

# Community – Investor Framework for Kenya's Drylands

**PILOT VERSION**

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## DEFINITION OF KEY TERMS

*Community Assembly:* The body consisting of all adult members of the community as provided under the Community Land Act and is also the highest decision-making organ responsible for approving by-laws, giving or withholding consent, and ratifying agreements that affect community land.

*Community Benefit Fund:* A community-governed financial mechanism established to manage benefits arising from an investment.

*Community–Investor Agreement (CIA):* A legally binding agreement negotiated and approved through FPIC. It sets out the rights and responsibilities of the community and the investor, benefit-sharing terms, land access conditions, safeguards, monitoring arrangements, and exit obligations.

*Community Land:* Land held by a community as recognised under the Community Land Act, 2016, including grazing areas, water points, cultural sites, forests, wetlands, and other shared resources.

*Community Land Management Committee (CLMC*): The committee elected under the Community Land Act to manage day-to-day administration of community land and represent the community in engagements with counties, investors, and other actors. The CLMC is accountable to the Community Assembly.

*Dry-Season Grazing Reserve*: Grazing areas identified by communities or county rangeland plans as essential during drought periods.

*Due Diligence:* An assessment conducted at the start of the investment process to verify land status, investor identity and beneficial ownership, ecological conditions, customary use, mobility routes, and social, environmental, and conflict risks.

*Expression of Interest (EOI):* A non-binding submission made by an investor outlining the nature of the proposed investment, land requirements, activities, timelines, and expected benefits and risks. They are publicly disclosed to allow communities and counties to review and respond before any negotiations begin.

*Free, Prior, and Informed Consent (FPIC):* A community-led decision-making process through which communities receive full and accessible information in advance, deliberate without coercion, and collectively decide whether a proposed investment may proceed and under what conditions. FPIC is grounded in Kenyan law and aligned with standards such as the VGGT, FAO FPIC Guidelines, and the UN Declaration on the Rights of Indigenous Peoples.

*Grievance Redress Mechanism (GRM*): A structured process enabling community members to raise concerns or complaints during the investment lifecycle. It includes steps for acknowledgement, investigation, resolution, and escalation.

*Investor:* Any individual or entity seeking access to community land for an investment.

*Joint Implementation Committee (JIC):* A multi-stakeholder body composed of community representatives, the investor, and county officials. It oversees implementation of the CIA, monitors compliance and manages grievances.

*Land Investment Committee/Negotiation committee*: A representative committee appointed by the community and endorsed by the Community Assembly to lead community preparation and coordinate negotiations with investors.

*Land Return:* The process by which an investor transfers control of land and associated assets back to communities at the end of an investment, with explicit recognition of prior community land rights, measures to restore tenure security, and remediation of any social or environmental harms arising from the investment. Land return is distinct from abandonment and requires intentional process, documentation, and community governance support.

*Mobility Corridor /Route:* Paths used by livestock and herders for seasonal movement across rangelands. These routes often extend across clans, communities, counties, or national borders and are central to dryland livelihoods and are protected under customary systems and county rangeland plans.

*No-Go Zone:* Areas that a community designates as off-limits to investment due to cultural significance, ecological sensitivity, or essential livelihood use (e.g., water points, sacred sites, dry-season grazing reserves).

*Participatory Mapping:* A mapping process that combines cadastral records with community knowledge to document legally recognised boundaries, customary land uses, seasonal mobility routes, water points, dry-season grazing reserves, and sensitive or protected areas.

*Screening Gate*: Mandatory decision points in the framework where counties and communities assess specific outputs and approve or halt movement to the next phase.

## LIST OF ACRONYMS

ASAL – Arid and Semi-Arid Lands

CIA – Community Investor Agreement

CLMC – Community Land Management Committee

CSO – Civil Society Organization

DD – Due diligence

DLCI – Drylands Learning and Capacity Building Initiative

EMCA – Environmental Management and Coordination Act

EOI – Expression of Interest

FPIC – Free, Prior and Informed Consent

JIC – Joint Implementation Committee

LIC – Land Investment Committee

MEP – Monitoring and Evaluation Plan

NDMA – National Drought Management Authority

NEMA – National Environment Management Authority

PFM Act – Public Finance Management Act

RIPL – Responsible Investment in Property and Land

UNGPs – United Nations Guiding Principles on Business and Human Rights

VGGT – Voluntary Guidelines on the Responsible Governance of Tenure

WRA – Water Resources Authority

## 1. INTRODUCTION & BACKGROUND

Kenya's drylands[1] cover most of the country and support pastoralist and agro-pastoral communities whose livelihoods rely on shared grazing areas, seasonal mobility, and access to water and dry-season reserves. These landscapes are ecologically fragile but economically important, contributing to livestock production, wildlife conservation, renewable energy, and emerging carbon and nature-based markets. They also form key mobility corridors that stretch across counties and into neighbouring countries, including Ethiopia, Uganda, Somalia, and Tanzania.

Despite their importance, drylands face persistent governance challenges. Frequent droughts, pressure on grazing areas, competition over water, cross-border movements, inaccessibility, and tenure insecurity place strain on customary and statutory systems. As trustees of unregistered community land and facilitators of land registration and land use planning approval, county governments often lack clear procedures for supporting communities in navigating private sector investment.

At the same time, private investment in drylands has increased. Renewable energy projects, infrastructure corridors, carbon initiatives, mining, conservancies, and commercial agriculture are expanding into rangelands. These investments offer opportunities but also expose gaps in how communities, counties, and investors interact. Common issues include informal or unclear entry points, inconsistent screening of proposals, limited transparency, unclear benefit-sharing arrangements, weak documentation, rushed consultations, exclusion of some groups, and agreements that fail to meet community priorities or legal requirements. In many cases, engagement processes do not reflect the realities of dryland community norms and practices and often ignore legal requirements, resulting in disputes, loss of trust, and investments that fail to deliver meaningful benefits to communities. Community land registration is an important prerequisite for responsible investment, yet on its own does not overcome these challenges; additional guidance and support for effective institutions is required.

Counties, as the first line of devolved land governance, play a central role in regulating and monitoring investments, yet many operate without a unified framework. Communities rely on customary systems to manage land and resolve disputes, but these systems are increasingly strained by climate pressures and new forms of land use. Investors also face uncertainty about the correct entry points and processes to follow. Addressing these challenges requires clearer processes as well as stronger safeguards against investor practices that undermine community trust and investment outcomes.

This Framework, developed by Landesa and the Drylands Learning and Capacity Building Initiative (DLCI), responds to these gaps by providing both guidance and operational steps for community-centred investment engagement. It offers a clear, legally grounded process for responsible investment on community land in Kenya's drylands, drawing on national laws, county planning systems, and established international standards. The framework outlines the full investment cycle: due diligence (DD), Expression of Interest, community preparation, Free, Prior, and Informed Consent (FPIC), negotiation, agreement, implementation, monitoring, and responsible exit.

Its purpose is to strengthen community rights, improve transparency, support county oversight, and ensure that investments in the drylands are lawful, inclusive, environmentally sound, and aligned with community and county priorities. The framework is intended to provide a structured approach to community-investor engagement while allowing for refinement based on implementation experience, emerging lessons, and evolving practice.

## 2. PURPOSE AND APPLICATION

Investment processes in Kenya's drylands are often inconsistent, with communities, counties, and investors following different approaches when screening proposals, conducting consultations, negotiating agreements, and monitoring projects. In practice, this has led to unclear entry points, uneven application of legal requirements, and engagement processes that do not always reflect community realities. These gaps have contributed to mistrust, delays, and, in some cases, disputes that affect both communities and investment outcomes. Because drylands depend on communal tenure, seasonal mobility, and shared natural resources, investment requires a structured approach that reflects these realities.

[1] This Framework refers to Drylands as areas commonly called Arid and Semi-Arid Lands (ASALs) in Kenya, defined as those areas with annual rainfall between 150-550 mm (arid) and 550-850 mm (semi-arid). ASALs constitute over 80% of Kenya's land mass and are subject to special policy attention due to historical marginalization, ecosystem fragility, low population density, and economic constraints. These areas support diverse livelihood systems including pastoralism (predominantly in arid counties), agro-pastoralism, and rainfed agriculture. (Republic of Kenya, 2012, Sessional Paper No. 8 of 2012 on National Policy for the Sustainable Development of Northern Kenya and other Arid Lands).

This framework provides a common, predictable process for responsible engagement on community land in Kenya's drylands.

The framework aims to:

- Provide investors with a clear, step-by-step pathway for entering and engaging responsibly in dryland community areas
- Support communities understand their rights, strengthen governance structures, and negotiate fair, enforceable agreements
- Enable counties to screen, verify, and monitor investments consistently and transparently
- Ensure that decisions affecting community land are lawful, inclusive, and based on Free, Prior and Informed Consent (FPIC)
- Promote investments that protect land rights, sustain dryland ecosystems, and strengthen local livelihoods and resilience

**Key Outcomes**

This Framework guides investors, communities, and county governments through structured processes that deploy responsible investment principles to ensure equitable consultation and engagement with community land governance systems. When applied consistently, the Framework is expected to achieve:

- Improved tenure security
  Communities gain clarity on land boundaries, user rights, and decision-making authority, while investors obtain predictable access through legitimate, enforceable agreements that respect communal tenure systems.
- Strengthened county–community oversight systems
  Counties develop capacity to screen proposals, verify compliance, and monitor investments, while community governance structures are reinforced to manage land decisions, enforce agreements, and hold investors accountable.
- Enhanced benefit-sharing arrangements
  Communities negotiate fair terms that reflect the value of land and resources, ensure equitable distribution of benefits within communities, and establish mechanisms for adaptive benefit-sharing as projects evolve.
- Reduced investment-related conflicts
  Transparent processes, inclusive consultation, and enforceable agreements minimize disputes over land access, resource use, and benefit distribution, while providing clear mechanisms for grievance resolution.
- Responsible, climate-aligned economic growth
  Investments support dryland livelihoods and ecosystem resilience, align with county development priorities, and contribute to climate adaptation and sustainable land management goals

## 2.1 Who Should Use the Framework

The framework is intended for the following:

- Communities and Community Land Management Committees (CLMCs) engaging with prospective investors
- County governments, including land, planning, environment, natural resources, and investment departments
- Investors pursuing land or natural resource-based projects in dryland counties
- Traditional governance institutions, including councils of elders involved in land governance, conflict resolution, and mobility management
- Civil society organizations supporting legal literacy, mobilization, FPIC, or monitoring
- Independent advisors (legal, financial, environmental) providing technical support during negotiations
- National Government Administrative Officers (NGAO), including chiefs and assistant chiefs involved in local administration and coordination
- National government agencies responsible for land administration, environmental regulation, and investment oversight

Effective implementation of the framework will require ongoing awareness and sensitization efforts to ensure that communities, local leaders, and other actors understand the processes, roles, and safeguards provided for under this framework.

