

GUIDEBOOKS BY COUNTRY



SOCIALLY RESPONSIBLE LAND INVESTMENT IN TANZANIA

A Guidebook for Government Officials Supporting 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 Governments 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.

Acknowledging that responsible land-based investments require significant engagement and collaboration with communities, civil society, governments, businesses and experts in the field, a broad range of stakeholders were included in the design and development of the guidebooks. In particular, during the development of the Ghana and Tanzania Country Guidebooks, extensive consultations with policymakers and communities were held.

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

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1.

Introduction & How to Use this Guidebook

Introduction

This Responsible Investments in Property and Land (RIPL) Guidebook will take District Council members and other government stakeholders through the steps needed to ensure that land investments in their communities are carried out inclusively and responsibly.

The primary audience for this guide is District Council members that are faced with the challenges and opportunities of a new land investment in their districts. The goal is to provide them with all the information they need to ensure that they are equipped and prepared for any proposed land-based investment. Importantly, such investments should adhere to international standards and best practices as they go through the investment process in Tanzania, starting with preparing for the agricultural investment, continuing on to support a community's decision to proceed with or halt an investment, all the way through to ensuring the investment is implemented in accordance with best practices.

This section discusses:

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

Background for the RIPL Guidebooks

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

In a well-functioning land governance framework, for example, no sale, lease or change in the use of a land asset occurs without notice, consultation, negotiation and

consent. Equitable and beneficial deals are the rule, and if there is a dispute or breach of an agreement, judicial and administrative remedies are available and accessible.

Unfortunately, however, many emerging economies lack governance frameworks embodying these best practices. If they are in place, the government and landholding communities often lack the capacity to implement them. Complicating the situation, individuals possessing 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. In Tanzania, laws are generally in place but government capacity to implement is lacking (particularly at the district and village level) and the informal land situation is unique, requiring that investors take special care to understand whether and in what way 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. At the same time, companies looking to invest may need help navigating those institutional and governance shortcomings to uphold equitable land practices in their investments.

With support from the United Kingdom's Department for International Development (DFID) Land Governance for Economic Development (LEGEND) Programs, Landesa's RIPL Project is addressing these challenges by condensing international guidelines and best practices into guidebooks and drawing experiences from Tanzania. These guidebooks offer country- and audience-specific step-by-step instructions for how to implement best practices and international standards, making it easier for businesses, governments and communities to all do their part to create a responsible land investment.

Important Notes About Using RIPL Guidebooks

It is important to recognize that the local context will shape how best practices can bring about a responsible investment. A few examples of the contextual variables seen in Tanzania include:

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

Early due diligence, consultation, engagement and assessment are the keys to understanding contextual variables like these, which will only help ensure a successful and sustainable investment process.

It is 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.

How to Use This Guidebook

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

Guidebook Audiences: Investment Stakeholders

The Role and Responsibilities of Government

The Tanzania government, in particular the District Council, 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 users and their rights, safeguard legitimate tenure rights against threats, make efforts to promote and facilitate the full realization of tenure rights, support equitable transactions, provide access to justice to deal with infringements of legitimate tenure rights, take steps to prevent tenure disputes from arising and escalating into conflicts, protect businesses from extortion and graft, and respond to businesses and communities that are engaged in a land matter. These responsibilities also feed into the government's other general responsibilities with respect to environmental conservation, food security and domestic security, all of which depend on an effective and equitable land tenure regime.

The role of the District Council is to directly engage with business and village authorities, primarily the Village Council and Village Land Committee. It should support the communities in strengthening systems and safeguards related to responsible investments before the investment process takes place. It will also need to ensure that investors and village authorities are engaging and consulting with the Village Assembly through regular meeting that are used to inform the investment process. Importantly, the District Council needs to ensure efforts reach all land rights holders and users, including women, men and pastoralists in an interactive and gender-sensitive way. In addition, the District Council will need to hold the business accountable for assessing and mitigating adverse impacts related to the project. If an investment does take place, it will be critical for the District Council to continue engaging with the business and village authorities to ensure that

grievances are prevented and addressed in a manner that includes the Village Assembly's participation in the decision-making process.

The Government Guidebook's intended user is the District Council member responsible for supporting the Village Council and Village Assembly in making decisions around land use in the community and ensuring the business complies with Tanzanian laws and policies and international best practices. Unfortunately, these individuals are not always familiar with best practices related to responsible agricultural investments or fully knowledgeable about Tanzania's investment process. Given this, the guidebook contains material about Tanzania governance and investment process as well as information on how to guide and support a business enterprise in achieving a responsible investment.

The Role and Responsibilities of Communities

Communities and their leaders must be empowered to participate fully in any investments affecting them. Though they may benefit from a land-based investment, rural communities and smallholders are also the stakeholders that have the most to lose when land deals take place. It is important to note that investments – even undertaken with best practices - cannot simply be imposed upon communities. Women and men in communities must have the capacity to be a part of fair land deals and have opportunities to participate and make informed decisions throughout the process. 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's 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.** Establishing processes or groups within the community that share information, support community input or other

considerations, and assisting with or guiding land use planning will leave a community better prepared to weigh the options and engage with a business on a potential investment.

- **Learn about how agricultural investments work**, such as the national and international protections the community has, the typical steps comprising a land transaction, and best practices and processes to achieve a fair, equitable and enforceable agreement.

Civil society can also assist communities during the planning, assessment, contracting and implementation of an investment by serving as facilitators, experts, interpreters and collaborators. This engagement may prove helpful to business enterprises as well, who will likely need help effectively reaching and engaging with community members. CSOs may therefore play the role of ensuring that all elements of a rigorous consultation and engagement effort or resettlement process are effectively implemented.

The Community Guidebook's intended users are the Village Council and Village Land Committee engaging with government and business on behalf of the broader community. It can be used for foreign or domestic investors of any size. Importantly, it should be used whether the investor is purchasing or leasing land from the community or an individual. In both circumstances, the Village Council and Village Assembly must be informed and provide their consent. Given the complexity to some of the issues, achieving best practices will likely require assistance from a civil society organization (CSOs). Throughout the guidebook, we have identified specific steps where CSOs should support community members.

The Role and Responsibilities of Businesses

Businesses must take the initiative in implementing best practices when governance frameworks are lacking or 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 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.

Guidebook Structure

Each Tanzania 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, along with 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 at the end of this document:
 - SR 1: Obligations Under International Treaties and Conventions
 - SR 2: Overview of Tanzania Legal Framework
 - SR 3: Best Practices for Responsible Investment
 - SR 4: Consultation Meeting Notes Template
 - SR 5: Land Rights Assessment Tool Kit
 - SR 6: Template for LOI/MOU
 - SR 7: Final Contract Checklist
 - SR 8: Grievance Mechanism Checklist

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

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

2.

International Standards & Best Practices

International Standards & Best Practices

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

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

This section will discuss:

- ✓ Best Practices Overview, and
- ✓ Free, Prior and Informed Consent 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 international standards that also apply. At a high level, these best practices call on business enterprises to work equitably with communities and individuals. This includes (but is not limited to):

- Committing to uphold both national law and international standards;
- Providing notice to all land rights holders and users (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 to an investment, with the option to decline;
- Assessing and mitigating potential impacts of the investment;
- Working with local government officials and CSOs to deliver capacity enhancement and technology transfer services to affected communities;
- Inviting land rights holders and users to negotiate a fair agreement;
- Ensuring investment benefits are distributed equitably among all individuals with land rights; and
- Establishing and implementing grievance mechanisms.

Comparing Tanzania Regulatory Requirements against Best Practices

Tanzania's legal framework establishes an investment process, but the content and application of the framework do not always comport with best practices for achieving a responsible investment. See [Supplemental Resource 2: Overview of Tanzania Legal Framework](#) for more information on the national laws relating to investment, land and property.

The following table briefly compares Tanzania's regulatory requirements against best investment practices and briefly lists the supplemental activities that government should undertake to bring an investment closer to these practices.

Investment best practice	Government regulatory requirement	Gap between best practices and government requirement	Recommended steps that government can take to bring the investment closer to international best practice
<u>Develop and implement policies, commitments and frameworks</u>	Ministry of Lands, Housing and Human Settlement Development (MLHHSD) is responsible for all land related matters while TIC is the responsible institution to coordinate,	Investment stakeholders do not fully understand TIC's mandate and how they should coordinate with the institution.	MLHHSD and TIC should consider updating existing operational manuals and guidance for government employees, potential investors and village authorities and ensure they are widely available.

	promote, encourage and facilitate prospective investments in Tanzania.		
<u>Conduct due diligence</u>	Before accessing land in Tanzania, a business is required to obtain a Certificate of Incentive (CI) from the TIC.	Many businesses bypass this step and engage directly with district and/or village authorities to expedite the process, which can lead to confusion and misaligned expectations.	Beyond issuing a CI when a business registers its intent to invest, TIC should conduct a due diligence review to ensure the business will comply with national laws and policies as well as international standards and best practices.
<u>Engage and consult with community members</u>	Investment Act; Land Use Act; Village Land Act; VLUP Guidebook	Insufficiently required by law. Significant gap.	The District Land Council needs to ensure that the business is engaging and consulting meaningfully with communities, individual smallholders, and all other land holders and users. It must also ensure that Village Assembly members are unified under common goals, prepared with information to meaningfully engage with the business and has sufficient time to make decisions.
<u>Conduct community assessments</u>	Environmental Management Act; VLUP Guidebook	Insufficiently required by law. Significant gap.	District Council should ensure assessments of community capacity; environmental and social impacts, including impacts on land rights, uses and livelihoods; and land value are carried out.
<u>Negotiate and draft the contract</u>	District and national government authorities review village-to-general land transfer request and provide notice to the community.	Communities are not parties to the contract and may not have access to it.	District Council should ensure the business and Village Council create and sign a binding MOU that establishes clear rights, responsibilities and processes.
<u>Review and sign the contract</u>	TIC issues a Derivative Right of Occupancy and final leaser terms	There is no gap. The gap occurs when communities are excluded from	District Council should ensure the community receives copies of the final contract. TIC should incorporate principles

	to the business.	the contracting process and are not made a party to the resulting agreement.	and commitments contained in the MOU into the final contract.
<u>Develop and implement a plan to address land-related issues</u>	Not mandated	Not required by law. Significant gap.	District Council should regularly engage the business and the community to ensure they establish a grievance mechanism to mitigate and prevent disputes.
<u>Develop and implement an ongoing monitoring and evaluation plan</u>	Not mandated	Not required by law. Significant gap.	District Council should ensure the business adheres to principles for effective monitoring and evaluation.

Each section of this guide provides more detailed guidance that describes Tanzanian regulatory requirements, the government capacity to oversee and participate in those requirements, and the supplemental activities that an investor will need to perform to bring an investment project in line with best-practices.

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

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 did not consent, leading companies are treating all affected communities under the higher standard afforded to indigenous communities.⁴ “Affected communities” refers to all communities and individuals whose land rights, uses, and livelihoods may be impacted by an investment.

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

FPIC in Tanzania

Although Tanzanian law does not expressly call for informed consent prior to curtailing or transferring community or individual land rights or uses, it does contain 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 or administrative decentralization (transfer of responsibility to district authorities) when it says that “the purpose of having local government authorities is to transfer authority to the people.” Local government authorities are entrusted with the right and power to participate, along with the people they govern, in planning and implementing development programs.
- The Village Land Act further calls for enacting as a fundamental principle of national land policy enabling “all citizens to participate in decision making on matters connected with their occupation or use of land.”⁵

District officials should acknowledge the right of citizens to participate as well as their responsibility 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, current laws and policies and their implementation fall short of best practices because the Village Land Act requires just one Village Assembly

meeting to seek consent. The process should be a series of meetings over a longer period, giving individual community members sufficient time to consider potential implications on their land and livelihoods from the investment.

For example, law land transfers fewer than 250 hectares only require one meeting of the Village Assembly to inform itself about a land transfer and to approve or reject the transfer. The 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 is required to signify an assembly action. However, findings from field work show that women, pastoralists, and other marginalized community members are often either absent from Village Assembly meetings or are not allowed to participate or vote even though they have a legal right to do so.

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

Despite the role set out for district government, lack of government capacity limits meaningful consultation and engagement by communities. District governments often lack the capacity to oversee or enforce the legal requirements of participation, consultation and full, informed consent. District officials should therefore ensure that businesses make special efforts to engage all community members, including pastoralists, women and other vulnerable groups. To obtain the free, prior and informed consent of all relevant stakeholders in all transactions, district officials should encourage businesses to do the following:

- Finance assessments that are carried out by third party experts to understand how the project will adversely affect the community and relevant stakeholders within the community.

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

Best Practices for Holding Village Assembly Meetings

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

- Share information about the meeting place and time in places where participants frequent, such as notices on message boards at local schools, churches, and community gathering places and messages on local radio.
- 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 instructions.
- To facilitate discussion that provides everyone an opportunity to express their views, Village Assembly members should be separated into groups of 15 to 25 community members. Women should be separated from men.
- Reconvene the Village Assembly for further discussion and an opportunity for members to ask questions.

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

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

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

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

² See 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 to evaluate the financial viability and social impacts of the project.

