and consultation include:

- The Village Assembly should be represented by a Negotiation Team, which should **incorporate voices and perspectives from both powerful and marginalized groups** within the village. The Negotiation Team should make

sure that the business engages and consults with the Village Assembly in accordance to FPIC.

- To be effective, engagement and consultation must be **representative and inclusive**. This means including the active participation of groups that are frequently under-represented in decision-making forums (such as women, youth and ethnic minorities).
- Engagement and consultation should be viewed as a process consisting of **multiple meetings**. Village Assembly members will need adequate time to digest information, consider the risk and benefits to their livelihoods, and formulate questions so they can truly make an informed decision. Should the community decide to move forward, the Negotiation Team will also need time to gather information, consider diverse concerns of different stakeholders, and establish open communication will continue throughout the life of the investment project.
- Engagement and consultation should involve **two-way communication**. While the business is providing useful information to help Village Assembly members decide whether they are interested in the investment, the business should also be listening to the Village Assembly to understand its needs and help it determine if this is the right place for the business to investment.

Step-by-Step Guidance

Tanzanian laws and policies do not always provide for adequate consultation and engagement between a community and business. As a result, the community will need to be unified under common goals, prepped with information to meaningfully engage with the business, and allowed sufficient time to make decisions.

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 a single meeting of the Village Assembly. But one meeting falls short of best practices. Issues include:

- There is limited opportunity for participants to gain a full understanding about the investment proposal, pose questions and receive detailed answers, and express serious dissent or disagreement.
- 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 rights.
- 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.

1. A Negotiation Team is identified as the community focal point and liaison to engage with the business.

Government-Required Procedural Action

Not required by Tanzanian law.

Gap Between Best Practice and Required Procedural Action

Village Assembly members have reported feeling that they have been uninformed and coerced by business, government officials and Village Council members to approve the investment in such meetings.

Best Practice Supplemental Steps

Much of the business’s community engagement and consultation activities should occur directly with the Negotiation Team, comprised of 3-5 individuals from the Land Committee. Having a smaller group directly engage with business will increase coordination, ensure all Village Assembly members participate in the decision-making process, and demonstrate to the business that the community is unified.

Negotiation Team Responsibilities

Because the Village Assembly deserves a fair deal that provides meaningful benefits to all members, the Negotiation Team should be responsible for:

- Representing the Village Assembly by providing perspectives from different community members, including those of pastoralists, single women, youth and other vulnerable groups.
- Acting as a zealous advocate for the rights and needs of the village at all stages of the investment process.
- Providing the business with guidance on how to engage with the Village Assembly.

- Maintaining strong relationships with key stakeholders such as the District Council, different groups within the community and neighboring communities.
- Documenting decisions and remaining transparent by communicating information with Village Assembly.
- Developing a positive working relationship with the business by being prepared and presenting accurate information.
- Demonstrating good faith in all engagement activities.

Negotiation Team Structure⁴⁹

There are three main roles that members will need to fulfill in order to conduct effective negotiations:

- **Lead Negotiator**- will be in charge of speaking in negotiation sessions and reporting at community meetings.
- **Secondary Negotiator** - will support the Lead Negotiator and serve as the Team's liaison with the Land Committee, particularly to coordinate with the Committee's budget manager to monitor the use of funds related to the negotiation process.
- **Secretary** - will keep records of all negotiation meetings and will facilitate communication between the business, the government and civil society actors.

While it may be tempting to assume that Negotiation Team members will fall into these functions naturally, it is very important that these roles are specifically assigned and that the Negotiation Team is held accountable for upholding these responsibilities.

Negotiation Team Selection

Selection of members should be made by the Village Assembly and the process should receive widespread support.

- Members should have experience and skill in negotiation. They should be selected for their ability to meet the needs of the negotiation process, rather than for popularity or position in the community.
- Members should be selected in a way that considers diversity in terms of background, points of view and negotiation style because such a small committee cannot include representatives from every community subgroup.

- Members should not be exclusively religious authorities, Village Council members, politicians or elites. If the members from these groups are chosen, it is important that they represent the entire community and not only a faction or subgroup.

2. Negotiation Team and Village Council meets with the business to receive detailed information about the business and 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 or disapproval. If approved, each Village Council introduces the business plan to the corresponding Village Assembly for its consideration and approval.

Gap Between Best Practice and Required Procedural Action

When reviewing investment applications, the Village Council is often unequipped to identify potential risks and impacts on the community. In addition, the Village Council may not be representative of the land holders and users that would be affected by the investment. For example, the law also calls for a minimum of seven council members to be women. However, women's participation frequently falls short of this requirement. Even when women are in attendance, they may not speak in a mixed gender audience.

Best Practice Supplemental Steps

The business will initiate a meeting with the community to determine whether there is initial interest in the investment. The meeting might be requested through a third-party such as CSO who is providing the business with technical support because they are familiar with the customs of the local community.

The purpose of the meeting is to exchange of information about the potential investment:

- **Information the community needs from the business** to better understand the business as well as the risks, impacts and benefits of the proposed investment. At this point, the business should have already conducted some of its due diligence and be able to provide useful information about the proposed project.
- **Information the community should have prepared** to help answer questions from the business about the community and individuals using land

in and around the potential investment area. The business will also need to become familiar with relevant customary and traditional practices. They will also need to better understand the proposed investment site, including the institutional, environmental and social dynamics.

The Negotiation Team should ensure all Village Council members attending the meeting to review the business proposal from the business. Small groups should have sufficient time to discuss:

- Background of the business
- Project purpose
- Geographic scope
- Business model
- Proposed project timeline
- Specific land right being sought
- Potential terms of the agreement
- Potential benefits to the community
- Potential risks, including social, environmental and financial risks⁵⁰
- Whether the business will be working with a CSO or another third party.

3. Negotiation Team validates information received from the business and secures permission from Village Council to engage with the broader community.

Government-Required Procedural Action

This step is not required by Tanzanian law.

Gap Between Best Practice and Required Procedural Action

The Village Council should be provided with additional time to process and validate the information before making a decision on how to proceed. Depending on the size of the investment area, there can be confusion between neighboring communities on what is being promised by the business.

Best Practice Supplemental Steps

The Land Committee should consolidate information gathered from the Village Council meeting with the business and meet with small groups of community members as well as parallel committees from neighboring communities.

Supplemental Resource 13: Consultation Meeting Notes Template will help with documenting conversations. This process should consist of these steps:

- **Review and consolidate information.**
 - The Negotiation Team and the Village Council should meet to combine notes from the initial meetings with the business and address questions and issues related to the proposed investment.
- **Consult a CSO to review information.**
 - If it has not been done already, the Negotiation Team should identify a third party CSO to help support the community in the negotiation and planning process. This CSO should have an opportunity to review the compiled notes assembled by the Negotiation Team.
 - The CSO should help to validate the business's site-specific background research and address outstanding information gaps. Topics to be discussed should include the land status, ownership, and uses; local land tenure system; land and resources conflicts; and social demographics of the community.
 - The Negotiation Team should coordinate with the CSO to determine additional needs related to the negotiation process.
- **Compare information with neighboring villages.**
 - The Negotiation Team should consult with similar groups in neighboring villages that are impacted by the investment.
 - Where neighboring villages have undergone the same process in meeting with the business, committees should compare notes from those meetings. Similarly, if neighboring communities are working with a different CSO, the Negotiation Team should seek to compare information with them as well.
- **Meet with existing village groups**
 - Now that the Negotiation Team is equipped with information from the business, the Village Council, the CSO and neighboring villages, there should be a series of meetings with smaller groups within the village to assess initial attitudes towards the investment
 - The Negotiation Team should take into consideration the specialized needs of vulnerable groups by organizing separate meetings (for example, a meeting for women, a meeting for ethnic or religious minorities, etc.)
- **Meet with the Village Council to determine how to proceed.**
 - Once the above steps are complete, the Negotiation Team should compile reports from all of these meetings and reconvene with the Village Council to make a final determination on how to proceed.

- In this follow up meeting, the Negotiation Team and Village Council should also begin planning for the next step, holding a Village Assembly meeting to discuss the proposed investment.

4. Land Committee assists in organizing a series of Village Assembly meetings for members to consider whether to conduct VLUP.

Government-Required Procedural Action

The VLUP meeting is an important Village Assembly meeting required by law. This meeting serves as the engagement and approval event that would carry the investment into the next phase of implementation.

Gap between Best Practice and Required Procedural Action

As mentioned earlier, a single meeting cannot constitute meaningful engagement and consultation with community members, particularly when the VLUP process and various assessments have not yet been carried out. This meeting should be viewed as a starting point by both the Negotiation Team and business to begin engaging directly with the community.

Best Practice Supplemental Steps

The Negotiation Team should be responsible for the following:

- Before meeting with the business, work with the Village Assembly to identify priorities and concerns and agree upon common goals. This is critical because internal conflicts or disagreements can prevent a village from negotiating a good deal.⁵¹ The best way reduce conflict is to keep Village Assembly members informed and facilitate opportunities for additional discussions.⁵²
- Working with the Village Council to organize a series of planning and preparation meetings to unify the community and putting it in a better position to negotiate a more favorable outcome. These meetings should be held without the participation of the business. The community may want to include the District Council. This meeting should be used an opportunity for the Village Council to inform the Village Assembly about:
 - The business and its proposed investment;
 - The Village Council's decision to proceed with the investment process;

- Outcomes from meetings with Village Councils from neighboring villages that could also be impacted by the investment;
 - The investment process, includes the importance of the VLUP, the capacity assessment, ESIA, valuation assessment and negotiation of the contract; and
 - Common economic, social and cultural goals to be agreed upon with the Village Assembly for the meeting with the business.⁵³
- Once the Village is unified, a series of Village Assembly meetings should be held for the business representative to officially introduce the proposed investment to the community. Similarly, the community may want to include the District Council. This meeting should take place until the village is unified under a common purpose. The business should provide complete information on:
 - Background of the business
 - Project purpose
 - Geographic scope
 - Business model
 - Proposed project timeline
 - Specific land rights the business enterprise is seeking
 - Duration of the agreement
 - Required government permissions for the project to proceed
 - Potential benefits to the community
 - Potential risks to the community and community members, including social, environmental and financial risks.⁵⁴

The business should not provide any sort of compensation for participation. Refer to Best Practices for Holding Village Assembly Meetings in the introduction section.

5. Negotiation Team ensures that the 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 Village Assembly 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 in carrying out the assessments in the following phase after they have obtained consent from the Village Assembly.

- The business should provide notice in a language, format and location that is accessible to community members, including women and other vulnerable groups.
- 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.

The Negotiation Team should ensure that the business’ notice of intent is accessible to all impacted community members. This may require the Negotiation Team to assist the business in distributing the notice and giving advice on the appropriate languages and formats for publication.

Task 2: Conduct Community Assessments

Best Practice

To inform whether both the business enterprise and the community should proceed with the investment, the business should ensure three types of assessments are conducted:

- **Capacity of Community:** This assessment looks at the capacity of community members to engage assessment teams, discuss their land uses and livelihoods, and of community leaders to negotiate benefits, compensation and other contract terms on behalf of the community.⁵⁵ The ongoing consultation, engagement and early revisions to the project design should include activities that enable community members (including women and others that cannot always participate) to articulate livelihoods, land uses and enable leaders to negotiate with business enterprise on an equal footing.
- **ESIA:** The ESIA identifies and gauges actual or potential impacts from the proposed investment project on the environment and community, including related land uses, rights and livelihoods.⁵⁶ Revisions to the investment design should incorporate mitigation measures that will reduce or eliminate impacts and sustain or improve livelihoods in the community.
- **Land Valuation:** At the core of determining impact is the assessment of the market and non-market value of the land, including livelihoods, social, cultural, religious, spiritual and environmental values to ensure that compensation and benefits are equitable for women, men and communities.⁵⁷

Step-by-Step Guidance

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

- **Capacity:** The activities outlined in the government-issued 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 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 does not adequately capture environmental impacts

or reflect the land uses and livelihood needs of women and pastoral communities, primarily because of prevailing cultural norms and the ongoing tension between pastoralists and farmers.

1. Negotiation Team and the business introduce the assessment process and develop assessment engagement plan with the community.

Government-Required Procedural Action

Not required by Tanzanian Law.

Gap between Best Practice and Required Procedural Action

Village Assembly members reported that they weren't aware when assessments were conducted for investment purposes.

Best Practice Supplemental Steps

As a result of the engagement and consultation process, the Negotiation Committee as well as the broader community should be aware that three assessments will be conducted to determine the feasibility of the investment.

The Negotiation Team should organize a Village Assembly meeting for the business to introduce the assessment team, answer questions, develop an assessment engagement plan and confirm that the community is comfortable moving forward.

Given the complexity of the assessment, the business will hire experienced third parties to design and conduct the capacity assessment, ESIA and land valuation. In addition to possessing the requisite expertise, the assessment teams should include:

- Experts generally familiar with customary and traditional practices who are able to engage with the Village Assembly in a culturally sensitive manner and learn the local customs and practices related to land, natural resources and livelihoods.
- Interpreters if necessary to ensure clear communication between the business enterprise and community participants.
- Ideally, one person from each team should be a woman who can engage and lead discussions with community women since local cultural norms and individual preferences may inhibit the candor and participation of women if they are interviewed by men.

During the meeting, in addition to following Best Practices for Holding Village Assembly Meetings, the following steps should be taken:

- Design and agree upon an assessment engagement plan with community leaders and members.
- Agree together on next steps and how to communicate and share assessment findings.
- Remember that community members have the right to choose how they will be represented in the assessment activities.⁵⁸
- Have the Negotiation Team and Village Assembly jointly decide to channel information by establishing a (or using an existing) committee of community representatives, each of whom will represent the interests of a group within the community, participate in the mapping and assessment activities, and share information. Each group should select its own representatives.
- Emphasize that anyone can approach the business enterprise and its implementing experts during the assessment.

2. Negotiation Team helps the business to facilitate the community capacity assessment.

Government-Required Procedural Action

Not required by Tanzanian Law.

Gap between Best Practice and Required Procedural Action

Village Assemblies lack experience with commercial land transactions.

Best Practice Supplemental Steps

The community capacity assessment should look at the capacity of community leaders and community members who use land to listen, comment, disagree, ask questions, and ultimately negotiate benefits, compensation and other contract terms. To conduct a community capacity assessment, the Negotiation Team should enlist help from a CSO to:

- **Decide the “who.”** The Negotiation Team will first need to determine the assessment population of interest, which is to say, *whose* capacity will be assessed. Depending on the size of each community, it may be too time-consuming to assess the capacity of every land holder and user. The Negotiation Team may therefore elect to focus on Village Council members and anyone chosen by a community group to represent their interests (as decided by each group as part of the assessment engagement plan). The Negotiation Team may also apply a sampling methodology to assess the

capacity of individuals and randomly select from among the different groups, taking care to include vulnerable groups such as women, youth, elderly, ethnic or religious minorities, indigenous people, and pastoralists.

- **Decide the “what.”** The Negotiation Team should next determine *what* capacities to assess. Sample categories could include:
 - *Land rights awareness:* Is the individual aware of his or her rights under national law and local custom, or able to describe his or her interests in the land?
 - *Communication and negotiation:* Is the individual able and confident to voice questions in group discussions, voice disagreement and propose alternatives?
 - *Land valuation and compensation:* Is the individual able to assess the value of his or her interests or rights to the land? Is the individual aware of different compensation options that he or she can request?
 - *Contract terms and conditions:* Is the individual literate? Does the individual understand how contracts work? Is he or she able to understand basic contract terms does he or she understand what is going to be agreed on?
 - *Leadership:* Is this individual able to represent the interests of other community members? Are there evident power struggles between leaders that could undermine the process?
 - *Committee structure:* If a committee was established to represent a community's interests, does it operate under agreed upon rules?
- **Decide the “how.”** The Negotiation Team must then determine *how* to assess the capacity of Village Council and Village Assembly members. It should consider whether it will use quantitative or qualitative methods. If it uses quantitative methods, it will need to develop a scale (such as a 1 to 4 scale for low, basic, moderate and high capacity). The Negotiation Team will need to determine the method of data collection: will the team hold semi-structured interviews with each participant, ask participants to fill out a written self-assessment survey or hold focus-group discussions?
- **Perform the assessment and validate findings.** After designing the assessment, the team must conduct the assessment and validate the findings in a community meeting. The Negotiation Team should share findings in a meeting that brings together all relevant stakeholders and held in accordance with the agreed upon assessment engagement plan. During this meeting, all stakeholders should be able to ask questions and express their opinions on

the findings. The Negotiation Team should consider the reactions of the Village Assembly and document them in the final version of the assessment. The Team should then outline next steps.

- **Develop and implement a plan to build community capacity.** If the Negotiation Team determines that the village does not have the needed skills or information to participate in subsequent assessments and contract negotiations, the Team will need to create a plan with the help of a CSO to build that capacity. The Negotiation Team should also consider engaging other local civil society organizations or experts to build capacity. The following are suggested activities that the assessment team could undertake:
 - Provide training on basic land and natural resource rights, as established in best practices, international standards Tanzania has signed onto, the Constitution, national land policy, national land laws and local customary laws. Consult Supplemental Resources 1 and 2.
 - Conduct a workshop to develop public speaking and negotiation skills.
 - Hold a workshop centered on topics that will come up in the livelihoods assessment and the valuation assessment to help community members understand how their lives and livelihoods will change if they are no longer able to use the land.
 - Hold a workshop on compensation options that incorporates case studies and examples of the types of compensation communities can request (such as land-based compensation, productive goods, rental fees, infrastructure development projects, employment opportunities and shares in the venture). The workshop should cover best practices such as ensuring compensation is specific, documented in the agreement, and tied to timelines and milestones.
 - Assist the appointed assessment committee to develop rules to ensure it is accountable and that expectations and roles are clear.
 - Provide financial support to the community so it can retain independent technical experts and advocates to assist the community throughout the process. The experts can help the community engage appropriately with the business enterprise, evaluate impacts of proposed project, negotiate fair contract terms and evaluate the contract. Taking steps to ensure that the experts provide independent advice to the community will make it more likely to trust that advice and have confidence in the contracting process.