## 2.2 Scope of Application

The framework applies to all land-based investments across different sectors in Kenya's drylands including renewable energy, carbon projects, conservation initiatives, agriculture, extractives, and infrastructure. However, the nature, scale, and regulatory requirements of investments may vary across sectors, and additional sector-specific requirements

may apply in practice. The framework is designed to reinforce existing county systems and complement national laws, county plans, and sector-specific approval processes and coordination among relevant government institution. It does not impose mandatory procedures, nor does it replace requirements under Kenyan law but provides a consistent reference for screening, consultation, negotiation, and monitoring across dryland counties.

While the framework is designed primarily for registered community land, it recognises that delays or gaps in registration processes may leave some communities exposed to unstructured investment engagement during transition periods. In such contexts, counties and communities are encouraged to apply relevant principles of transparency, inclusion, and accountability while registration processes continue. The framework's principles may also inform engagement and grievance management in existing investments where appropriate and feasible.

The Framework provides guidance that aligns with Kenya's legal requirements and international best practices for responsible investment on community land. While not currently legally binding, it offers clear pathways for counties, communities, and investors to meet their existing legal obligations. Counties may adopt elements of the Framework through county legislation, regulations, or administrative procedures to strengthen local investment governance systems.

## 3. LEGAL ALIGNMENT

Investment on community land in Kenya's drylands must operate within a clear legal and policy framework. This guide brings together the laws and standards that govern community land, environmental safeguards, county planning, and responsible investment. It does not create new legal obligations; instead, it organizes existing requirements into a practical sequence that communities, counties, and investors can apply consistently.

Kenya's Constitution (2010) provides the foundation for community land governance. Articles 60, 63, and 66 affirm the principles of equitable access, security of tenure, sustainable land use, public participation, and the regulation of land use in the public interest. These principles guide how decisions affecting dryland landscapes should be made.

The Community Land Act (2016) and its Regulations (2017) set out the procedures for recognizing, registering, and governing community land. They define the role of Community Land Management Committees (CLMCs), community assemblies, and county governments, and require communities to give consent before their land is allocated or used for investment. The Regulations clarify quorum requirements, documentation standards, benefit-sharing provisions, and the processes that must be followed before agreements are made. Where investments involve leasing community land, the process should align with existing legal requirements and recognised community decision-making structures.

Other key national laws that shape dryland investment include:

- Land Act (2012) – regulates leases, easements, compensation, allocation for public purpose, and protection of land rights
- Land Registration Act (2012) – provides for registration of rights and recognises customary and community interests
- Physical and Land Use Planning Act (2019) – establishes county planning, zoning, development control, and alignment with CIDPs and CLUPs
- Environmental Management and Coordination Act (EMCA) – governs environmental impact assessments, audits, and compliance monitoring
- Climate Change Amendment Act (2023) – mandates climate risk integration, adaptation measures, and reporting obligations
- Access to Information Act (2016) – requires transparency and proactive disclosure of information related to land and natural resources

Even with the above laws in place, in practice there are still problems with how agreements are made. Communities may enter into agreements that they do not understand fully or that include provisions that expose communities to disproportionate risk. For instance, contracts commonly mandate dispute resolution mechanisms that are outside Kenya or impose financial obligations upon communities linked to project failure. Strengthening transparency and legal oversight of agreements and ensuring that such terms are clearly discussed through robust consultation and negotiation processes is therefore critical.

In dryland regions, customary governance systems remain central to the management of grazing areas, water points, mobility routes, and conflict resolution. These norms, and institutions such as councils of elders, grazing committees, and resource management groups, continue to operate as long as they are consistent with the Constitution and national law. Their role is especially important where resources are shared across clans, counties, and international borders.

This framework is also aligned with regional and international standards that guide responsible land-based investment, including:

- Voluntary Guidelines on the Responsible Governance of Tenure (VGGT)
- African Union Framework and Guidelines on Land Policy in Africa
- African Charter on Human and Peoples' Rights (ACHPR)
- UN Guiding Principles on Business and Human Rights (UNGPs)
- IFC Performance Standard 7 on communities with customary tenure systems
- FAO and IFAD FPIC Guidelines
- Kenya Vision 2030

Sector-specific laws including those regulating energy, mining, wildlife, water, carbon, and infrastructure remain fully applicable depending on the nature of the investment. Compliance with these sector requirements must proceed alongside community consent and county planning processes.

Bringing these laws and standards together gives communities, counties, and investors a clear and practical way to handle investment on community land. It offers a shared reference rooted in Kenya's legal framework and supported by recognised international standards, making the process more predictable, transparent, and fair for everyone involved.

## 4. CORE PRINCIPLES

This framework is built on principles drawn from Kenya's Constitution, national land laws, county planning systems, and the day-to-day realities of dryland communities. These principles guide how communities, counties, and investors should engage on community land to ensure that investment is lawful, fair, and respectful of local priorities. Key principles guiding this framework are:

i) *Community self-determination over land* - Dryland communities hold collective rights to their land under the Constitution and the Community Land Act. Decisions about land use or access must be made by the community through its recognized structures. This protects tenure security and ensures that engagement with investors reflects community priorities.

ii) *Legal Entry and Compliance*- All parties must follow the requirements of the Community Land Act and its Regulations, the Land Act, EMCA, the Physical and Land Use Planning Act, county by-laws, and relevant sector laws. A lawful process prevents disputes and ensures that agreements can be enforced.

iii) *Free, Prior, and Informed Consent (FPIC*)- Communities must be given clear information, time to discuss it, and freedom to decide without pressure. In drylands—where grazing areas, water points, and mobility routes support livelihoods—FPIC is essential for protecting shared resources and seasonal access rights.

iv) *Transparency and Accessibility of Information—Investment* information should be shared openly and in forms that community members can understand. This includes using local languages and holding meetings in locations and at times accessible to women, youth, elders, herders, and minority groups who may be far from administrative centres.

v) *Gender Equity and Social Inclusion (GESI) and Addressing Power Imbalances* - Dryland communities are diverse, and decision-making can be influenced by elders, dominant clans, or local politics. Engagement must involve women, youth, minority clans, persons with disabilities, and mobile pastoralists. Processes should guard against elite capture to ensure that all groups are heard.

vi) *Environmental and Climate Stewardship* **-** Dryland ecosystems are fragile and slow to recover. Investments must protect rangelands, water sources, dry season grazing reserves, riverbanks, watersheds, wildlife habitats, and migration routes. Climate risks such as drought cycles and land degradation must be considered in planning and decision-making.

vii) *Fair and Enforceable Benefit Sharing* **-** Communities should receive clear and meaningful benefits from investment on their land. Benefit-sharing arrangements must be transparent, enforceable, and aligned with community priorities, with a focus on long-term resilience rather than short-term gains.

viii) *Conflict Sensitivity* **-** Drylands experience regular tensions linked to grazing areas, water access, county boundaries, and cross-border movement. Investment processes must recognise these dynamics and avoid actions that could worsen conflict. Counties, peace committees, and community structures should work together to address any emerging issues.

ix) *Accountability and Proper Documentation* **-** All meetings, consultations, agreements, and decisions must be properly recorded and stored. Clear documentation and institutional processes support continuity, accountability, and implementation across administrative transitions.

x) *Predictable and Consistent Processes* - Communities, counties, and investors should have clear and accessible information on process steps, responsibilities, and expected engagement requirements to support transparent and predictable investment processes. Predictability reduces delays, limits political interference, and builds trust among all parties.

These principles respond to common challenges observed in practice and are intended to guide how investments are implemented across all stages of the investment lifecycle.

## 5. THE INVESTMENT LIFECYCLE

This framework guides investors and communities through seven key phases:

### Phase 0: Introduction

This phase sets out how an investor may introduce the business enterprise and proposed project idea to a community in Kenya's drylands before any due diligence, site access, screening, or consent processes begin. Its purpose is to ensure that first contact is transparent, conflict-sensitive, and clearly non-binding, providing opportunities for a community to communicate its priorities and interests in land-based investment, while preventing informal or misleading entry that can undermine community trust and later processes of consultation and negotiation. Engagement should take place through recognised community governance structures, including the Community Land Management Committee (CLMC), in coordination with NGAO and the County Government, to ensure that entry is formal, transparent, and accountable. In many dryland contexts, initial project introductions have taken place through informal channels, political intermediaries, brokers, or other third parties, often accompanied by promises of benefits to communities or implied approvals. Such approaches have often contributed to unrealistic expectations, elite capture, community divisions, and disputes that later undermine both community interests and investment viability hence the need for a structured entry.

The introduction phase establishes minimum standards for how project ideas are introduced, what information may be shared, and what actions are prohibited at the point of entry.

This phase does the following:

- Provides/identifies potential formal, reputable, and legal entry points for investment in community lands
- Allows an investor to formally identify itself and outline a high-level project concept
- Provides a platform for communities to share land use priorities and discuss potential alignment with investment
- Ensures that communities receive early, accurate, and consistent information
- Creates a public record of first contact
- Clarifies that the project is subject to further processes and decisions

This phase does not:

- Grant permission to access, survey, map, peg, or use land
- Constitute Free, Prior, and Informed Consent (FPIC)
- Approve the project or guarantee that it will proceed
- Allow negotiation of benefits, compensation, or land rights
- Permit signing of any agreement, MoU, or commitment of any kind

**Guiding principles**

The Introduction and First Contact phase shall be guided by the following principles:

1. *Transparency:* Information about the investor and proposed project idea must be shared openly with the wider community, not selectively with individuals or groups.
2. *Non-Binding Engagement:* All parties must clearly understand that the introduction does not create rights, obligations, or expectations of project approval.
3. *Conflict Sensitivity:* Introductions must consider existing tensions, seasonal stress, mobility patterns, and local governance dynamics, and avoid actions that could heighten conflict.
4. *Respect for Community Governance:* Engagement must occur through recognised community structures in line with the Community Land Act and customary governance systems.

5. *Expectation Management:* Investors must avoid promises, projections, or representations that could create false expectations regarding jobs, income, services, or land access. This is particularly critical in contexts where communities have previously experienced unmet commitments. Investors should also avoid actions that may create pressure for early acceptance or endorsement of the project at this stage.