This information will help district officials, particularly District Council members, better understand issues in Tanzania related to responsible investments. The information can be used to ensure that business and village authorities meet their responsible investment responsibilities and avoid negative impacts on the community. Below is a brief overview of some of this context, including:

- ✓ Land Governance in Tanzania: Legal Framework
- ✓ Land Based Investment Experience to Date
- ✓ Village Land Use Planning
- ✓ Customary Practices and Women
- ✓ Customary Practices and Pastoralists
- ✓ Potential Avenues for Investment

Land Governance in Tanzania: Legal Framework

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

- National Land Policy (1997),
- Land Act Cap 113 (1999),
- Village Land Act Cap 114 (1999),
- Courts (Land Disputes) Act Cap 216 (2002),
- Land Use Planning Act Cap 116 (2007), and
- Land Acquisition Act Cap 118 (1967).

Sections of other laws, such as the Tanzania Investment Act and the Environmental Management Act, additionally apply in the context of certain agricultural development projects.⁶

The Village Land Act affirms that woman and men have equal rights to acquire, hold, use and manage land without restriction. Women's land rights are also covered by "family law," including the Law of Marriage Act,⁷ which stipulates that a married woman has the same right as has a man to acquire, hold and dispose of land and other property, and the same right to contract.

All land in Tanzania is deemed "public land" administered by the President as a trustee through MLHHSD. The Land Act and Village Land Act divide public land into general land, reserved land and village land.⁸ Village land, comprising approximately 70% of all Tanzanian land, is managed by the district and village authorities of Tanzania's nearly 12,000 villages, while reserved land is managed by specific agencies overseeing the largely public purposes for which the land is reserved (e.g., wildlife conservation, forestry, etc.). General land, which makes up approximately 2% of Tanzanian land, is defined as the remaining land that is not categorized as village land or reserved land.⁹ It includes most urban land.

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

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

The Village Land Act also describes what land comprises village land and how it is to be managed. The law regulates inheritance and transfer of land, along with the process for granting and certifying Customary Rights of Occupancy through a Certificate of Customary Right of Occupancy (CCRO). These CCROs represent the holders' lease or "occupancy" rights, which is the highest level of tenure security possible under Tanzanian law.¹⁰

The Land Use Planning Act further regulates the process of surveying and registering village land and establishes Village Land Use Planning (VLUP). This

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

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

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

Land-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.¹¹ 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.¹² 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.¹³

Perhaps the biggest challenge for the SAGCOT initiative is the shortage of land 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 village land available for

agricultural investment requires a lengthy and complicated process discussed later in this guidebook. While the National Land Use Planning Commission (NLUPC) has floated the idea of converting 19% of village land for use in potential investments through the VLUP process,¹⁴ the lack of available land and the complexity of the VLUP process limits the likelihood that such conversions will take place.

This adds to the complexity of commercial agricultural investment and means that legitimate land rights holders and users can be left out of consultation and decision making around land transactions. In some cases, this has resulted in communities learning that their land rights have been given away to an investor only after a lease has been signed, with unfortunate results for both company and the community members. It is not hard to imagine how conflict can erupt from this kind of situation, resulting in wrongful displacement or a failed deal.

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 natural resources in a more efficient and sustainable manner.¹⁵ 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.¹⁶ 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 is not planning beyond 10 years, large-scale, long term agribusiness projects could have unforeseen 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.¹⁷ Village land is not directly available for land investment, but must be reclassified as general land (controlled by the national government) and allocated to the TIC to be made available for investment.¹⁸ 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.¹⁹

The government envisioned that all of the 12,000-plus villages across Tanzania would undertake the VLUP process. However, resource constraints have permitted

less than 14% of the country's villages to complete VLUPs as of June 2017. An even smaller percentage have completed issuance and registration of CCROs, the individual or groups titles for village land that result from the VLUP process.²⁰

Given these challenges, the government has been encouraging private businesses to view VLUP “as a tool for determining availability of land in areas they want to invest.”²¹ Importantly, no mention of using the VLUP for determining the availability of land was made in the original version of the VLUP manual. Not surprisingly, some CSOs advocate against use of the VLUP to determine availability of lands because they claim that VLUP is being used as a justification for outside investments rather than being used as a tool to assess community land needs. Indeed, field work has revealed many examples where VLUP investment-focused outcomes were not favorable for communities.

Government policymakers acknowledge that using VLUP to help businesses identify and acquire land is beyond the government's mandate. However, businesses recognize that the NLUPC is the regulatory body responsible for land use planning, and so they routinely engage and 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 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. Key to this is conducting capacity and impact assessments to supplement VLUP.

Customary Practices and Women

Customary practices undermine gender equity in Tanzanian land tenure. In particular, patriarchal norms result in unequal household power relations, a gendered division of labor, women's weak representation in leadership positions in growers' associations, smaller landholdings and less control over income generated from agriculture.²² 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.²³

Discriminatory customary practices are particularly visible in marriage and inheritance. Approximately 80% of Tanzanian communities practice patrilocal and patrilineal marriage customs,²⁴ 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.²⁵

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.²⁶ 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.²⁷ 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.²⁸

Gender inequity that results from customary practices is also reflected in economic terms. Tanzanian women are more likely to be unemployed than men, and when they are employed, women earn less than men across all educational and occupational scales.²⁹

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 Region³⁰ and a comparative gender analysis of three different agribusinesses in the Arusha Region³¹ found that income generation opportunities that are not specifically targeted at women may increase their workloads while not providing them with the same benefits as men.³²

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.³³ 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.³⁴

In sum, women in Tanzania are disadvantaged by customary law and practices, so district officials 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, the District Council should consider and address women's issues to ensure investments do not leave them worse off. Refer to the **Gender Primer** for more information about effectively engaging and considering women in investment activities.

Customary Practices and Pastoralists

One prominent challenge in Tanzania's agricultural sector, and across much of Eastern Africa, is the tension between pastoralists and farmers. Because mobile pastoralist communities use land differently than stationary farming communities, and because many pastoral uses do not align with government land classifications, there are often conflicts between pastoralist activity and village land use management and planning.³⁵ In some cases, the tension between farming practices and grazing needs of pastoralists erupts into violent conflict.³⁶ 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.³⁷ Similarly, pastoralists and hunter-gatherers often have difficulty proving customary title to communal land, even where land has long been used for grazing.³⁸ Due to these factors, the VLUP process can surface longstanding tensions—and even create new conflicts—between farmers and pastoralists.³⁹

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.⁴⁰ 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

- 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.⁴¹ Through the VLUP process, the TIC is mandated to work with the NLUPC, district authorities and village leaders to identify village land that can be transferred to general land and recorded in the land bank data base. Coordination efforts have been disjointed because of insufficient human capital and financial resources to support sound land use planning and management. The current process and systems are not in keeping with Tanzanian laws or international best practices.

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

⁶ For a more comprehensive list, see International Land Coalition (ILC), *Village Land Use Planning in Rangelands in Tanzania: Good Practice and Lessons Learned* 21 (Sustainable Rangeland Management Project 2013), available at <http://www.landcoalition.org/sites/default/files/documents/resources/RangelandsVillageLandUsePlanning.pdf>.

⁷ No. 5 (1971).

⁸ Land Act Cap 113 (1999); Village Land Act Cap 114 (1999).

⁹ 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].

¹⁰ *Id.*

¹¹ 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.

¹² 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.

¹³ See Tenga & Kironde, *supra* note 9.

¹⁴ See *id.*

¹⁵ Land Use Planning Act (2007), §40(2).

¹⁶ National Land Use Planning Commission (NLUPC), *Guidelines for Participatory Village Land Use Planning, Administration and Management in Tanzania* 9 (2013).

¹⁷ See Tenga & Kironde, *supra* note 9.

¹⁸ Land Act (1999), at §20(2).

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- ¹⁹ Land Use Planning Act §40(2).
- ²⁰ Faustin Maganga, et al., Briefing at Royal Danish Embassy, Dar es Salaam: Transformations in Poverty and Property Rights (Sept. 30, 2016).
- ²¹ NLUPC, *supra* note 16, at 9.
- ²² 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>.
- ²³ See Ministry of Community Development, Gender, and Children (MCDGC), *A National Gender Diagnostic Study in Tanzania: Final Report* (2012).
- ²⁴ 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/>.
- ²⁵ Yefred Myenzi, *Women Land Rights in Tanzania* (2009) (Paper prepared by HAKIARDHI for presentation at the workshop organized by Mzumbe University DSM Campus).
- ²⁶ 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).
- ²⁷ See Marjorie J. Mbilinyi, *The State of Women in Tanzania*, 6 CAN. J. OF AFRICAN STUD. 371 (1972).
- ²⁸ See *id.*
- ²⁹ See MCDGC, *supra* note 21.
- ³⁰ 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.
- ³¹ 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>.
- ³² *Id.* at 36.
- ³³ See Dancer & Sulle, *supra* note 30; Daley & Park, *supra* note 31.
- ³⁴ See Dancer & Sulle, *supra* note 30, at 19; Daley & Park, *supra* note 31.
- ³⁵ See ILC, *supra* note 6, at 29.
- ³⁶ See Tenga & Kironde, *supra* note 9.
- ³⁷ See ILC, *supra* note 6.
- ³⁸ See *id.* at 11.
- ³⁹ See *id.*
- ⁴⁰ See *id.*
- ⁴¹ 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 Investment

This phase prepares the company to take on a responsible agricultural investment and gather the information it needs to assess whether to move forward.

Task 1: Develop and Implement Policies, Commitments and Frameworks

1. MLHHSD, in coordination with TIC, publicizes and shares guidelines for responsible investments with businesses, district officials and Village Councils.
2. MLHHSD trains district officials, particularly District Council members, on best practices for responsible investments.

Task 2: Conduct Initial Due Diligence

1. TIC evaluates proposed investment and grants the business a Certificate of Incentive.
2. NLUPC assists TIC and the business in selecting the appropriate district to identify potential land for investment.
3. For selected communities, District Council ensures Village Councils and Village Assemblies are prepared to engage with a business regarding a potential investment.

Phase 2: Community Engagement and Assessments

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

Task 1: Engage and Consult with Village Assembly

1. TIC introduces the business to regional and district authorities, including the District Land Council.

2. District Council ensures that the Village Council and Village Land Committee have identified 3-5 individuals for the village Negotiation Team that will serve as the community focal point that engages with the business.
3. District Council introduces the business to the Village Council to discuss the potential investment.
4. District Council ensures the Village Council and Negotiation Team have adequate time to review and validate information from the business.
5. District Council ensures a series of Village Assembly meetings are held for members to consider whether to proceed with the investment process and conduct VLUP.
6. District Council ensures 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. District Council ensures the Negotiation Team and business introduce the assessment process and develop an assessment engagement plan with the Village Assembly.
2. District Council ensures the Negotiation Team facilitates the community capacity assessment.
3. District Council ensures an ESIA is conducted by an impartial third party and validates the findings.
4. District Council, in coordination with the NLUPC, conducts VLUP activities with village authorities.
5. District Council supports the valuation assessment conducted by national authorities determining the value of the land and develops a compensation package.
6. District Council ensures a Village Assembly meeting is held to review findings from all three assessments and ratify or renew the Assembly's consent.

Phase 3: Developing an Equitable and Inclusive Contract

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

Task 1: Negotiate and Draft the Contract

1. District Council supports the business and community signing a binding MOU and holds a series of Village Assembly meetings to agree on its 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. TIC incorporates principles and best practices for contract into binding MOU and lease agreement.

Phase 4: Implementing and Monitoring the Investment

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

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

1. District Council supports Village Council in taking steps to strengthen community governance systems and ensure preparedness for ongoing investment accountability.
2. District Council regularly engages and consults with the business and village authorities to ensure they are mitigating and preventing disputes from occurring.
3. District Council ensures that the business and Village Council coordinate to establish a grievance mechanism.

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

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

2. District Council facilitates follow on impact assessments to evaluate impacts on the community.

Phase 1: Preparing for Investment

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

Task 1: Develop and Implement Policies, Commitments and Frameworks

1. MLHHSD, in coordination with TIC, publicizes and shares guidelines for responsible investments with businesses, district officials and Village Councils.
2. MLHHSD trains district officials, particularly District Council members, on best practices for responsible investments.

Task 2: Conduct Initial Due Diligence

1. TIC evaluates proposed investment and grants the business a Certificate of Incentive.
2. NLUPC assists TIC and the business in selecting the appropriate district to identify potential land for investment.
3. For selected communities, District Council ensures Village Councils and Village Assemblies are prepared to engage with a business regarding a potential investment.

Task 1: Develop and Implement Policies, Commitments and Frameworks

Best Practice

It is important for countries engaging in responsible agricultural investments to create a legal, administrative and investment environment that supports best practices for responsible investment.⁴² The following best practices apply equally to large, medium and small scale land-based investments.

Legal Best Practices

- The country should have in place laws and policies that protect and respect the legitimate tenure rights of land holders and users (both women and men) and communities.
- Government authorities engaged in investment promotion, approval and monitoring should advocate for policies that both safeguard and respect tenure rights and contribute to overall national development.⁴³
- Government should compare national laws and policies to international standards and practices, and address gaps and inconsistencies.⁴⁴

Administrative Best Practices

- Government should provide and maintain systems that promote responsible governance of tenure of land, fisheries and forests.
- National organizational frameworks for tenure governance should recognize, respect and promote the exercise of legitimate tenure rights in line with social, cultural, economic and environmental significance of land, fisheries and forests.⁴⁵

Investment Best Practices

- Encourage businesses to work with smallholders in different ways and establish business models that can offer better opportunities for women, men and communities.⁴⁶
- Enable businesses to acquire rights to land that are less prone to disputes, conflict and other issues that may harm communities.