3. Negotiation Team ensures the business conducts an ESIA.

Government-Required Procedural Action

According to the Environmental Management Act, 2004 (EMA) and its regulations, an 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 does not address social, economic, livelihood and legal impacts related to the potential investment as called for by international best practices.

Best Practice Supplemental Steps

The business will be responsible for hiring an independent third party to conduct an ESIA. This assessment offers a more thorough analysis of the social, economic and livelihood impacts of the project, in addition to environmental impacts.

- Tanzanian EIA laws and 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 standards⁵⁹ and domestic laws and policies.
- The third-party assessment team will need to develop a customized assessment to identify potential issues and risks related to economic, environmental, social and land rights issues. The research methodology should describe:
 - Scope and duration of study;
 - Location and boundary of the potential investment site, along with areas near the site that could be affected by the investment;
 - Thematic areas and issues that will be assessed;
 - The different types of land holders and users potentially affected by the investment;
 - Tailored questionnaires for each type of land holder and user;
 - Types of qualitative and quantitative research techniques that will be used; and
 - Links to the community engagement plan.

4. Negotiation Team helps organize 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 participatory land use management (PLUM) team and the completion of an operating plan for the village or villages within the district that will be the subject of VLUP.⁶⁰
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 uses 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.⁶¹
4. **PLUM Team Completes a 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 lays out planned uses. This part of the process typically takes around 30 days to complete.⁶²
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 land use management appraisals are carried out periodically by village leaders to identify and address issues.⁶³

Gap between Best Practice and Required Procedural Action

There are a number of challenges towards implementing the VLUP process.⁶⁴

- 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 2) is inadequate to meet the requirements for an ESIA.
- 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.
- 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 create challenges in enforcing laws and policies, particularly during the implementation of VLUP.⁶⁵ To effectively address women's land uses and rights, the VLUP should 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

As the NLUPC, in coordination with district and village authorities, carries out VLUP, the Negotiation Team should ensure that ongoing consultation and engagement is maintained with the Village Assembly, that impacts linked to the proposed investment are clearly identified and mitigated, and that women, men, pastoralists and other vulnerable groups are reached, considered and accommodated. **The business enterprise should not be involved in the process.**

In order to support the Negotiation Team, it might be useful to identify one or more suitable CSOs and request that they be integrated into the process. Ideally this would be the same organization(s) that helped with the capacity building assessment discussed previously to ensure continuity and reduce the burden on the communities.

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. Assuming that the proposed land investment is moving toward an 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.

5. National authorities conduct land valuation.

Government-Required Procedural Action

The government requires that a MLHSD-certified valuer conducts valuation of the identified 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.⁶⁶ 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.⁶⁷
- 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 rural land market.⁶⁸

Gap between Best Practice and Required Procedural Action

In 2016 Tanzania enacted the Valuation and Valuers Registration Act to regulate the valuation profession. Noteworthy gaps in the existing process include:

- The 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.⁶⁹ 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.

Best Practice Supplemental Steps

Communities that know the value of their land have more bargaining power with business and are better prepared to negotiate more effectively for a fair deal. The Negotiation Team should refer to [Supplemental Resource 12](#), which provides guidance on how to value the land designated for the investment. For additional guidance for this step see the **Valuation and Compensation Primer**.

Based on the valuation conducted by the government as well as the value of the land conducted by the Negotiation Team with the Village Assembly, develop a **compensation and benefits framework** that should include:⁷⁰

- **Who should be compensated:**
 - Women
 - Men
 - Village Council on behalf of the community,
 - 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, including marine and aquatic resources, timber and non-timber forest products, freshwater, medicinal plants, hunting and gathering grounds,⁷¹ and grazing and cropping areas; and
 - Non-tangible values, including livelihoods, social, cultural, religious, spiritual and environmental.⁷²
- **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 resources 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 to all recipients (including women), including frequency, amounts and penalties for failure to perform.

Document how compensation was calculated and shared with the community during the negotiation process.⁷³ Revise the business plan to reflect the proposed compensation scheme, 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.

6. Negotiation Team holds a Village Assembly meeting to review findings from all three assessments and decide whether to ratify or renew 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 alone 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, the Negotiation Team should conduct additional consultation and engagement efforts to ensure familiarity with the findings from each of the assessments and to ensure agreement on next steps. Importantly, 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.

The Negotiation Team should hold a final Village Assembly meeting to ratify and memorialize the community's decision to halt or proceed. Refer to [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 and renew the consultation and engagement process to determine if they can be brought into agreement.⁷⁴
- If 51% of participating assembly members that are adults vote in favor of the application, the meeting minutes should be drafted and signed by those that gave their consent. Full consent by the community has been ratified and formalized.

⁴⁹ See Ginger Gibson & Ciaran O’Faircheallaigh, *IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements* 68 (Gordon Foundation 2015), available at http://gordonfoundation.ca/app/uploads/2017/03/IBA_toolkit_web_Sept_2015_low_res_0.pdf.

⁵⁰ See United States Agency for International Development (USAID), *Operational Guidelines for Responsible Land-Based Investment* 25 (2015).

⁵¹ Gibson & O’Faircheallaigh, *supra* note 49, at 54.

⁵² *Id.* at 55.

⁵³ *Id.* at 54.

⁵⁴ USAID, *supra* note 50, at 25.

⁵⁵ See 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.

⁵⁶ 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.”).

⁵⁷ Nigel Edmead, Presentation on “Gender Issues in Designing and Setting Up Land Information Systems and Databases: Experiences from Ghana, Zambia and Uganda” (May 2011).

⁵⁸ See FAO, *Respecting Free, Prior and Informed Consent* 23 (Governance of Tenure Technical Guide 3 2014), available at <http://www.fao.org/3/a-i3496e.pdf>.

⁵⁹ See AU Guiding Principles, *supra* note 55, 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 56, *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.

⁶⁰ See 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).

⁶¹ See ILC, *supra* note 30.

⁶² See NLUPC, *supra* note 60.

⁶³ See *id.*

⁶⁴ 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>; Faustin Maganga, et al., Briefing at Royal Danish Embassy, Dar es Salaam: Transformations in Poverty and Property Rights (Sept. 30, 2016); 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.

⁶⁵ 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>.

⁶⁶ Land Act §2.

⁶⁷ See Valuation and Valuers Registration Act §51(1).

⁶⁸ See *Id.*

⁶⁹ *Id.* at §18.

⁷⁰ See True Price, *Towards a Better Protocol on Fair Compensation in Cases of Legitimate Tenure Changes: Input Document for a Participatory Process* 5 (2016), available at <http://landportal.info/sites/landportal.info/files/TowardsFairCompensationProtocol-FinalDraft.pdf>.

⁷¹ International Finance Corporation (IFC), *Performance Standard 5: Land Acquisition and Involuntary Resettlement* ¶ 5 (2012), available at http://www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES.

⁷² Edmead, *supra* note 57.

⁷³ IFC, *Guidance Note 5* ¶ GN22 (2012).

⁷⁴ Agence Française de Développement (AFD), *Guide to Due Diligence of Agribusiness Projects that Affect Land and Property Rights* 24 (2014), available at <http://www.landcoalition.org/sites/default/files/documents/resources/Guide-to-due-diligence.pdf>.

Phase 3: Developing an Equitable and Inclusive Contract

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

Task 1: Negotiate and Draft the Contract

1. With the support of a CSO, the Negotiation Team negotiates a binding MOU with the business and holds a series of Village Assembly meetings to agree on the terms.
2. District and national government authorities review village-to-general land transfer request and determine how to proceed.
3. Office of Commissioner for Land provides 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. TIC issues a Derivative Right of Occupancy and final lease terms to the business.
2. Negotiation Team facilitates a final convening of the community to share the final version of the contract.

Task 1: Negotiate and Draft the Contract

Best Practice

The Negotiation Team is responsible for representing the entire community throughout the negotiation process. Tanzanian laws, policies and practices sometimes can prevent communities and/or individual land holders and users from participating 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. Given the complexity of contracting it is highly advisable that the Negotiation Team seek formal legal representation or support from CSOs with legal expertise. The Negotiation Team should ensure:

- The negotiation process is **non-discriminatory and gender sensitive and provides the meaningful opportunity for participation** of all community members in the investment area.⁷⁵
- The business **actively engages with communities and individuals who have legitimate land rights**, including all women and men that currently occupy and use the land.
- The business **provides comprehensive information** to the Negotiation Team that is shared with all land holders and users (both women and men).⁷⁶
- The **contract document memorializes the clear rights, responsibilities and processes** that have been defined under Phase 2 and includes provisions that provide clarity to the terms of the agreement.
- The business **considers all relevant information** by taking into account local interests identified through consultation, engagement and assessments.
- 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.

Step-by-Step Guidance

The Negotiation Team should ensure a binding MOU between the community and business is signed and establishes clear rights, responsibilities and processes.

- The current contracting process called for by law virtually prevents communities and individual land holders and users from participating equally as an informed and empowered contracting parties with the business enterprise and the government.
- Because the government is 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.

The 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 that will help in establishing, performing, and policing agreements made with communities.

1. With the support of a CSO, the Negotiation Team negotiates binding MOU with the business 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. They should also have time to present their compensation and requirements based upon the ongoing consultation and engagement, impact assessment, findings from the VLUP, and final investment configuration.

Best Practice Supplemental Steps

Due to the importance of the contracting process and its complexity, the Negotiation Team should seek support from a CSO to help with negotiating the binding MOU and contract, particularly if:

- Village Assembly members do not view themselves as possessing sufficient status such that they would be expected to be consulted and to consent;
- Village Assembly members do not understand contract terms;

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

The Negotiation Team and the CSO should work with the business to develop a binding MOU. This is an important starting point for the contracting process between the business and the community because:⁷⁷

- It indicates the business's intent to negotiate a full contract with the community.
- It sets out expectations for appropriate inclusion, consultation and consent throughout the contracting process.
- It outlines the principles that will govern the rest of the contracting process.

Important elements to consider when drafting an MOU and the resulting contract are listed in Supplemental Resource 14: Key Contract Elements. In addition, the MOU should include:

- A detailed description and timeline of the proposed negotiation, consultation and drafting process;
- A list of key stakeholders who will be included, along with their roles, rights and responsibilities;
- A description of any professional or legal support that the company will provide to the community during the contracting process;
- Shared objectives between company and community;
- A description of the engagement and consultation process that the company will undertake with the community and individual women and men land holders and users;
- A description of the role of government authorities in the negotiation, consultation and drafting process; and
- A clearly defined process for dispute resolution.

A sample MOU can be found in Supplemental Resource 15: Template for LOI/MOU. The consultation process with the Village Assembly should include the following actions:

- During a Village Assembly meeting, the community reviews the first draft of the MOU and makes suggestions.

- The Negotiation Team should then incorporate the community's revisions into a second draft of the MOU.
- As part of conducting a "legal check," the Negotiation Team should solicit input from legal experts as well as district or regional government officials to ensure compliance with the national constitution and other relevant laws.
- If there are existing issues, the Negotiation Team should hold additional Village Assembly meetings to share comments from the legal check.
- The Negotiation Team should then incorporate community revisions into a third draft of the MOU.
- If there is still significant discussion to be had or strong disagreement on certain issues within the community, the Negotiation Team should continue with additional rounds of drafting and hold additional Village Assembly meetings.
- Once the Village Assembly is in agreement, the third draft of the MOU should be shared with business.
- Depending on the business's responses, some or all of the above steps might need to be repeated. Refer to Best Practices for Holding Village Assembly Meetings when conducting these meetings.

2. District and national government authorities review village-to-general land transfer request and determine how to proceed.

Government-Required Procedural Action

There are several steps to the 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
- 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 or 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 legal operate and have 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 business enterprise to operate in Tanzania
 - Evidence of investment capital
 - Investment Action Plan
 - Details about employment opportunities offered by the business enterprise investment 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 the VLUP documents, 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 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 request for transfer, the Assistant Commissioner, Rural, follows-up with the District Office to provide clarity, which might include a field visit. Assistant Commissioner, Rural, also has the authority to require the District Office to re-do 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 land. The Commissioner of Land on behalf of the Minister 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

The MLHHSD doesn't always have the financial resources to carry out site visits if complaints arise. If complaints are brought forward from Village Assembly members or other actors such as civil society, resolving them could take several years.

Best Practice Supplemental Steps

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

3. Office of Commissioner for Land provides 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, is responsible for preparing the 90-day notice of Intention to Transfer (Land Form #8).
- The DED is responsible for posting 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 is then returned to the Office of Commissioner of Land by the District Office.
- Village Executive Officer (VEO) provides DED with evidence that the notice was indeed posted and the 90 days to raise concerns was provided.
- A 30-day notice is issued by Assistant Commissioner, Rural, that follows the same process.

Gap between Best Practice and Required Procedural Action

There is no significant gap, although 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.

Best Practice Supplemental Steps

To the extent desired by the district government, the Negotiation Team should stand ready during the 90-day period and 30-day period to consult and engage with interested community members. Additional cycles of sensitization, consultation and engagement should occur to the extent that public comment signifies demand.

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 to 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, the individual land holders and land users that have given up village land to the business are not parties to the agreement. As such, a supplemental binding MOU should be developed and signed between the Village Council and business enterprise and 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.⁷⁸
- 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, the government and the community.

1. TIC issues a Derivative Right of Occupancy and final lease terms to the business.⁷⁹

Government-Required Procedural Action

Issuing 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 land 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, the Certificate of Occupancy is issued to TIC.
- TIC's legal team finalizes the terms of the lease 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 party to the resulting agreement.

Best Practice Supplemental Steps

At this point, the business should have taken and continued to take significant steps to include the community as a part of the land acquisition process. 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 Negotiation Team should ensure that:

- The business makes the creation of the contract document a part of the still-ongoing consultation and engagement process, informs the community about the contract details and how it will affect the community.

- The business seeks community input and ratification. If Village Assembly members are confused or concerned about the contract's content, the business has the responsibility to address them.
- Negotiations between the company and government are informed by the binding MOU the company signed with the community. Ideally, the terms of the MOU would be included in the lease agreement.

2. Negotiation Team facilitates a final convening of the community to share the final version of the contract.

Once the investment contract has been finalized and signed, the business should provide copies to community members.⁸⁰ The contract should also be made publicly available.

- To support transparency and clear communication among all stakeholders, the meeting should be well-documented and witnessed by as many people as possible.
- Photographs and video are one way of documenting events.

If the community is not an actual party to the agreement, it is critical that an MOU is signed with the community as discussed in the previous task.

⁷⁵ VGGT, *supra* note 56, at 23.

⁷⁶ *Id.*

⁷⁷ While this guidebook recommends the use of MOU, a Letter of Intent (LOI) or a Terms Sheet may serve a similar function.

⁷⁸ 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.

⁷⁹ Land Act §19(2).

⁸⁰ See FAO, *supra* note 58, at 43.

Phase 4: Implementing and Monitoring the Investment

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

Task 1: Prevent and Address Land-Related Issues

1. Village leaders take steps to strengthen community governance systems and ensure preparedness for ongoing investment accountability.
2. Land Committee helps to prevent disputes by maintaining ongoing engagement and consultation with the business and community members.
3. Land Committee works with the business to establish a grievance mechanism for resolving land-related disputes.

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

1. Land Committee supports the business in establishing monitoring and evaluation practices for land related investments.
2. Land Committee ensures the business conducts follow on impact assessments to evaluate impacts on the community.

Task 1: Prevent and Address Land-Related Issues

Best Practice

Land-related issues that escalate to a significant dispute between a community and business can reduce the investment benefits that the community deserves.

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

- **Ensure on-going engagement and consultation** with the village assembly and the business to prevent disputes from occurring
- **Ensure access to remedy** by working with the business to establish a functioning, effective and accessible grievance mechanism for handling land-related disputes.⁸¹

Step-by-Step Guidance

1. Village leaders take steps to strengthen community governance systems and ensure preparedness for ongoing investment accountability.

Government-Required Procedural Action

No actions are mandated by Tanzanian government.

Gap between Best Practice and Required Procedural Action

Village Councils and Village Assemblies have difficulty holding business accountable to ensure investments are implemented responsibly.

Best Practice Supplemental Steps

Even where investments are already being implemented, the Village Council should work to secure certain preparations so that the future of the investment will unfold in a way that respects the rights and needs of community members.

The Village Council and the business should work together to equip the Village Assembly for the steps that follow. Look to Phase 1 of this guidebook and its

associated resources for guidance in developing robust governance structures that will help ensure that the investment project is implemented responsibly.

Necessary steps will include:

- Identify a CSO to assess and strengthen village governance structures regarding investment,
- Conduct a community governance assessment ([Supplemental Resource 3](#)),
- Create a Land Committee ([Supplemental Resource 4](#)),
- Hold land rights awareness trainings ([Supplemental Resource 5](#)), and
- Develop by-laws for responsible investment ([Supplemental Resource 6](#)).

Conducting these steps will promote the interests of all Village Assembly members and result in:

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

2. Land Committee helps to prevent disputes by maintaining ongoing engagement and consultation with the business and community members.

Government-Required Procedural Action

No actions are mandated by Tanzanian government.

Gap between Best Practice and Required Procedural Action

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

Best Practice Supplemental Steps

Continued engagement by the Land Committee with the business and Village Assembly throughout project implementation is essential to maintaining a productive relationship and identifying implementation challenges and unanticipated impacts as early as possible.⁸²

This is particularly important for longer-term projects, as there is a higher likelihood that activities will deviate from the initial plan as implementation proceeds and unanticipated challenges arise. Although the challenges that arise for each endeavor are context-specific, there are some common themes that frequently appear as problems for land-based investments. A few of these themes are discussed below.