**Step by Step Process**

| Step | Objective | Key Actions | Outputs |
|---|---|---|---|
| 1. Investor identification | Introduce to the community who the investor is and the nature of the proposed investment | Investor:<br><br>- Formally introduces the company and points of contact through recognised community structures<br>- Provides basic information on legal identity and contacts<br>- Shares basic information on the proposed project, including its nature, intended activities, and general location, in a manner that is accessible and understandable to the community<br>- Shares examples of similar projects that the investor has implemented (ongoing or completed)<br>- Indicates the general geographic area of interest (no mapping, pegging, or demarcation)<br>- Clearly states that the project is exploratory and subject to further processes, including community engagement and consultation | - Investor introduction note<br><br>- Company profile shared with community |
| 2. Community information meeting | Ensure early, open, and non-binding information sharing | - Convene a community meeting through recognised community governance structures including the CLMC, with support from NGAO to ensure coordination and participation<br>- Introduce the investor and project concept<br>- Allow questions and clarifications from community members<br>- Clearly state that no decisions, commitments, or approvals are being made at this stage<br>- Conduct meetings in accessible locations, using Kiswahili and/or relevant local languages, and at times that allow participation by women, youth, and other community members<br>- Hold multiple meetings across different locations where communities are geographically dispersed to ensure broad participation.<br>- Ensure information is communicated in a clear and accessible manner (local language) | - Meeting minutes<br>- Attendance lists<br>- Record of questions and responses |
| 3. Government notification | Ensure transparency and awareness on the part of administrative institutions | - Notify relevant county (and, where applicable, national) government officials prior to the introductory meeting<br>- NGAO officials, including chiefs and assistant chiefs, should be informed at the point of entry to support coordination, transparency, procedural accountability, and early identification of potential issues.<br>- Invite officials to attend in an observational capacity, where appropriate<br>- Clarify that government presence does not imply approval or endorsement<br>- Investor engages county offices to access existing land use or development plans relevant to the area | - Record of county notification<br>- Any observer notes (if applicable) |

**Prohibited Actions at Introduction Stage**

Below are actions that are not permitted during this phase:

- Accessing, surveying, mapping, pegging, drilling, or carrying out any site-based activity.
- Making promises or commitments related to jobs, benefits, compensation, or services.
- Engaging through brokers, political intermediaries, or parallel committees that bypass recognised community governance structures.
- Holding selective or closed meetings that bypass legitimate and recognized community governance structures.
- Providing gifts, cash, or inducements to individuals or groups.
- Signing any agreement, MoU, letter of intent, or consent document.
- Presenting the project as approved by government or guaranteed to proceed.

Any violation of these restrictions should result in suspension of engagement until corrective action is taken.
Where engagement begins through informal or unrecognised channels, the process should be regularised through the appropriate institutions before proceeding to subsequent stages.

**Documentation and Outputs**

The following records form part of the preliminary engagement file and support transparency in subsequent phases and should be maintained:

- Minutes of introduction meeting(s)
- Attendance lists
- Summary of information presented
- Record of county notification (where applicable)

An investment proposal will proceed to Phase 1 (due diligence) after a clear, documented, and non-binding introduction. No investment shall proceed beyond introduction unless this phase has been conducted in accordance with the principles and restrictions set out above.

## Phase 1: Due Diligence

The purpose of this phase is to establish a verified factual and legal baseline description of land status, ecological conditions, customary use, and potential risks before any investment proceeds. In Kenya's Arid and Semi-Arid Lands (ASALs), this phase ensures that investments respect the seasonal mobility, shared resource systems, and communal tenure that define dryland livelihoods. In many cases, communities may have limited information about the resources on their land or the implications of proposed investments. This phase therefore aims to ensure that due diligence processes are inclusive and accessible, and that communities are able to engage meaningfully in the assessment of proposed projects.

The due diligence process should enable communities to assess proposed investments in relation to their land use priorities, livelihoods, and long-term interests. The outcome is a clear Gate 1 decision, confirming whether the proposed investment can move to the Expression of Interest phase.

Key activities and expected outputs in this phase include the following:

***1. Map the registered community lands***

The goal is to establish the precise location, boundaries, and extent of the lands formally recognized as Community Land under relevant legislation (e.g., in Kenya, the Community Land Act) relevant to the proposed investment.

Steps in the process include:

- Obtain cadastral data and registration records from the County Land Registry and Ministry of Lands and Physical Planning.
- Verify registration under the Community Land Act (2016) or ongoing adjudication process.
- Conduct participatory mapping with elders, women, and youth to overlay actual land uses, mobility routes, water points, and dry-season grazing zones.

The output is a verified participatory land use map showing both legal and customary realities.

**2. Assess Customary Use, Ecological Features, and Mobility Patterns**

The goal is to understand the actual on-the-ground reality of the land, resources and its importance to the community and the environment, which may differ from the formal legal status, and which may not appear in formal records.

The assessment process to include:

- Document customary practices: Documenting how the community historically and currently uses the land such as grazing areas, farming plots, spiritual/cultural sites, communal water points, seasonal farming plots, and shared resources). This is vital for respecting Indigenous rights and practices as well as to ensure that the uses and rights of groups within the community, particularly women, youth, and others are well understood and included in due diligence.
- Identify ecological and climate-sensitive features: Identify important natural resources, sensitive ecosystems, biodiversity hotspots, water bodies, or critical wildlife habitats.
- Map and document existing land uses including shared resources, mobility corridors and patterns for people and livestock — livestock migration routes, settlement areas, access paths to rivers, or seasonal movement patterns across communities or counties. This is crucial for avoiding disruption to livelihoods. Where proposed investments affect or involve multiple communities, engagement and verification processes should include all affected communities.

The output is a socio-ecological baseline report integrating customary and ecological data. Where required, communities and CLMCs may be supported by independent technical advisors to review project information and potential impacts

**3. Engage County Governments and Verify Land Status**

The goal is to ensure official government endorsement, review applicable land use and development plans, clarify any potential overlaps or conflicting claims, and confirm the land's legal standing from an administrative perspective.

Key steps are:

- Engage relevant county departments (Lands, Physical Planning, Environment, ASAL Coordination, and Water).
- Confirm that the land is indeed registered as community land and that there are no active government plans (e.g., for infrastructure, urbanization) or historical claims that might conflict with its status or the project's goals. Particular attention should be given to investments located along infrastructure corridors, where communities may face increased pressure from informal or unstructured land access and compensation processes.
- Review applicable land use and development plans, including County Spatial Plans, Community Land Use Plans (where available), CIDPs, and any approved zoning or reservation instruments relevant to the proposed area.
- Record the outcome of verification in the county register and share with the Community Land Management Committee (CLMC).

The output is a county verification document or memo confirming community land status and absence of conflicting claims.

**4. Review of Investor Background**

Due diligence in Kenya's drylands should be reciprocal. As investors assess land status, governance arrangements, and community risks, communities and counties also need a clear understanding of who the investor is, how they have operated elsewhere, and whether their track record presents risks for the proposed engagement.

Reviewing the investor's background helps communities and counties identify early warning signs, information gaps, or conduct that may require clarification or additional safeguards before engagement proceeds. This review does not approve or reject an investor on its own. Rather, it supports informed discussion and strengthens the community's Gate 1 decision.

Counties and Community Land Management Committees (CLMCs) should be supported by independent advisors where necessary to access and interpret this information.

Key areas to review include:

- Legal identity and ownership including company registration details and place of incorporation; directors, shareholders, and beneficial ownership; use of subsidiaries or special purpose entities linked to the project
- Operational history including experience with similar projects in terms of sector, scale, and location; duration of past projects and reasons for exit or termination; evidence of long-term commitments or abandoned sites
- Past or ongoing engagement with communities including: history of disputes, complaints, or litigation related to land or community engagement; public records, media reports, or civil society findings linked to previous projects; outstanding grievances or unresolved agreements

- Regulatory and social compliance including: record of compliance with environmental, social, and labour requirements; enforcement actions, penalties, or regulatory sanctions where applicable; and stated approaches to FPIC, benefit-sharing, and grievance management
- Financial and institutional capacity including: ability to finance the proposed project and meet long-term obligations; reliance on speculative financing or future revenue streams; insurance, guarantees, or other risk-management arrangements where relevant
- Identification of any agents, brokers, or facilitators acting on behalf of the investor in relation to land access or community engagement, and disclosure of any relationships between such intermediaries and community leaders, county officials, or other decision-makers.

Findings from this review should be shared with the CLMC and community in accessible formats and reflected in the risk screening and mitigation measures.

**5. Gender risk assessment**

The purpose of this assessment is to identify and differentiate investment risks and impacts for men and for women that may not be captured through other required land, social, or environmental assessments. In drylands, access to water, land, grazing areas, etc. is often influenced by gender and other customary practices. Key areas to be reviewed include:

- Possible impacts on women's livelihoods, labour responsibilities, and access to resources
- Women's rights and access to land, water and other resources
- Safety and security risks that may arise for women during projects
- Risk of exclusion during consultations, engagement, negotiations, decision-making, and benefit sharing

The output is a Gender Risk Analysis and Mitigation Strategy that will inform risk screening in Step 6 and will support investment processes and outcomes that Do No Harm to women and support an equitable and sustainable process.

**6. Screening of Risks**

The goal is to proactively identify and evaluate potential challenges that could derail the project, cause conflict, or lead to negative social or environmental outcomes. The process entails the use a customized risk screening checklist to evaluate the following:

- Land disputes or overlapping claims
- Legal and policy risks (unresolved adjudication, litigation, policy reform)
- Environmental risks (soil erosion, biodiversity loss, water scarcity)
- Climate risks (drought exposure, flash floods)
- Social and gender risks (elite capture, exclusion, intra-community divisions and disagreements, political instability)
- Economic and livelihoods risks
- Conflict triggers (historical tensions, resource competition)
- Financial Risks: Potential high costs related to compensation or mitigation measures

The output is a Due Diligence and risk screening report with mitigation measures and risk rating.

**Community disclosure and inclusivity requirements**

- Hold at least one community baraza to inform community members of the investor's interest and share the output (land and resource map) and findings of the mapping and risk screening
- Ensure participation by women and youth, with targeted sessions for minority or pastoralist sub-groups required by law
- Record proceedings (minutes, attendance sheets, photos)
- Include at least one independent observer (traditional council, CSO, or faith-based organisation) for transparency

The outcome is a community disclosure record attached to the Due Diligence package.

Key outputs from this phase will include:

- Participatory land use map
- Socio-ecological baseline report
- County verification document/memo
- Gender risk and mitigation analysis
- Risk screening report with mitigation plan

- Community disclosure records

**Roles and Responsibilities**

| Actor | Lead responsibilities | Support roles | Decision / Sign-off |
|---|---|---|---|
| County Government (Lands/ASAL/Planning) | Coordinate due diligence; verify land status; confirm investor documents; compile Due Diligence file; support verification of information and alignment with county plans; issue Screening Note (Gate 1). | Provide technical inputs on mapping, environment, and planning | Gate 1 (County signs the Screening Note) |
| CLMC | Participate in mapping and verification; confirm land and resource use and customary rights; identify disputes or overlaps; facilitate community-level engagement | Mobilise community for mapping; validate outputs | Co-sign screening note |
| Community Assembly | Provide information on land use, shared resources, and customary governance | Participate in mapping and verification | Not a gate signatory (information provider) |
| Investor | Submit registration documents, project outline, and beneficial ownership details | Provide clarifications when requested | None |
| CSOs / Independent Advisors | Facilitate community participation; verify documentation integrity | Provide observation notes | Observer |
| National Agencies (NEMA/NDMA/WRA) | Offer sector-specific technical verification on land registration, climate and environmental risk, and water sustainability. | Offer clarifications | Technical notes (not gate signatories) |
| NGAO | Procedural transparency, and communication between administrative and community structures. | Support coordination | None |

Findings from the due diligence process should be shared with the wider community and validated through recognised community structures before proceeding to subsequent phases.