- Provide the opportunity and support for women to be equal beneficiaries of investments in land and are not left worse off as a result of such investments.⁴⁷

Step-by-Step Guidance

When developing this guidebook, the drafting team assumed that investment decisions will be aligned with Tanzania's National Investment Strategy, which includes decisions about which lands to retain in the public sector and which to allocate for other uses such as commercial agriculture. We also assumed that these decisions will take into account the long-term investment priorities, food security interests and the tenure rights of people who are already using the land.

1. MLHHSD, in coordination with TIC, publicizes and shares guidelines for responsible investments with businesses, district officials and Village Councils.

Government-Required Procedural Action

MLHHSD is responsible for all land related matters⁴⁸ while TIC is the responsible institution to coordinate, promote, encourage and facilitate prospective investments in Tanzania.⁴⁹

Gap Between Best Practice and Required Procedural Action

Businesses, district government officials and Village Councils do not fully understand TIC's mandate and how they should coordinate with the institution. In addition, potential investors oftentimes bypass TIC due to limited understanding of the investment process in Tanzania.

Best Practice Supplemental Steps

Making policies and guidelines for responsible investment available and clear to district government officials and businesses is a necessary first step in ensuring that investors follow the correct procedures. These policies should be freely accessible and easy for other government employees, businesses, civil society organizations or community members to find and understand.

As part of the implementation plan, MLHHSD and TIC may want to consider updating existing operational manuals and guidance for government employees, potential investors and village authorities and ensure they are widely available.

2. MLHHSD trains district officials, particularly District Council members, on best practices for responsible investments.

Government-Required Procedural Action

MLHHSD oversees all matters related to land and has jurisdiction over the district and municipal land offices of local government.⁵⁰

Gap Between Best Practice and Required Procedural Action

District officials often have limited understanding of best practices for responsible investment.

Best Practice Supplemental Steps

An important part of establishing a foundation for responsible investment in land is ensuring district officials, particularly the District Council, are informed by training them and other government employees involved in agricultural investments in land. At a minimum, training should touch on:

- Best practices for responsible investment and
- Potential benefits and risks that investments in land may bring.

Training will vary based on the roles and responsibilities of different government stakeholders. For instance, government employees responsible for receiving and addressing land-related grievances in the course of an investment will need more detailed checklists and resources than a policy maker. That said, all stakeholders are likely to benefit.

Supplemental Resource 3: Best Practices for Responsible Investment will help district officials, including the District Council, to understand key themes and issues related to agricultural investments.

Principles for responsible investment that are essential for sound national policy include:

- **Limit or avoid resettlement of local people.** Instead explore alternative options to land acquisition such as contract farming, management contracts and other inclusive business arrangements. Resettlement should be a last resort.
- **Investors should assess communities' capacity** to determine whether, and what sort of, trainings or technical support will be necessary to ensure that land holders and users (both women and men) and communities are able to

appropriately engage with the company, evaluate impacts of a proposed project and negotiate for contract terms that are agreeable to all parties.

- **Investors should assess any actual or potential impacts** on human rights and land tenure rights implicated by the potential investment.⁵¹
- **Establish land valuation methodologies** that establish the price/value of property using both 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.⁵² These methods should also capture secondary uses of the land, such as those of women and pastoralists.
- **Investors should establish compensation mechanisms** that ensure joint family decision-making⁵³ about the use of compensation funds, create long term value and mitigate long term risks⁵⁴ for any rights and/or resources that are modified or lost by communities and land holders and users (both women and men).
- **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.
- **Recognize the different needs and challenges facing women and men** in terms of accessing and exercising rights to land and natural resources and aim to close gender gaps through specific provisions aimed at improving gender equity.
- **Adhere to FPIC** when engaging with communities and land holders and users, particularly during the negotiation, contracting and enforcement stages of the investment process.
- **Establish non-judicial dispute resolution mechanisms** that are culturally appropriate, accessible, transparent and accountable to all parties and provide appropriate protection mechanisms for communities and land holders and users.⁵⁵
- **Monitor and evaluate** the implementation of land laws and regulations related to land-based investment in a gender-equitable manner.

Task 2: Conduct Initial Due Diligence

Best Practice

TIC should serve as the only touch point for business and be responsible for:

- Conducting due diligence on the business to better understand the company's core policies, activities, reputation and involvement in land investments;
- Providing the business with a package of information to facilitate its completion of the legal and social requirements for investing in land; and
- Ensuring that the investor's policies, proposed projects and suppliers comply with national laws and international best practices and align with national development priorities.

Importantly, TIC should carefully review investment proposals involving community or customary land, particularly where land is held by communities that have limited experience and understanding of the law and their rights and are in a weak position for negotiating fair transfers of tenure rights.

Step-by-Step Guidance

1. TIC evaluates proposed investment and grants the business a Certificate of Incentive.

Government-Required Procedural Action

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

- Certificate of Incorporation;
- Business Plan;
- Memorandum of Articles of Association;
- Evidence of Finance;
- Evidence of previous land investments;
- Letter from Board of Director to register the company with TIC;
- Tanzania tax identification number;
- TIC application form; and
- Letter from appropriate Tanzania commodity regulatory board.

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

Gap Between Best Practice and Required Procedural Action

Many businesses bypass this step and engage directly with district and/or village authorities in the belief that it will expedite the process of identifying land. However, this approach can lead to confusion and misaligned expectations. District officials and village leaders, who are often eager to promote rural economic development, have been known to make unreasonable promises to communities regarding potential benefits from investments. This has led to mistrust between the community and the business when the investment is ultimately introduced to the community.

Best Practice Supplemental Steps

Beyond issuing a CI when a business registers its intent to invest, TIC should conduct a due diligence review to ensure the business will comply with national laws and policies as well as international standards and best practices. TIC should examine the following:

- Certified copies of memoranda and articles of association;
- Location of the registered office in the country of domicile;
- List of directors of the company and local representatives (if company is foreign owned);
- Type of agricultural production – crop, livestock, processing, etc. – proposed;
- Previous experience with this type of investment;
- Overview of business plan – production model and alternatives, number of hectares, export versus domestic sales, timeline, etc.;
- Ongoing/past agricultural activities;
- Involvement in any tenure rights disputes or violations and/or other environmental or social disputes or violations;
- Copy of most recent financial statements or, if company is new, copy of bank statement showing capital for investment;⁵⁶ and
- Copy of company's commitment to responsible and sustainable investments in land.

For commodity procurement, additional information is required:

- Analysis of risks in the supply chain.⁵⁷

- Copy of strategy to respond to identified risks in the supply chain.⁵⁸ This should begin with an initial risk assessment that may be expected to trigger enhanced, issue-specific assessments that may include stakeholder consultations, monitoring and civil society engagement.⁵⁹
- Copy of report on supply chain due diligence.⁶⁰

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

- Gauging the reputation of the business enterprise, both internationally and regionally.⁶¹
- Reviewing the business's sophistication, transparency and financial capabilities to assess whether it has the means to operate as proposed.⁶²
- Identifying any past projects the business has conducted and how it performed in terms of economic production, respect for human rights and community interaction.⁶³ Any information about the business violating tenure rights in previous contexts should trigger a complete and detailed explanation from the investor.⁶⁴

2. NLUPC assists TIC and the business in selecting the appropriate district to identify potential land for investment.

Government-Required Procedural Action

Not required by law.

Gap Between Best Practice and Required Procedural Action

Even though a land bank has been established and is being managed by TIC, a limited amount of land is available for economic development. To identify land, TIC is mandated to work with the other governmental departments. But coordination efforts have been disjointed because of insufficient human capital and financial resources. While the government may consider land in the land bank available for investment, the village that previously controlled it may not consider it available. Depending on the context, businesses that obtain land through the land bank might be taking on significant risk.

Best Practice Supplemental Steps

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

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

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

3. For selected communities, District Council ensures Village Councils and Village Assemblies are prepared to engage with a business regarding a potential investment.

Government-Required Procedural Action

The District Council has the authority to directly engage and support the Village Council in land use planning activities within the District.⁶⁵

Gap Between Best Practice and Required Procedural Action

Village Councils and Village Assemblies are not always best positioned to benefit from a prospective investment.

Best Practice Supplemental Steps

At the outset of a potential investment process, it is imperative the Village Council and Village Assembly are able to engage with a business by identifying and mitigating issues and risks a potential investment project may pose.

To ensure that land investments are responsible, sustainable, and will benefit the community, the District Council should ensure the community has strong systems and safeguards in place that are rooted in good practices and include the following:

- The Village Council delegates authority to the Village Land Committee to lead efforts in preparing the Village Assembly for a possible investment and represent the community in negotiations with prospective investors. The Committee will be comprised of community members selected in a process outlined in the village's by-laws for responsible investment. The Committee's

responsibilities include working with the District Council to carry out community mapping, land rights identification, land use planning and land valuation efforts, as well as leading investment-specific consultations between the community, business and government officials.

- The Village Assembly, through the Land Committee, drafts and adopts 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.
- Village Assembly members are informed about their rights and understand the benefits and risks associated with land-based investments.
- The Land Committee develops land use plans that identify development priorities and designate areas that might be suitable for investment if appropriate.
- Village Assembly members understand the monetary value of their land and natural resources, particularly the area designated for investment.⁶⁶

If a community is not prepared to engage with an investor, the District Council should identify a qualified CSO to work with the community to implement Phase 1 of the Tanzania RIPL Community Guidebook. To identify qualified CSOs, Village Councils may reach out to:

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

other things, WILDAF Tanzania provides support for emergency response, legal aid, legal training and community mobilization.

- **Tanzania Land Alliance (TALA):** a forum of CSOs which serves as a national network of small farmers groups in Tanzania. TALA focuses on joint advocacy activities to attain land rights for smallholder farmers in Tanzania.

If no CSO can be found, the District Council should do what it can to support community to carry out this process on its own.

⁴² For a comprehensive treatment of how to use law to make foreign investment work for sustainable development, see Lorenzo Cotula, *Foreign Investment, Law, and Sustainable Development: A Handbook on Agriculture and Extractive Industries* (2014), available at <http://pubs.iied.org/12587IIED/>.

⁴³ See Food and Agricultural Organization (FAO), *Safeguarding Land Tenure Rights in the Context of Agricultural Investment*, (Governance of Tenure Technical Guide No. 4 2015), available at <http://www.fao.org/3/a-i4998e.pdf>.

⁴⁴ For further guidance on evaluating national laws and comparing them to international best practices, see Janet Pritchard et al., *Securing Community Land and Resource Rights in Africa: A Guide to Legal Reform and Best Practices* (2013), available at <http://www.forestpeoples.org/sites/fpp/files/publication/2014/01/securingcommunitylandresourcesguideenglishjan2014.pdf>.

⁴⁵ FAO, *Voluntary Guidelines on the Governance of Tenure, Fisheries, and Forests in the Context of Food Security* 7-9 (2012) [hereinafter “VGGT”], available at <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.

⁴⁶ See L. Cotula, *Land Tenure Issues in Agricultural Investment* (2011), available at http://www.fao.org/fileadmin/templates/solaw/files/thematic_reports/TR_05B_web.pdf.

⁴⁷ See Leslie Hannay, David Bledsoe & Mina Manuchehri, “Realizing Socially-Responsible Investments in Land from a Gender Perspective: Unpacking ‘Zero Tolerance’ to Identify Barriers and Practical Steps to Achieve Positive Long-term Change,” Paper prepared for presentation at the World Bank Conference on Land and Poverty, The World Bank - Washington DC, March 14-18, 2016.

⁴⁸ See Tenga & Kironde, *supra* note 9.

⁴⁹ Tanzania Investment Act §5.

⁵⁰ See Tenga & Kironde, *supra* note 9.

⁵¹ VGGT, *supra* note 45, at 4 (“Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others.”). See also UN Office of the High Commissioner for Human Rights (OHCHR), *Guiding Principles on Business and Human Rights* 5 (UN Human Rights Council 2011) [hereinafter “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.”).

⁵² Nigel Edmead, Presentation on “Gender Issues in Designing and Setting Up Land Information Systems and Databases: Experiences from Ghana, Zambia and Uganda” (May 2011).

⁵³ See FAO, *Compulsory Acquisition of Land and Compensation* (Land Tenure Studies No. 10 2008), available at <http://www.fao.org/3/a-i0506e.pdf>.

⁵⁴ See Rugemeleza Nshala, Anna Locke & Jennifer Duncan, “Discussion Paper: A Proposed Land for Equity Scheme in Tanzania” (2013).

⁵⁵ See International Finance Corporation (IFC), *Good Practice Note: Addressing Grievances from Project-Affected Communities* 3 (2009), available at <https://www.unglobalcompact.org/library/38>.

⁵⁶ See FAO, *supra* note 43.

⁵⁷ See OECD & FAO, *OECD-FAO Guidance for Responsible Agricultural Supply Chains* (2016), available at <http://mneguidelines.oecd.org/OECD-FAO-Guidance.pdf>.

⁵⁸ See *id.*

⁵⁹ See *id.*

⁶⁰ See *id.*

⁶¹ See FAO, *supra* note 43.