Land Scarcity

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

Encroachment

Allegations of encroachment arise where one user is accused of extending their land use into the neighboring user's claim. Encroachment typically occurs when the encroacher knows that they do not have a right to the land but feel historically disadvantaged by an investment, or simply they view idle land not used by the business as an opportunity to meet their livelihood needs.

Compensation

Issues around compensation create some of the most common obstacles to a successful responsible investment in land and property. Other common problems, like encroachment or displacement, often develop after initial faults in compensation. The Negotiation Team should have ensured fair compensation during the investment term negotiation process. The Land Committee and the Village Council should work to ensure that fair compensation terms are met and that any ongoing agreements for community benefits are respected by the business and the government.

Case Example: Compensation

Source: FAO, *The Gender and Equity Implications of Land-Related Investments on Land Access, Labour and Income-Generating Opportunities in Northern Ghana: The Case study of Integrated Tamale Fruit Company* (2013).

Fair and adequate compensation requires consideration of many factors. In one Ghanaian investment, community members raised complaints after initial compensation did not account for crops traditionally grown and sold by women. This illustrates the importance of inclusive community engagement at the start of and then throughout the life cycle of an investment.

Communication

In addition to considering these common issues that arise during the implementation of an investment, it is important to maintain consistent communication between the Village Assembly, the business and other stakeholders. Multiple channels of two-way communication should be established to facilitate clear, well-planned and frequent consultation and engagement with communities.⁸³ Approaches should address how women face particular barriers to accessing information and participating in consultations.⁸⁴ Communication should be structured to:

- **Reaffirm contract terms and performance with the business.**
 - Depending on the last interaction with the business, the Land Committee and Village Council should meet with the business and Village Assembly to ensure that members have a complete understanding of the material terms of the agreement and that they perceive that the agreement is being implemented fully and fairly.
 - 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 business**
 - The business and community should develop an ongoing Communication and Engagement Strategy to guide engagement throughout implementation and project close-out.⁸⁵ Guidance for developing a strategy can be found in [Supplemental Resource 16: Designing a Stakeholder Engagement Plan](#). The strategy should take into account the Village Assembly, with particular considerations for the Village Council, women and women's groups, associations/groups for vulnerable populations, and outgrowers
 - Outgrower arrangements require thoughtful planning and execution, and investors should plan to dedicate extra time and resources to managing outgrower relationships.
 - For best practices around outgrower arrangements, look at [Supplemental Resource 17: Outgrower Best Practices Literature Review](#).
- **Frequently review and update the strategy on a specific schedule that is agreed upon by stakeholders**

3. Land Committee works with business to establish a grievance mechanism for resolving land-related disputes.

Government-Required Procedural Action

No actions are mandated by Tanzanian government.

Gap between Best Practice and Required Procedural Action

Businesses do not always ensure access to remedies by establishing a functioning, effective and accessible grievance mechanism for handling land-related disputes.

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 community works with the business to establish a robust non-judicial grievance mechanism. Consult the **Grievance Mechanism Primer** when navigating this step.

The Land Committee and Village Council should work together to determine how grievance mechanisms should be coordinated through the business and hold the business accountable for dispute resolutions where appropriate. The mechanism

should comply with the UN Guiding Principles on Business and Human Rights (UNGPR) 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 prevent further grievances and harms.
- **Based on dialogue and engagement:** Consult users on the mechanism's design and performance, focus on dialogue as the means to address and resolve grievances.⁸⁶

Designing and Implementing the Mechanism

- The Land Committee should ensure that the business **dedicates sufficient personnel and resources** towards designing, implementing and managing its grievance mechanism.
- The Land Committee should ensure that the business **consults 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.

- The Land Committee should ensure that the business **sensitizes staff regarding the importance of identifying and respecting formal and customary land rights**. The more its employees are aware of the business's reasons for committing to conduct socially responsible investments, the better able the business will be to manage and enforce the grievance mechanism for dealing with land-related disputes seriously and effectively.
- The Land Committee, Village Council and the business should work together to **determine the scope of the grievance mechanism** by determining what types of land-related grievances it is likely to receive.
 - ESIA results should help to inform the business of what complaints are most likely to arise. For example, if the ESIA indicates that the proposed land acquisition and project (e.g., a new sugarcane plantation) will use significant amounts of water, then it is possible that individuals or communities may have complaints alleging that the business enterprise is using too much water and contributing to water shortages.
- The Land Committee should work with the business to **inform communities of the grievance mechanism**. Communicate in a manner in line with the communities' preferred modes of communication (e.g., radio, local newspaper, flyers, bulletins, consultations, etc.). The Committee and the business should share the following information:
 - 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.).
 - Types of complaints the grievance mechanism will receive.
 - Description of the procedures for receiving, processing, and responding to complaints (e.g., the time period for responding to complaints, the manner in which the business will respond to complaints, the time period for investigating complaints, the time period for filing an appeal, etc.).
 - Description of the procedures for monitoring and evaluating the effectiveness of the grievance mechanism to ensure it is serving communities as intended.

Receiving and Responding to Complaints

- The Land Committee should make sure that the business has clear procedures in place for how it will **receive complaints**.
 - The procedures should be developed in a manner that ensures all Village Assembly members (including both women and men) are able to file complaints easily and in confidence.
 - The business should also provide prompt confirmation documenting that it has received the complaint and will determine whether it is a violation of the business's land-related policies, the key elements of responsible land-based investment, or the UNGP criteria for non-state dispute resolution processes. The confirmation will provide the complainant with acknowledgement that the business is taking the complaint seriously and will be reviewing it.
- The Land Committee should ensure that the business has clear procedures in place for how it will **process complaints**.
 - The procedures should detail what types of grievances will be covered by the mechanism and how the business will determine whether the complaint alleges a covered violation that will trigger an investigation.
 - To promote transparency, the procedures should indicate how long it will take the business to determine whether it will investigate the complaint.
- The Land Committee should make sure that the business has clear procedures in place for how it will **resolve complaints**.
 - Procedures could be the same for all complaints or could vary depending on the nature of the allegation. The business's procedures could authorize the business to make the final decision by itself, authorize the community to make the final decision, or authorize the enterprise and the community to jointly make the final decision.
 - 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. That being said, the more the community is involved in resolving complaints, the more trust it will have in the mechanism and the easier it will be for it to hold the business accountable through implementation of the project.

Monitoring and Evaluating the Mechanism

- The Land Committee should make sure that the business has clear procedures in place 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 that will prompt an investigation; 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.
- The Land Committee and the business should **share monitoring and evaluation results with interested parties and use the findings to improve the grievance mechanism**.
 - It is important for the business to evaluate what the results may indicate regarding the mechanism's effectiveness and demonstrate whether the grievance mechanism is functioning, accessible and effective. The business should use these results to adapt and improve the grievance mechanism. The Land Committee can facilitate this process by maintaining ongoing engagement with community members to gauge the effectiveness of the mechanism.
 - It is important to keep an open mind when making conclusions based on monitoring and evaluation results. For example, although a high rate of complaints could indicate poor relations between the business and local communities, it could also indicate that the grievance mechanism is functioning as intended and is helping to improve relations between the business and communities.

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. The community, primarily through the Land Committee, must ensure that the business conducts M&E throughout the investment. There are two primary reasons for the community to ensure the company dedicates time and resources to M&E:

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

The community should also help the company in monitoring its impacts on the communities and individual smallholders that have changed their relationship to the land for the benefit of the investment. A thorough and robust M&E plan should include continuous monitoring, regular evaluation and periodic impact assessments conducted by third parties. See the **M&E Primer** for more guidance.

Step-by-Step Guidance

1. Land Committee supports the business in establishing monitoring and evaluation practices for land-related investments.

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

By conducting regular M&E activities, the business will be able to identify implementation challenges and unanticipated impacts earlier than it otherwise

might.⁸⁷ 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.

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

- **Commitment.** The business needs to make M&E an integral part of implementation by providing strong commitments of financial and human resources coupled with strong mechanisms for corrective actions as needed.⁸⁸
- **Collaboration and Consent.** The business must provide for inclusive participation from relevant stakeholders in the development of indicators, benchmarks, assessment processes, and mechanisms for grievance, redress and learning.⁸⁹ Participation should be both culturally appropriate and gender sensitive, allowing for meaningful participation from both women and men.
- **Practicability and Sustainability.** The M&E plan should have realistic timelines and targets and provide for sufficient expertise and resources so that it is sustainable over the life of the investment.
- **Transparency and Independence.** The business must be transparent when developing and conducting M&E and in disseminating and using the findings to make corrections to design and implementation. The community should advocate the use of third parties to perform M&E activities.
- **Accessibility.** The business should make M&E plans, updates, inquiries and findings available to all stakeholders.
- **Accountability.** M&E must link to and depend upon a strong, accessible and enduring grievance mechanism that provides for sanctioning of or remedies for non-compliance.⁹⁰
- **Source of Continuous Learning & Improvement.** Effective M&E requires assessments that provide information needed to make subsequent adjustments and improvements to processes, standards, project design and project implementation.

2. Land Committee ensures the business conducts follow on impact assessments to evaluate impacts on the community.

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 Land Committee should encourage the business to **commission and publish assessments of the ongoing social, environmental and livelihoods impacts of investment activities on the community**, particularly with respect to vulnerable populations such as women, indigenous peoples, and ethnic or religious minorities. 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.

⁸¹ See VGGT, *supra* note 56, at 4; New Alliance for Food Security and Nutrition, *Analytical Framework for Responsible Land-Based Agricultural Investment* (2015), available at https://docs.google.com/viewerng/viewer?url=https://new-alliance.org/sites/default/files/resources/Analytical-framework-for-land-based-investments-in-African-agriculture_0.pdf; UNGP, *supra* note 55, at 31-32.

⁸² USAID, *supra* note 50, at 50.

⁸³ 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>.

⁸⁴ *Id.* at 4.

⁸⁵ *Id.*

⁸⁶ USAID, *supra* note 50, at 53.

⁸⁷ *Id.* at 50.

⁸⁸ VGGT, *supra* note 56, at 39.

⁸⁹ *Id.* at 24, 27.

⁹⁰ UNGP, *supra* note 56, at 19.

5.

Supplemental Resources

Supplemental Resource 1

International Standards

How to Use this Resource

There is no established “right to land.”⁹¹ 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.⁹² In the context of international investments, the host state has the primary duty to protect human rights,⁹³ 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 communities 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 rather 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)**⁹⁴ 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.⁹⁵

The **International Covenant on Civil and Political Rights (ICCPR)**⁹⁶ 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.⁹⁷

The **International Covenant on Economic, Social and Cultural Rights (ICESCR)**⁹⁸ 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).⁹⁹ The CESCR has also extended states’ responsibility to follow FPIC principles towards communities whose cultural preservation may be

threatened if their land rights are infringed.¹⁰⁰ 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.¹⁰¹

The **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**¹⁰² obligates States to eliminate discrimination against rural women to ensure that they participate 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.¹⁰³ This is the most direct statement equating the right to land as a human right in current human rights discourse.¹⁰⁴ 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.”¹⁰⁵

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 Group¹⁰⁶ and during treaty monitoring body reviews.¹⁰⁷ 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.¹⁰⁸

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)**,¹⁰⁹ which establishes the principle of FPIC (Art. 10) and to the **African Charter for Human**

and People's Rights (ACHPR).¹¹⁰ 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."¹¹¹

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, known as the **Maputo Protocol**,¹¹² 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**,¹¹³ or the Kilimanjaro Charter,¹¹⁴ 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.¹¹⁵

The **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)**¹¹⁶ 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, 25.7.¹¹⁷

The **Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security**¹¹⁸ include references relevant to land and human rights at: Guidelines 2.5, 3.5, 4.2, 4.7, 8, 9, 10.8, 13.2, 14.3.¹¹⁹

⁹¹ 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>.

⁹² 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>.

⁹³ OHCHR Report, *supra* note 91, at ¶ 17.

⁹⁴ UN General Assembly, *Universal Declaration of Human Rights* 217 A (III) (1948), available at: <http://www.refworld.org/docid/3ae6b3712c.html>.

⁹⁵ OHCHR Report, *supra* note 91, 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>.

⁹⁶ 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>.

⁹⁷ OHCHR Report, *supra* note 91, at ¶ 22.

⁹⁸ 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>.

⁹⁹ 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/>.

¹⁰⁰ 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 99.

¹⁰¹ 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>.

¹⁰² 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>.

¹⁰³ 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_793_3_E.pdf.

¹⁰⁴ 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>.

¹⁰⁵ CEDAW, *supra* note 103, at ¶ 5.

¹⁰⁶ OHCHR, *Basic Facts about the UPR*, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx> (last visited Apr. 6, 2018).

¹⁰⁷ OHCHR, *Monitoring the Core International Human Rights Treaties*, <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx> (last visited Apr. 6, 2018).

¹⁰⁸ 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>.

¹⁰⁹ 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.

¹¹⁰ 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/>.

¹¹¹ 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/>.

¹¹² 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.

¹¹³ 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).

¹¹⁴ 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.

¹¹⁵ *Id.* at 6.

¹¹⁶ See VGGT, *supra* note 56.

¹¹⁷ 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>.

¹¹⁸ 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>.

¹¹⁹ OHCHR Land, *supra* note 117, 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.¹²⁰

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 1967,¹²¹ the Law of Marriage Act of 1971 and Governmental Notices on Customary Land.¹²²

Constitution

The Constitution of 1977,¹²³ 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).¹²⁴ 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, the State holds title to all land in Tanzania.¹²⁵ The President, through the Commissioner of Lands, has authority to grant a right of occupancy for up to 99 years.¹²⁶ 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, representing the remaining 28% of Tanzania land).¹²⁷ 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.¹²⁸

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.¹²⁹ 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.¹³⁰ 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 (CCRO).¹³¹ 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.¹³²

Village Land Act of 1999

The Village Land Act outlines what land is included in village land and how it is to be managed and administered.¹³³ It includes provisions regulating inheritance and transfer of land, along with the process for granting and certifying customary rights of occupancy through a CCRO.¹³⁴ 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;¹³⁵ and
- Land that can be allocated by the Village Council for communal or individual occupation.¹³⁶

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.¹³⁷

The 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.¹³⁸ 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.¹³⁹ When family units apply, at least two persons from that unit must sign the application.¹⁴⁰

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 CCRO.¹⁴¹ The law further provides that the Village Adjudication Committee or officer must treat the rights of women and pastoralists to occupy, use or have interest in land equally to those of men and agriculturalists.¹⁴² 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 of occupancy or as a successor in title to the assignor.¹⁴³ 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.”¹⁴⁴

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.¹⁴⁵

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 chooses 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.¹⁴⁶

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 disabilities lawful access to ownership, occupation or use of any customary land.¹⁴⁷ 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.¹⁴⁸ After a customary right has been surrendered, the Village Council must offer it to the other spouse(s) before re-granting it.¹⁴⁹

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.¹⁵⁰

Land Use Planning Act of 2007

The Land Use Planning Act further regulates the process of surveying and registering village land, setting out the complicated VLUP process that is required before village land can be recategorized as general land.¹⁵¹ 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.¹⁵²

Land Acquisition Act of 1967

The Constitution allows 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.”¹⁵³ The Land Acquisition Act and the Land Act of 1999 govern compulsory acquisition. Both include “development of agricultural land” as valid public purposes for compulsory acquisition, 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.¹⁵⁴

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....”¹⁵⁵ 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.¹⁵⁶ 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.¹⁵⁷ 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.¹⁵⁸

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.¹⁵⁹ Property and other matrimonial assets that a woman has acquired individually belong to her. Where a man has two or more wives, they have equal rights and liabilities as spouses.¹⁶⁰

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)¹⁶¹ without the consent of the other spouse(s). The 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.¹⁶² 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.¹⁶³

Customary Law Declaration Orders

Governmental Notices NG 279 and GN 436 (Customary Law Declaration Order)¹⁶⁴ identify customary rules related to land, marriage and inheritance for some patrilineal communities in Tanzania. These Customary Law Declaration Orders (CLDOs) are quasi-formal legal instruments that only apply to districts that have signed on to them and adopted them through the District Council. Although 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.¹⁶⁵ CLDOs are not applicable to matrilineal communities.¹⁶⁶

¹²⁰ Much of this Supplemental Resource is adapted from Jennifer Duncan, *Women's Land Rights Guide for Tanzania*, (LANDESA 2014), available at <https://www.landesia.org/wp-content/uploads/LandWise-Guide-Women%E2%80%99s-land-rights-guide-for-Tanzania.pdf>.

¹²¹ Land Acquisition Act (1967).

¹²² Local Customary Law (Declaration) (No. 4) Order, GN 436/1963.

¹²³ 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://newsouth.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.

¹²⁴ 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 19, at 104.

¹²⁵ Land Act §4(1).

¹²⁶ *Id.* at §32(1).

¹²⁷ *Id.*

¹²⁸ *Id.* at §31.

¹²⁹ *Id.* at §181.

¹³⁰ *Id.* at §159(1).

¹³¹ *Id.* at §161(1), (2).

¹³² *Id.* at §160(1).

¹³³ Village Land Act §159(1).

¹³⁴ See ILC, *supra* note 30.

¹³⁵ 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 19, at 110.

¹³⁶ Benschop, *supra* note 19, at 115 (citing Village Land Act §12(1)).

¹³⁷ *Id.* at 105 (referring to the Village Land Act).

¹³⁸ Village Land Act §22.

¹³⁹ *Id.* at §22(1), (2).

¹⁴⁰ *Id.* at §22(3)(ii)(b).

¹⁴¹ *Id.* at §23(2)(c).

¹⁴² *Id.* at §57(3).

¹⁴³ *Id.* at §30(4)(b).

¹⁴⁴ *Id.* at §33(1)(d).

¹⁴⁵ *Id.* at §43 (9).

¹⁴⁶ See Benschop, *supra* note 19, at 109; USAID, *Country Profile: Tanzania, Property Rights and Resource Governance* 1-2 (2011).