**Decision Gate 1 (Screening Gate)**
At this stage, the aim is to determine whether the investment proposal is eligible to advance.

Approval criteria include:
- Verified community land (registered or legitimate claim, no major dispute).
- Investor identity and beneficial ownership disclosed and validated.
- Risk Screening completed with mitigation actions for moderate/high risks.
- At least one community disclosure meeting was held, no unresolved objections.
- Alignment with the county land use plans confirmed.

*Possible outcomes include:*

Go: Criteria met → Proceed to Phase 2 (EOI)
Conditional Go: Minor gaps → corrective actions required
No Go: Critical risks or disputes → halt until resolved

The county will issue a Screening Note (Gate 1) summarising findings and decision.

**No investment shall proceed beyond Due Diligence unless the community land boundary, customary use, and seasonal mobility patterns are verified and publicly disclosed, and all tenure, environmental, and social risks have been screened transparently with community participation.**

### Phase 2: Expression of Interest (EOI)

Phase 2 sets the first formal step for investors to engage with communities about the details of a proposed investment. It ensures early transparency by giving communities clear information about proposed investments, timelines, and benefits. The goal is to empower communities to review, understand, and provide initial feedback before any planning or site activities begin. Early disclosure also strengthens investor credibility and reduces potential conflicts later. The EOI is intended to support early understanding of a proposed investment and does not constitute a formal consultation, approval, or selection process.

Guiding principles in this phase are:

- *Transparency* – EOIs and related investment information should be documented are made publicly accessible so all community members can see and discuss them.
- *Early Engagement* – Communities learn about investments before approvals, surveys, or land access.
- *Clarity* – EOIs should include enough detail to allow meaningful review (investment type, land area, timeline, benefits, risks).
- *Community Comprehension* – Information must be shared in local languages, with visuals, storyboards, radio announcements, or SMS for distant groups.
- *Alignment with Law* – EOIs comply with county and national land regulations, as well as customary land governance.
- *Non-Binding* – An EOI signals intent but does not guarantee project approval; it starts the dialogue.

**Step-by-Step Process**

| Step | Objective | Key actions | Outputs |
|---|---|---|---|
| 2.1 Investor Submission | Capture investor intent | - Investor submits EOI to CLMC and County Government<br>- Include type of investment, proposed land area, timeline, expected benefits, and preliminary social/environmental considerations | EOI document submitted to CLMC & County |
| 2.2 County Review & Verification | Ensure completeness and legality | - County checks EOI against land laws, county plans, and customary arrangements<br>- Request additional information if incomplete | Verified EOI; County notes/feedback |
| 2.3 Public Disclosure | Empower communities with information | - Publish EOIs on noticeboards, radio, county websites, and through local meetings<br>- Allow minimum 30-60 days for community review | Public notices; dissemination records (attendance, radio logs, website screenshots) |
| 2.4 Community Comprehension & Feedback | Ensure understanding and collect opinions | - Organize barazas, workshops, or small-group sessions<br>- Use local language, storyboards, and visuals<br>- Record questions, concerns, and initial feedback | Feedback logs; baraza/workshop minutes; attendance records |
| 2.5 Investor Vetting & Expert Review | Assess investor credibility | - Independent advisors or CSOs review investor history, past investments, and potential risks<br>- Summarize findings for the community | Advisor reports; summary for community discussion |
| 2.6 Shortlisting & Next Steps | Identify EOIs for Phase 3 | - CLMC reviews community feedback and advisor input<br>- Shortlist EOIs for community preparation and mobilization<br>- Flag EOIs needing clarification or withdrawal | Shortlist report; recommendations for community consultation |

**Roles and Responsibilities**

| Actor | Lead Responsibilities | Support Roles | Decision / Sign-off |
|---|---|---|---|
| Investor | Submit full, accurate EOI; provide timely documentation; disclose relevant risks; respond to county/community queries | Respond to county or community requests | None |

| | | | |
|---|---|---|---|
| County Government | Review EOIs for legality and alignment with planning frameworks; ensure publication and accessibility of EOI; support community comprehension; track EOIs | Assist CLMC in translating or presenting information | Gate 2 (County acknowledgment) |
| CLMC | Receive EOIs; facilitate understanding; collect and document feedback; maintain transparency; communicate concerns to the county | Help share materials in local language | Sign feedback summary |
| Community Assembly | Discuss and provide feedback; ask questions | Participate in barazas and small-group meetings | None |
| CSOs / Advisors | Provide neutral explanation of EOIs; review investor credibility; support communities in understanding potential risks and opportunities | Support inclusive participation | Observer report only |

**Risks & Mitigation**

| Risk | Impact | Mitigation |
|---|---|---|
| Incomplete or misleading EOI | Communities cannot make informed review | Require standard EOI template; county verification before public disclosure |
| Low community understanding | Misinterpretation or missed concerns | Use visuals, local language, storyboards, radio, SMS; hold multiple sessions in dispersed locations |
| Elite capture / dominant voices | Marginalized groups excluded | Facilitate inclusive sessions; ensure women, youth, minority clans participate and lead discussions where possible<br>Information should be shared in a way that is accessible to the wider community and not only to a small group of individuals. |
| Misalignment with law or county plans | Potential legal disputes or rejected projects | County review of all EOIs; expert vetting of investor track record |
| Unrealistic community expectations | Conflict if project does not proceed | Clearly communicate that EOI is non-binding and subject to FPIC, Phase 3, and other approvals |
| Past negative investor history | Trust issues or future conflicts | Independent verification of investor history; present findings to community |

### Phase 3: Community Preparation & Mobilization

Phase 3 sets the stage for fair, informed, and inclusive engagement between communities and investors. It strengthens local governance, builds knowledge of land rights, and helps communities define their priorities and safeguards before entering any negotiations. If done well, it ensures that any decisions about land investment reflect the community's voice, protect rights, and support sustainable development.

Key guiding principles in this phase are:

- Free – No coercion, bribery, or political pressure.
- Prior – Communities get time to understand, discuss, and make decisions before approvals or commitments.
- Informed – Clear, balanced, and complete information is shared in local languages using visual aids, storyboards, or radio.
- Inclusive – Women, youth, minority groups, and mobile pastoralists actively participate and can lead sessions.
- Iterative – The process allows for repeated discussions, reflection, and refinement.
- Transparent & Accountable – Decisions, by-laws, and actions are documented, stored, and openly accessible.

**Step-by-Step Process**

| Step | Objective | Key actions | Outputs |
|---|---|---|---|
| 3.1 Sociocultural & baseline assessment | Understand social structures, land tenure, and local institutions | - Conduct assessment of customary governance, mobility patterns, and tenure arrangements<br>- Map power dynamics and decision-making structures<br>- Share and validate findings with community | Baseline report; community map of tenure, governance, and mobility |
| 3.2 Governance strengthening & committee formation | Establish representative, legitimate negotiation structures | - The CLMC to form or strengthen Land Investment Committee (LIC) with broad community acceptance & representation<br>- Draft or update community by-laws for investment engagement<br>- Validate by-laws through assemblies/barazas<br><br>The Land Investment Committee is intended to operate through the existing Community Land Management Committee (CLMC) structure and does not establish a separate parallel decision-making body. | LIC ToR; Community by-laws; Assembly minutes |
| 3.3 Rights awareness & information campaign | Empower community to understand legal rights, implications of proposed investments (potential risks, trade-offs, long-term commitments) | - Conduct training on land laws, FPIC, negotiation, risk, and governance<br>- Use culturally appropriate formats: visuals, radio, theatre, SMS<br>-Ensure representation from all groups as well as meaningful contribution<br>- Maintain feedback loop for questions and concerns<br><br>Community rights awareness should include information on what communities are entitled to expect at the end of an investment, including land return, asset transfer, and restoration obligations, so that these expectations are established before negotiations begin. | Training materials; participation records; feedback log |
| 3.4 Visioning & participatory land-use planning | Define community priorities for land use | - Organize workshops to define shared vision<br>- Map critical areas: grazing, water, no-go zones, sacred sites<br>- Align with county planning where relevant | Community vision statement; participatory land-use map |
| 3.5 Investor profiling & assessment | Ensure community knows who they are negotiating with | - Collect full investor information<br>- Conduct independent legal, financial, environmental review (advisors should be independent and accountable to communities)<br>- Present findings to community for discussion | Investor info dossier; Expert analysis; Community review log |
| 3.6 Risk assessment & safeguards design | Identify risks and design protections | - Assess social, economic, and environmental risks<br>- Develop community safeguards framework (serve as a baseline for assessing agreements)<br>- Establish early grievance mechanism | Risk assessment; Safeguard framework; Grievance design |
| 3.7 Validation & decision making | Confirm legitimacy and community approval | - Hold general assembly to validate LIC, by-laws, safeguards, vision, priorities and ensure understanding & support by the community.<br>- Use culturally recognized decision methods<br>- Record approvals, amendments, or objections | Assembly minutes; Resolution; By-laws adoption record |

| | | | |
|---|---|---|---|
| 3.8 Monitoring & feedback | Track progress and emerging issues | - Develop indicators to monitor participation, inclusion, process quality and understanding<br>- Maintain a living risk log<br>- Conduct periodic feedback sessions | Monitoring reports; Risk log; Feedback summaries |

**Roles and Responsibilities**

| Actor | Lead Responsibilities | Support Roles | Decision / Sign-off |
|---|---|---|---|
| CLMC / Land Investment Committee | Represent the community, report back regularly to give feedback and share information with the wider community, engage in negotiations, monitor safeguards, support and coordinate community preparation<br><br>Under this framework, the Land Investment Committee role is intended to be undertaken through the existing CLMC structure and does not create a separate governance body | Coordinate meetings and documentation | Co-sign Gate 3 readiness |
| Community Assembly | Lead assemblies, validate by-laws, oversee and validate LIC, ensure transparency and quorum in decision-making; final decision maker regarding the land | Participate in visioning and mapping | Resolution adopting structures |
| County Government | Align community plans with county policy and plans, support technical mapping, provide oversight and verification; review community preparedness. | Assist with mapping and governance support | Gate 3 (County readiness approval) |
| CSOs / Advisors | Support capacity-building on rights, FPIC, risks, negotiation; conduct baseline assessments, facilitate committee formation, mediate disputes; support power-balancing and inclusive processes | Provide technical assessments | Submit readiness report (non-binding) |
| Investor | Provide accurate, timely information; respect FPIC protocol and community timelines; fund independent advisors fairly; avoid coercion or political interference | None | None |
| Independent advisors | Provide neutral legal, financial, environmental advice; review investor proposals; support community negotiations | None | None |