⁶² See *id.*

⁶³ See International Institute for Sustainable Development (IISD), *The IISD Guide to Negotiating Investment Contracts for Farmland and Water* (2014), available at http://www.iisd.org/sites/default/files/publications/iisd-guide-negotiating-investment-contracts-farmland-water_1.pdf.

⁶⁴ See FAO, *supra* note 43.

⁶⁵ See NLUPC, *supra* note 16.

⁶⁶ See Namati, *Community Land Facilitators Guide* (2016).

Phase 2: Community Engagement and Assessments

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

Task 1: Engage and Consult with Village Assembly

1. TIC introduces the business to regional and district authorities, including the District Land Council.
2. District Council ensures that the Village Council and Village Land Committee have identified 3-5 individuals for the village Negotiation Team that will serve as the community focal point that engages with the business.
3. District Council introduces the business to the Village Council to discuss the potential investment.
4. District Council ensures the Village Council and Negotiation Team have adequate time to review and validate information from the business.
5. District Council ensures a series of Village Assembly meetings are held for members to consider whether to proceed with the investment process and conduct VLUP.
6. District Council ensures 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. District Council ensures the Negotiation Team and business introduce the assessment process and develop an assessment engagement plan with the Village Assembly.
2. District Council ensures the Negotiation Team facilitates the community capacity assessment.
3. District Council ensures an ESIA is conducted by an impartial third party and validates the findings.
4. District Council, in coordination with the NLUPC, conducts VLUP activities with village authorities.

5. District Council supports the valuation assessment conducted by national authorities determining the value of the land and develops a compensation package.
6. District Council ensures a Village Assembly meeting is held to review findings from all three assessments and ratify or renew the Assembly's consent.

Task 1: Engage and Consult with Village Assembly

Best Practice

During the engagement and consultation process, the government role is to monitor and enforce best practices for responsible investment. The District Land Council needs to ensure:

- The business is engaging and consulting meaningfully with communities, individual smallholders, and all other land holders and users (both women and men) throughout the land investment project, starting at the beginning of the investment.
- Village Assembly members are unified under common goals, prepared with information to meaningfully engage with the business and have sufficient time to make decisions.

For an investment to succeed over time, a community must foster strong interactive relationships with the business through regular engagement and consultations. The expectation under international best practices is that the business should be covering the costs associated with community engagement and capacity building as part of its cost of doing business. 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. Leading companies have expanded this principle to encompass all land holders and users, not just indigenous peoples. 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 transfers or changes the use of community 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 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 contracting. For more information, see the **FPIC Primer**, as well as FAO's guide, *Respecting Free, Prior, and Informed Consent* (2014), and USAID's *Operational Guidelines for Responsible Land-Based Investment*, (2012).

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 District Council should be represented on the Negotiation Team. The Negotiation Team should make sure that the business is engaging and consulting with the Village Assembly in accordance with 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. The Negotiation Team will also need time to gather information, consider diverse concerns of different stakeholders and establish open communication that can continue throughout the life of the investment project, should the community decide to move forward.
- **Engagement and consultation should involve two-way communication**. While the business is providing useful information to help the Village Assembly to decide whether it is interested in the investment, the business should also be listening to the Village Assembly to understand the community's needs and determine if this is the right place for them to invest.

Step-by-Step Guidance

The application of Tanzanian laws and policies is at times inadequate to ensure communities and businesses embrace best practices for effective consultation and engagement. Therefore, there is a need for supplemental activities.

In practice, the community engagement and consultation process that currently results from the application of the existing law – regardless of the size of the land acquisition– is just a single meeting of the Village Assembly. But one meeting clearly falls short of best practices, and fieldwork findings reveal a host of other issues:

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

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

1. TIC introduces the business to regional and district authorities, including the District Land Council.

Government-Required Procedural Action

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

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

Gap Between Best Practice and Required Procedural Action

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

Best Practice Supplemental Steps

At this stage, **the business should not make any agreement with regional or district officials.** By law, the business plan must receive the approval of the Village Council and Village Assembly.⁶⁷ Once a prospective investment site has been identified, the District Council should ensure the business gathers relevant information about the communities, including women and individual land holders and users in preparation for meetings. The District Council should:

- Help the business **obtain a clear picture of the rural conditions**, dynamics and power structures.
- Provide the business with **existing information to assess past, current and potential land issues and conflicts** in the area related to:
 - Boundary issues between neighboring communities;
 - Conflicts between farmers and pastoralists;
 - Conflicts between households; and
 - Village conflicts with minority or vulnerable groups such as widows, single women, or people with disabilities.

2. District Council ensures that Village Council and Village Land Committee have identified 3-5 individuals for the village Negotiation Team who will serve as the community focal point that engages 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 businesses, government officials and Village Council members to approve the investment.

Best Practice Supplemental Steps

The District Council should ensure the business's community engagement and consultation activities occur directly with a village Negotiation Team, comprised of 3-5 individuals from the Land Committee. Although the District Council will not be represented on the Negotiation Team, it should support the Team and participate in discussions with the business.

Having a smaller group directly engage with business will increase coordination, ensure all Village Assembly members are participating in the decision-making process and show the business that the community is unified.

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 perspective 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 District Land 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.

Structure of the Negotiation Team⁶⁸

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

- **Lead negotiator:** in charge of speaking in negotiation sessions and reporting at community meetings.
- **Secondary negotiator:** supports the lead negotiator and serves as a liaison with the Land Investment Committee, particularly to work with its budget manager to monitor funds related to the negotiation process.
- **Secretary:** keeps records of all negotiation meetings and facilitates communication between the business, the government and civil society actors.

3. District Council introduces the business to the Village Council to discuss the potential investment.

Government-Required Procedural Action

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

Gap Between Best Practice and Required Procedural Action

Several factors make this process inadequate:

- The 25-member Village Council is not necessarily representative of the land holders and users who would be affected by the investment.
- Not all of the 25 members who comprise the Village Council are likely to have actively participated in the discussion about the proposed investment because council meetings are often uncoordinated and under-facilitated.
- The law calls for a minimum of seven council members to be women.⁶⁹ However, women's participation frequently falls short of this requirement, and even when women are in attendance, they may not speak in a mixed gender audience.

Best Practice Supplemental Steps

The District Council will initiate a meeting between the business and the community to determine whether there is initial interest in the investment. If local government capacity is lacking, the meeting might be requested through a third-party, such as a CSO that is providing the business with technical support because it is familiar with the customs of the local community. The purpose of the meeting is to exchange 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 and better understand the proposed investment site, including institutional, environmental and social dynamics.

The District Council should ensure all Village Council members attend the meeting to review the business proposal from the business. Ensure that the small groups have sufficient time to discuss:

- Background of business,
- Project purpose,
- Geographic scope,
- Business model,
- Proposed project timeline,
- Specific land right being sought,
- Potential term of the agreement,
- Potential benefits to the community, and
- Potential risks, including social, environmental and financial risks.⁷⁰

4. District Council ensures the Village Council and Negotiation Team have adequate time to review and validate information from business.

Government-Required Procedural Action

This step is not required by Tanzanian law.

Gap Between Best Practice and Required Procedural Action

The Village Council and Negotiation Team 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 District Council might need to help the community consolidate information gathered from the Village Council's meeting with the business. In addition, if there are multiple villages that might be impacted by the investment, the District Council should encourage Negotiation Teams from neighboring communities to meet and discuss the proposed investment. Supplemental Resource 4: Consultation Meeting Notes Template will help with documenting these conversations. This process should consist of these steps:

1. Review and consolidate information.

- The Negotiation Team should meet to combine notes from the initial meetings with the business and address questions and issues related to the proposed investment.
- If the District Council is not able to support the community, then it would be wise to seek support from a CSO to conduct this review.
 - If it has not already, the village should consider identifying a third party CSO to help support it in the negotiation and planning process.
 - This CSO should have an opportunity to review the compiled notes
 - The CSO should help to validate the business's site-specific background research and address outstanding information gaps. Topics to be discussed include land status, ownership, and uses; local land tenure system; land and resources conflicts; and social demographics of the community.

- The village should coordinate with the CSO to determine additional needs related to the negotiation process.

2. District Council works with neighboring villages to review notes.

- Neighboring villages should consult one another about the investment.
- Where neighboring villages have undergone the same process in meeting with the business, committees should compare notes from those meetings.

3. District Council supports the Village Council and Negotiation Team to determine how to proceed.

- Once the above steps are complete, the District Council and Village Council should reconvene to make a final determination on how to proceed.
- In this follow up meeting, the Negotiation Team should also begin planning for the next step: Village Assembly meetings to discuss the proposed investment.

5. District Council ensures a series of Village Assembly meetings are held for members to consider whether to proceed with the investment process and conduct VLUP.

Government-Required Procedural Action

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

Gap between Best Practice and Required Procedural Action

These meetings should be a starting point for the business to begin engaging directly with the community. As mentioned earlier, a single meeting cannot constitute meaningful engagement and consultation with community members, particularly when the VLUP process and other assessments have not yet been carried out.

Best Practice Supplemental Steps

The District Council should participate in the Village Assembly meetings. The village should be responsible for the following:

- Before meeting with the business, it will be important that the Village Assembly agrees upon priorities, concerns and common goals. This is critically important because internal conflict or disagreements can prevent a village from negotiating a good deal.⁷¹ The best way reduce conflict is keeping

Village Assembly members informed and facilitating opportunities for additional discussions.⁷²

- Work with the Village Council and Negotiation Team to organize a series of planning and preparation meetings to unify the community and place them in a better position to negotiate a more favorable outcome. These meetings should be held without the participation of the business. This meeting should be an opportunity for the Negotiation Team 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 Negotiation Teams from neighboring villages that could also be impacted by the investment;
 - The investment process, including the importance of VLUP, capacity assessment, environmental and social impact assessment (ESIA), land valuation, 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.⁷³
- 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. These meetings should not 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 right the business enterprise is seeking;
 - Duration of the agreement;
 - Potential benefits to the community; and
 - Potential risks to the community and community members, including social, environmental and financial risks.⁷⁴

Ensure the business does not provide any sort of compensation for participation. Refer to Best Practices for Holding Village Assembly Meetings in the Introduction section.

6. District Council ensures 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 community members may know about the proposed investment through initial meetings and “word of mouth,” the business should take the initiative in providing formal public notice of its intent to carry out the assessments in the following phase after it has 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. To reach illiterate members of the community, the business should also consider providing non-written notice through radio announcements or other means.
- The notice should include key project details, such as the name of the investor, intended land use, a map of the affected area and contact information.

Task 2: Conduct Community Assessments

Best Practice

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

- **Capacity of Community:** This assessment looks at the capacity of community members to engage assessment teams and discuss their land uses and livelihoods and of community leaders to negotiate benefits, compensation and other contract terms on behalf of the community.⁷⁵ The ongoing consultation and engagement and early revisions to the project design should include activities that enable community members (including women and others who are not always included) to articulate livelihoods and land uses and enable leaders to negotiate with the business enterprise on an equal footing.
- **Environmental and Social Impact Assessment:** The ESIA identifies and gauges actual or potential impacts from the proposed investment project on the environment and community, including related land uses, land rights and livelihoods.⁷⁶ Revisions to the investment design should incorporate mitigation measures that will reduce or eliminate impacts and sustain or improve livelihoods.
- **Land Valuation:** At the core of determining impacts is assessing and establishing 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.⁷⁷

Consult [Supplemental Resource 5: Land Rights Assessment Tool Kit](#) for more guidance on what should be included in these assessments.

Step-by-Step Guidance

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

- **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 livelihoods needs of women and pastoral communities, primarily because of prevailing cultural norms and the ongoing tension between pastoralists and farmers.

1. District Council ensures the Negotiation Team and business introduce the assessment process and develop an assessment engagement plan with the Village Assembly.

Government-Required Procedural Action

Not required by Tanzanian Law.

Gap between Best Practice and Required Procedural Action

Village Assembly members reported that they were not aware when assessments were being conducted for investment purposes.

Best Practice Supplemental Steps

The District Council should ensure that the Village Assembly is aware of the three assessments that will be conducted to determine the feasibility of the investment. District officials should work with the business and Negotiation Team to design an **assessment engagement plan**. A Village Assembly meeting should be organized with the business to introduce the assessment and discuss the assessment engagement plan with the Village Assembly. Refer to Best Practices for Holding Village Assembly Meetings in the introduction section. At the meeting:

- The business should provide the community with a Letter of Intent showing its commitment to conducting the necessary assessments in good faith.
- The business and district officials should introduce the third-party assessment teams to the community and answer questions about the process. Emphasize that anyone can approach the business enterprise and the assessment teams during the assessment.
- Discuss and agree upon the assessment engagement plan with community leaders and members and confirm the community is comfortable moving forward.

- It is important to remember that community members have the right to choose how they will be represented in the assessment activities.⁷⁸ The Village Assembly may 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.
- Together agree on next steps and how to communicate and share assessment findings.

Given the complexity of each assessment, the business should finance independent, experienced third parties to design and conduct them. In addition to possessing the relevant expertise, each assessment team should include:

- Local 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 assessment teams and community participants.
- At least one 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.

2. District Council ensures the Negotiation Team facilitates 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.

The District Council participation includes validating findings and, to the extent required, informing the development of a capacity building plan.

3. District Council ensures an ESIA is conducted by an impartial third party and validates the findings.

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 legally required EIA does not address the social, economic and livelihood impacts related to the potential investment and so does not meet international best practices.