¹⁴⁷ Village Land Act §20(2).

¹⁴⁸ *Id.* at §35(7)(c)(i).

¹⁴⁹ *Id.* at §36.

¹⁵⁰ Ezer, *supra* note 21, at 604; Ingunn Ikdahl 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).

¹⁵¹ See Tenga & Kironde, *supra* note 8.

¹⁵² See *id.*

¹⁵³ Constitution of the United Republic of Tanzania, Art. 32(2).

¹⁵⁴ Land Acquisition Act §4(1)(a); Land Act §4(1).

¹⁵⁵ Land Act §3.

¹⁵⁶ Tenga & Kironde, *supra* note 8, 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.

¹⁵⁷ Abdon Rwegasira, *LAND AS A HUMAN RIGHT: A HISTORY OF LAND LAW AND PRACTICE IN TANZANIA* 208 (2012).

¹⁵⁸ 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).

¹⁵⁹ Law of Marriage Act §56–58.

¹⁶⁰ *Id.* at §56–63.

¹⁶¹ *Id.* at Part I (a).

¹⁶² Benschop, *supra* note 19, at 128 (citing Interpretation of Laws and General Clauses Act, 1972 (Cap. 1), §2(1)).

¹⁶³ *Id.*; Hunton & 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).

¹⁶⁴ Local Customary Law (Declaration) (No. 4) Order, GN 436/1963.

¹⁶⁵ 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).

¹⁶⁶ 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

Community Governance Assessment

How to Use this Resource

Phase 1 of the Tanzania Guidebook for Communities discusses how the Village Council can work with a local CSO to assess the community's existing community governance structures and land governance rules to evaluate the strengths of current systems and safeguards in place to support responsible investment. This resource provides more detailed steps on conducting that governance assessment.

Step-by-Step Guidance

Step 1. Gain Support. To begin this process, first gain support from trusted community leaders. Motivated and committed leadership will legitimize assessment efforts and help navigate interests, personalities and institutions so that the community can be in the best position to conduct the assessment and implement its recommendations.

Step 2. Decide the “who.” Next identify existing institutions. It may be useful to begin a stakeholder map. This is defining what we call the *assessment population of interest*.

Step 3. Decide the “what.” Next decide what categories to use to evaluate the suitability of existing institutions and community structures. Consider the following categories:

- *Current roles and responsibilities:* Does this body have the time, resources, and skillsets to take on this additional role? How complementary is planning for prospective investment to the existing responsibilities of the body (consider for instance the questions posed above; how effective would this body be at helping the community to answer these questions)?
- *Existing reputation:* Are this body and its members well-respected in the community? Does it have a history of working effectively with other community structures and those of the local government? Do most members of the body (past and present), community members and local government believe this body is effectively achieving its current mandate?

- *Active communication structures:* Does this body have regularly scheduled meetings? Does it have channels for information dissemination? Are its decisions and actions generally regarded as transparent?
- *Existing composition:* Is this body representative of individuals from all sectors of the community with interests in potential investment in the community? Does it represent vulnerable groups, such as women, youth, elderly, ethnic and religious minorities, indigenous people, and pastoralists? Is this representation meaningful, which is to say that vulnerable group representatives are able to participate effectively and have decision-making authority within the body?
- *Existing rules and protocols:* Does this body have clear procedures for selection of members and criteria for removal of members when there is bad performance?

Step 4. Decide the “how.” Next determine *how* to assess the institutions and community structures. Consider whether to use quantitative or qualitative methods. Using quantitative methods will require developing a scale (such as a 1 to 4 scale for low, basic, moderate and high capacity). Consider who is best positioned to provide this information. This may include existing and former members of each institution or structure; community leadership; local government; members of local associations; and community members. Ensure information sources are representative of the community as whole, paying special attention to include vulnerable groups such as women, youth, elderly, ethnic and religious minorities, indigenous people, and pastoralists. Finally, determine the method of data collection that is most appropriate; options include holding semi-structured interviews, holding focus-group discussions, and using written surveys.

Step 5. Perform the assessment and validate findings. After designing the assessment, the team must conduct the assessment and validate findings in a community meeting. During this meeting, all stakeholders should be able to ask questions and express their opinions on the findings. Consider the reactions of the community and document them in the final version of the assessment.

Supplemental Resource 4

Establishing an Interim Land Committee

How to Use this Resource¹⁶⁷

Phase 1 of the Tanzania Guidebook for Communities discusses how a community can assess its existing community governance structures and land governance rules to evaluate the strengths of current systems and safeguards in place to support responsible investment.

The community may have decided based on that governance assessment that it should establish a new body to be in charge of helping the community prepare for prospective investment and engage with business when the community receives an investment proposal. The community will also be developing new or revising existing rules on prospective investment as part of this process; these rules are called *community by-laws for responsible investment*.

The guidebook discusses how external experts can help the community through the process of strengthening community systems and safeguards for land investments. External experts may be useful in supporting the community to set up the Land Committee by bringing comparative experiences and helping ensure all stakeholders are included in the process, by bringing in an outside, unbiased perspective. See the side bar for more ideas on how an external expert can help.

Potential Roles of External Experts in Establishing a Land Committee:

- Work with community leaders and members to spread news about the public community meetings to elect/select Committee members.
- Support the participation of all major stakeholder groups in the community. Support the development and implementation of vulnerable groups' empowerment or participation strategy.
- Contribute to community decisions on the suggested roles and responsibilities of the Committee.
- Encourage the community to select member criteria and representation options that support diverse and fair representation.
- Serve as a facilitator during community meetings by contributing to structuring the meeting and supporting community brainstorming and decision-making.
- Serve as an outside observer during the selection/election process to support a fair and transparent process. If the process appears to have been co-opted by community elites, the expert can support community members to request a new election.

What is the Land Committee?

The Land Committee's purpose is to:

- Prepare the community for developing its by-laws for responsible investment. This may include working with local CSOs or legal experts to deliver legal literacy training to community members.
- Inform community members about the by-law process and get as many people as it can to participate in meetings.
- Hold meetings with community members to get input on the by-laws.
- Draft the community by-laws.
- Obtain the input of outside legal experts, government officials and customary leaders on the draft by-laws.
- Hold an adoption ceremony to vote on the final by-laws.
- Support the community to elect permanent Committee members.

How to Select the Land Committee

Step 1: Determine Duties of the Committee. The community should hold a public community meeting to confirm and write down the intended roles and responsibilities of the Committee. The community can use the findings of the governance assessment (see [Supplemental Resource 3](#)) and the suggested roles described above as a starting point.

Step 2: Determine Committee Member Requirements. In the same public community meeting, community members should brainstorm a list of criteria for Committee members. Based on the list generated, the community should decide upon a list of what types of people should be on the Committee.

Step 3. Determine Representation. The community should also decide how many members will be on the Committee and how different groups within the community will be represented in the meeting. This is a critical decision and should be made carefully. Make sure that all major stakeholder groups in the community are represented – any group that is left out or not adequately included might undermine the process; the process could also result in the establishment of a body and rules that hurt some community members if it is not representative. The community should consider representatives from:

- Different spatial or sub-units within the larger community (such as wards or zones).
- Different demographics, such as women, youth, people who practice specific livelihoods, minority ethnic groups, religious groups, etc.

Step 4: Determine Selection

Process. How a community chooses to select or elect its permanent Committee members will depend on how it has defined the criteria for committee representation in Step 3. Once a representative structure (by ward and/or by characteristics like age/gender/religion/ethnic group/profession, etc.) is agreed upon, each defined “group” may need to gather as a small group to decide who would best represent them. The groups should be given time to discuss outside of the meeting. The meeting should close with a decision to hold a follow-up community meeting to complete the election or selection process. Community members should be encouraged to invite friends, family and neighbors to attend the follow-up election/selection meeting.

Sample Committee Criteria:

- Experience shows committees typically work best with 10 to 15 members.
- Committees should include a quota to ensure women are represented. One third is a good starting point.
- Committees should be demographically representative of the community and its different sub-units.
- Members should be respected and trusted by community members. They should have integrity and be considered honest and transparent. They should be role models who can demonstrate the path forward by example.
- Members should be hardworking, determined and reliable.
- Members should have effective leadership abilities. This includes good mediation and conflict-resolution skills.
- Members should be good communicators and have a basic level of literacy.
- Members should not be afraid to have tough conversations and address challenging issues.
- Members should be able to work well with others, especially other community leadership and government officials.
- Members should know how to listen and foster collaboration and consensus-building.
- Members should be passionate about the community’s well-being, protection, and prosperity.

Step 5: Complete Election or Selection. In a separate public community meeting, the community should complete the chosen election or selection process. In this meeting, the roles, responsibilities and criteria established in the first meeting should be read aloud again, any remaining questions answered, and then the process carried out.

¹⁶⁷ The roles and duties described here are adapted with permission from Namati’s experience working with interim coordinating committees as part of community land governance protection efforts. See Namati, *supra* note 37, at 85-96.

Supplemental Resource 5

Land Rights Awareness Training Curriculum

An example training curriculum adaptable to different country contexts is available for download at https://ripl.landesa.org/model_guidebooks/3

Supplemental Resource 6

Developing Community By-Laws for Responsible Investment

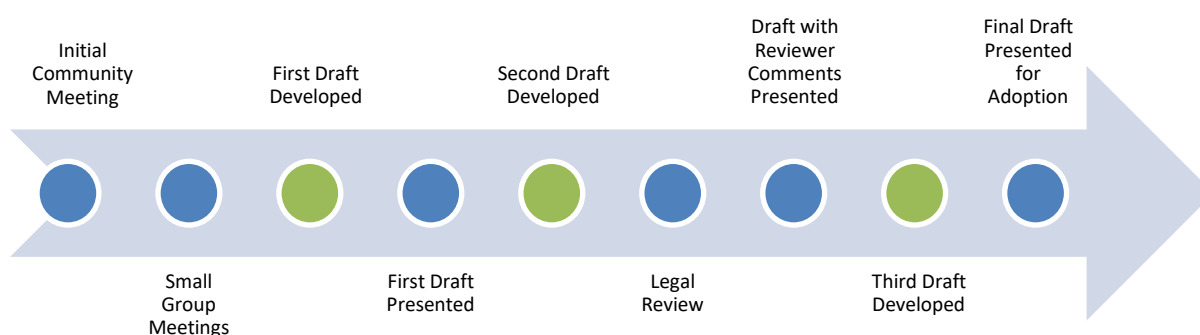
How to Use this Resource

Use this resource alongside the guidebook to develop local rules governing land investment in the community that support responsible, sustainable, and equitable investments. These rules, or by-laws, will establish how the community will make decisions about its land, who will represent the community in negotiations with prospective investors, and how compensation will be shared and used.

The guidebook outlines the steps the community can follow to develop these by-laws. This resource provides specific detail on how to implement each step in an inclusive, participatory and transparent manner. It provides sample activities, content topics and questions to promote community planning. These activities and ideas should serve as examples; the interim Land Committee, community leaders and community members should work with the CSO partner to tailor this information according to the community's unique situation.

How to Draft Community By-Laws

This section presents the overall drafting process¹⁶⁸ alongside sample activities the community can perform to brainstorm ideas and set priorities to guide the process. As evident from the below steps, the by-law drafting process relies heavily on community meetings and active participation. It is critical that all community members have the opportunity to participate in developing these rules. Not doing so risks establishing rules that will be ineffective or harm vulnerable members of the community and promote the self-interest of a few against the interest of the whole community. See [Best Practices for Holding Village Assembly Meetings](#).



► **Step 1. Interim Land Committee holds initial community meeting:** The committee should begin the drafting process with an initial community meeting with as many community members as possible. In this meeting, the committee should:

- Outline the entire community investment by-law drafting process. It is important to establish a shared and clear understanding of the process.
- Set expectations and ground rules for community drafting meetings. Consider how the community would like to address the following questions:
 - How will we respect diverse opinions (such as avoiding personal attacks and name-calling)?
 - How will we resolve disagreements?
 - How will we finalize rules (e.g. 100% of people say yes, 66% of people vote yes, 51% of people vote yes, etc.)?
 - How will we record and document meetings?
 - How will the committee solicit information outside of big group meetings for those who cannot attend?
 - How will the committee follow-up on specific topics that require more information, thinking, discussion or expertise?
- Discuss the categories of content the community wants to include in the by-laws for responsible investment. Topics could include (refer to the section on by-law content below for more detailed information):
 - Composition, authority and governance of the Land Committee;
 - Communication channels and protocols;
 - Community objectives and rules for engaging and negotiating with investors; and
 - Community rules for investment compensation.
- Facilitate a community vision and planning exercise.¹⁶⁹ This activity can inform community by-laws and provide information for the committee and negotiators on community negotiation priorities.

Community Vision & Action Plan Exercise

Objective: Community members have a shared vision of the community's future. This can create a common sense of purpose and motivation. This activity can help the community develop an action plan that can be used to set priorities and help the community negotiate more effectively and strategically with prospective investors.

Supplies: Large pieces of paper, markers and post-it-notes.

Community Vision Activity

A community vision describes the desired future state of the community.

1. **Present State:** Community members should close their eyes and reflect on the community's present situation. Give people several minutes to reflect in silence. Then ask people to share their visions by raising their hands and sharing out loud. Have someone write down everything people say on large pieces of paper at the front of the meeting space. Questions to ask include:
 - What does the community look like?
 - What does the landscape look like? What is the quality of the water, soil and air? What resources are available?
 - How are your community's lands and resources being used now?
 - What kinds of livelihoods do people have? How does the community prosper?
 - Who manages and uses the community's natural resources?
 - What kinds of infrastructure or public services exist in the community?
 - How do neighbors treat one another?
 - How do schools look? How do children learn about your culture and customs?
 - What kinds of markets, festivals and events take place in your community?
 - How are sick people cared for?
 - What do community members care about most? What are their priorities?
 - Are you happy with the current situation? What is working well? What is not working well?
2. **Future State:** Ask community members to close their eyes a second time and think about how they want the community to be for their children 10 or 15 years from now. Repeat the question prompts if needed, and follow the same steps described in Step 1 to have the community share and document the future vision.

Community Action Plan Activity

A community action plan outlines clear goals that the community wants to achieve. It includes a timeline and prioritizes goals to help the community achieve its future vision. Goals should be achievable.

1. **Decide Timeframe:** The community should decide the timeframe of its action plan. Most action plans include short-term goals (such as 2 years) and long-term goals (such as 10 years).
2. **Brainstorm Goals:** Community members should reflect on their community vision. After several minutes of reflection, community members should raise hands to share specific ideas that could help them move towards their vision. Someone should be at the front of the space to write down the ideas on a large paper. If the community has post-it-notes available, these can be useful to move goals to new pieces of paper in the next step.
3. **Prioritize Goals:** Next, the community should review all goals to decide what goals to prioritize. It is recommended the community select no more than 10 goals for its plan. A goal could be prioritized for many reasons. For example, a goal could be prioritized because many community members agree it is very important to achieving the community's vision, it is time sensitive, or it could respond to a current problem that will have serious negative impact if not addressed quickly. Goals that are

identified as priorities should be listed on new sheets of paper (if post-it-notes were used, the note can simply be transferred to the new page). One sheet of paper should be for short-term priority goals and a second sheet of paper should be for long-term priority goals. Short-term goals may be “quick-wins” or may be intermediate goals to help the community progress to its long-term goals.

4. **Agree on Next Steps:** The community should reflect on each goal and discuss what actions it can take to reach the goal. Facilitators should encourage the community to think of how these goals relate to actions for drafting community by-laws for responsible investment and formalizing the role of the Land Committee. Where goals and actions are outside of the scope of the investment preparation process (which is both likely and okay), the community should decide how to share the goals and next steps with the appropriate people, leaders, organizations and governing bodies to take them forward.

► **Step 2. Committee holds follow-up small group meetings and content specific meetings.** The Committee should next hold small group discussions with individuals representing different groups within the community (for example, women, youth, farmers’ associations and members from different community sub-units). The Committee should also hold content-specific meetings to go in-depth into each of the by-law content categories decided in the initial community meeting.

► **Step 3. Committee develops first draft of the by-laws for responsible investment.** The Committee should use the input from the small group meetings together with the input from the first big community meeting to develop a first draft.

► **Step 4. Committee presents first draft in a large community meeting.** The Committee next presents the draft to the community. The meeting should follow Best Practices for Holding Village Assembly Meetings. During the meeting, the community reviews the first draft of the by-laws and suggests revisions. This can involve creating new rules, changing or updating existing rules, and removing those that are no longer seen as valuable.

► **Step 5. Committee incorporates revisions to develop second draft.**

► **Step 6. Second draft is reviewed by an outside legal expert, local government and customary leaders.** A legal expert should review the second draft to check for compliance with the national constitution and other relevant laws. At this stage, the Committee can also solicit input from district and regional government officials and trusted customary leaders as part of the “legal check.” This will help build buy-in and support for the implementation of the by-laws.

► **Step 7. Committee holds community meeting to share comments of legal expert.** The Committee should next hold a community meeting to share comments from the legal check. The meeting should follow Best Practices for Holding Village Assembly Meetings, as the community decides what to revise based on the legal check.

► **Step 8. Committee incorporates community revisions into third draft.** If there is still significant discussion to be had or strong disagreement on certain issues, the Committee should continue with additional rounds of drafting and community meetings. Otherwise the third draft will become the final draft.