**Risks and mitigation**

| Risk | Potential impact | Mitigation |
|---|---|---|
| Exclusion of marginalized groups | Decisions may lack legitimacy | Conduct separate sessions for women, youth, minority groups; ensure representation in LIC to include women, youth, and minority clans, and its mandate with clear mandates |
| Power imbalances / elite capture | Community voice overshadowed | Use neutral facilitators; rotate leadership; transparent reporting |
| Rushed timelines | Communities may not fully understand investment | Allow adequate, culturally appropriate deliberation time; iterative engagement |
| Low capacity for negotiation | Poor agreements or safeguards | Train LIC and community members on legal, financial, and technical issues |

| | | |
|---|---|---|
| Lack of trust in facilitators | Participation may be limited | Use respected local CSOs; maintain open communication; document all processes |
| Weak grievance mechanisms | Unresolved conflicts escalate | Establish early, accessible, community-led grievance system; integrate feedback loops |

This is aligned with global standards including:

- FAO FPIC manual – emphasizes culturally appropriate, iterative engagement with communities
- RIPL / Landesa guidebooks – recommend community-owned Land Investment Committees, by-laws, and independent advisor support
- IFAD FPIC policy – highlights adequate time, full disclosure, and informed community decision-making
- RSPO / RSB guidelines – stress documentation, safeguards, and inclusion as part of due diligence

Phase 3 ensures that communities:

- Understand their rights
- Establish legitimate governance and representation structures
- Define their vision and priorities for land use
- Review and assess investor proposals independently
- Identify risks and safeguards before any negotiation
- Have clear mechanisms for monitoring and raising grievances

## Phase 4: Free, Prior, and Informed Consent (FPIC) and Negotiation

Free, Prior, and Informed Consent (FPIC) is a legally grounded and community-led decision-making process required for all land-based investments affecting community lands in Kenya's drylands. FPIC requires that communities are able to make decisions based on clear and complete information, without pressure, and through recognised community governance structures. It includes the option to accept, reject, or propose changes to a proposed investment.

FPIC is essential in dryland contexts where communities rely on shared rangelands, water sources, mobility corridors, and customary governance systems. It provides a structured mechanism for equitable negotiation, transparent decision-making, and sustainable investment outcomes. No permits, surveys, feasibility studies, or site activities should commence until FPIC is fully completed, documented, and validated.

**Historical Realities and Rationale for FPIC in Drylands**

Kenya's drylands have long-standing legacies of fragility shaped by:

- Historical land alienation and boundary ambiguities
- Marginalization from public investment and service delivery
- Cross-border dynamics and clan-based governance
- Low literacy and limited access to formal legal systems
- Recurrent droughts, climate shocks, and ecological fragility
- Weak enforcement of land rights and inadequate oversight of investments

FPIC therefore supports the realisation of key priorities, namely:

a) *Protection of Community Land Rights:* Dryland economies depend on communal land, mobility routes, and shared grazing regimes. FPIC safeguards these rights and prevents dispossession
b) *Equity and Inclusion***:** Pastoral and agro-pastoral communities often face structural barriers to negotiation. FPIC addresses power asymmetry through transparency, advisory support, and procedural fairness
c) *Conflict Prevention and Peacebuilding:* Investment decisions without consultation can trigger inter-clan, cross-border, or livelihood-based conflicts. FPIC provides a peaceful, legitimate platform for decision-making
d) *Sustainable Development and Local Prosperity:* When communities consent based on clear benefit-sharing mechanisms, investments are more resilient, equitable, and sustainable

**Legal and Policy Basis for FPIC**
FPIC under this Framework is grounded in the following:

**Kenyan Law**

- Constitution of Kenya (2010): Articles 10, 27, 40, 63, 66
- Community Land Act (2016)
- Land Act (2012)
- National Land Commission Act (2012)
- Environmental Management and Coordination Act (EMCA, 1999)
- County Governments Act (2012)

**Regional and International Standards**

- African Charter on Human and Peoples' Rights
- UN Declaration on the Rights of Indigenous Peoples (UNDRIP)
- IFAD, FAO & AfDB Guidelines on Responsible Agricultural Investment
- World Bank ESS7 on Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities

This chapter provides the operationalization of these obligations specifically for drylands.

Guiding principles under this phase include:

| Principle | Meaning |
|---|---|
| Free | No coercion, bribery, intimidation, or political pressure<br><br>The process should be conducted in a manner that allows adequate time for reflection and avoids actions that may create pressure for early agreement, including time constraints, incentives, or implied commitments. |
| Prior | FPIC concludes before any administrative or sectoral approval or project activities |
| Informed | Communities receive clear and balanced information on impacts, benefits, risks, and alternatives in Kiswahili and local language. |
| Consent | Collective decision through the CLMC and general assembly with recorded quorum and vote. |
| Inclusive | Women, youth, minority clans and mobile pastoralists do not just participate but proactively engage and hold active leadership roles during the sessions<br><br>FPIC should be conducted in a non-discriminatory manner, with particular attention to the rights and needs of, as well as the challenges faced by, individuals from minority clans, groups or populations that may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced by women, youths, and men. |
| Documented | Each session yields minutes, attendance list, photos, and observer report/statements stored in the investor register at the county's central data depository centre. |
| UNGPs on Business and Human Rights | A set of principles established by United Nations to guide governments, businesses and other stakeholders on preventing and addressing business-related human rights harm. |

FPIC should take into account the historical contexts of fragilities and pastoral mobility, multi-use landscapes, cross-clan resource sharing, low literacy, and seasonal migration. Schedules should therefore follow seasonal mobility calendars, event/ activity schedules, use radio and mobile communication to announce meetings for distant and 'hard-to-reach' groups, and provide adequate days where necessary to reach and engage all rightsholders.

**Detailed step-by-step FPIC process**

| Step | Objective | Key actions | Outputs |
|---|---|---|---|
| 4.1 Develop community FPIC protocol | Establish community-owned rules for FPIC. | - CLMC & CSO support, draft and adopt a protocol (defining quorum, representation, languages, observers, documentation, pause/stop triggers).<br>- Investor signs acknowledgement to abide by the protocol. | Signed FPIC protocol developed plus an investor acknowledgment. |
| 4.2 Information disclosure | Ensure communities are fully informed. | - Investor submits an information pack containing project summary, maps, alternatives including no-project option, | Information pack (English & Kiswahili); |

| | | | |
|---|---|---|---|
| | | expected benefits & risks, timeline, benefit-sharing options, grievance and exit plans.<br>- Translate & present the investor information pack in local language to the community using visuals, radio, and storyboards; allow minimum 60 days for review. | Community Q&A log for grievances. |
| 4.3 Consultations and Barazas | Gather views and concerns from all users. | - Hold at least 3 forums with communities ensuring separate women & youth sessions.<br>- Schedule barazas around seasonal mobility and community event schedules; use radio/SMS alerts for remote herders.<br>- Invite CSOs observers | Consultation reports (minutes, attendance, photos, observer forms). |
| 4.4 Negotiation of terms | Reach mutual agreement on conditions. | - CLMC negotiation committee and investor negotiate with support of independent legal, financial, and technical advisors funded via investor/County/donor mechanism ensuring independence. (Where advisors are funded through external mechanisms, communities should retain the right to identify and approve advisors supporting their interests ).<br>- Negotiate on: land area, duration, benefit-sharing triggers, jobs/SMEs, environmental & social obligations, allocation of responsibilities and risks associated with the investment, grievances, monitoring, exit & restoration, dispute resolution etc.<br>- Lease duration, renewal, and termination conditions, including the community's right to cancel under Section 22 of the CLA for non-compliance, and the process for returning land to community governance on exit<br>- Asset inventory, restoration obligations, financial guarantee mechanism, and community validation of land condition upon return<br>- Identify “red-flag” clauses to avoid (confidentiality restrictions, broad waivers, unilateral termination). | A draft community investor agreement (CIA) composed of all the negotiated terms; negotiation minutes; Advisors’ report/statement. |
| 4.5 Validation & community decision | Formalize consent or rejection. | - Convene general assembly ensuring quorum as provided in the law.<br>- Present CIA in Kiswahili & local language; read aloud key clauses to the community<br>- Record vote (open or secret).<br>- Document objections in the Objection Register and redress given. | FPIC resolution form; Objection register; Validation of meeting minutes; etc. |
| 4.6 Registration & public disclosure | Legalize and publicize outcome. | - Submit CIA together with FPIC Resolution to Community land registrar.<br>- Store in county investment register<br>- Publish a plain language FPIC Summary (Kiswahili & local language-preferably) on noticeboards and county website with grievance contacts. | Registered CIA; Disclosure notice; Grievance contact poster. |

Decision options:

Go: Criteria met → Proceed to next phase
Conditional Go: Minor gaps → corrective actions required
No Go: Critical risks or disputes → halt process until resolved/end of project

Key outputs in this phase:

- Community FPIC protocol & investor acknowledgment
- Information pack (translated into local languages)
- Consultation reports (3 plus women/youth sessions)
- Negotiation minutes & draft CIA
- Independent advisors'/CSO report
- FPIC resolution form including objection register
- Registered CIA
- Public disclosure summary

**Roles and responsibilities**

| Actor | Lead Responsibilities | Support Roles | Decision / Sign-off |
|---|---|---|---|
| CLMC | Lead FPIC; develop and adopt protocol; ensure transparency, quorum in decision-making, appoint and coordinate negotiation committee & advisors; record decisions; Co-sign off FPIC | Keep records, minutes, attendance, translations | Co-sign FPIC Resolution |
| Community Assembly | Review information; participate in consultations; vote on consent or non-consent | Hold separate sessions for women, youth, minority groups | FPIC Resolution (community decision) |
| Investor | Provide full, timely, accurate information; respect FPIC protocol & timeline; fund independent advisors; avoid coercion, political interference or bribery; ensure fair negotiation; negotiate in good faith | Provide technical clarity during negotiation | Signs FPIC Protocol Acknowledgement (not a gate) |
| County Government-legal/lands officer | Investment fund; update and maintain investment database and county investor register; provide oversight and verification, facilitate community access to technical advisors, ensure investor compliance with law and alignment with CIPD and land-use plans. Co-sign FPIC Resolution | Provide neutral support as needed | Gate 4 (County FPIC Compliance Confirmation) |
| CSOs / Independent Advisors/Observers | Verify process integrity; maintain grievance log; submit observer reports.<br>Review investor proposals, maps, contracts; Flag risky or exploitative clauses<br>Provide value-for-money in-depth analysis and support community negotiations with legal and economic analysis; report to community only | Support LIC and community | Observer report (non-binding) |
| Government agencies (KenInvest, NLC, MEMD, MoALD) | Due diligence support; observe FPIC processes; Guarantee compliance with national land and investment laws; Provide technical mapping support; Monitor large scale or high-risk investments; ensure transparency. | Technical support, oversight, and monitoring | |