Best Practice Supplemental Steps

The business will be responsible for financing an ESIA, which should be carried out by a qualified third party that is vetted by the government. This assessment offers a more thorough analysis of the social, economic and livelihood impacts of the project, in addition to environmental impacts.

- Tanzania EIA laws 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 standards.⁷⁹
- The third-party expert will need to develop a customized assessment to identify potential issues and risks related to economic, environmental, social and land rights issues.

The District Council should receive a copy of the final report and validate the findings.

4. District Council, in coordination with the NLUPC, conducts VLUP activities with 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.⁸⁰
2. **Village-Level Participatory Rural Appraisal (PRA):** The PRA begins with the Village Council installing a Village Land Use Management Committee (VLUMC) for the PLUM team to work with. Once the PLUM team has conducted introductory meetings with the Village Assembly, the Village Council and the VLUMC, it must work with these village authorities to complete a thorough PRA.
3. **Building on the PRA:** A more thorough mapping of existing land use in the village is performed. This step is often the stage where inter- and intra-village conflicts emerge, as the PLUM team works to formally demarcate borders that may be subject to longstanding disputes.⁸¹
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 lay out planned uses. To complete this much of the process typically takes around 30 days.⁸²
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. VLUM appraisals are carried out periodically by village leaders to identify and address issues.⁸³

Gap between Best Practice and Required Procedural Action

There are a number of challenges to implementing the VLUP process.⁸⁴

- Resource constraints limit the involvement of NLUPC technical experts who should be overseeing the implementation of each stage.
- As a part of the first step, NLUPC typically organizes and trains PLUM teams over several days, which is an insufficient amount of time required given the

complexity of land use planning, and then depends upon the PLUM team to train the VLUM and carry out the remaining activities.

- The existing methodology and framework for the Village-Level PRA (stage two) is inadequate to meet the requirements for an 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, which may last for a 99-year lease.
- The process is usually completed within 30 days, which does not provide for full engagement, consultation and participation of community members when determining their future livelihood needs in relation to allocating land for an investment project.
- The differences between formal law and customary practices in women's access to and control over land creates challenges in enforcing laws and policies, particularly during the implementation of VLUP.⁸⁵ To effectively address women's land uses and rights, the VLUP would ideally educate both women and men on the importance of recognizing those uses and rights and how that recognition can improve the quality of life within the community.

Best Practice Supplemental Steps

As the NLUPC staff and District Council carries out VLUP, there should be ongoing consultation and engagement maintained with the Village Assembly. Impacts linked to the proposed investment should be clearly identified and mitigated, and women, men, pastoralists and other vulnerable groups should be engaged, considered and accommodated. **The business should not be involved in the process.**

In order to support the village, 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 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. District Council supports the valuation assessment conducted by national authorities determining the value of the land and develops a compensation package.

Government-Required Procedural Action

The government requires that:

- A valuer certified by MLHSD conducts a valuation assessment of 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.⁸⁶ 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.⁸⁷
- It is within the valuer's discretion to adopt a valuation method based on the unique conditions of the property and the strength of the local land market.⁸⁸

Gap between Best Practice and Required Procedural Action

In 2016 the Tanzanian parliament enacted the Valuation and Valuers Registration Act⁸⁹ to regulate the valuation profession. Noteworthy gaps in the existing process include:

- The Valuation Act provides little substantive guidance on valuation best practice as it should pertain to the acquisition of village land by investors.
- The new 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.⁹⁰ This could potentially prevent a community from validating a valuer's report to ensure all uses and values of the land are accounted for.
- The new valuation approach is inadequate because it fails to include the full livelihoods value of the land, particularly secondary uses. The Act does allow valuers to use other methods not enumerated in the Act, which potentially could capture those secondary use values, but there is no guidance on how to do so.

Best Practice Supplemental Steps

Given the need to promote transparency and accountability, the valuation for purposes of investment by business in village land should be done independently by a third party or, at a minimum, validated by a third party. In addition, all information on any valuation should be shared with the community.⁹¹ For additional detail see the **Valuation and Compensation Primer**. Best practices for achieving these ends call for the following steps:

1. **Hire a third-party expert to validate the legally required valuation.**
2. All engaged valuers should **collaborate in reconciling discrepancies** between valuations.
3. Based on outcomes from the independent valuation and any valuation conducted as a part of the VLUP process, **develop a compensation and benefits framework** that should include:⁹²
 - *Who should be compensated:*
 - Women
 - Men
 - Village Council
 - Pastoralists
 - All other land holders and users that will forego use of the land or begin to use it differently for the benefit of an investing business enterprise.
 - *What losses should be compensated:*
 - Market and non-market value of land
 - Tangible assets lost, marine and aquatic resources, timber and non-timber forest products, freshwater, medicinal plants, hunting and gathering grounds,⁹³ and grazing and cropping areas
 - Non-tangible values, including livelihoods, social, cultural, religious, spiritual and environmental.⁹⁴
 - *Forms of compensation:*
 - Cash
 - Employment commitments
 - Social and economic community improvements
 - Equity in the investment
 - Other benefit-sharing arrangements, including outgrower schemes

- Periodic rent such as annual rent
 - Replacement land or natural resource access
 - *Modes of Compensation:*
 - Individual payments to joint bank accounts for married couples
 - Payments to the village's bank account that are accompanied by clear provisions for how funds will be further distributed (including all recipients, including women; frequency; amounts; and penalties for failure to perform).
4. **Document how compensation was calculated and share with the community** during the negotiation process.⁹⁵
 5. **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. District Council ensures a Village Assembly meeting is held to review findings from all three assessments and ratify or renew the Assembly's 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

The District Council should participate in reviewing findings from all three assessments. If land was allocated for an investment as an outcome of the VLUP, conduct additional consultation and engagement efforts to ensure familiarity with findings from each assessment 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 District Council should ensure a final Village Assembly meeting is held 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 with specificity and renew the consultation and engagement process to determine if they can be brought into agreement.⁹⁶
- If 51% of participating assembly members that are adults vote in favor of the application, the meeting minutes are drafted and signed by those that gave their consent. Full consent by the community has been ratified and formalized.

⁶⁷ See Village Land Act § 4 (read together with §§ 7(7), 8, and Part IV Subpart B of the same law); Local Government (District Authorities) Act § 114.

⁶⁸ 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.

⁶⁹ Local Government (District Authorities) Act §55

⁷⁰ See United States Agency for International Development (USAID), *Operational Guidelines for Responsible Land-Based Investment* 25 (2015).

⁷¹ Gibson & O'Faircheallaigh, *supra* note 68, at 54.

⁷² See *id.* at 55.

⁷³ See *id.* at 54

⁷⁴ USAID, *supra* note 70, at 25.

⁷⁵ 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.

⁷⁶ See note 51, *supra*.

⁷⁷ See Edmead, *supra* note 52.

⁷⁸ 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>.

⁷⁹ See AU Guiding Principles, *supra* note 75, at 6 ("Decisions on the desirability and feasibility of LSLBI are made based on independent, holistic assessment of the economic, financial, social and environmental costs and benefits associated with the proposed investment, throughout the lifetime of the investment."); see also note 51, *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.

⁸⁰ See NLUPC, *supra* note 16.

⁸¹ See ILC, *supra* note 6.

⁸² See NLUPC, *supra* note 16.

⁸³ See *id.*

⁸⁴ 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, Mpwapa, 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>; Maganga, et al., *supra* note 20; 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.

⁸⁵ 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>.

⁸⁶ Land Act §2.

⁸⁷ See Valuation and Valuers Registration Act, No. 7 of 2016 §51(1).

⁸⁸ See *id.*

⁸⁹ No. 7 of 2016.

⁹⁰ Valuation and Valuers Registration Act §18.

⁹¹ VGGT, *supra* note 45, at 31.

⁹² 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>.

⁹³ 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.

⁹⁴ See Edmead, *supra* note 52.

⁹⁵ IFC, *Guidance Note 5* ¶ GN22 (2012).

⁹⁶ 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 will help ensure that the contract is fair and equitable to all parties and establishes clear rights, responsibilities and processes to ensure the long-term sustainability and equity of the land transaction.

Task 1: Negotiate and Draft the Contract

1. District Council supports the business and community signing a binding MOU and holds a series of Village Assembly meetings to agree on its 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. TIC incorporates principles and best practices for contract into binding MOU and lease agreement.

Task 1: Negotiate and Draft the Contract

Best Practice

The District Council should support the community throughout the negotiation process, working with the Negotiation Team and participating in discussions with the business. Customary practices in some areas of Tanzania may prevent communities and/or individual land holders and users from participating as informed and empowered contracting parties, while Tanzania law considers the government, not the community, to be the appropriate contracting party. If the contracting process between the government and the business omits or limits the involvement of the full community, it contravenes principles of good contracting. The District Council should work with the Village Council and Land Committee to ensure:

- The negotiation process is non-discriminatory, gender sensitive and provides the meaningful opportunity for participation of all community members in the investment area.⁹⁷
- The business actively engages with communities and individuals who have legitimate land rights, including all women and men who currently occupy and use the land.
- The business provides comprehensive information to the Negotiation Team that is shared with all land holders and users (both women and men) and communities.⁹⁸
- The contract document memorializes the clear rights, responsibilities and processes that have been defined under Phase 2 and includes provisions that provide clarity to terms of the agreement.
- The business considers all relevant information by taking into account local interests identified through consultation and engagement and assessments under Phase 2.
- The business seeks FPIC from all affected right holders and users. 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 considering and addressing all stakeholders' concerns and input on the proposed project and contract.

Step-by-Step Guidance

The business and Village Council should create and sign a binding Memorandum of Understanding (MOU) that establishes clear rights, responsibilities and processes.

The business should be aware of several existing issues:

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

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

1. District Council supports the business and community signing a binding MOU and holds a series of Village Assembly meetings to agree on the terms.

Government-Required Procedural Action

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

Gap between Best Practice and Required Procedural Action

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

Best Practice Supplemental Steps

The consultation and engagement process largely mirrors the steps in the previous sections of this guidebook. Due to the importance of the contracting process and its complexity, village authorities should be encouraged to 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 District Council, village authorities, 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 the MOU:⁹⁹

- Indicates the business's intent to negotiate a full contract with the community;
- Sets out expectations for appropriate inclusivity, consultation and consent throughout the contracting process; and
- 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 the following task. A sample MOU can be found in [Supplemental Resource 6: Template for LOI/MOU](#). 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 role of government authorities in the negotiation, consultation and drafting process;
- 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; and

- A clearly defined process for dispute resolution.

The consultation process should adhere to best practices for holding Village Assembly meetings and include the following steps:

- During the Village Assembly meeting the community reviews the first draft of the MOU and makes suggestions.
- The village authorities then incorporate the community's revisions into a second draft of the MOU.
- As part of conducting a "legal check," village authorities should solicit input from legal experts as well as district or regional government officials to ensure compliance with Tanzania law.
- If there are existing issues, village authorities should hold additional Village Assembly meetings to share comments from the legal check.
- Village authorities 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, village authorities should continue with additional rounds of drafting and holding 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.

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 review and documentation process that include review and approval of the project documentation by the following entities:

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

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

- Letter of Consent from Village Council
- Signed meeting minutes from Village Assembly and VLUP documents
- Minutes from District Council meeting and letter of consent
- Minutes of the DLAC meeting and letter of consent
- CIs issued by TIC to the business enterprise, including:
 - Memorandum of Articles of Association for the business,
 - Proof of citizenship (to confirm whether it is Tanzanian or foreign),
 - Consent from Administration General,
 - Certificate of Registration by Minister of Home Affairs to show the business can legally operate and has been incorporated in Tanzania,
 - Annual return from Tanzania Licensing Authority (BRELA) to confirm that the business is profitable,
 - Business plan or project write-up about the proposed investment,
 - Report from Tanzania Revenue Authority authorizing business enterprise to operate in Tanzania,
 - Evidence of investment capital,
 - Investment Action Plan and
 - Details about employment opportunities offered by the business enterprise and other benefits to affected communities.
- Cover letter written by the District Executive Director (DED) to the Office of the Commissioner for Land on behalf of the business enterprise requesting the transfer of village land to general land. The cover letter must include:
 - Names of villages,
 - Geographic area of each village,
 - Population of each village,
 - Economic activities done in the village and
 - Size of land allocated to the business and other businesses (if available).
- Originals or photocopies of all VLUP reports and maps. Photocopies must be attested to by village leaders.

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

- **District Level:** The District Council is the first to review the documentation. If approved, the material is submitted to the 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. The Commissioner of Land on behalf of the Minister of Lands writes a formal letter to the President of Tanzania requesting his or her signature finalizing the transfer.

Gap between Best Practice and Required Procedural Action

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

Best Practice Supplemental Steps

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

3. 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 following actions:

- 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 returned to the Office of Commissioner of Land by the District Office.
- The Village Executive Officer (VEO) provides DED with evidence that the notice was indeed posted and the 90-day period 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 some ongoing consultation and engagement should occur. Given the significant supplemental efforts made by the business enterprise, complaints and dissent during the 90-day period should be minimal or absent. One potential issue could be accessibility; consider supplementing the official written notice with other non-written forms, such as radio announcements.