Content of the By-Laws

The below table presents five topics that should be covered in the community by-laws for responsible investment. Each topic has a list of questions the community should consider to inform the content of the by-laws. A number of the questions have example answers to serve as a **starting point** for discussions. Every community should decide for itself with the support of a trusted CSO what is most appropriate. These topics are:

1. Affirmative Statements
2. Rules to Create the Land Committee
3. Rules on the Land Committee & Communication
4. Rules for Engaging & Negotiating with Prospective Investors
5. Rules for Investment Compensation¹⁷⁰

QUESTIONS TO CONSIDER	EXAMPLES
1. Affirmative Statements	
What principles or beliefs should preface the by-laws? These statements can be included at the beginning of the by-laws as a preamble to give the community the opportunity to state important principles that ground the intent and content of the by-laws.	• We affirm our commitment to nurturing and protecting the well-being of the individuals and families that make-up our community. • We affirm our pride in our community's heritage and our goal to sustain it for the benefit of future generations. • We affirm our respect for our community's ethnic, cultural and religious diversity. • We affirm the supremacy of the Constitution. • We affirm our right to explore new opportunities for our community, such as those brought by prospective land investment, to bring prosperity to community members and future generations. • We affirm the recognition and respect for all legitimate land rights for individual land holders and users (both women and men) and communities, including those with customary, secondary, seasonal and other use rights as we explore investment opportunities. • We affirm the principles of FPIC as we explore

	potential investment opportunities.
2. Rules to Create the Land Committee	
What will the Land Committee be responsible for? The Land Committee has an integral role in leading the community through all four phases discussed in the guidebook. • Phase 1 - strengthening community systems and safeguards for land investments. • Phase 2 – engaging with the business on behalf of the community about a potential investment project and supporting the implementation of community assessments. • Phase 3 – negotiating a contract with the business on behalf of the community. • Phase 4 – representing the community as the investment project is being implemented and establish systems that facilitate a responsible investment.	• Working with CSO partners to hold trainings and/or conduct awareness-raising campaigns within the community to promote legal literacy, land rights knowledge and skills building. • Leading the community in participatory land rights identification and mapping. • Leading the community in land use planning to identify areas suitable and available for investment. • Supporting the community to participate in consultations with prospective investors. • Supporting the community to participate in the capacity assessment, ESIA and land valuation. • Representing the community in negotiations with prospective investors. • Liaising with third-party experts to review, analyze and sign investment contracts. • Supporting the community to raise grievances or otherwise communicate with the investor's representatives throughout the investment project. • Managing and reporting on financial aspects of the investment (such as compensation for community-held land). • Developing protocols, reports and tools to implement the by-laws for responsible investment. • Reviewing the by-laws for responsible investment on an annual basis with community members and updating as needed.
How many people will be on the Land Committee?	• Experience shows committees typically work best with 10 to 15 members.
What groups will be represented? How will the committee ensure that women, youth and minority groups will be included? Will the community use a quota?	• The committee will be demographically representative of the different socio-economic groups within the community and its different sub-units. There will be balance in terms of gender (males and females), age (young, middle aged and elders), land uses (agriculturalists, forestry and pastoralists, and geographic sub-units).
How will the Land Committee function? Will there be particular roles on the committee like chairperson or treasurer, or will all members play an equal part?	• Consider having a designated negotiating team. A 3-person team is a good starting point. • Consider having a designated chairperson and treasurer/budget manager. • Consider if members can also be members of other community governing bodies (e.g., Village Council)

	while serving on the Land Committee.
What kind of skills, qualities or qualifications should Land Committee members have?	• Members should live in the community as land users and have basic knowledge about the community's residences, farms, grazing areas, forests, etc. • Members should be respected and trusted by community members. They should have integrity and be considered honest and transparent. They should be role models who can demonstrate the path forward by example. • Members should be hardworking, determined and reliable. • Members should have effective leadership abilities. This includes good mediation and conflict-resolution skills. • Members should be good communicators and have a basic level of literacy. • Members should not be afraid to have tough conversations and address challenging issues. • Members should be able to work well with others, especially other community leadership and government officials. A good leader knows how to share leadership. • Members should know how to listen and foster collaboration and consensus-building. • Members should be passionate about the community's well-being, protection and prosperity. • Certain Committee positions may require different skills and qualifications. For example, it may be important to have familiarity with legal framework for investments, financial management skills or proficiency in the language spoken by prospective investors.
How will Land Committee members be elected? Are there terms and term limits?	• The community designates two committee positions per each geographic sub-unit. Of the two positions, one will be filled by a man and one by a woman. Community members in each sub-unit voice interest in position. Each geographic sub-unit elects one male and one female representative from candidates in a community meeting. • The community designates one or two positions it will hold specific elections for (e.g. chairperson and treasurer). Community members with necessary qualifications voice interest in the position. Community members elect individuals to fulfill designated positions in a community meeting. • The Committee will have two-year terms with a limit of four consecutive terms.

How often will the Land Committee meet? Where will it meet?	The Committee meets at least 4 times a year. The Committee will meet regularly and with frequency if the community is in active communication with a prospective investor.
What can the Land Committee do to enforce its decisions? For example, what happens if certain elders/leaders agree to lease or sell a large amount of land without community participation and approval?	The lease or sale of community land by elders, leaders or Committee members that does not comply with these by-laws will be considered invalid.
What are the criteria and process for evaluating member performance and removing a member for bad behavior?	- A Committee member can be removed by a Committee vote with cause. Three or more Committee members can submit a petition to the Chairperson. A petition can also be brought to the Chairperson by community members when signed by “___” people. After a petition is received by the Chairperson, the individual will be given opportunity to respond in writing or in person. A Committee vote is then held. A member can be removed by a committee vote of “___” people. - The Committee will develop a Code of Conduct within one year of its establishment and ask all committee members to sign. A Code of Conduct can be used by the community and Committee members alike to hold leaders accountable and establish cause.
3. Rules on the Land Committee & Communication	
How will the Land Committee relate to/interact with community leaders or community committees that are already in existence?	
How will the Land Committee relate to government officials?	
How will the Land Committee interact with companies looking to invest?	
How will the Land Committee communicate with the community?	
Who will represent the community when meeting with companies and investors? Will the community set up a	

negotiating team to talk to companies and investors? How will the community make sure everyone's interests are represented by the negotiating team? What can the community negotiating team decide on their own and what must they bring back to the entire community to decide together?	
4. Rules for Engaging & Negotiating with Prospective Investors	
Is the community willing to lease or sell part of its land to a company?	The community will only lease its land; it will never sell.
What land can be shared, and what land should not be shared?	
Is the community willing to engage in land deals that would involve the resettlement of local people?	- The community always prefers to explore alternative options such as contract farming, management contracts and other inclusive business arrangements that avoid the resettlement of anyone. - The community, in almost all cases, is not willing to engage in investments that require the resettlement of people. If the community moves forward on an investment that necessitates resettlement, the principles of FPIC must be followed and full and fair compensation must be timely paid.
If individual families own land privately within the community, can they sell or lease land to investors without consulting the community?	
What types of companies are welcome, and what types are not welcome?	
If leasing the land, how long of a lease would be allowed?	The community will never lease land longer than "___" years.
What information must a prospective investor provide, or steps the investor must take, in order for the community to proceed with an investment?	- A company must provide information on the prospective investment, including its purpose, what and how much land is desired, and the desired start and end dates of the project. A company must provide its proposed business plan in writing. - A company must provide information about its operational track record, location of headquarters and operations, annual profits and expected revenue to be generated by the investment, main

	investors in the company/proposed project, and contact people and how the community can reach them. • The government or business must hire independent and mutually-agreed upon experts to conduct an ESIA to identify and assess the potential environmental and social impacts of a proposed project, evaluate alternatives, and design measures to mitigate risks. • An ESIA must occur prior to the negotiation of a lease or sale agreement. • An ESIA must also evaluate tenure rights and any actual or potential impacts on human rights and land tenure rights. These assessments must recognize and respect all legitimate land rights for individual land holders and users (both women and men) and communities, including those with customary, secondary, seasonal and other use rights. • ESIA findings and recommendations must be presented to the community in a format that the community can understand and before the community agrees to the investment.
How will the Committee make decisions about proposed investments involving community land? • What must the Committee do if approached by investors or elites seeking to rent or buy community land? • At what stages of the investment process or on what decisions must they provide information? Consult community members? Seek consent from community members? • What land and natural resource decisions are so important that the Committee must convene a large community meeting to decide together by vote? • What land and natural resource decisions can the Committee make by itself on behalf of the community?	• The Committee must request information from prospective investor on the proposed project and complete an initial evaluation to determine if the company and its proposed plan meet with the community's land use plan and by-laws. • The Committee takes initial vote. If at least “___” % of the Committee approves, it will facilitate a public information meeting with the investor and entire community if the proposed project involves leasing or selling land over “___” hectares. • The Committee will hold a Village Assembly meeting for initial input to halt or proceed with the investment process. At least “___” % of community members must participate in this meeting when leasing or selling community land over “___” hectares. At least “___” % of community members must approve of the decision to move forward when leasing or selling community land over “___” hectares. • After facilitating the required community impact assessments, the Committee will hold a large public meeting inviting all community members for decision to halt or proceed with negotiations. At least “___” % of community members must participate in this meeting when leasing or selling community land over “___” hectares. At least “___” % of community members must approve of the decision to move forward when leasing or selling community land over “___” hectares.

	• After negotiating the final agreement terms with the investor, the Committee will hold a Village Assembly meeting for decision to sign agreement. At least “___” % of community members must participate in this meeting when leasing or selling community land over “___” hectares. At least “___” % of community members must approve of the decision to sign agreement when leasing or selling community land over “___” hectares. • The Committee cannot sign an agreement to sell or lease community land if an ESIA has not been conducted. • The Committee cannot undertake negotiations without legal or technical support. • The Committee cannot sign an agreement until it has been reviewed by a lawyer.
5. Rules for Investment Compensation	
What kinds of compensation and benefits would the community ask for and how should it be decided?	• The government or business must use land valuation that establishes the price/value of property using market and non-market values such as social, cultural, religious, spiritual and environmental values to ensure that compensation and benefits are fair, just and equitable for land holders and users (both women and men) and communities. • The community is open to negotiating for fixed cash payments or royalty payments (such as royalty based on volume of outputs, value of production or profits). • Monetary compensation for community land should be paid over the life of the investment, rather than one lump sum, to a community account managed by the Land Committee in trust for the community. • The Committee should always pursue other benefits during negotiations, such as job opportunities at the project, training programs associated with the project and employment opportunities, and access to project infrastructure and facilities. • After ESIA findings have been presented and before investor negotiations begin for a specific project, the committee will hold a consultation inviting all impacted community members to generate a list of top community concerns and priorities.
How should the community use the financial compensation and who decides? Examples include: • Infrastructure projects such	• Monetary compensation for community land should be put in a bank account at a local bank, registered in the name of the community. • The Committee will manage the account on behalf of the community. Managing the money means the Committee will control the money, plan and budget

as building schools, roads and pumps. • Community services such as social, educational or health programs • Payments distributed equally among households • Payments to CSO partner, lawyers and other experts supporting the investment process.	for how the money is spent, and keep track of how much money has been received and spent. • A community budget should be prepared on an annual basis. The Committee should hold at least “___” public meetings a year to receive input on community priorities for the budget. At least “___” Committee members must approve of the community budget. • The Committee will manage funds according to the community budget for the year. Expenditures deviating more than 10% from the original budget require approval of at least “___” Committee members. • At least “___” Committee members must be present to withdraw money from the community bank account. • The Committee will develop a Financial Manual within one year of its establishment to outline detailed financial practices and rules.
How will community money be tracked and reported to the community?	• The Committee will be responsible for maintaining up-to-date financial records. This includes a record of financial transactions and supporting documents like receipts and invoices. • Any community member can request a copy of the financial records, which the committee must provide within “___” days. • An independent expert will review the financial reports once a year. • The Committee will present the financial and audit report to the community at a public meeting every year.

¹⁶⁸ The process for by-laws adoption outlined here is adapted with permission from Namati’s experiences working with communities to adapt by-laws for community land governance. See *id.* at 95-104.

¹⁶⁹ The Community Vision and Action Plan Exercise described in the following box is adapted with permission from Namati’s experience working with communities in community land governance protection efforts. See *id.* at 69-72.

¹⁷⁰ These topics are adapted with permission from Namati’s experiences working with communities as part of community land governance protection efforts. See *id.* at 105-122.

Supplemental Resource 7

Holding a By-Law Adoption Ceremony

How to Use this Resource

Use this alongside the guidebook and Supplemental Resource 6: Developing Community By-Laws for Responsible Investment to develop and adopt local rules governing land investment in the community that support responsible, sustainable and equitable investments. These rules, or by-laws, will establish how the community will make decisions about its land, who will represent the community in negotiations with prospective investors and how compensation will be shared and used. Once a final draft of the by-laws has been agreed upon, the Land Committee should host a large community-wide ceremony to adopt the community investment by-laws.

How to Conduct a By-Laws Adoption Ceremony¹⁷¹

► **Step 1. Post notice of meeting and promote attendance:** The ceremony should be attended by at least the male and female heads of every household in the community, all community leaders, trusted government officials, and relevant cultural and customary leaders.

► **Step 2. Read the by-laws:** At the by-laws adoption ceremony, the complete list of by-laws should be read aloud. Community members should be given the opportunity to make any final objections. If a community member raises an objection, the issue should be addressed and a solution found. After all final objections have been resolved, the community should prepare to vote to adopt their by-laws.

► **Step 3. Hold a community vote:** The community votes on the by-laws. At the first meeting to launch the by-laws development process, the community decides how many votes it would take to approve the by-laws. Community members should be reminded of the number required for approval before voting.

► **Step 4. Document the Meeting:** Members of the Committee should take good notes of the ceremony, discussion and votes, including taking photos and videos. It is recommended that all voting community members sign the by-laws. This will help make the document more legitimate in the eyes of community members, both immediately and over time.

¹⁷¹ The process for by-laws adoption outlined here is adapted with permission from Namati's experiences working with communities to adapt by-laws for community land governance. See Namati, *supra* note 37, at 95-104.

Supplemental Resource 8

Community Mapping

How to Use this Resource

Phase 1 of the Tanzania Guidebook for Communities discusses how a community can conduct initial due diligence to support responsible investment. This resource provides more detailed steps on identifying and mapping land users, rights and livelihoods in the community.¹⁷² A community map should be seen as a living record that can be updated to reflect changes in people's land rights and uses. Regardless of the type of map method used, communities should revisit their map throughout the investment process.

Types of Mapping Methodologies

The choice of mapping method will depend on each community's context, the resources available to facilitators, and the expected output or use of the map. Some mapping methods require significant preparation time, so facilitating organizations should decide on which mapping method(s) will be used at least one month before community mapping begins.

- **Sketch mapping** involves community members drawing pictures of their lands and natural resources on a large piece of paper to create a general understanding of the community's spatial layout and promote discussion of land and natural resources management.
- **Satellite imagery mapping** involves using printed, high-resolution photographs that shows community lands and natural resources in detail and can be used to create maps that are more accurate and useful for calculating distance and area. In this strategy, community members draw maps on top of printed satellite imagery.

Best Practice

Regardless of mapping method, the following strategies will be helpful when undertaking community mapping activities:

- **Ensure broad participation.** To prevent conflict, the entire community should be involved with all mapping activities until all boundaries are harmonized and land conflicts resolved. Activities should include participation from:

- Married Men
 - Single Men
 - Married Women
 - Single Women
 - Widowed Women
 - Male Youth
 - Female Youth
 - Male Pastoralists
 - Female Pastoralists
 - Vulnerable groups such as widows, religious minorities, elderly, people with disabilities, etc.
- **Avoid situations where a leader or a group of leaders draws a map without the community present.** Leaders may not draw maps that accurately reflect accepted land use and management practices by the broader community.
 - **Put the community in control.** Community members, not outside facilitators, should always draw the maps.
 - **Resolve conflicts later.** Mapping alone does not decide the boundaries – negotiations and community approval are still needed before boundaries are agreed. Community members should mark disputed areas on the map as “hot spots” and refrain from discussing the conflict further until a proper conflict resolution process at a later date.
 - **Ensure broad participation from all groups.** To ensure that all voices are heard, divide women and men into separate groups to draw maps. Importantly, women tend to know the location of certain natural resources that men may not be aware of. As a result, their maps tend to be more thorough than men’s maps. As women share their maps, highlight their contributions to emphasize the importance of women’s active involvement in all community land protection activities.
 - **Involve traditional leaders.** Make sure that traditional authorities and leaders who are knowledgeable about sacred sites and particular natural resources are involved. Their participation will strengthen the map’s legitimacy.
 - **Ensure the maps are kept safe by Land Committee.** Always leave the maps - or copies of the maps - with the Land Committee.

Sketch Mapping

Sketch mapping is the simplest and most accessible form of mapping, but it does not show accurate size, distance and spatial location and may also be difficult for people outside the community to understand. Sketch mapping activities take about three hours, and the only materials required are large pieces of paper and colored markers.

Step 1: Prepare by reviewing the general spatial layout of the community.

- Review satellite imagery or existing maps to become familiar with the landscape.

Step 2: Hold a community-wide meeting

- Work with community leadership to ensure that women, youth, elders, leaders and all relevant stakeholders attend and take part in this meeting.
- Describe the steps of the mapping activity. It may be helpful to draw a sample map (of an imaginary community) to demonstrate the end goal of the activity.
- Describe the benefits and potential challenges of mapping.
- Agree to simply mark conflicted areas on the map, avoid discussing them and commit to a proper conflict resolution process at a later date.
- Make a plan for how to keep maps safe and private.
- Decide whether the facilitators can take photographs of the map for their records.
- Allow community members to ask any questions they have about the activity.
- Address all concerns and do not begin mapping until everyone feels comfortable making maps.

Step 3: Agree on what should be on the map.

- Ask the community to brainstorm a list of things to include on its map. The following table lists examples of what might be included.