**Risks and mitigation**

| Violation | Remedy |
|---|---|
| Pre-FPIC permit or site work | Regularize by undertaking FPIC |
| Exclusion of groups (women/youth/minorities) | Repeat affected sessions with inclusion of the group that was left out. |
| Coercion or bribery | Pause/ Investigation including redress |
| False or withheld information | Process paused until full disclosure |
| Fabricated records | Nullification of FPIC resolution and fresh process. Seek justice |
| Violations (violating the FPIC process & provisions, the CIA terms, etc.) | Document the violations, pause the process, External audit |

*No investment may proceed to agreement or implementation without verifiable evidence that Free, Prior, and Informed Consent was obtained through inclusive, documented, and independent processes, and that all communities retain the right to pause or decline participation at any stage before contract execution.*

**Good FPIC practice tips include:**

- Align meetings with seasonal and activity event calendars and market days to reach pastoralists
- Use local radio, storyboards, and SMS updates for dispersed groups
- Ensure minority groups, women and youth are represented and lead at least one FPIC session each
- Share FPIC summaries with communities (in Kiswahili and local language)

**Compliance, Monitoring, and Enforcement**

*1. Pre-FPIC Compliance*

- No site entry before FPIC completion
- All information verified

*2. Post-FPIC Monitoring*

- Joint monitoring committees established
- Annual community-level monitoring reports
- Mid-term and final audits

*3. Enforcement*

- County and national agencies may suspend permits
- Community may trigger reviews for breaches
- CIA terms legally binding and enforceable

**FPIC Templates/Annexes**

- Annex A: FPIC Protocol Template
- Annex B: Consultation Report Format
- Annex C: CIA Structure and Clause Guidance
- Annex D: FPIC Resolution Template
- Annex E: Grievance Redress Mechanism Framework
- Annex F: Monitoring and Compliance Checklist

## Phase 5: Agreement and Implementation

The purpose is to convert community consent from the FPIC process into a legally binding and enforceable Community Investor Agreement (CIA), register it with the appropriate authorities, and launch implementation under transparent, participatory, and climate-resilient systems of monitoring and benefit-sharing.
This phase ensures that negotiated commitments translate into clear rights, responsibilities, and measurable benefits for all parties.

**A. Legalization of the Community Investor Agreement (CIA)**

The key objective is to formalize and register the CIA in conformity with Kenyan law, ensuring all FPIC outcomes are preserved and enforceable.

| Step | Objective | Key actions | Outputs |
|---|---|---|---|
| 5.1 FPIC compliance verification | Confirm that Gate 4 requirements were met before contract finalization. | - County verifies FPIC Certificate and Pre-FPIC Compliance Declaration.<br>- No permits or works allowed prior to FPIC approval | FPIC Compliance Certificate attached to CIA file. |
| 5.2 Legal review and finalization | Validate conformity with laws and negotiated outcomes. | - County Legal Officer and independent advisor review CIA for alignment with Community Land Act (2016), Land Act (2012 Part VIII), Land Registration Act (2012), EMCA (1999), and PFM Act (2012).<br>- Confirm that exit and land return provisions are consistent with the community's statutory reversionary interest under the Community Land Act, and that restoration obligations are enforceable with financial assurance.<br>- Confirm no new clauses added post-FPIC<br>- Translate into Kiswahili / local language and prepare summary sheet.<br>During the review, particular attention should be given to agreement provisions that may expose communities to disproportionate legal or financial risk, including dispute resolution mechanisms that may be inaccessible to communities and financial obligations linked to project failure or withdrawal. | Legally vetted bilingual CIA + Legal Compliance Certificate. |
| 5.3 Ratification and public signing | Obtain formal consent of community and investor. | - Convene General Assembly (2/3 quorum).<br>- Read key clauses aloud; sign before County + CSO witnesses.<br>- Video or photo record event for public archive. | Signed CIA; Attendance Register; County Witness Certificate |
| 5.4 Registration and disclosure | Give the agreement legal standing and transparency. | - File CIA with County Land Board<br>- Register under Land Registration Act (2012) with term, renewal and termination conditions.<br>- Record entry in County Investment Register.<br>- Publish plain-language summary (Kiswahili/local) on noticeboards and county website. | Registered CIA + Public Disclosure Notice + Digital archive entry |

**B. Implementation and Oversight**

The objective is to operationalize the CIA through inclusive oversight, benefit-sharing, environmental and social safeguards, and adaptive management.

| Step | Objective | Key Actions, | Outputs |
|---|---|---|---|
| 5.5 Establish joint implementation committee (JIC) | Create an accountable body to oversee execution | - Form JIC (community ≥ 50 %, investor ≤ 40 %, county 10 %).<br>- Ensure at least one woman and one youth hold leadership roles<br>- Define ToR covering workplans, budgets, conflict mediation, and grievance oversight<br>- Train members on contract management and financial tracking | JIC Constitution |
| 5.6 Operationalize Benefit-sharing and community fund | Implement economic and social benefits | - Establish Community Benefit Fund as trust or co-op account (3 signatories: woman, youth, elder)<br>- Define benefit types (cash, in-kind, infrastructure)<br>- Fix payment triggers (time/volume/profit).<br>- County Treasury audits annually and presents public report. | Benefit Fund Registration Docs; Audit Schedule; Public audit summary |

| | | | |
|---|---|---|---|
| 5.7 Implement Environmental & Social Management (ESMP) | Ensure climate-resilient and environmentally sound operations | - Integrate approved ESMP and climate-adaptation measures (SDG 13 & 15)<br>- JIC tracks indicators on water, biodiversity, jobs, gender, climate risk<br>- NEMA & NDMA conduct quarterly monitoring (first year) then bi-annual audits | Monitoring reports; ESMP checklist; NDMA/NEMA Audit findings |
| 5.8 Activate Grievance and Adaptive management system | Resolve disputes quickly and learn from experience | - Launch CIA-based grievance mechanism<br>- Acknowledge within 7 days; resolve within 21 days; escalate to County Grievance Committee and if unresolved within 45 days, refer to ELC.<br>- JIC records and reviews quarterly lessons for adaptive management. | Grievance Register; Quarterly review reports; Corrective action plans |
| 5.9 Reporting and public accountability | Maintain continuous transparency | - Investor submits semi-annual compliance & benefit reports.<br>- JIC hosts bi-annual community barazas to present progress and budgets.<br>- Publish annual community investment report | Reports; baraza minutes; Annual public summary |

**Gate 5: Agreement & Implementation Gate**
The purpose is to verify that the CIA is lawful, inclusive, transparent, and implementation ready.

Approval criteria include:
- FPIC Certificate verified
- CIA legally reviewed and bilingual version attached
- General Assembly ratification (2/3 quorum) documented
- CIA registered under Land Registration Act (2012)
- JIC constituted and trained
- Benefit Fund operational with governance rules
- ESMP and grievance system activated
- Digital archive and public disclosure completed

**Outputs**
- Legally vetted bilingual CIA
- FPIC Compliance certificate & legal review memo
- Ratification minutes & attendance register
- Registered CIA & Public disclosure notice
- Joint Implementation Committee (ToR & Roster)
- Community Benefit Fund registration documents & audit plan
- ESMP and a Monitoring schedule
- Grievance Register & Adaptive Management Plan
- Gate 5 approval note

**Roles and responsibilities**

| Actor | Lead Responsibilities | Support Roles | Decision / Sign-off |
|---|---|---|---|
| CLMC | Present CIA to Assembly; nominate JIC members; oversee benefit fund governance | Keep community updated | Co-sign Gate 5 documents |
| Community Assembly | Ratify CIA (2/3 quorum); approve implementation start | Participate in signing ceremony | Ratification (Assembly sign-off) |
| Investor | Implement obligations; provide reports; take part in JIC; honour ESMP and benefit terms, support capacity building and grievance resolution | Support monitoring | Sign CIA (not gate authority) |

| | | | |
|---|---|---|---|
| County Government (Legal, Treasury, Lands, Environment) | Legal review; register CIA; monitor environmental and social commitments; lead oversight; enforce sanctions | Publish disclosure; audit benefit fund;<br>Archive all documents in the county register and central data repository | Gate 5 (County implementation approval) |
| JIC | Coordinate implementation; track benefits, ESMP, grievances | Prepare periodic reports | Reports to County & Community |
| National Agencies (NEMA, NDMA, WRA) | Oversight on land, environment, climate risk, and resource use; Conduct statutory audits (environment, climate, water) | Provide technical backstopping | Audit sign-off only |
| CSOs / Observers | Support capacity building; verify transparency; publish independent progress briefs | | |

**Sanctions and remedies**

| Violation | Remedy / Corrective action |
|---|---|
| Failure to register CIA | Halt implementation until registration |
| Non-payment or missed benefit triggers | Investor liable for penalty + interest; JIC initiates corrective plan |
| ESMP non-compliance / pollution | Immediate remediation & possible project suspension by NEMA |
| Grievance delays > 30 days | County intervention & public notice of violation |
| Failure to hold barazas / publish reports | County withholds permits until compliance |
| ≥ 2 violations | Automatic external audit by County Oversight Committee |

**Minimum standard**

*No investment shall proceed without a registered, bilingual Community–Investor Agreement that embodies FPIC commitments, defines benefit distribution, integrates climate and social safeguards, and establishes monitoring and grievance systems verifiable by the County and the community.*

**Good practice tips**

- Keep signing ceremonies public and recorded
- Store community copies both physically and digitally within 10 days
- Ensure ≥ 40 % women and youth representation in JIC leadership
- Link Benefit Fund to existing co-operative or savings structures
- Integrate climate adaptation and resilience actions in annual workplans
- Include Data Protection clauses for all financial records
- Publish annual “Investment in the Drylands” progress summary

## Phase 6: Monitoring, Reporting, and Exit

The purpose is to ensure that land-based investments in Kenya’s drylands are implemented, monitored, and concluded in a transparent, inclusive, and sustainable manner.

This phase verifies that all commitments made in the Community–Investor Agreement (CIA) are honoured, that benefits and safeguards are realized, and that projects are responsibly closed with the land restored and lessons documented for future policy improvement.