Best Practice Supplemental Steps

To the extent desired by the District Council, the business 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. At the most basic level, an oversight and consultation committee should be formed and comprised of representatives of the business enterprise, district officials, Village Council members, and the various categories of affected community members such as women and pastoralists.¹⁰⁰

The committee should make a minimum of one monitoring visit to each affected village during the 90-day notice period. It should similarly make one visit during the 30-day notice period to consult with Village Council and Village Assembly members, including:

- Married Men
- Single Men
- Married Women
- Single Women
- Widowed Women
- Male Youth
- Female Youth
- Male Pastoralists
- Female Pastoralists
- Other vulnerable individuals, such as widows, people with disabilities, etc.

At these meetings, to the extent required, the oversight and consultation committee should review the proposed business plan, mitigation strategy and other relevant materials. As necessary and requested, it should make available the record of consultation and engagement and all other project documentation.

If the community has 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 clarity and erase doubts about the terms of the agreement.

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

Step-by-Step Guidance

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

- As mentioned in the previous section, land lease agreements in Tanzania are between the business enterprise and the government. The community and the individual land holders and users who have given up village land to the business enterprise are not parties to the agreement. A supplemental binding MOU should be developed and signed between the Village Council and the business 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.¹⁰¹
- The standard government-business lease provisions include such basic terms as price and duration but omit important clauses related 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.¹⁰²

Government-Required Procedural Action

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

- After the 30-day notice, the Commissioner of Land informs the DED, who communicates with the Village Council that the transfer of village land 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, TIC is issued the Certificate of Occupancy.
- 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

The District Council should ensure the community receives copies of the final contract. Commitments have been made to the community. 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 District Council should ensure that:

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

- The business and the government continue to seek community input and ratification. If the community is confused or concerned about the contract's content, those concerns should be addressed.
- 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. TIC incorporates principles and best practices for contract into binding MOU and lease agreement.

This section provides guidance on the terms and elements that should be included in the binding MOU between the company and community as well as the lease agreement that memorializes the land investment. Also consult [Supplemental Resource 7: Final Contract Checklist](#) when finalizing these agreements.

Parties to the Lease

- 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 business and the community, or both. Under any scenario, the community should receive legal representation.

Tenure Rights

- Define the rights of the business enterprise to use, access and exclude others from the project site.
- 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, with clear geographical boundaries for the project area, bodies of water, and any features on the land that the parties have agreed are to be left intact (such as forests, wetlands, sacred areas, trees, etc.).
- Acquiring large expanses of land can give rise to resentment and encroachment and can erode a business enterprise's social license where community members give up their land and then watch it sit idle. Establish an option clause for phased acquisition of additional parcels to avoid

encroachment issues that become complicated to resolve over time. Responsibilities for policing the boundaries of the leased land should be clearly assigned to the business enterprise.

- Business enterprises might also consider setting aside limited use rights to land that is not immediately used so that community members may continue to make productive use of any idle land. The enterprise should be aware, however, that subsequently beginning to use the land may be viewed as a hostile act by the community that could erode social license.
- Another option is to include a clause that establishes rights reserved by the community, such as harvesting tree nuts, gleaning crops after harvest, and using marginal or buffer lands. This approach can be especially important for women or of marginalized groups who use these lands in “secondary” ways.

Lease Term

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

Impact Mitigation Clause

- The results of impact assessments and their corresponding mitigation plans should be incorporated as legally binding obligations in the lease (or the MOU).
- The lease should also contain a requirement for annual reporting on the implementation of the impact mitigation plan, with the reports to be made public and accessible to rural communities.

Financial and Non-Financial Terms

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

payments owed by the business enterprise or may describe tax or fee exemptions.

Economic and Social Development Obligations

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

Grievance and Dispute Resolution Mechanisms

- The lease should call for or include clearly defined grievance mechanisms, which give parties access to an effective non-judicial means of dealing with grievances and which are periodically assessed to ensure they function effectively. They should be proportional to the size and potential impact of the project, culturally appropriate, transparent, and accessible to all affected community members (including women and vulnerable groups).¹⁰³
- These mechanisms should not prejudice or restrict access to State-based or other non-State based complaint mechanisms. Clauses should stipulate that mechanisms should:
 - Be in place from the beginning.
 - Be “simple to understand, but not simplistic in its dealing with people and issues.”¹⁰⁴
 - Include stakeholders from the community in the design of the grievance mechanism in order to ensure accessibility.

- Be able to deal with a wide range of concerns, including multi-party or multi-issue complaints.
- Include culturally appropriate ways to access them, including ways for women to access without the intercession of their husbands or other male family members.
- Be responsive to the local context, including a variety of approaches to cater to differences in personal preferences and in culture.
- Have a central point of coordination in order to facilitate the development and implementation of the mechanisms.
- Report back to the community and relevant stakeholders about how the mechanism is doing and on types of cases received.

Disclosure and Transparency

- Transparency is critically important to ensure that laws are followed, benefits to communities and to the host country are maximized, and communities are reassured that the government is acting in the public interest.
- The lease should expressly provide for sharing of the contract and its terms, along with regular reporting to named individuals and groups.

Monitoring and Enforcement

- Establishing clear reporting requirements within the lease will aid the government in tracking adherence to environmental, fiscal and social development obligations. In particular, reporting mechanisms that publicly track payments under the contract will help prevent graft.
- The terms should also establish requirements for a business monitoring its own compliance through internal reviews and self-reporting to government or third-party compliance evaluations.
- The 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 is causing adverse social impacts.¹⁰⁵

Equitable Compensation

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

Gender

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

⁹⁷ VGGT, *supra* note 45, at 23.

⁹⁸ *Id.*

⁹⁹ While this model guidebook recommends the use of an LOI, a Memorandum of Understanding (MOU) or a Terms Sheet may serve a similar function.

¹⁰⁰ See USAID, *supra* note 70.

¹⁰¹ 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.

¹⁰² Land Act §19(2).

¹⁰³ See USAID, *supra* note 70, at 52.

¹⁰⁴ 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>.

¹⁰⁵ USAID, *supra* note 70, at 51.

Phase 4: Implementing and Monitoring the Investment

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

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

1. District Council supports Village Council in taking steps to strengthen community governance systems and ensure preparedness for ongoing investment accountability.
2. District Council regularly engages and consults with the business and village authorities to ensure they are mitigating and preventing disputes from occurring.
3. District Council ensures that the business and Village Council coordinate to establish a grievance mechanism.

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

1. District Council supports the Village Land Committee and business in establishing monitoring and evaluation practices for land-related investments.
2. District Council facilitates follow on impact assessments to evaluate impacts on the community.

Task 1: Develop and Implement a Plan to 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 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, and
- **Ensure access to remedy** by working with the business to establish a functioning, effective and accessible grievance mechanism for handling land-related disputes.¹⁰⁶

Step-by-Step Guidance

1. District Council supports Village Council in taking 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 have already begun implementation, the District Council and 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 District Council might consider helping the community identify a CSO to assess and strengthen village governance structures regarding investment. Information on how to accomplish this can be found in the RIPL Tanzania Community Guidebook.

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

Government-Required Procedural Action

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

Gap between Best Practice and Required Procedural Action

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

- Limited interaction and communication leads to strained relationship with neighboring communities.
- Oftentimes direct communication with community members is inadequate, with few mechanisms enabling village leaders and community members to initiate dialogue with the company.¹⁰⁷

Best Practice Supplemental Steps

The District Council should ensure that the business and community establish multiple channels of two-way communication to facilitate clear, well-planned and frequent consultation and engagement with communities.¹⁰⁸ Approaches should address the particular barriers that women face to accessing information and participating in consultations.¹⁰⁹

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

guide engagement throughout implementation and project close-out.¹¹⁰ The plan should:

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

3. District Council ensures that the business and Village Council coordinate to establish a grievance mechanism.

Government-Required Procedural Action

Below the national government, Tanzania is divided administratively into Regions, Districts, Wards and Villages.¹¹¹ Of these subdivisions, Districts, Wards and Villages all have land-specific dispute resolution mechanisms.

- At the District level are the District Land and Housing Tribunals, which were established by the Land Act to determine disputes and proceedings related to land.¹¹² Among other specific powers outlined in the Land Disputes Courts Act, the District Land and Housing Tribunals have the power to decide disputes over land worth less than 50 million shillings, and can overturn or modify Ward Tribunal decisions within their District.¹¹³ Unlike Ward Tribunals and Village Land Councils, District Land and Housing Tribunals allow advocates to represent the disputing parties.¹¹⁴
- Each District contains several Wards, each of which has a Ward Committee that is responsible for implementing plans of the District Council and coordinating cooperative activities within the Ward.¹¹⁵ The Ward Committee, in turn, elects the members of the Ward Tribunal, a 4-8-member dispute resolution body that must include at least three women.¹¹⁶ Ward Tribunals can both mediate between parties and make determinations in cases involving property valued at less than 3 million shillings.¹¹⁷
- Finally, at the Village level are the Village Land Councils, which are empowered to mediate disputes on any matter concerning land within their respective villages.¹¹⁸ The seven-member Village Land Council must include at least three women,¹¹⁹ and can use customary principles of mediation or natural justice when reaching a conclusion.¹²⁰ If disputing parties are not satisfied with the conclusion of a Village Land Council's mediation, they can request that the dispute be heard by the local Ward Tribunal.¹²¹

Gap between Best Practice and Required Procedural Action

The District government often lacks sufficient resources to resolve land disputes or to enforce decisions, and Village Land Councils are not always impartial.¹²²

Moreover, an investment-specific grievance mechanism is a worthy best practice to add to any ongoing investment project.

Best Practice Supplemental Steps

Guidance relating to responsible land-based investment emphasizes the need for business-based, non-judicial grievance mechanisms to complement any existing state-based, judicial grievance mechanisms. Due to the numerous governance gaps surrounding land-based investment and dispute resolution 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** for more guidance when carrying out this step.

The District Council should support the Land Committee and Village Council in determining how the grievance mechanism should be coordinated through the

business and holding the business accountable for dispute resolution where appropriate. The mechanism should comply with the UN Guiding Principles on Business and Human Rights (UNGPR) criteria for non-state dispute resolution processes. Consult Supplemental Resource 8: Grievance Mechanism Checklist for guidance on whether the business is complying with the following criteria:

- **Legitimate:** Enable trust from the mechanism's users and ensure accountability for the fairness of the grievance resolution process.
- **Accessible:** Be known to all potential users and providing assistance for those who may face particular barriers to access, such as women, pastoralists, and other vulnerable groups.
- **Predictable:** Be clear on the types of processes and outcomes available and means of monitoring implementation.
- **Equitable:** Provide users reasonable access to the information, advice and expertise necessary to engage on fair, informed and respectful terms.
- **Transparent:** Keep parties to a grievance informed about its progress and provide sufficient information about the mechanism's performance to build confidence in its effectiveness.
- **Rights-compatible:** Ensure outcomes and remedies comply with internationally-recognized human rights standards.
- **Source of continuous learning:** Identify lessons for improving the mechanism and preventing further grievances and harms.
- **Based on dialogue and engagement:** Consult users on the mechanism's design and performance and focus on dialogue as the means to address and resolve grievances.¹²³

Designing and Implementing the Mechanism

- The District Council should encourage the business to **dedicate sufficient personnel and resources** to designing, implementing and managing its grievance mechanism.
- The District Council should encourage the business to **consult with community members potentially affected by the investment** to incorporate their input into the mechanism's design.
 - All categories of community members and relevant external stakeholders should be consulted regarding the grievance mechanism, including women, indigenous peoples and other vulnerable groups; civil society organizations; local government officials; and community leaders.

- Feedback obtained during consultations with external stakeholders should be incorporated into the design, implementation, management and monitoring of the grievance mechanism. The mechanism should reflect and be compatible with customary dispute resolution mechanisms and should be accessible to and trusted by all relevant stakeholders, including women, indigenous peoples and other vulnerable groups.
- The District Council should encourage the business to **sensitize staff regarding the importance of identifying and respecting formal and customary land rights**. The more employees are aware of the business's reasons for committing to conduct socially responsible investments, the better able they will be to manage and enforce the grievance mechanism to deal with land-related disputes seriously and effectively.
- The 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 identify which complaints are most likely to arise. For example, if the ESIA indicates that the proposed land acquisition and project (e.g., a new sugarcane plantation) will use significant amounts of water, then it is possible that individuals or communities may have complaints alleging that the business enterprise is using too much water and contributing to water shortages.
- The District Council should work with the business and Land Committee to **inform communities of the grievance mechanism**. Communicate in a manner in line with the communities' preferred modes of communication (e.g., radio, local newspaper, flyers, bulletins, consultations, etc.) to share the following information:
 - Information on how individuals and communities (including both women and men) can file complaints with the grievance mechanism (e.g., in person at the business's office, via mail or drop box, with a community representative, with a community leader, during the business's routine visits to communities, etc.).
 - Information on what types of complaints the grievance mechanism will receive.
 - A description of the procedures for receiving, processing and responding to complaints (e.g., the time period for responding to complaints, the manner in which the business will respond to complaints, the time period for investigating complaints, the time period for filing an appeal, etc.).

- A description of the procedures for monitoring and evaluating the effectiveness of the grievance mechanism to ensure it is serving communities as intended.