Physical features, natural resources	Infrastructure	Social factors
• Major landmarks (roads, rivers, mountains etc.) • Boundaries of community • Boundaries of communal land areas • Rivers, lakes, streams, ponds, wells/boreholes	• Settlement areas • Shops and markets • Roads/Paths/Trails • Schools • Churches • Clinics or other	• Neighboring communities • Sacred/religious, cultural and historical sites • Places that are fenced or private land • Conflicts: Places and resources in dispute (mark in red)

• Wetlands, swamps, bogs • Pasture/grazing areas (used in different seasons), livestock rest areas • Planted crops and garden areas • Dry areas and wet areas • Seasonal use areas • Forests • Places to gather food, medicinal herbs, building materials, etc. • Areas where wildlife gather or migrate	• facilities • Farm/livestock infrastructure • Offices of governments, NGOs or other institutions • Areas given to companies or outsiders for any purpose (such as mining, tourism, logging)	• Access routes (including ones used by pastoralists or other migratory groups) • Movements (can be shown on the same or another map, mark the direction with arrows if destinations are off the map) ○ Places where outsiders enter ○ Places where villagers go outside the boundaries to access land or natural resources
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Step 4: Divide the meeting into small groups to draw sketch maps.

- Provide each group with several sheets of blank paper and colored markers.
- Ask the members of each group to draw a representation of how they understand the landscape of their community.
- Invite the groups to begin the process by using a stick to sketch the map into the earth - this may help people feel more comfortable drawing maps with pens and paper. Alternatively, bring lots of paper, so that groups can draw and re-draw their maps until everyone agrees.
- Ask groups to draw a legend – a list of what they will map, with a corresponding symbol or color that they will use when drawing each item to indicate each item on the list.
- Once a group feels ready to draw its final group sketch map, ask the group to choose an artist (or a few artists) to do the drawing, guided by the group's inputs and instructions. Remind groups that everyone should contribute and that the maps should be as clear, detailed and accurate as possible.
- Make sure the map is labeled with community name, group and date.
- Encourage community members to include notes about landmarks that define boundaries or particular locations (such as roads, rivers, rocky outcrops, trees) and notes about the distance between points or areas (to help with scale and orientation).
- Ask each group to choose a spokesperson to present the map to the large group.

Women and Mapping

In some cultures, women may be reluctant to draw a map, or may insist that they do not know how to draw. In such situations, start a discussion about why women's perspectives are important for comprehensive mapping.

- Because of their household and community responsibilities, women may be more aware of certain aspects of the landscape in the community than the men. Remind women that **women tend to map more thoroughly than the men**, and to include resources — such as water sources — necessary to their livelihoods and household roles. Explain that when the women share their maps with the wider group, men are often surprised by how much more the women have included.
- Ask women to first draw in the earth with a stick; in regions with low literacy rates, the pen and paper may be the challenge, not the women's spatial awareness. In such cases, the entire mapping exercise may be completed in the earth, and then the facilitators can work with the women to transcribe it to paper.
- It may be that women are shy – ask several times for a woman who can draw. As the mapping exercise starts getting interesting, women may move past their shyness and be ready to take pen in hand.

Step 5: Group presentation of the maps.

- When the groups have finished drawing their maps, bring everyone back together and invite each group to present its map.
- Encourage spokespeople to explain their group's discussions (including any disagreements and challenges that arose) and legend.
- After each group has made its presentation, the community should discuss all the maps.
- Support peaceful discussion when there are disagreements about the location of certain boundaries.
- If the disagreement cannot be resolved, support the community to mark both ideas on the map, and give people time to revisit the disagreement in future meetings.
- Community members may choose to visit the site and examine the landscape for proof of the current reality on the ground.

Step 6: Combine the maps into one sketch map.

- Support the community to draw a single combined map (on a fresh piece of paper) that includes details from each small group.
- After the maps have been combined into one final map, the community may want to reflect upon it and continue to add details until all important features and natural resources are accurately represented.
- If the time for the meeting runs out before the community agrees that the map is finished, hold additional meetings to finalize the map.

- Ask the community to identify any points, lines or areas that should be made more accurate using GPS coordinates later once boundaries are agreed upon.

Step 7: Make a plan for how the map will be safeguarded.

- The Land Committee should store the map safely for the community's use.
- Ensures that the maps are safe from unauthorized access.

Step 8: Land Committee should photograph the maps for record-keeping.

- Ask for permission to photograph all the maps (small group maps and combined map) for record-keeping purposes.
- Ensure that map files are kept in a clear, well-maintained management system that clearly identifies which maps correspond with each community.

Step 9: Later, after completing the boundary harmonization exercise, update the maps and consider making a more permanent version.

- Once a community and its neighbors have agreed on boundaries, the harmonized boundaries should be recorded on the map (see Supplemental Resource 10: Documenting Boundaries and Land Rights).
- To ensure that the map will not degrade over time, print and laminate a copy of the final map or support communities to paint it onto a board or fabric to display in a central community meeting place.

Satellite Imagery Mapping

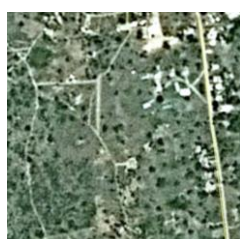
Satellite imagery can help to improve the accuracy of communities' maps and are easier to convert into the kind of technical maps necessary for formal community land rights formalization and titling. The process of satellite mapping is very similar to sketch mapping, but requires more preparation and recent, high-quality satellite imagery is not always available for all locations. It is not necessary to do sketch mapping first, but the community may want to use sketch mapping as a first step. Supporting communities to work with satellite maps may take several hours longer than sketch mapping, as community members may be unfamiliar with looking at images of their community from above.

Step 1: Choose mapping software and learn how to use it.

- For free, easy mapping software try Google Earth Pro (download it at <http://www.google.com/earth/download/gep/agree.html> and use the license key: GEPFREE). There are many online tutorials in various languages for learning how to use Google Earth Pro software.

Step 2: Search for imagery.

- Collaborate with CSOs or satellite imagery providers in order to search for available imagery files.¹⁷³
- The best scenario is to find a source that allows the download of a georeferenced imagery file (often a .tiff file).
- The quality of imagery depends on how recent it is, how clear and detailed it is (resolution), whether it is distorted, or whether there are too many clouds obscuring the landscape. If the imagery is low quality, it will be hard to see individual buildings and details in the landscape, which will make the images unsuitable for mapping.



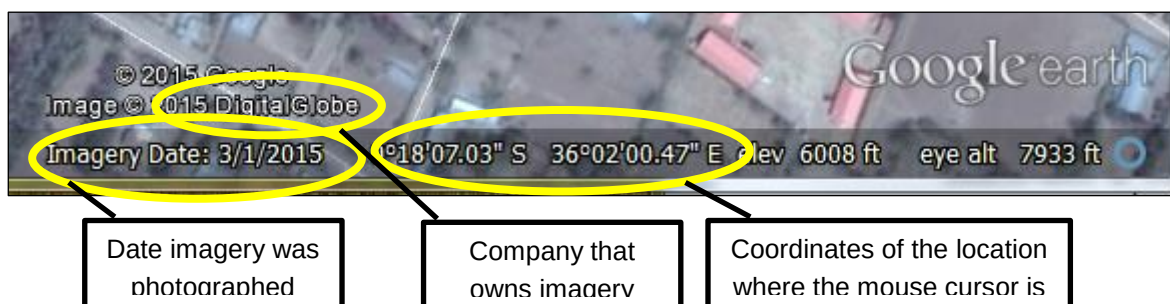
*Low resolution
imagery
(difficult to use)*



*Medium
resolution
imagery
(acceptable)*



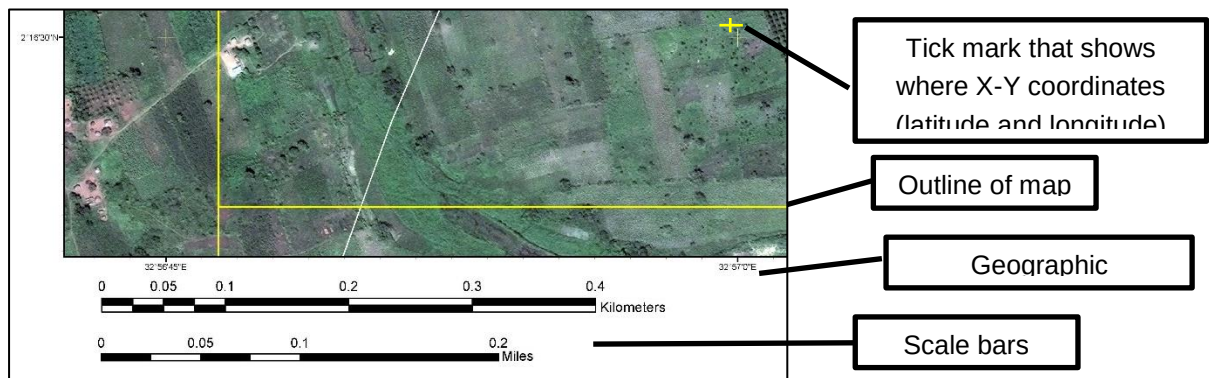
*High resolution
imagery
(excellent)*



Step 3: Prepare the imagery for use in community meetings.

- Decide whether to create the posters or ask for design assistance from a partner organization or geospatial professionals.
- If designing the posters internally, choose a graphic design program or more advanced mapping software (such as QGIS or ArcGIS).
- If using downloaded imagery files, use mapping software or design software to format it into large posters.
- If using imagery from Google Earth Pro, export .jpegs of imagery at the zoom level needed and reassemble them in design software.¹⁷⁴

- Format the imagery into a series of large posters or banners that are big enough to allow community members to gather around them and see the imagery comfortably.
- Posters should have a title (the community's name), a bar at the bottom showing the scale, a north arrow or compass, geographic coordinates along the edges showing the longitude and latitude, a thin line that outlines the map, and a faint grid or tick marks (like '+') across the map (these are used to line up the posters if there is more than one and during digitization).



Step 4: Print and laminate the satellite imagery posters.

- Print the imagery posters in high resolution and in color and laminate them to protect them from water and dirt.
- Print at least two copies of each poster to allow two small groups to work with them at the same time. An alternative to printing posters is to design and print the imagery as large plastic or cloth banners if a banner printing business is available.

Step 5: Become familiar with the images.

- Spend time looking closely at the posters to be comfortable helping community members identify landmarks and navigate the imagery.

Satellite Mapping Materials:

- Satellite imagery posters or banners
- Clear plastic (often called 'acetate' or 'Mylar') cut into map size pieces
- Tape
- Colored permanent markers
- Rubbing alcohol and cloth (for fixing mistakes)
- Large paper or cardboard
- Magnifying glasses (optional – to help people see details)
- Tubes or boxes to carefully transport the imagery and plastic sheets.

Step 6: Organize a community-wide meeting

- Before the meeting, explain the activity and satellite imagery to the local leaders who will be opening the meeting.
- Ask them to explain the satellite imagery to participants in a way that will address potential concerns.

Step 7: Divide the meeting into small groups and orient each group to the imagery (see Step 3 of the sketch mapping process, described above).

- Give each group a copy of the printed imagery.
- Without using the pens and markers yet, ask community members to identify major landmarks, meeting places, basic infrastructure, their homes and fields, neighboring communities, etc.
- Ask community members to point to approximate locations of boundaries and any communal lands, forests or water bodies.

Step 8: Agree on what should be on the map.

- Ask the group to decide on a list of things to draw on its map (see Step 2 of the sketch mapping process, described above).
- On a separate piece of paper, have the group members make a legend – a list of what they will map – with a corresponding symbol or color that they will use when drawing each item to indicate each item on the list.

Step 9: Prepare the group to draw over the map.

- Overlay a piece of clear plastic over each printed poster and tape it in place.
- Ask a volunteer to mark the corners of the map outline and tick marks (this is in case the plastic needs to be lined up again – it is also important for digitizing the map later). Label the plastic pieces with the community name, group and date.
- Ask the group to choose an artist (or a few) to do the drawing.

Step 10: Support each group to draw a map of the community.

- The group should work through the list of what to map, first agreeing on what to draw and where, then giving careful instructions to guide the artist(s).
- Mark geographic features using single points or icons (such as a dot or 'x' for infrastructure like schools and clinics), lines (for things like roads and footpaths), or outlined shapes (for areas like grazing lands).
- Prompt the group to make sure that it maps major landmarks, boundaries, common areas, roads and key infrastructure.
- If possible, take notes about any discussions that provide details about landmarks that define boundaries, areas used for specific purposes or other details that seem significant to the group.

Step 11: Group presentation of the maps.

- When the groups have finished, reconvene the groups and invite them to

present their maps and explain any points of disagreement or areas that were challenging to map.

- Encourage spokespeople to explain the process their group followed and what was discussed.
- If the drawn maps are difficult to see, it is possible to carefully separate the plastic from the imagery poster and hold it up against the white back of the poster – however, the drawn shapes may appear very abstract without the imagery behind them for reference.

Step 12: Combine the maps into one.

- Have the group choose an artist to draw a combined community map (either on a new piece of plastic overlaid on the imagery or on one of the small group maps).
- The community should discuss the final map to ensure that it is accurate and includes all important natural resources.
- Ask the community to identify any points, lines or areas that should be made more accurate using GPS coordinates later, when boundaries are agreed upon.
- Ask the community about potential past and present land disputes and boundary disagreements in order to note them on the community map for future resolution.

Step 13: Once the community has agreed on the combined map, ask the community for permission to photograph the maps for record-keeping.

- Leave the original map and satellite imagery posters with the community.¹⁷⁵
- Ensure that map files are kept in a clear, well-maintained management system that clearly identifies which maps correspond with each community and ensures that the maps are safe from unauthorized access.

Step 14: Make a plan for how the map will be safeguarded.

- Leave the digital images and map with the community.
- Support the community to create a plan to keep the map private and safe.

Step 15: Once boundaries are agreed, update the map.

- This should be done both on the printed satellite images and on any digital versions of the map (see [Supplemental Resource 10: Documenting Boundaries and Land Rights](#)).

¹⁷² This resource is adapted with permission from Namati, *supra* note 37, at 143-46.

¹⁷³ Contact Namati for support to access other sources of free or donated imagery. Before requesting, purchasing or printing imagery, it is best to take GPS coordinates of the community's approximate center and (if possible) any agreed boundaries. This confirms locations more precisely and helps ensure that the imagery used is for the correct location.

¹⁷⁴ In Google Earth Pro, it is only possible to save JPG image files up to 4,800 pixels wide. If printing imagery from Google Earth Pro, add a note to the map that gives attribution to Google Earth and the imagery company (e.g. © Google Earth 2015 and © Digital Globe 2015). Do not charge fees for printed copies of Google Earth imagery. For more on saving images from Google Earth visit <https://support.google.com/earth/answer/148146?hl=en>.

¹⁷⁵ In some cases, the community may prefer that the facilitator hold onto the map for the time being. Or, if the map is incomplete or there are significant conflicts or concerns that came up during the meeting, it may be advisable to ask to keep the map and imagery until another meeting can address concerns and finish the map.

Supplemental Resource 9

Boundary Harmonization

How to Use this Guide

Phase 1 of the Tanzania Guidebook for Communities discusses how a community can conduct initial due diligence to support responsible investment. This resource provides more detailed steps on harmonizing boundaries: the process through which people agree on the land boundaries between neighboring individuals and communities.¹⁷⁶ The process of determining community boundaries tends to unearth latent, unresolved land conflicts — even ones that have been long dormant or festering for years — and may also create new land disputes. As a result, activities may stall, and conflict resolution will become a critical component.

Causes of Conflict

Intra-community conflicts can occur between members of households, families in a community or whole sub-groups within a community. Key drivers of intra-community conflicts may include:

- Individuals encroaching upon the land of another community, group or family and claiming the land as their own;
- Inheritance disputes within families, including dispossession of “weaker” family members by “stronger” family members;
- Historical ownership based on a founding or elite family’s claim to community land, which the family feels entitles it to more extensive or stronger land rights than other community residents;
- Elite or landless families claiming communal areas for their own homes and farms; and
- Migration patterns, population shifts or post-conflict settlement of internally displaced people, which tend to create overlapping or multiple, contested claims to a single piece of land.

Inter-community conflicts can occur between one community and a neighboring community. Key drivers of inter-community conflicts may include:

- Differences between indigenous/customary and state-drawn/administrative boundaries, which create an opportunity for each community to side with the boundary that gives it claim to more land;

- The suspected or known presence of valuable natural and/or mineral resources on a given piece of contested land;
- The historical division of families (related to internal power struggles or intra-community disagreements) where one side of the conflict split off and formed a new community; and
- Community elites or leaders acting in bad faith to ensure that boundaries are never harmonized, so that the community's land cannot be formally documented, thus allowing more time for them to grab community lands for themselves and their families.

Conflicts between a community and an outside actor can occur with a local elite, outside investor or a government official. Drivers of community-outside conflicts may include:

- Government grant of a large-scale concession to an investor without community consultation;
- A national or regional elite or government official grabbing land from a community for private use;
- An investor failing to comply with the terms of a lease agreement, polluting community resources or blocking essential rights of way necessary for community members' access to their livelihoods; and
- Government seizure of local land for infrastructure without following proper expropriation procedures.

Principles for Successful Boundary Harmonization

- **Facilitate open dialogue.** Facilitating dialogue involves bringing together all parties to a disagreement and related stakeholders and creating an open, public discussion about the land conflict. The object is to gather all of the stories and perspectives and identify the roots of the problem, the harm done and all relevant laws that apply.
- **Work with trusted community leaders and government officials.** Communities must be careful to involve all respected, trusted leaders and ensure that all leaders feel included and valued.
- **Provide sufficient time.** The boundary harmonization process can take a long time so it's important to allow communities as much time as they need to arrive at genuine boundary agreements.
- **Prepare to speed up the process.** A community motivated by a strong

desire to maintain good relationships with neighboring communities while working to protect its land may move through the process faster than others.

- **Resolving disputes might require meditation.** If community members are not willing to compromise, the boundary harmonization process will stall. If negotiations fail, it may be necessary to use alternative dispute resolution strategies such as meditation.

Facilitating Boundary Harmonization

Step 1: Provide an overview of the boundary harmonization process.