**A. Monitoring System**

Aim is to track compliance with the legal, social, environmental, and economic commitments outlined in the CIA throughout the project lifecycle.

| Step | Key Actions | Outputs |
|---|---|---|
| 6.1 Activate the Monitoring and Evaluation Plan (MEP) | - Upon Gate 5 approval, the Joint Implementation Committee (JIC) adopts an M&E Plan aligned with the CIA and ESMP. | Approved M&E Plan; list of community monitors. |

| | | |
|---|---|---|
| | - Define indicators, frequency, and responsible actors.<br>- Nominate trained Community Monitors (gender-balanced). | |
| 6.2 Indicator Tracking and Data Collection | - Monitor quarterly across key domains such as:<br>- Land & tenure compliance<br>- Environmental and climate performance (water, vegetation, wildlife)<br>- Social and gender outcomes (jobs, participation)<br>- Benefit Fund audits<br>- Grievance resolution rates<br>- Climate-risk management and NDMA alerts<br>- Include baseline and target values for each indicator | Quarterly monitoring reports |
| 6.3 County and National Oversight | - County consolidates JIC reports and submits semi-annual summaries to NLC, NEMA, and NDMA<br>- NEMA conducts independent environmental audits as per Environmental Audit Regulations<br>- NDMA integrates drought-risk data into investment tracking | Semi-annual County Report; NEMA/NDMA Audit notes. |
| 6.4 Data Management and Transparency | - Upload reports to the County Investment Register<br>- Summaries posted in plain language on community noticeboards and county portals<br>- Where internet is limited, use radio updates or physical notice circulation | Digital upload records; public Disclosure notices. |

**B. Reporting and Learning**

The objective is to promote continuous accountability, adaptive management, and knowledge exchange across counties and national platforms.

| Step | Key Actions | Outputs |
|---|---|---|
| 6.5 Routine reporting | - Investor submits semi-annual progress reports to JIC and the county<br>- JIC compiles quarterly briefs shared with communities through barazas, local radio, social media, etc. | Semi-annual Investor reports; Quarterly JIC briefs. |
| 6.5 Annual investment review forum | - County hosts a multi-stakeholder forum each year bringing together communities, investors, national agencies, and CSOs<br>- Present performance, audit findings, and lessons learned<br>- Women and youth monitors co-present results,<br>- Forum adopts corrective actions and policy recommendations | Annual forum proceedings; Action plan. |
| 6.7 Adaptive management and policy feedback | - JIC updates workplans based on lessons and audit outcomes.<br>- Counties integrate findings into CIDPs and ASAL investment strategies.<br>- National Secretariat compiles biennial Lessons Briefs to revise the Framework. | Revised workplans; Policy update memo; Biennial lessons brief. |

**C. Exit and Closure**

The aim is to guide the responsible completion or termination of investments, ensuring environmental restoration, benefit reconciliation, and transparent handover.

| Step | Key Actions | Outputs | Indicative Timeline |
|---|---|---|---|
| 6.8 Closure notification | Investor issues written notice to County and CLMC six months before project completion or termination.<br>Notice should confirm the basis for land return and specify the timeline for formal reversion to community governance, including any registration steps required to give effect to the community's reversionary interest. | Notice of Intent to Close | 6 months prior |

| | | | |
|---|---|---|---|
| 6.9 Environmental & social restoration | - Implement Closure Plan and site rehabilitation per ESMP.<br>- NEMA conducts independent audit; community validates restoration via field inspection.<br>- Address outstanding grievances.<br>- Conduct an asset inventory and confirm which assets transfer to the community, which are removed, and the timeline for each, in line with the CIA exit provisions. | Closure Audit Report; Restoration Certificate | Within 3 months post-closure |
| 6.10 Financial and benefit reconciliation | - Finalize Benefit Fund balances and pending obligations.<br>- County Treasury verifies and publishes audited report. | Final Benefit Statement; Audit Report | 2 months |
| 6.11 Final handover & post-closure review | - Sign project handover Certificate among investor, CLMC, and County<br>The handover certificate should confirm that the lease has been formally extinguished, that land has reverted to community governance, and that documentation of renewed community tenure has been registered.<br>- Conduct post-closure monitoring 12 months later to confirm restoration and livelihood outcomes<br>- Submit final lessons log | Handover Certificate; Post-Closure Report; Lessons Log | 1 month after audit; 12-month follow-up |

**Gate 6: Closure and Exit Gate**

The purpose is to confirm that all obligations under the CIA have been fulfilled and that the project has been responsibly concluded.

The approval criteria include:

- Monitoring and audit reports up-to-date and publicly disclosed
- Environmental and social restoration completed and verified
- Benefit Fund reconciled and audited
- All grievances resolved or formally closed
- Post-closure sustainability review (after 12 months) planned
- Signed handover certificate and lessons log attached

**Deliverables**

- Monitoring & Evaluation Plan (MEP)
- Quarterly Monitoring and Semi-annual County Reports
- Annual investment review proceedings
- Revised workplans and Corrective action records
- Closure audit and Restoration certificates
- Handover Certificate
- Gate 6 Approval note.

**Roles and Responsibilities**

| Actor | Lead Responsibilities | Support Roles | Decision / Sign-off |
|---|---|---|---|
| JIC | Oversee implementation; collect monitoring data; coordinate grievance handling | Prepare quarterly summaries | None |
| CLMC | Validate monitoring reports; check benefit distribution; verify restoration | Present updates to community | Sign restoration confirmation |
| Community Assembly | Validate restoration and benefits during exit | Participate in closure barazas | Sign Handover Certificate |
| Investor | Provide data and resources for monitoring; implement restoration plan; close outstanding obligations | Support closure activities | None |

| | | | |
|---|---|---|---|
| County Government | Consolidate monitoring data; enforce compliance; lead closure and archive documentation | Maintain investment register; Archive all documents in the register | Gate 6 (Closure and Exit Approval) |
| National Agencies (NEMA/NDMA/WRA) | Conduct independent exit audits and environmental verification; integrate data into national databases; track climate and resource impacts. | Provide final technical reports | Restoration Certificate |

**Risks and mitigations**

| Violation | Corrective action |
|---|---|
| Failure to submit reports/audits | County issues compliance notice; repeat default → suspension of investor permits. |
| Environmental degradation on exit | NEMA enforces remediation at investor's cost, plus penalty. |
| Unreconciled Benefit Fund or unpaid dues | County Treasury orders forensic audit; publish results. |
| Unresolved grievances at closure | Delay Gate 6 approval until resolved; escalate to ELC if persistent. |
| Recurrent non-compliance (>2 violations) | County Oversight Committee initiates external audit and public disclosure. |

**Legal and policy anchors**

- Constitution of Kenya (2010) – Articles 10, 42, 69 & 232
- Community Land Act (2016) & Regulations (2017)
- Land Act (2012) & Land Registration Act (2012)
- Environmental Management and Coordination Act (1999) & Environmental Audit Regulations (2003)
- Climate Change Act (2016) – Section 19 on reporting obligations
- Public Finance Management Act (2012) – Benefit Fund oversight
- County Governments Act (2012) – Public accountability
- Data Protection Act (2019) – Data security for community records
- FAO VGGT (2012); IFC Performance Standards 1 & 7; UN Guiding Principles on Business & Human Rights.

**Minimum Standard**

*An investment shall be considered complete only after all financial, environmental, and social obligations have been met; land and natural resources have been restored and verified by NEMA and the community; and a Final Handover Certificate and Post-Closure Review have been completed and archived in the county register.*

**Good Practice Tips**

- Train community monitors (≥ 40% women/youth) to collect geo-referenced data via mobile tools
- Hold barazas in local languages to present monitoring results
- Integrate climate and livelihood indicators into county CIDP and NDMA systems
- Archive all reports in open-access digital and physical formats
- Summarize lessons from Gate 6 reviews in annual drylands investment learning notes

**Transition to Framework review**

Lessons from Gate 6 Closure Reports and review inform periodic updates of this Framework and county-level by-laws, ensuring that Kenya's drylands investment governance remains adaptive, inclusive, and evidence-driven.

## 6. ROLES AND RESPONSIBILITIES

### 6.1 Investors

- Conduct rigorous due diligence and seek legal compliance with Kenyan law
- Submit a comprehensive Expression of Interest (EOI) that includes project scope, intended impacts, benefit-sharing proposals, and environmental considerations
- Engage transparently with both community institutions and county governments
- Respect community protocols and decision-making structures

- Secure FPIC before land acquisition or implementation
- Co-develop and implement the CIA with the community
- Establish grievance redress mechanisms
- Commit to long-term monitoring and reporting
- Ensure fair exit and land restoration upon project closure

### 6.2 Communities and Community Land Management Committees (CLMCs)

- Hold primary rights over their land and determine whether, how, and when to engage with investors
- Develop a community land use plan and vision prior to negotiations
- Nominate and mandate an inclusive Negotiation Committee
- Request independent legal, financial, or technical support during the engagement
- Participate actively in all FPIC steps
- Review, understand, and ratify final agreements through the General Assembly
- Monitor implementation through community representatives
- Raise grievances through agreed structures and participate in evaluation

### 6.3 County Governments

- Maintain an up-to-date investment register and publish EOIs
- Screen investment proposals and facilitate compliance reviews
- Support community preparation processes where capacity is limited
- Verify legality of land documents and investor claims
- Participate in FPIC observations and confirm procedural compliance
- Approve and archive CIAs in county records
- Monitor project impacts through the county land board and relevant departments

### 6.4 National Government Agencies (Ministry of Lands, NLC, NEMA, etc.)

- Ensure consistency with national land use policy and environmental regulation
- Provide oversight in the approval of leases and licensing
- Mediate conflicts that exceed county jurisdiction
- Build county capacity for land governance and investment screening

### 6.5 Civil Society Organizations

- Provide legal empowerment and community training
- Facilitate FPIC processes in a culturally appropriate and inclusive manner
- Offer neutral facilitation in investor–community dialogues
- Support grievance resolution and contract monitoring
- Document and disseminate lessons learnt for broader advocacy

## 7. PROHIBITED PRACTICES

The following practices are not permitted under this Framework. This Framework adopts a zero-tolerance approach to practices or actions that undermine community land rights, violate legal provisions, and create conditions for conflict, exclusion, or manipulation. Counties and communities should immediately suspend engagement with any investor who engages in these actions.

*Entering Community Land Without Permission*

No investor may access, survey, map, peg, drill, fly drones, or carry out feasibility work on community land without the community's prior approval through its legally recognized structures. Early technical assessments without consent are prohibited.

*Using Brokers, Political Intermediaries, or Parallel Committees*

Investors must not rely on local brokers, politicians, chiefs, influential individuals, or handpicked groups to negotiate on behalf of the community. Creating or supporting parallel committees to bypass the CLMC or community assembly is prohibited.

*Coercion, Intimidation, or Political Pressure*

Communities must not be pushed into decisions through threats, promises of services, promises made during election seasons, or suggestions that approvals have already been granted by government. Consent obtained under pressure is invalid.