Receiving and Responding to Complaints

- The District Council should make sure that the business has **clear procedures in place for how it will *receive* complaints.**
 - The procedures should be developed in a manner that ensures all Village Assembly members (including both women and men) are able to file complaints easily and in confidence.
 - To help build trust between communities and the business, the business should provide prompt confirmation documenting that it has received the complaint and will determine whether it represents a covered violation. The confirmation will provide the complainant with acknowledgement that the business is taking the complaint seriously and will be reviewing it.
- The District Council 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 District Council should make sure that the business has **clear procedures in place for how it will *resolve* complaints.** There is no one-size-fits-all process for resolving complaints; what is important is that the process is transparent and accepted by the community. The complaint resolution process will go more smoothly and enjoy more community support if it incorporates some form of Village Assembly involvement in reaching final decisions, as this will help to build community trust in the business's grievance mechanism, as well as make implementation of and stakeholder satisfaction with the final decision more likely.

Monitoring and Evaluating the Mechanism

- The District Council should make sure that the business has **clear procedures in place for *monitoring and evaluating* the grievance mechanism.** The business should monitor and evaluate the following:

- The number of land-related complaints it receives.
 - The average time the business takes to respond to complaints, determine whether the complaint alleges a covered violation, investigate the complaint and reach a final decision regarding the complaint.
 - If the business and complainant(s) reached a resolution, 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 District Council, Village Land Committee and the business should **share monitoring and evaluation results with interested parties and use the results to improve the grievance mechanism**. It is important for the business to evaluate and demonstrate whether the grievance mechanism is functioning, accessible and effective, and make changes where necessary.
 - For example, although a high rate of complaints could indicate poor relations between the business enterprise and local communities, it could also indicate that the grievance mechanism is functioning as intended and is helping to improve relations between the business enterprise and communities. Regardless, the business should use monitoring and evaluation results to adapt and improve the grievance mechanism.

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

Best Practice

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

- To **ensure the business's compliance with lease terms and conditions**, and
- To **assess the unfolding investment and restructure as necessary**.

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

Step-by-Step Guidance

The District Council must ensure that the business conducts M&E throughout the investment. The District Council should also facilitate the company's monitoring of 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. For more information consult the **M&E Primer**.

1. District Council supports the Village Land Committee and 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 having the business conduct regular monitoring and evaluation activities, the District Council and village authorities will be able to identify implementation challenges and unanticipated impacts earlier than they otherwise might.¹²⁴ 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. The District Council should ensure the business adheres to the following principles in its M&E activities:

- **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.¹²⁵
- **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.¹²⁶ 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.¹²⁷
- **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. District Council facilitates 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 business should **commission and publish assessments of the impact of investment activities on the community**, particularly with respect to vulnerable populations such as women, indigenous peoples, and ethnic or religious minorities.

The District Council should encourage the business to monitor and address ongoing social and environmental impacts of the project on the surrounding community. To ensure accountability and transparency, these assessments should be conducted by reputable third parties and based on international standards for human rights and responsible investments. More frequent assessments create more opportunities for adaptation and mitigation, but this benefit should be balanced against the feasibility of thorough assessment on a compressed timeline.

During implementation the government should also be assisting with capacity enhancement and technology transfer to improve agricultural practices in affected communities. This might include providing communities with better fertilizers, training on crop maintenance and improved irrigation systems. The business and partner CSOs can also play a role in delivering these services to affected communities throughout project implementation.

¹⁰⁶ See VGGT, *supra* note 45, 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 51, at 31-32.

¹⁰⁷ 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>.

¹⁰⁸ *Id.* at 4.

¹⁰⁹ *Id.*

¹¹⁰ See *id.* at 20.

¹¹¹ Villages are rural subdivisions of Wards and may be further subdivided into hamlets. There are also urban subdivisions of Wards, but they do not play a role in the agricultural investment process.

¹¹² Land Act §167(1)(c).

¹¹³ Land Disputes Court Act §§ 33-36.

¹¹⁴ *Id.* at §§18, 30.

¹¹⁵ Local Government (District Authorities) Act §32(1).

¹¹⁶ Land Disputes Court Act §11.

¹¹⁷ *Id.* at §15.

¹¹⁸ *Id.* at §7.

¹¹⁹ *Id.* at §5(1)

¹²⁰ Village Land Act §61.

¹²¹ *Id.* at §62.

¹²² See Landesa, *supra* note 107, at 11-12.

¹²³ USAID, *supra* note 70, at 53.

¹²⁴ *Id.* at 50.

¹²⁵ VGGT, *supra* note 45, at 39.

¹²⁶ AU Guiding Principles, *supra* note 75, at 25 -26, available at:

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

¹²⁷ UNGP, *supra* note 51, at 19.

5.

Supplemental Resources

Supplemental Resource 1

Obligations Under International Treaties and Conventions

How to Use this Resource

There is no established “right to land.”¹²⁸ 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.¹²⁹ In the context of international investments, the host state has the primary duty to protect human rights,¹³⁰ meaning that the Government of Tanzania must design and implement policies and laws to ensure that investments do not harm human rights, but instead contribute to their progressive realization. This guidance is intended to provide companies with an overview of the links between land and human rights enshrined in these agreements and in official statements issued by treaty monitoring bodies. This guidance is not an exhaustive examination of Tanzania’s human rights obligations, but 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)**¹³¹ 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.¹³²

The **International Covenant on Civil and Political Rights (ICCPR)**¹³³ guarantees the rights to life (Art. 6) and self-determination (Art. 1), as well as 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.¹³⁴

The **International Covenant on Economic, Social and Cultural Rights (ICESCR)**¹³⁵ 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).¹³⁶ The CESCR has also extended states’

responsibility to follow (FPIC) principles to communities whose cultural preservation may be threatened if their land rights are infringed.¹³⁷ 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.¹³⁸

The **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**¹³⁹ obligates States to eliminate discrimination against rural women to ensure that they participate in and benefit from development on an equal basis with men, and to provide equal treatment for rural women in the context of land and agrarian reforms and resettlement schemes, including access to agricultural credit and loans (Art. 14). The Committee for the Elimination of Discrimination Against Women, 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.¹⁴⁰ This is the most direct statement equating the right to land as a human right in current human rights discourse.¹⁴¹ 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.”¹⁴²

These obligations require the Tanzanian government to demonstrate progress toward the guarantees of these agreements during universal periodic reviews (UPR) conducted by the UPR Working Group,¹⁴³ and during treaty monitoring body reviews.¹⁴⁴ The Working Group report from the 2016 UPR recommended that Tanzania take steps to clarify land rights, especially matters of inheritance and succession.¹⁴⁵

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)**,¹⁴⁶ which establishes the principle of FPIC (Art. 10), and to the **African Charter for Human**

and People's Rights (ACHPR).¹⁴⁷ 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."¹⁴⁸

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, known as the **Maputo Protocol**,¹⁴⁹ 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**,¹⁵⁰ or the Kilimanjaro Charter,¹⁵¹ 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.¹⁵²

The **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security**¹⁵³ 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, 25.7.¹⁵⁴

The **Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security**¹⁵⁵ include references relevant to land and human rights at: Guidelines 2.5, 3.5, 4.2, 4.7, 8, 9, 10.8, 13.2, 14.3.¹⁵⁶

¹²⁸ 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>.

¹²⁹ 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> (last visited Apr. 6, 2018).

¹³⁰ OHCHR Report, *supra* note 128, at ¶ 17.

¹³¹ UN General Assembly, *Universal Declaration of Human Rights* 217 A (III) (1948), available at: <http://www.refworld.org/docid/3ae6b3712c.html>.

¹³² OHCHR Report, *supra* note 128, 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>.

¹³³ 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>.

¹³⁴ OHCHR Report, *supra* note 128, at ¶ 22.

¹³⁵ 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>.

¹³⁶ 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/>.

¹³⁷ 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 136.

¹³⁸ 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>.

¹³⁹ 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>.

¹⁴⁰ 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.

¹⁴¹ 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>.

¹⁴² CEDAW, *supra* note 140, at ¶ 5.

¹⁴³ OHCHR, *Basic Facts about the UPR*, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx> (last visited Apr. 6, 2018).

¹⁴⁴ OHCHR, *Monitoring the Core International Human Rights Treaties*, <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx> (last visited Apr. 6, 2018).

¹⁴⁵ 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>.

¹⁴⁶ 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.

¹⁴⁷ 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/>.

¹⁴⁸ 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/>.

¹⁴⁹ 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.

¹⁵⁰ 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).

¹⁵¹ See 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.

¹⁵² *Id.* at 6.

¹⁵³ See VGGT, *supra* note 45.

¹⁵⁴ 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>.

¹⁵⁵ 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>

¹⁵⁶ OHCHR Land, *supra* note 154, at 15.

Supplemental Resource 2

Overview of Tanzania Legal Framework

How to Use this Resource

This guidance is intended to provide an overview of Tanzania's legal framework for land rights, with special attention paid to the land rights of women and pastoralist communities.¹⁵⁷

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 1967,¹⁵⁸ the Law of Marriage Act of 1971,¹⁵⁹ and Governmental Notices on Customary Land.¹⁶⁰

Constitution

The Constitution of 1977,¹⁶¹ 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).¹⁶² However, the Village Land Act, as discussed below, covers in detail instances of conflict between customary and statutory law in regard to women's land rights.

Land Act of 1999

Under the Land Act of 1999, the State holds title to all land in Tanzania.¹⁶³ The President, through the Commissioner of Lands, has authority to grant a right of occupancy for up to 99 years.¹⁶⁴ Land is divided into three basic categories: general land (controlled directly by the state, and representing approximately 2% of the country's land); village land (mostly controlled by the villages, and representing approximately 70% of the country's land); and reserve land (designated by the state for national parks, game reserves, conservation areas and public utilities), comprising the remaining 28% of Tanzania's land.¹⁶⁵ 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.¹⁶⁶

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.¹⁶⁷ 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.¹⁶⁸ Joint occupants cannot dispose of their share of the property without the approval of all other joint occupants, and upon their death their share transfers to the other joint occupants; occupants in common, on the other hand, upon their deaths may transfer their share as part of their estate, but during life generally cannot transfer their share without consent from each other occupant. The legal presumption is that spouses hold all land that is co-occupied and used by both (or all) as occupiers in common, and the presumption of co-occupancy for spouses applies to granted rights (certificate of occupancy) and customary rights (customary certificate of occupancy).¹⁶⁹ 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.¹⁷⁰

Village Land Act of 1999

The Village Land Act of 1999 outlines what land is included in village land and how it is to be managed and administrated.¹⁷¹ It includes provisions regulating inheritance and transfer of land, along with the process for granting and certifying Customary Rights of Occupancy through a CCRO.¹⁷² 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 or group of persons under customary law;¹⁷³ and
- Land that can be allocated by the Village Council for communal or individual occupation.¹⁷⁴

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 CCRO without prior approval of the Village Assembly.¹⁷⁵

The Village Land Act permits any individual, family unit or group of persons recognized as such under customary law to apply to the Village Council for a CCRO.¹⁷⁶ 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.¹⁷⁷ When family units apply, at least two persons from that unit must sign the application.¹⁷⁸

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.¹⁷⁹ The law further provides that the Village Adjudication Committee or officer must treat the rights of women and the rights of pastoralists to occupy, use and have interest in land equally to those of men or agriculturalists.¹⁸⁰ Moreover, the Act prohibits villagers from assigning their right of occupancy if it would interfere with the right of any woman to occupy land under a customary right of occupancy, a derivative right or as a successor in title to the assignor.¹⁸¹ In determining whether to grant a derivative right to village land, the 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.”¹⁸²

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.¹⁸³

Although the Village Land Act did not decentralize land ownership to the village level, the Act devolves substantial authority to communities to govern village lands. Rather than establishing new local governance institutions for this purpose, the government chose to vest authority in existing village governance bodies (Village Councils and Village Assemblies). The national-level Commissioner of Lands serves as the chief authority for governance of general and reserve lands.¹⁸⁴

The Village Land Act upholds customary rules on land, but provides that the customary rule or any action dependent on the rules shall be void to the extent to which it denies women, children or persons with disability lawful access to ownership, occupation or use of any customary land.¹⁸⁵ 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.¹⁸⁶ And after a customary right has been surrendered, the Village Council must offer it to the other spouse(s) before re-granting it.¹⁸⁷

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.¹⁸⁸

Land Use Planning Act of 2007

The Land Use Planning Act of 2007 further regulates the process of surveying and registering village land, setting out the complicated Village Land Use Planning (VLUP) process that is required before village land can be recategorized as general land.¹⁸⁹ 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.¹⁹⁰

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."¹⁹¹ 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.¹⁹²

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..."¹⁹³ 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.¹⁹⁴ 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.¹⁹⁵ The Land Acquisition Act does not provide any specific protection for women or spouses, but 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.¹⁹⁶

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, as well as the right to distribution of property earned jointly when the relationship is dissolved.¹⁹⁷ Property and other matrimonial assets that a woman has acquired individually belong to her. When there are two or more wives, they have equal rights and liabilities as spouses.¹⁹⁸

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)¹⁹⁹ 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.²⁰⁰ Customary rules are not legally valid if they violate the constitutional and legal mandates for gender equality, but in practice, customary rules generally are applied whether or not they violate statutory norms.²⁰¹

Customary Law Declaration Order

Governmental Notices NG 279 and GN 436 (Customary Law Declaration Order),²⁰² 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 the force of law (in relevant Districts) because they have not been repealed by an act of Parliament.²⁰³ CLDOs are not applicable to matrilineal communities.²⁰⁴

¹⁵⁷ 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>.