- Call a community meeting and explain all the steps of the process.
- Remind the community members that they should proceed carefully and peacefully and be ready to make compromises.

Step 2: If available, revisit the community's map and identify all boundaries and "hotspots."

- Ask the community to look at its map and discuss what it thinks are the exact boundaries of its lands.
- Have community members mark any "hotspots" (sites of boundary disputes or possible tensions with neighbors) on the map.
- To help identify potential disputes, ask the following questions:
 - Who are your neighbors? How many communities do you share a boundary with?
 - Do you and your neighbors agree on where your land stops and their lands begin?
 - Why is that particular location the boundary of your land? Is there a story to explain that boundary?
 - Describe your relationships with each of your neighboring communities.
 - What history do you have with each of your neighbors?
 - Do you share any resources or land areas with your neighbors?
 - Is the boundary a customary boundary or one made by the state?
 - Do you have a marker at each boundary? If you had a marker that is now gone, what happened?
 - Did you have any conflicts at these borders that have now been resolved?

- Do you have any existing conflicts at these borders? What are these conflicts about?
- Has your community ever tried to resolve these conflicts? What happened?

Step 3: Support the community to make a plan for how it will try to address any boundary conflicts.

- Remind the community members of the bigger picture: it is better to compromise to gain peace and protect their lands rights than to fight over small pieces of land and remain in conflict, without legal protection.
- Discuss a range of compromise solutions.

Potential Solutions to Boundary Conflicts and Other Land Conflicts

I. Inter-community boundary conflicts:

- **Agree to accept one community's definition** of the boundary.
- **Agree to share the disputed land** as a common area, recorded on formal documents as owned by or belonging to *both* communities with equal rights of use and access.
- **Agree to divide the disputed land equally in half**, each party giving up half of the contested area.
- **Allow towns or households located within the contested area to choose which community they would like to belong to.** For example, members in one community described during fieldwork how: "We failed to come to one understanding, so we fought among ourselves. Some people kept talking about history, and we could not go nowhere. So we started talking to the community people in the town [on the border of the two fighting communities] to decide what they wanted to do. We allowed the town at the border to decide what they want to do and then we supported them."
- **Locate and compromise on either the administrative boundary or the original traditional boundary.** In cases where conflict stemmed from differences between administrative and customary boundaries, some communities agreed to abide by one of these pre-defined limits. For example, one boundary conflict between two communities was easily resolved because these communities thought of themselves as "brother" communities. Their boundary conflict was over a small area of land, and each community felt that it would be less of a loss to compromise and lose some land than to fight with its "brother." They resolved their conflict by agreeing to use a relevant pre-existing administrative boundary as their formal dividing line.

II. Intra-community disputes over common areas:

- **Allow encroachers to stay where they are**, conceding that the land they have taken as no longer being part of the common lands.
- **Allow encroachers to keep part of the land they have taken** but return part of the land to the community.
- **Evict encroachers and give them a reasonable time period to move off the land.** For vulnerable or impoverished encroachers who have moved onto common lands because they have nowhere else to live (such as widows, elderly men with no children, etc.), communities may respond by finding alternative land to give them to live and farm on. For richer families who have grabbed land in bad faith,

communities might take a harder line, giving them a specified time period to return the land to the community or their neighbors.

III. Conflicts between a community and an outside actor:

- **Allow small-scale users** from other communities using community resources for livelihood purposes to continue to use resources, but pay a fee for a monthly license, with limits placed on the amount of extraction permitted.
- **Allow medium-scale regional investors to pay for licenses, leases or permits** to use the land and natural resources on a monthly basis, with limits on the permitted amount of extraction or degree of environmental degradation.
- **Renegotiate terms of a pre-existing agreement** with international investors to address concerns of the community and investors, as raised in the mediation.

Step 4: With the support of CSO, discuss dispute resolution and mediation techniques. As part of this discussion, the boundary harmonization team should:

- Discuss each of the “hot spots” along their borders and think carefully about the origins of each boundary conflict.
- Remind each individual about any past efforts to resolve the conflict(s) and the results of those efforts, particularly what happened and what were the outcomes of previous resolution attempts.
- For each dispute, create a strategy for how it will be resolved This strategy should include:
 - Which decisions can be made without community input and which decisions should be made with community input.
 - How the conversations will be shared and documented with neighboring communities and individuals.
 - What circumstances will require support from local government or CSOs.
- For disputes with neighboring communities, brainstorm a range of compromises, paying careful attention to only include solutions that the community will accept.
- Strategize possible responses to counter-offers that the neighbors might suggest – including various responses if the neighbors refuse to compromise.

Step 5: Meet with both parties to discuss, negotiate and agree on boundaries.

- It is best to have the meetings at the actual site of the boundary when possible, so that people can look at the landscape for clues as to where the boundary is located.
- If there is no conflict or only minor disagreements, negotiations may take only one meeting. If there is a serious conflict, it may take many months.

- If there is no agreement during the first meeting, leave the discussion for the day and give everyone time to think.
- Keep having meetings until a compromise is found or until mediation or another conflict resolution strategy is necessary.

Negotiation

In negotiation, the people on either side of a conflict come together *without an external mediator* to work towards resolution on their own. Facilitators can support the parties to prepare for negotiation and provide advice on how to negotiate most effectively.

Preparing for Negotiation:

- Select a neutral location for the negotiation that will ensure a balance of power between the parties. In many boundary disputes, it is best to hold the negotiation at the site of the conflict. There, it is possible to discuss the conflict in practical terms, instead of theoretically, and look for evidence that can contribute to the discussion (based on the physical terrain and natural resources at the site). If the parties cannot go to the site, use a detailed map of the area with resources clearly marked.
- Only the Land Committee should take part. Establish how many people will be present and participating from each party, and who will be the primary representative from each side. If there are a large number of stakeholders, a few elected or chosen representatives from each side should negotiate.
- Set ground rules for the meeting (e.g., one person speaks at a time, no demeaning or hurtful language, etc.).
- Support the parties to decide whether or not they will call witnesses, and if so, who will speak.
- Support the parties to think about their ideal outcome, what they are willing to compromise about, and what they are not willing to compromise about.
- Help each side to understand the other's perspective and desired outcomes.

Effective Negotiation Strategies:

- **Opening statements.** A negotiation begins with an uninterrupted opening statement by each side that expresses its views, understandings and desired outcomes. *After* each side has made its opening statement, the other side can ask questions to clarify anything that remains unclear (not to argue back).
- **Testimony by witnesses.** Next, witnesses may come forward to add useful or important details or information to the conflict at hand. If the roots of the conflict are in the distant past, witnesses might include elders who were alive at the time.
- **Offers and counter-offers.** Together, the parties discuss possible outcomes, including what an ideal future might look like. Each party then offers to give something up to keep what is most important to it and reach a compromise. The other side can agree to that offer or make a counter offer of what would be a better compromise for its needs. The parties go back and forth until a compromise is reached.
- **Recording the agreement in writing.** Once agreement is reached it should be written and signed by all parties and witnesses, then publicly announced. Written agreements work best when they include detailed instructions for how the agreement will be made "real" – for example: who will plant or erect boundary markers, what will happen if someone disrespects the agreed boundary, etc.

Step 6: Return to the community to discuss and confirm the boundaries agreed upon with neighbors.

- After an agreement has been reached, the negotiators from both communities must return to their communities to seek final approval for the agreements.
- If the community does not agree with the negotiated boundary, then the boundary harmonization team must return and resume negotiations, bearing in mind the communities' objections.
- It is important that everyone in both communities is aware of the agreed boundaries and accepts them.
- To prevent last-minute community disagreement after lengthy negotiations, it may be useful for the boundary team to provide regular updates to its community between meetings with neighbors.

Step 7: Mark the agreed-upon boundaries.

- After the boundaries have been agreed and accepted by communities, the agreements are formalized using MOUs and boundary trees, signs and culturally appropriate markers (see [Supplemental Resource 10: Documenting Boundaries and Land Rights](#)).

Preparing for Mediation (when boundary harmonization reaches an impasse)

Step 1: Choose a respected mediator whom both parties trust, agreement is impartial and welcome into their process of conflict resolution. It is often best to choose respected local customary or religious leaders, government officials, or thoughtful elders. A good mediator should:

- Remain impartial and fair;
- Be able to earn and maintain trust and acceptability;
- Be self-confident, friendly and focused;
- Keep the details about the dispute confidential and the process transparent;
- Be able to listen, analyze problems and identify the issues involved for resolution;
- Use clear and neutral language;
- Be sensitive to possible factors that might create power imbalances or otherwise affect the discussion, such as local gender dynamics, relations between two ethnicities or cultures, etc.;

- Positively address and balance power imbalances;
- Positively address the underlying emotional aspects of the conflict;
- Help the parties articulate their specific interests;
- Screen out issues that cannot be mediated and help the parties set them aside;
- Help the parties invent creative solutions and options;
- Help the parties understand the pros and cons of different outcomes;
- Help the parties make informed choices; and
- Help the parties find their way to a practical agreement that can be realized and satisfies both parties' needs and interests.

Step 2: If the dispute has ever been brought to court, review all court records to get a sense of the conflict's history.

Step 3: Talk separately with both parties to understand the history of the land conflict as well as both sides' points of view.

- One strategy to try during these discussions is to ask each party how things "should have happened" – describing the conflict and its outcome as they could have happened in an ideal world.
- The mediator might also ask each party to envision a "positive future" where the conflict is resolved. What would happen as a result of the conflict's peaceful resolution? What will relations between the parties look like in the future? Identifying and thinking about a peaceful, productive future may make the parties more willing to compromise to attain that future vision.
- The mediator may work with each party to draw a "tree" or a map of the conflict, in which the roots of the tree represent the roots of the conflict and the history of the land in question, the trunk represents the conflict itself, describing who is involved, the timeline, what the disagreement is about, etc., and the branches represent possible resolutions and the positive outcomes of peaceful reconciliation. Creating these visual maps may help each party articulate its point of view and realize where interests/desires overlap or differ.
- The mediator might also ask each party to talk about positive steps the other party has made towards resolution, as a way of helping each side remember all the good actions of its opponent.

Step 3. Hold a preparation meeting with both parties to the conflict.

- Determine a neutral time and place for the mediation to take place.

- Discuss the format and structure of the mediation.
- Support each party to decide if it will call witnesses, and if so, who will give testimony about each relevant issue.
- Support each party to think about its ideal outcome and what it is willing to compromise on to reach resolution.
- Ensure that the parties are actually interested in coming to a resolution and would like to end their conflict.
- Agree to each party's negotiation team.
- Agree to who may be in the audience, watching the mediation.
- Set ground rules for conduct during mediation, such as:
 - Be respectful and patient; one person speaks at a time.
 - Do not interrupt, use demeaning or hurtful language, or make threats.
 - Do not make promises that cannot be kept.
 - Focus on resolution, not past grievances.
- Clarify the major points of disagreement and create an agenda that describes which issues will be discussed in what order.
- Ensure that all the necessary information is available to both parties ahead of time – parties should agree to a “no surprises” principle.
- Ensure that the parties reaffirm their willingness to mediate and arrive at an authentic resolution.

During Mediation

Step 1: Introduction and ground rules.

- Both parties affirm that they are ready to enter into mediation and ready to arrive at a resolution of the land conflict.
- Mediator sets the tone of the proceedings by proclaiming his or her neutrality and clarifying his or her role.
- Review the mediation process.
- Review the agreed ground rules, make sure that there are not any rules missing from the list, and seek the parties' agreement to follow these rules.
- Summarize the parties' positive past interactions and feelings (before the conflict began).

Step 2: Each party side tells its side of the story without interruption.

- The “opening statements” should explain: the history of the conflict, the basic issues at stake, the party’s needs and interests, and the desired solution(s).
- At the end of the statement, the mediator and any neutral local leaders assisting with the mediation may ask clarifying questions.

Step 3: Statements and presentations are made by witnesses, elders or local experts (identified during the preparatory meetings).

- These statements should add useful information that can help clarify the facts of the conflict.
- The witnesses should aim to be impartial, only stating what they know to be true, not taking one side or the other.
- The witnesses’ main role is to validate and clarify facts.

Step 4: Mediator summarizes and provides facts.

- Next, the mediator summarizes what each party has said, identifies key issues that must be addressed and reminds the parties about any relevant laws that must impact the agreed outcome.

Step 5: Each party then describes its desired solutions and outcomes.

- The mediator facilitates the discussion with an aim towards arriving at a mutually agreeable settlement and, as appropriate, offers creative solutions that may bridge the parties’ interests.
- The mediator may engage in open-ended questioning during this phase to make sure that all of the parties’ main points come across clearly.
- If there are power asymmetries between the parties (such as an elite ex-military commander or politician on one side and a poor community on the other side), the mediator may want to take a more active role in moderating this discussion. The mediator can do this by asking questions to allow the weaker side to state its position more clearly or clarify or repeat a point in more detail. If, in the course of the mediation, the power asymmetries become so unequal as to obstruct the weaker side from asserting its ideas and desires, the mediation should not proceed.
- If emotions run high, the mediator must have strategies to defuse anger and tension that might cause a breakdown in goodwill. Such strategies can include:
 - Refusing to allow the use of hurtful or destructive language;

- Asking a speaker to repeat an angry sentiment in a more constructive manner (which allows the speaker to clarify and explain what he or she is thinking and feeling);
 - Pausing the mediation to give people time to take deep breaths, sit for a few moments in silence to think, or go off and cool down for a bit; and
 - Breaking to privately check in with each party.
- The mediator should encourage creative solutions and problem-solving but allow the parties to arrive at the final resolution themselves.

Step 6: Once the parties reach an agreement, the mediator's job is to restate the exact terms agreed upon and make sure that there is true agreement.

- The mediator may suggest various hypothetical situations that challenge the agreement and ask the parties how those situations might impact the agreed solution. For example, the mediator might ask:
 - What if a community member disrespects the agreed boundary?
 - What if valuable minerals are found under this boundary?

Step 7: Drawing up and witnessing a written agreement.

- Once the terms of the agreement have been clarified, the mediator writes down the agreement, reads it out loud for confirmation, and has both parties and all witnesses sign it.
- The moment of signing should ideally be captured in a photograph or video. Signing witnesses can act as social enforcers over time.
- Both parties and the mediator should keep a copy for their records.
- The written agreement should include:
 - All the terms of the agreed solution;
 - A plan for carrying out the solution, including who, what, where, when and how the plan will be put into practice;
 - A clear arrangement for how the agreement will be enforced over time;
 - A written and pictorial description of the agreed boundaries of the land at issue;
 - Any penalties or actions that will occur if the parties violate the agreement;
 - Signature lines for as many witnesses as would like to sign; and
 - Any other provisions the parties think are necessary.

What to Do when Mediation Does Not Work.

If community meetings, negotiation, mediation and working with trusted community leaders and government officials do not resolve a conflict, it may be necessary to refer the case to the formal court system.

¹⁷⁶ This resource is adapted with permission from Namati, *supra* note 37, at 149-166.

Supplemental Resource 10

Documenting Boundaries and Land Rights

How to Use this Resource

Phase 1 of the Tanzania Guidebook for Communities discusses how a community can conduct initial due diligence to support responsible investment. This resource provides more detailed steps on how to document the results of the community's mapping and boundary harmonization efforts.¹⁷⁷ After boundaries are harmonized and conflicts resolved, it is necessary to create as many different forms of proof of the land claims as possible. There are three basic ways to create this proof:

- **MOUs**
 - MOUs are useful as proof between communities and individuals of what they agreed upon during the boundary harmonization process.
 - If any community member disrespects an agreed boundary, an MOU can be used as proof of the boundary agreements.
 - MOUs can also help provide proof of a community's or individual's land claims to courts and other outsiders.
- **Physical Markers on the Land**
 - Physical proof on the land is necessary to show all community members and neighbors where the agreed limits of a community's lands fall (so that they can respect the boundaries).
 - Physical markers are also useful to illustrate community limits to outsiders or as a type of landscape-based evidence to show to courts and other government agencies.
- **Formal Technical Measurements of Boundaries**
 - GPS coordinates and surveys provide specific, technical, digital proof that many government cadasters require in order to formally register community land.
 - They are the strongest form of community and individual land documentation, as they include exact coordinates of boundaries and are most useful for demonstrating to external actors where a community's lands begin and end.

Facilitate Signing an MOU

MOUs should include:

- A list of the parties to the MOU (usually the communities' names).
- The purpose, terms and conditions of the MOU.
 - For example, a community may choose to write: "This MOU is to make clear for all future generations where the boundary is between X Community and Y Community, and to provide proof that we agreed with one another about this decision, so that there will be no future challenges to this boundary."
- A list of the boundaries that are agreed to in the MOU.
 - For example, a community may choose to write: "This boundary is the northern boundary of Community X, and the southern boundary of Community Y."
- Descriptions of the agreed boundaries.
 - Boundaries should be described with reference to nearby towns or other markers.
 - For example, a community may choose to write: "The boundary is marked by X River" or "the boundary is marked by ten soap trees planted today as proof."
- Drawings, maps and/or photographs of the agreed boundaries.
- Written agreements about any land and natural resource use and access rights, including rights of way and seasonal users' rights.
- Names and signatures of the people who will sign on behalf of each community.
- Names and signatures of those who will sign as witnesses on behalf of each community.
- Signatures of local government officials or other authorities who will attest to the MOU.

Sample Memorandum of Understanding

between

The community of _____

and

The community of _____

Signed on _____.