*Excluding Women, Youth, Minority Clans, or Mobile Pastoralists*
Any engagement that sidelines women, youth, minority groups, persons with disabilities, or pastoralists who move seasonally is prohibited. Meetings held at times or locations that limit participation of these groups are also unacceptable.

*Secret Meetings, Undisclosed Negotiations, or Side Deals*
Private meetings, selective consultations, or undisclosed agreements with individuals are not allowed. No MoU, LOI, draft contract, or preliminary understanding may be signed outside the community's formal structures.

*Misrepresentation or Withholding of Information*
Investors must not provide misleading or incomplete information about expected land requirements, financial returns, carbon prices, project timelines, environmental impacts, or long-term obligations. Hiding risks or downplaying potential impacts is prohibited.

*Personal Payments, Gifts, or Favors*
Providing cash, gifts, transport money beyond reasonable facilitation, or promises of personal benefits to individuals—including community leaders or county staff—is strictly forbidden. All benefits must be negotiated transparently for the whole community.

*Engaging During Conflict, Displacement, or Extreme Stress*
Investors must not pursue agreements when communities are displaced, facing active conflict, recovering from violence, or experiencing drought emergencies that limit meaningful participation. County peace structures and NDMA alerts must be considered before proceeding.

*Signing Agreements Before FPIC is Completed*
No MoU, lease, licence, consent letter, or Community–Investor Agreement may be signed before the FPIC process is completed, documented, and validated by the community in line with the Community Land Act and its Regulations.

*Bypassing County Planning, Legal Processes, or Sector Approvals*
Investors may not bypass county planning offices, ignore county land-use plans, skip required environmental assessments, or proceed without relevant sector approvals. All legal steps must be followed in sequence.

*Blocking Mobility Routes or Altering Shared Resource Access*
No investment should close livestock corridors, restrict water access, limit dry-season grazing areas, or fragment shared rangelands without community approval. These resources are central to dryland livelihoods and protected under customary and statutory rights.

*Dividing Communities or Fuelling Internal Tensions*
Actions that exploit clan divisions, favour specific groups, or deliberately create conflict within the community are prohibited. Investors must not use community disagreements to fast-track approvals or weaken collective decision-making.

*Manipulating or Fabricating Documentation*
Forging minutes, altering attendance lists, fabricating FPIC records, or influencing county or community documentation is prohibited. Any such action should trigger immediate suspension of engagement.

# ANNEXES

## Annex 1: Investment Screening Checklist

*(County & Community Land Management Tool)*

**Purpose:**

This checklist allows counties and community institutions to screen investment proposals before they enter the Due Diligence and FPIC phases. It is grounded in the Community Land Act (2016), County Governments Act (2012), Physical and Land Use Planning Act (2019), EMCA (1999), and recognised good practice for dryland governance.

This tool should be completed jointly by the County Lands/ASAL Unit, CLMC, and relevant county departments before an investor proceeds to Phase 1 or 2 of the investment lifecycle.

**A. LEGAL IDENTITY & BASIC ELIGIBILITY**

1. Is the investor legally registered in Kenya?
   □ Yes □ No
2. Has the investor provided complete company documents (registration, directors, KRA PIN)?
   □ Yes □ No
3. Has beneficial ownership been disclosed and verified?
   □ Yes □ No
4. Has the investor provided a physical address, contact person, and project focal point?
   □ Yes □ No
5. Is the investor legally allowed to operate in the proposed sector (energy, carbon, mining, agriculture, etc.)?
   □ Yes □ No

**B. LAND STATUS & TENURE VERIFICATION**

6. Is the land registered as community land, or is it under a legitimate adjudication process?
   □ Yes □ Ongoing □ No
7. Has the community confirmed that the proposed area is not under dispute?
   □ Yes □ No
8. Does the proposed area overlap with dry-season grazing reserves, mobility corridors, water points, sacred sites, or other critical livelihood areas?
   □ No □ Yes (High-Risk Flag)
9. Has the county confirmed the land is not earmarked for a public purpose or county project?
   □ Yes □ No

**C. ALIGNMENT WITH COUNTY PLANS & SECTOR LAWS**

10. Is the proposal consistent with or not in conflict with the County Integrated Development Plan (CIDP)?
    □ Yes □ No
11. Does it align with the County Spatial Plan, Community Land Use Plan, or any relevant local planning framework?
    □ Yes □ No
12. Have all relevant sector requirements been identified (energy licensing, water permits, wildlife regulations, mining laws, carbon rules, etc.)?
    □ Yes □ No
13. Does the proposal require an ESIA or full Environmental and Social Impact Assessment?
    □ Yes □ No

**D. INVESTOR TRACK RECORD & CONDUCT**

14. Does the investor have experience with similar projects?
    □ Yes □ No
15. Has the investor faced complaints, conflicts, litigation, or project withdrawals in other communities or counties?
    □ No □ Yes (explain)
16. Is there any evidence of brokers, political intermediaries, or parallel committees being used?
    □ No □ Yes (Red Flag)
17. Has the investor committed to follow the FPIC process without shortcuts or early site access?
    □ Yes □ No

**E. PROJECT CHARACTERISTICS & RISK SCREENING**

18. Is the type of project suitable for the ecological and livelihood context of the area?
    □ Yes □ No

19. Could the project restrict livestock mobility, water access, grazing patterns, or shared resources?
    □ No □ Yes (High-Risk Flag)
20. Could the project trigger or worsen clan tensions, political disputes, or cross-border conflict?
    □ No □ Yes
21. Does the project require long-term land commitments (leases, carbon contracts, easements over 10 years)?
    □ No □ Yes (Flag for deeper review)
22. Does the project involve carbon rights, carbon revenue sharing, or multi-decade carbon agreements?
    □ No □ Yes (Requires national carbon compliance)

**F. COMMUNITY AWARENESS & EARLY DISCLOSURE**

23. Has the CLMC received a clear written description of the investor's interest?
    □ Yes □ No
24. Has a community baraza been held to disclose the investor's approach and proposed activities?
    □ Yes □ No
25. Was the disclosure meeting inclusive of women, youth, minority clans, and mobile pastoralists?
    □ Yes □ No
26. Has it been made clear to the community that this is NOT FPIC, but only an initial awareness step?
    □ Yes □ No

**G. COUNTY MULTI-DEPARTMENT REVIEW**

27. Has the County Lands/ASAL Unit reviewed the proposal?
    □ Yes □ No
28. Have Physical Planning, Environment/NEMA, Water, and ASAL/Peace Units reviewed the proposal?
    □ Yes □ No
29. Has the county compiled an internal screening file for the proposed investment?
    □ Yes □ No

**H. HIGH-RISK FLAGS SUMMARY**

If any of the following are **YES**, the project requires heightened due diligence or should not proceed:

- Investor uses brokers or political actors
- Land overlaps mobility corridors or water points
- Land is disputed
- Project requires long-term tenure (carbon, concessions)
- Investor has history of conflict
- Project risks fuelling clan or cross-border tensions
- Project overlaps dry-season grazing reserves
- Proposal conflicts with county plans

**GATE 1: SCREENING DECISION**

**Outcome:**

□ **Go** – Requirements met; proceed to Phase 2
□ **Conditional Go** – Gaps identified; corrective actions required before moving forward
□ **No Go** – Major risks or gaps; proposal cannot proceed

**Reasons for Decision:**

……
……

**Signatures:**

- County Lands / ASAL Officer: _____
- CLMC Chairperson: _____
- Community Representatives (Women & Youth): _____
- County Environment/NEMA Officer: _____
- County Physical Planning Officer: _____
- County Peace/ASAL Unit Representative: _____

**Date:** _____

**Annex 2: Gate Decision Summary**

| Gate | Lead Signatory | Required Co-signatories | Purpose |
|---|---|---|---|
| Gate 1 – Due Diligence | County Lands/ASAL Unit | CLMC Chair; County Environment/Planning Officer | Confirm land status, investor identity, and risk screening |
| Gate 2 – EOI | County Investment Desk | CLMC acknowledgment | Confirm completeness and public disclosure |
| Gate 3 – Community Readiness | County Lands/ASAL | CLMC; CSO readiness report | Confirm LIC, by-laws, and preparedness |
| Gate 4 – FPIC Compliance | County?? | CLMC | Confirm lawful consent or non-consent |
| Gate 5 – Agreement & Implementation | County Legal | CLMC; JIC roster | Confirm CIA legality and readiness for implementation |
| Gate 6 – Exit & Closure | County Lands/Environment | CLMC; Community Assembly; NEMA | Confirm restoration, benefit reconciliation, and project closure |

**Annex 3: Summary of Legal and International Frameworks Applicable to Each Phase**

| Phase | Kenya laws | Global and regional frameworks |
|---|---|---|
| Phase 1: Due Diligence | Constitution of Kenya (2010); Community Land Act (2016) & Regulations (2017); Land Act (2012); Land Registration Act (2012); Physical and Land Use Planning Act (2019); Environmental Management and Coordination Act (EMCA, 1999); Climate Change Act (and amendments); Access to Information Act (2016); Data Protection Act (2019); NDMA Act; Water Act | VGGT; IFC Performance Standards (PS1, PS7); UN Guiding Principles on Business & Human Rights; AU Framework & Guidelines on Land Policy |
| Phase 2: Expression of Interest (EOI) | Constitution (2010); Community Land Act (2016); County Governments Act (2012); Physical and Land Use Planning Act (2019); Access to Information Act (2016) | VGGT; UNGPs; AU Land Policy Framework |
| Phase 3: Community reparation and mobilisation | Constitution (2010); Community Land Act (2016) & Regulations (2017); Land Act (2012); County Governments Act (2012); Physical and Land Use Planning Act (2019); | FAO FPIC guidance; FAO VGGT; IFAD FPIC guidance |
| Phase 4: FPIC & negotiation | Constitution (2010); Community Land Act (2016) & Regulations (2017); Land Act (2012); Land Registration Act (2012); County Governments Act (2012); EMCA (1999); National Land Commission Act (2012); Access to Information Act (2016); Data Protection Act (2019) | African Charter on Human & Peoples' Rights; IFC PS7; World Bank ESS7; UNGPs |
| Phase 5: Agreement and implementation | Constitution (2010); Community Land Act (2016) & Regulations (2017); Land Act (2012); Land Registration Act (2012); EMCA (1999); Public Finance Management Act (2012); Data Protection Act (2019); Climate Change Act; Water Act | IFC Performance Standards; VGGT; UNGPs; AU Land Policy Framework |
| Phase 6: Monitoring, Reporting & Exit | Constitution (2010); Community Land Act (2016); EMCA (1999) & Environmental Audit Regulations (2003); Public Finance Management Act (2012); Climate Change Act; NDMA mandates / Act; County Governments Act (2012); Data Protection Act (2019) | IFC Performance Standards; VGGT; UNGPs; AU Land Policy Framework |



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