¹⁵⁸ Land Acquisition Act (1967).

¹⁵⁹ Law of Marriage Act (1971).

¹⁶⁰ Local Customary Law (Declaration) (No. 4) Order, GN 436/1963.

¹⁶¹ 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.

¹⁶² 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. See Benschop, *supra* note 27, at 104.

¹⁶³ Land Act §4(1).

¹⁶⁴ *Id.* at §32(1).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at §31.

¹⁶⁷ *Id.* at §181.

¹⁶⁸ *Id.* at §159(1).

¹⁶⁹ *Id.* at §161(1), (2).

¹⁷⁰ *Id.* at §160(1).

¹⁷¹ Village Land Act §159(1).

¹⁷² See ILC, *supra* note 39.

¹⁷³ 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 27, at 110.

¹⁷⁴ Benschop, *supra* note 27, at 115 (citing Village Land Act §12(1)).

¹⁷⁵ *Id.* at 105 (referring to the Village Land Act).

¹⁷⁶ Village Land Act §22.

¹⁷⁷ *Id.* at §22(1), (2).

¹⁷⁸ *Id.* at §22(3)(ii)(b).

¹⁷⁹ *Id.* at §23(2)(c).

¹⁸⁰ *Id.* at §57(3).

¹⁸¹ *Id.* at §30(4)(b).

¹⁸² *Id.* at §33(1)(d).

¹⁸³ *Id.* at §43 (9).

¹⁸⁴ See Benschop, *supra* note 27, at 109; USAID, *USAID Country Profile: Tanzania, Property Rights and Resource Governance* (2011), at 1–2.

¹⁸⁵ Village Land Act §20(2).

¹⁸⁶ *Id.* at §35(7)(c)(i).

¹⁸⁷ *Id.* at §36.

¹⁸⁸ Tamar Ezer, *Inheritance Law in Tanzania: The Impoverishment of Widows and Daughters*, 7 GEO. J. GENDER & L. 599, 604 (2006); Ingunn Ikdaahl et al., *Human Rights, Formalisation and Women's Land Rights in Southern and Eastern Africa*, 57 STUD. IN WOMEN'S L. 1, 39–40 (2005).

¹⁸⁹ See Tenga & Kironde, *supra* note 9.

¹⁹⁰ See *id.*

¹⁹¹ Constitution of Tanzania, art. 32(2).

¹⁹² Land Acquisition Act §4(1)(a); Land Act §4(1).

¹⁹³ Land Act §3.

¹⁹⁴ Tenga & Kironde, *supra* note 9, at 57, 59. Under the Land Act, at § 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.

¹⁹⁵ Abdon Rwegasira, *LAND AS A HUMAN RIGHT: A HISTORY OF LAND LAW AND PRACTICE IN TANZANIA* 208 (2012).

¹⁹⁶ 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).

¹⁹⁷ Law of Marriage Act §56–58.

¹⁹⁸ *Id.* at §§56–63.

¹⁹⁹ *Id.* at Part I (a).

²⁰⁰ Benschop, *supra* note 27, at 128 (citing Interpretation of Laws and General Clauses Act, Cap. 1 (1972) §2(1)).

²⁰¹ *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).

²⁰² Local Customary Law (Declaration) (No. 4) Order, GN 436/1963.

²⁰³ 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).

²⁰⁴ 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

Best Practices for Responsible Investment

This Power Point is available for download online at
<https://ripl.landesa.org/support/2>.

Supplemental Resource 4

Consultation Meeting Notes Template

How to Use this Resource

This resource is a template for documenting and recording the information exchanged between the business and community when introducing the proposed project.

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 5

Land Rights Assessment Tool Kit

How to Use this Resource

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

Scope of the ESIA

Any economic, environmental, social and human rights impact assessment that a company conducts to comply with widely-accepted human rights standards²⁰⁵ and domestic laws and policies should also assess investment impacts on land rights, uses and livelihoods. The ESIA should be supplemented by analyses of the following:

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

community, and women may be more knowledgeable than men about plants grown or gathered for food or medicinal purposes, and may be able to provide more detailed information on sources and uses of water.²⁰⁶

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

Resources for HRIA and ESIA

Human Rights Impact Assessment (HRIA) Tools

- BSR, *Conducting an Effective Human Rights Impact Assessment* (2013), available at: http://www.bsr.org/reports/BSR_Human_Rights_Impact_Assessments.pdf
- Business and Human Rights Resource Centre, *Human Rights Impact Assessments*, <https://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-companies/type-of-step-taken/human-rights-impact-assessments>
- Columbia Center on Sustainable Investment, *A Collaborative Approach to Human Rights Impact Assessments* (2017), available at: http://ccsi.columbia.edu/files/2014/05/A-Collaborative-Approach-to-HRIAs_Web.pdf
- Danish Institute for Human Rights, *Human Rights Impact Assessment Guidance and Toolbox* (2016), available at: <https://business-humanrights.org/en/road-testing-toolbox-on-assessing-human-rights-impacts-of-business-projects-activities>
- Desiree Abrahams and Yann Wyss, United Nations Global Compact, *Guide to Human Rights Impact Assessment and Management* (2011), available at: https://www.unglobalcompact.org/docs/issues_doc/human_rights/GuidetoHRIAM.pdf

- Global Compact Network Netherlands, Oxfam, Shift, *Doing Business with Respect for Human Rights: Assessing impacts* (2016), available at: <https://www.businessrespecthumanrights.org/en/page/344/assessing-impacts>
- NomoGaia, *Human Rights Impact Assessment Toolkit* (2012), available at: <http://nomogaia.org/tools>
- Rights & Democracy, *Getting it Right: Human Rights Impact Assessment Guide*, available at: <http://hria.equalit.ie/en/index.html>
- World Bank Group, *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

Environmental and Social Impact Assessment (ESIA) Tools

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

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

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

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

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

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

Community Assessment Interview Guides

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

District Agency: Key Informant Interview Guide

District governance structure

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

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

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

Documentation, recording and registration of land rights

1. Do you document or record land rights? How? When? Triggers for documentation?
2. Is any documentation required for land for investments purposes? What kind of documentation?
3. Who bears responsibility for documentation? The business enterprise? The seller/landlord?

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

Land use planning

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

Consultation and engagement practices

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

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

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

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

Land acquisition and compensation practices

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

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

Community mobilization, engagement and voice

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

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

Pastoralists

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

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

Negotiation and contracting practices

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

Dispute resolution mechanisms

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

Key challenges and opportunities

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

Technology considerations for communication strategies

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

Village Leaders and Traditional Authorities: Key Informant Interview Guide

Customary governance setup

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

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

1. What are the types of land rights granted for investments?

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

Documentation, recording and registration of land rights

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

Land use planning

1. What roles do you play in land use planning?
2. How does your role in land use planning influence allocation of land for investments decisions?

3. To what extent does planning decisions by the district government influence granting of land rights for investments? How does the regulation on land use work in practice?
4. What are the challenges?
5. Recommendations?

Consultation and engagement practices

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

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

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

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

Land acquisition and compensation practices

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

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

Community mobilization, engagement and voice

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

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2. What is the relationship between the fixed community and pastoralists?
3. What are the most common issues for pastoralists?
4. Any pastoralist leaders in the community in any capacity?
5. Do pastoralists attend village meetings? Actively engage? If not, why not?
6. Were there pastoralists using land being given to existing companies?
 - What were women using it for?
 - What were men using it for?
 - What time of the year were women using it?
 - What time of the year were men using?
7. Were pastoralist women and men consulted and engaged with during the process?
8. Were pastoralist women and men a part of the negotiations?
9. Did pastoralist women and men give their consent? What would happen if they said “no” to the investment?

10. How is pastoral land valued?
11. Was there compensation? Who determined the compensation?
12. Was the pastoral community involved in determining the compensation?
13. Where do pastoralists go if they need help resolving a land dispute about an investment?
14. Where do pastoralists go if they need help resolving a land dispute about an investment?

Negotiation and contracting practices

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

10. Have any interim agreements, such as memoranda of understanding (MOU) been made between business enterprises and local communities? District and business enterprises? Do any MOUs exist in this area currently?
11. How are investment contracts or any MOUs enforced and monitored? How could or should they be enforced or monitored?

Dispute resolution mechanisms

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

Key challenges and opportunities

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

business enterprise failed to meet development conditions or the land lease ended?

4. Are there any other challenges, successes or ideas for improvement you would like to share?

Technology considerations for communication strategies

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

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

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

Household decision making

1. Who makes decisions in your household about your livelihood – about how you will feed yourselves and buy what you need?
2. What do you grow? Who grows it? Do you sell it? Do you consume it?

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

Ownership of land and other assets

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

Custom related to land

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

Documentation, recording and registration of land rights

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

Land use planning

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

4. What are the challenges?
5. Recommendations?

Consultation and engagement practices

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

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

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

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

Land acquisition and compensation practices

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

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

Community mobilization, engagement and voice

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

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

Pastoralists

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

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

Negotiation and contracting practices

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

Dispute resolution mechanisms

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

Key challenges and opportunities

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

Technology considerations for communication strategies

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

Farmers Associations – Focus Group Discussion Guide

Background and history

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

Functional and managerial structure

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

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

Land use planning

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

Functional relationship with the company

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

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

Functional relationship with association members

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

Produce supply agreements

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

Technology considerations for communication strategies

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

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

Pastoralists

Customary Governance Setup

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

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

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

Documentation, recording, and registration of land rights

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

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

Land use planning

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

Consultation and engagement practices

1. Describe the consultation and engagement process used by business enterprises in your area
 - Who should be consulted and how?

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

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

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

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

Land acquisition and compensation practices

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

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

Community mobilization, engagement and voice

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

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

Pastoralists

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

Negotiation and contracting practices

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

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

Dispute resolution mechanisms

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

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

Key challenges and opportunities

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

Technology considerations for communication strategies

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

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

²⁰⁵ AU Guiding Principles, *supra* note 75, at 6 (“Decisions on the desirability and feasibility of LSLBI are made based on independent, holistic assessment of the economic, financial, social and environmental costs and benefits associated with the proposed investment, throughout the lifetime of the investment.”); *see also* VGGT, *supra* note 45, at 4 (“Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others.”); UNGP, *supra* note 51, at 5 (“In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”); World Bank Group, *supra* note 79.

²⁰⁶ Namati, *supra* note 66, at 29.

Supplemental Resource 6

Template for LOI/MOU

How to Use this Resource

This resource is a template for creating a letter of intent or memorandum of understanding between the business and the community.

[Cover Page-To be produced on official letterhead]

This document is a **Letter of Intent (LOI)**
Incorporating an agreement between
[The Community]
and
[Business Enterprise]
on
[Date of Agreement]

This Letter of Intent . . . [brief paragraph describing the parties and the process of entering into the agreement]

§1 Definitions (optional)

In this LOI . . . [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 7

Final Contract Checklist

How to Use this Resource

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

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

Supplemental Resource 8

Grievance Mechanism Checklist

How to Use this Resource

This resource provides a high-level checklist for evaluating the company-based grievance mechanism developed by the business in the course of a responsible land investment. This checklist reflects the criteria for effective non-judicial grievance mechanisms set forth in the United Nations' Guiding Principles on Business and Human Rights.

CHECKLIST FOR EFFECTIVE GRIEVANCE MECHANISMS	
LEGITIMACY	
☐	Does the business take steps to promote trust in the mechanism from the groups that use it? This should include considerations specific to: ▪ Women ▪ Indigenous peoples ▪ Pastoralists ▪ Any other groups who may be marginalized within the community.
☐	Does the mechanism protect confidentiality where appropriate, and protect complainants from reprisal?
☐	Is the mechanism designed with input from the community? Is it administered with help from community members?
☐	Are those who administer the mechanism held accountable for conducting the grievance process fairly?
ACCESSIBILITY	
☐	Are all of the target groups aware of the grievance mechanism?
☐	Does the business provide assistance for those who may face particular barriers to access? This may include traditionally vulnerable groups, as well as those who face barriers related to age, wellness and geographic distance.
PREDICTABILITY	
☐	Does the business provide a clear and predictable procedure with specific time expectations for each stage?
☐	Does the business provide guidance on the types of processes and outcomes available to those who use the grievance mechanism?
☐	Does the business effectively monitor the implementation of the grievance mechanism to ensure that it functions fairly and consistently?
EQUITABILITY	
☐	Does the business ensure that aggrieved parties are provided with the information, advice and expertise necessary to engage in the grievance process?
☐	Does the business work with a third party to ensure that proceedings are neutral and fair?
☐	Does the mechanism prefer solutions achieved through dialogue? Does it allow for

	independent, third party resolution when necessary?
TRANSPARENCY	
☐	Are parties to a grievance resolution kept informed about the progress of the resolution process?
☐	Does the business work to provide the community with information (e.g., statistics, case studies) about the mechanism's effectiveness?
RIGHTS-COMPATIBILITY	
☐	Does the business have a procedure to ensure that all outcomes and remedies adhere to international standards for human rights?
SOURCE OF CONTINUOUS LEARNING	
☐	Does the business draw on relevant monitoring to identify lessons for improving the mechanism?
☐	Does the community have input into the business's continuous learning from the mechanism?

A GUIDEBOOK FOR GOVERNMENT OFFICIALS SUPPORTING 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

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