WHEREAS we, residents of (name of county/district/region) and the Republic of Tanzania seek to secure our existing land rights by documenting our customary land claims; and

WHEREAS we believe that land- and natural resources-related conflict or insecurity will hinder our community development, interfere with our livelihoods and family survival, and impede the full prospering of our local communities; and

WHEREAS we seek to avoid future land- and natural resources-related conflicts and to clarify all community boundaries so as to be able to independently seek documentation of our respective community lands, and

WHEREAS Our local leaders including _____ have endorsed these efforts and expressed support for our actions;

NOW, THEREFORE we together agree to clearly and finally establish the boundaries between our communities, and to desist from any further boundary conflicts concerning this area. To this end, we hereby declare:

1. This MOU is documenting the boundary between
_____ community, and
_____ community.

2. The boundary is described by the following evidence and markers:

3. A map of the boundaries (sketch map below or attach a copy of the community map):

4. These boundaries will be permanent and undisputed. Should a boundary disagreement arise, this signed and witnessed agreement will be referenced to resolve the dispute. The communities signing this agreement pledge to peacefully and quickly settle all boundary disputes related to this agreement, using mediation and other non-violent methods of dispute resolution.
5. This MOU makes clear for all future generations where the boundary is between _____ community and _____ community. It provides proof that we have agreed with one another about this decision, so that there will be no future challenges to this boundary.
6. Should an individual family or member of one of the communities plant crops or build buildings across the agreed boundary, the community that such individual or family belongs to will be responsible for condemning this action and taking measures to re-establish the boundaries as agreed today.
7. The communities that are signatories to this agreement will use these boundaries when applying for legal documentation of their land rights. Furthermore, if and when either community applies for its lands to be surveyed, these boundaries will be the ones recorded and measured.
8. The parties have agreed that copies of this MOU shall be deposited with all relevant government agencies and officials, including:
_____.
9. This boundary agreement was witnessed and signed by the following leaders, government officials, and community members on this day of
_____ :

Name	Title and Community Affiliation	Signature
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		

* Feel free to add as many signatures of witnesses as the community feels is necessary.

¹⁷⁷ This resource is adapted with permission from Namati, *supra* note 37, at 175-84.

Supplemental Resource 11

Developing a Land Use Plan

How to Use this Resource

Phase 1 of the Tanzania Guidebook for Communities discusses how a community can conduct initial due diligence to support responsible investment. This resource provides more detailed steps on assessing current uses of land and natural resources and evaluating alternative options to select and adopt the best land use options within a community, including planning for potential investment. Communities should use their community map to develop the land use plan, which should be attached to their by-laws for responsible investment. The community should make sure that its by-laws include clear rules for what people can and cannot do in the investment area.

Step-by-Step Guidance

Step 1: Post notice of meetings to ensure all land holders and users and groups are represented.

- Post information about the meeting place and time in places where participants frequent.
- It is likely that the investment will impact people and groups differently so widespread participation is needed to contribute different perspectives and help anticipate and mitigate potential issues.

Step 2: Select location of meetings to achieve diverse representation.

- Meetings should be held at locations and times that are accessible to all community members.
- Women, pastoralists and others may have different schedules that must be accommodated.

Step 3: Ensure broad representation during the meeting. Reaching groups who are frequently underrepresented in decision making forums (such as women, youth and ethnic minorities) often requires more concentrated effort than just inviting them to information meetings. The meeting should include the following people:

- Married Men
- Single Men

- Married Women
- Single Women
- Widowed Women
- Male Youth
- Female Youth
- Male Pastoralists
- Female Pastoralists
- Others, e.g., widows, religious minorities, elderly, people with disabilities, etc.

Step 4: Community members should convene as one large group for general information and instructions.

Step 5: Community members should be separated into groups of 15 to 25 community members. Women should be separated from men.

- Supply groups with maps, paper for a map legend and notes, and colored markers.
- Use the final map to identify:
 - Areas that should keep current land uses,
 - Areas that should remain protected so that natural resources are preserved,
 - Areas that still have unresolved conflicts,
 - Areas required for future use so the community grows in an organized manner, and
 - Areas that might be considered for potential developments such as new construction, community projects and investments.
- It is important to emphasize that land identified for investment does not overlap with other land uses.
- Use a facilitator to help the groups.

Step 6. Reconvene the groups to present their maps of current land uses and proposed zoning.

- Each group should choose a presenter who will present both maps to the larger group meeting.

Step 7. Lead the community to discuss and reconcile existing competing uses of land, as well as what land should be identified for possible investments and consider possible impacts. Community members should to think about:

- **Suitability**
 - Given the arable land available, what land should be reserved for animal grazing? For agriculture? For residential development? For forestry?
 - Is there land well-suited for an investment?
 - Are there reasons why the land is sensitive or why certain activities should be restricted?
- **Potential conflicts**
 - Can the investment be next to the community's lake, stream or spring?
 - Should a very noisy activity be allowed to take place next to housing areas?
 - Will polluting activities be allowed upstream from the community's water source?
- **Fairness**
 - Do current modes of land use represent the best use of limited resources, both now and for future generations? Are there any ways to enhance existing land uses to improve sustainable and efficient use of the community's natural resources?
 - Would the investment area unfairly harm or benefit certain groups?
 - Would certain families or individuals be negatively affected by the investment?
 - The community may need to agree on appropriate exceptions or compensations to remedy any harms caused by the investment.
- **Community priorities**
 - Do existing modes and intensity of land use support community priorities for development, resource management and community health?
 - Does the investment area support the community's future vision?
 - What uses of the land will best help the community to prosper, thrive, grow and ensure that community natural resources are abundantly available for future generations?

Step 8. Walk around and mark the area to designate it for an investment.

Step 9. Ask community members to make rules in their by-laws to explain the land use plan and ensure that it is enforced. The community by-laws can set out:

- Rules that the community must post posters or signs near to or inside the investment area that explain the community's land use zones and the rules for the zones;
- Rules to discourage violations and/or provide incentives for respecting the zoning rules;
- Clear systems for monitoring compliance with the zoning plan, reporting violations, and determining fines or remedies for violations;
- A process for evaluating and deciding on requests to use the land and resources in a different way than set out in the zoning plan;
- A process for making changes to the zoning plan over time; and
- Other rules the community thinks are necessary to support the zoning plan.

Step 10. Share the land use plan with district and regional state officials so they can refer to it when helping to resolve community land use disputes and other matters related to land and natural resources.

Supplemental Resource 12

Land Valuation

How to Use this Resource

Phase 1 of the Tanzania Guidebook for Communities discusses how a community can conduct initial due diligence to support responsible investment. This resource provides more detailed steps on demonstrating how much value those community lands bring to the community already.¹⁷⁸ When communities appreciate the value that they are already receiving from their land in monetary terms, they will be better positioned to negotiate with potential investors.

This exercise is designed to give people a sense of the value of the land designated for investment. It is not meant to be precise or perfectly accurate and should not be represented to communities as a fact.

Materials that are useful during this exercise are: a calculator, large paper (or a big chalkboard/whiteboard), markers or chalk, and printed copies of a form like the “Basic Valuation Worksheet” below.

Methods to Estimate Value of Land

Communities can estimate the monetary value of their land in a number of ways. These include:

- The value of the land and natural resources on the local market, based on the value of other land or resources that have been rented, leased or sold in the region;
- The value of the land and natural resources to the prospective buyer or tenant, including what they would use it for, and how much they would profit from it; and
- The market costs of replacing the resources currently hunted or gathered from the land - how much it would cost for the community to replace the resources lost by buying them in the local market.

The community itself can do a rough estimate of the amount of money it would take to replace the natural resources that community members hunt or gather from their common lands.¹⁷⁹ This is done by:

- Listing all the resources that the community uses on or gathers from its common land;

- Estimating how much of each resource is used or gathered; and
- Figuring out what the community would have to spend in the local market to replace the resources that it would no longer have if the land was leased or sold to an investor.

Step-by-Step Guidance

Step 1: Post notice of meetings to ensure all land holders and users and groups are represented.

- Post information about the meeting place and time in places where participants frequent.
- 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.

Step 2: Select location of meetings to achieve diverse representation.

- Meetings should be held at locations and times that are accessible to all community members.
- Women, pastoralists and others may have different schedules that must be accommodated.

Step 3: Ensure broad representation during the meeting. Reaching groups who are frequently underrepresented in decision making forums (such as women, youth and ethnic minorities) often requires more concentrated effort than just inviting them to information meetings. The meeting should include the following people:

- Married Men
- Single Men
- Married Women
- Single Women
- Widowed Women
- Male Youth
- Female Youth
- Male Pastoralists
- Female Pastoralists
- Others, e.g., widows, religious minorities, elderly, people with disabilities, etc.

Step 4: Community members should convene as one large group for general information and instructions.

Step 5: Generate a list of resources that community members receive from the investment area.

- Make a big chart that has 7 columns (see the “Basic Valuation Worksheet” below).
- Get community members to “shout out” or brainstorm all the main activities or uses of the common land, as well as all natural resources that can be found on the land.
- Write down everything that people say in the column on the left side of the board or big paper.
- Keep asking people to shout out uses of the common areas until no one can think of any more uses of the land or resources found there.
- Examples of activities that community members may suggest are:
 - Hunters hunt for animals in the forest.
 - Women gather wild mushrooms.
 - People gather thatch for the roofs of their houses.
 - People gather traditional medicines for healing sicknesses.
 - Women gather water from streams, rivers and springs.
 - People gather honey from wild bees.

Step 6. Select the 7 to 10 most-used resources that households typically gather on a daily or weekly basis.

- Focusing on a shorter list tends to work best within a 2-hour time period.
- If community members have interest and energy feel free to continue for all the resources.

Step 7. Calculate the value of each resource.

Community members are often shocked by the large value of their community land. To make sure that they understand how total value is calculated, it is important to do all calculations in front of the community, or to have community members do the math on their mobile phones along with the facilitator.

- **Determine the unit of measurement for each resource.** To agree on a common unit of measurement, ask people how the resource is usually sold or bought in the market. For example: By kilo? By bundle of three? Write the agreed-upon answer in the column titled “Basic Unit.”

- **Determine how many units of each resource are used each week.** Ask people to estimate how much a “typical” family gathers or uses every week. Ask them to “shout out” the answers. For example:
 - How often does a family hunt for meat?
 - How much meat do they hunt and eat every week/month, on average (using the agreed unit)?
 - How many units of wild fruit or vegetables do women generally gather each week?
 - How many units of firewood does a family generally gather from the community common lands each week?
 - How often do people gather wild honey?
 - What quantity of honey can someone get each time he or she goes to gather it?
 - How much honey does the typical family consume or sell every week?
- **Determine the cost of the unit on the market.**
 - Ask the community how much one unit of the resource would cost in the market if people had to buy it in town.
 - For example, how much would a kilo of meat cost to buy if families could not hunt for their meat? How much would a bundle of thatch cost? How much would a bundle of firewood cost?
- **Find out the cost per week.**
 - Multiply the cost of one unit by the number of units used per week.
 - For example, if a “typical family” uses one bundle of firewood every day, and a bundle of firewood costs \$1 in the market, then a “typical family” would have to spend \$7 a week on firewood if they could no longer access their common forest. Write down the weekly costs in the chart.
- **Find out the cost per month and per year.**
 - Multiply the cost per week by 4 to get the cost per month.
 - Enter it into the table.
 - Then multiply the monthly cost by 12 to find out the yearly cost to a family (in the final column).
- **Calculate the total cost per year for one family.**

- Add up everything in the final column to find the total cost per year for all the resources discussed.
- **Estimate the total cost per year for the whole community.**
 - Ask the community how many families/households live in the community and use the common areas.
 - Write down the total number of families/households in the community.
 - Multiply the total cost per year for one “typical family” by the number of families/households.
 - This number is an estimate of the total cost for the entire community to replace the resources it currently gets from its common land.
 - It should be a surprisingly large number – and it is likely still a low estimate because there are other resources and uses that are not included.
- **Find out the cost in US Dollars.**
 - Often, investors offering to lease or buy land will come offering a rental fee or sale price in US dollars.
 - For this reason, it is important to not only estimate the monetary value of investment area in Tanzanian shillings, but to also convert that into US dollars.
 - Confirm the current exchange rate before the meeting. Multiply the total cost to the community in the local currency by the current exchange rate.
- **Reflect:** After completing these calculations, it is sometimes useful to take a moment to ask community members to envision what their lives would be like if they no longer had access to their community land. Consider asking:
 - If you did not have your community land, where would you get firewood/bricks/wild fruit and other resources?
 - If you did not have your community land, how would you earn money to buy each item at the market?
 - Since you now know the value of what you get from your community land, would you consider selling or renting the land? (If yes, what would be a fair price, given the value that your community is already receiving from these lands?) It may be useful to remind community members that it is unwise to sell or rent their land for the exact value it has to them currently – if they did so they would not gain any profit to help the community prosper.

Basic Valuation Worksheet

(Participants decide which resources to list in the left column, but facilitators should be prepared to suggest these examples or other commonly used resources if they are not suggested by participants.)

Collected from common land & water areas by one "typical family"		Basic Unit (bundle, kilo, etc.)	Units used per week	Cost per unit	Cost per week	Cost per month (x4)	Cost per year (x12)
	Firewood						
	Water						
	Meat from hunting						
	Fish						
	Vegetable #1						
	Vegetable #2*						
	Herbal Medicine						
	Wild Fruit #1*						
	Wild Fruit #2						
	Thatch for homes						
Total cost of foods and resources for one "typical" family:							

*Add extra lines for more vegetables and wild fruits, anything gathered for alcoholic beverages, etc. – but make sure that the community is only calculating items gathered for household consumption.

Total # of families in the community	Total cost of resources for entire community per year (TZ Shillings)	Exchange rate of TZ Shillings to US Dollars	Total cost of resources for entire community per year (US Dollars)

¹⁷⁸ This resource is adapted with permission from Namati's guidance for valuing community land. See Namati, *supra* note 37, at 73-77.

¹⁷⁹ If an investor requests a specific piece of land, facilitators may want to research how much the land requested is worth on the local market (and/or how much the land is worth to the investor) and share this with the community for reference.

Supplemental Resource 13

Consultation Meeting Notes Template

How to Use this Resource

Phase 2 of the Tanzania Guidebook for Communities discusses community engagement. This resource can help document conversations with stakeholder groups for Phase 2, Task 1, Step 3.

Names of meeting participants:	
Name of note taker:	
Date:	
Topic	Notes
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	
Potential risks, including social, environmental, and financial risks	
If the business will be working with a CSO or another third party	

Supplemental Resource 14

Key Contract Elements

How to Use this Resource

This resource provides guidance on the terms and elements that should be contained within the MOU and final contract between the business and community, as well as the lease agreements that memorialize land investments.

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 an MOU between the enterprise the community, or both. Under any scenario, the community should receive legal representation.

Tenure Rights

- Define the rights of the business to use, access and exclude others from the project site.
- The lease should include the total area of land given and indicate the boundaries and location of the land with precision.
- The lease should include a map as an annex to the contract and 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.).
- Selling or leasing large expanses of land can give rise to resentment and encroachment 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 one of the parties.

- 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 business 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 (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 and mitigation plans of impact assessments should be incorporated as legally binding obligations in the lease (or 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 local communities.

Financial and Non-Financial Terms

- Annual rental payments are a 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.
- Where a business has committed to international standards such as the VGGT, those commitments should be included in the lease if they can be directly related to the obligations and responsibilities anticipated under the lease.
- The lease (or MOU) 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. Details should provide that it be made clear that these benefits are provided to the community by the business, even though local 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.¹⁸⁰
- These mechanisms should not prejudice or restrict access to State-based or other non-State based complaint mechanisms.¹⁸¹ 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."¹⁸²
 - 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 culture, including a variety of approaches to cater to differences in personal preferences and in culture.
- Have a central point of coordination in order to facilitate the development and implementation of the mechanisms.
- 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.
- 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.¹⁸³

Equitable Compensation

- The lease should be specific about compensation by outlining mechanisms that ensure land holders and users (both women and men) and communities, 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.

¹⁸⁰ See USAID, *supra* note 50, at 52.

¹⁸¹ *Id.* at 20

¹⁸² 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>.

¹⁸³ USAID, *supra* note 50, at 51

Supplemental Resource 15

Template for MOU

How to Use this Resource

Phase 3 discusses outlines the negotiation and contracting process. This resource provides a sample MOU between a community and an investor to inform that process.

[Cover Page-To be produced on official letterhead]

This document is a **Memorandum of Understanding**
Incorporating an agreement between
[The Community]
and
[Business Enterprise]
on
[Date of Agreement]

This Memorandum of Understanding (MOU) . . . [brief paragraph describing the parties and the process of entering into the agreement]

§1 Definitions (optional)

In this MOU . . . [a list of terms to be used and their agreed upon definitions for the purposes of this agreement; the same function may be served by including definitions of terms as they are introduced in the text of the document]

§2 Recitals

Whereas . . . [this list of statements provides the background information about the proposed investment, broken out into individual clauses, including:

- relevant interactions between business entity, government, and community prior to this agreement;
- laws and institutions implicated in the agreement;
- the current status of the proposed investment;
- and the purpose of this document]

§3 Statements of Intent/Understanding/Agreement

The parties agree . . . [this is the substantive and action-oriented portion of the document, and should include an exhaustive list of the elements of the negotiation and investment process that have been discussed and agreed upon, including:

- times and locations of community meetings (both prior to and during negotiation and investment);
- topics to be covered in meetings;
- groups to be consulted;
- standards of consultation, consent, and any other concepts not included in a separate definitions section;
- professional and legal assistance to be provided to community;
- description of the dispute resolution process to be used in negotiation stages;
- any other commitments made by business entity, government, and community]

§4 Signatories

[List of signatories and the capacity in which they are signing (e.g., community leader on behalf of community)]

[Name and Role of Signatory]

[Name and Role of Signatory]

[Name and Role of Signatory]

[Name and Role of Signatory]

Supplemental Resource 16

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) two checklists for evaluating the community engagement plan based on established standards for stakeholder communication.

Model Community Engagement Plan 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 Plan

- 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 for 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 CSO 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 17

Outgrower Best Practices 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 communities 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/8dc5628042112fdbba2ff494779b2ad/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 ESAs, 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.

A GUIDEBOOK FOR COMMUNITIES 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



Responsible Investments
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