

GHANA COMMERCIAL AGRICULTURE PROJECT

Community/Investor Guidelines for Large-Scale Land Transactions

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Agriculture



PREFACE

These guidelines were produced in tandem with two other project documents that aim to facilitate socially responsible land investment practices: Recommendations for Large-Scale Land-Based Investment in Ghana, and a Model Lease Agreement. These documents identify specific actions and steps to be employed by communities, investors, and government officials to realize sound investment practices in Ghana. The three documents should be used together.

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ABBREVIATIONS AND ACRONYMS

ADR	Alternative Dispute Resolution
AGRA	Alliance for a Green Revolution
CFS	Committee on World Food Security
CLMC	Community Land Management Committee
CLS	Customary Land Secretariat
CSO	Civil Society Organization
EPA	Environmental Protection Agency
ESIA	Environmental and Social Impact Assessment
FASDEP	Food and Agriculture Sector Development Policy
FDI	Foreign Direct Investment
GCAP	Ghana Commercial Agriculture Project
GCAP	Ghana Commercial Agriculture Project—
RFP	Request for Proposal
GDP	Gross Domestic Product
GIDA	Ghana Irrigation Development Authority
GIPC	Ghana Investment Promotion Centre
GoG	Government of Ghana
IFAD	International Fund for Agriculture Development
IFC	International Finance Corporation
ITFC	Integrated Tamale Fruit Company
KNUST	Kwame Nkrumah University of Science and Technology
LAP	Land Administration Project
LSLBI	Large-Scale Land-Based Investment
MLA	Model Lease Agreement
MoFA	Ministry of Food and Agriculture
MOU	Memorandum of Understanding
NADeF	Newmont Ahafo Development Foundation
NGO	Non-Governmental Organization
OASL	Office of the Administrator of Stool Lands
OMOA	Organic Mango Outgrowers' Association
PDF	Project Development Facility
PPP	Public-Private Partnership
RAI	Responsible Agriculture Investments
RSB	Roundtable on Sustainable Biomaterials
SADA	Savannah Accelerated Development Authority
TCPD	Town and Country Planning Department
USAID	United States Agency for International Development
USD	United States Dollars
VGs	Voluntary Guidelines



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INTRODUCTION

Background and objectives of the guidelines

Under the Food and Agriculture Sector Development Policy II (FASDEP II) of the Ministry of Food and Agriculture, Ghana is making targeted interventions to increase agricultural productivity, improve smallholder farmer incomes and livelihoods, and raise the contribution of agriculture to the country's gross domestic product. The Government of Ghana (GoG) recognizes the importance of commercial agricultural investments in furthering national development and has engaged the World Bank and USAID to support agricultural development through the Ghana Commercial Agriculture Project (GCAP). GCAP aims to facilitate increased access to land, private sector finance, and input and output markets by engaging smallholder farmers in public-private commercial agriculture partnerships in the Accra Plains and the Savannah Accelerated Development Authority (SADA) zone.

These Guidelines, along with GCAP's Model Lease Agreement, are part of the GoG's commitment to addressing the challenges that investors, landowners, and affected communities often encounter in commercial agricultural land transactions. The Guidelines and Model Lease Agreement also aim to offer protection to landowning communities in order to ensure that investments yield socially acceptable, environmentally sustainable, and economically rewarding outcomes that are equitably shared. Toward this end, these Guidelines and the Model Lease Agreement offer a framework for helping investors and landowning communities to pursue their respective interests in an open, cordial, inclusive, and transparent way.

In particular, the Guidelines and Model Lease Agreement aim to address three challenges that have been the source of investment risks and, in some cases, failure of commercial agricultural investments. The first is a gap in understanding and expectations between customary landowning communities in Ghana and commercial investors. In the past, the divergent perspectives of these two groups have often resulted in tremendous risks and costs once an investment is underway. Following the recommendations in these Guidelines will go a long way toward creating a solid mutual understanding of risks, benefits, and expectations before an agreement is signed. The second challenge is that investors have often failed to obtain a broad social license from the community, though this is necessary for long-term harmonious relationships and financial success. The inability of investors to obtain social license partly derives from how investors gain entry into communities in their land acquisition efforts. Following these Guidelines will help to foster a form of consent and support from the community that is broad-based and powerful. The third, related, challenge is that negotiation processes for large-scale investments have often excluded many community stakeholders, such as women, youth, and migrants. These groups are usually among those who have gained the least and lost the most in past investments, resulting in significant risks to the social and economic welfare of customary communities. Following these Guidelines will help to ensure that a wide variety of stakeholders understand the proposed investment and negotiation process, are able to provide input into this process, and are ultimately included among those who benefit from the investment.

The Guidelines incorporate international best practices and trends and are in keeping with Guidelines for Large-Scale Land Acquisitions that were developed by the Lands

Commission of Ghana in 2012. It is important to stress that the Guidelines complement, and do not replace, the adopted Guidelines of the Lands Commission when applied in GCAP operational areas. The Guidelines form part of a larger body of tools being developed to implement the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests, developed through the joint efforts of 96 countries and endorsed by the UN’s Committee for World Food Security in May, 2012, as well as the World Bank’s Principles for Responsible Agricultural Investment.

How to use these guidelines

The Guidelines should be used together with the GCAP Model Lease Agreement. This will give both communities and investors the most information possible on options and outcomes as they advance through negotiation to a written agreement. Neither document should be used as a substitute for professional advice. Both the community and the investor should seek counsel from qualified, objective legal professionals as they proceed with initial engagement and negotiations.

The Guidelines have been designed with three main stakeholders in mind: landowning communities, investors, and government/state actors. An effort has been made to ensure that this document can easily be understood, but many communities may need support in order to make full use of its content. This is largely because illiteracy rates are high and local languages are often the dominant medium of communication. Translating the document into the major local languages could be useful for reaching the target audience across the communities. So too could be communication tools that do not rely on literacy, such as illustration. Finally, the information in the Guidelines should be shared with the whole community—both men and women—at times and locations and in forms that are accessible to each group.

The Guidelines are organized into five phases (Figure 1). Although the phases are best approached sequentially, principles and concepts within each may apply to all. In some cases it will be necessary to tackle certain recommendations out of order. Each investor and each community is unique, and flexibility will be essential to developing the best choices for both, in terms of the negotiation process and the final outcomes.

Figure 1: The five phases of the guidelines



Funding, facilitation, and support

Implementing these Guidelines will require resources. Funds will be necessary to support, among other activities, community consultations and forums, the impact assessment process, the drafting of terms and conditions on behalf of the community, legal representation through the negotiation process, and monitoring and enforcement efforts over the lifespan of the investment. While the investor would be expected to directly finance some of these costs, such as those related to assessments and community consultations, many of the costs could fall on the community side. And, in most cases, communities will not have the resources to support these costs.

An important question is how to fund this needed support to communities over time. Direct payment by the investor for professional and technical services to assist communities is perhaps the most financially viable option, but it is also fraught with potential conflicts of interest. Another option is for the government to provide services, perhaps supported through investment-related taxes or a pooled investment fund.

State-sponsored assistance could be organized through existing government entities such as district assemblies, the Lands Commission, the Office of the Administrator of Stool Lands (OASL), customary land secretariats (CLSs), or the Ghana Investment Promotion Centre (GIPC). For example, the Lands Commission plans to offer the services of three lawyers on a pro bono basis to support communities to negotiate better deals with investors. Although such an approach may raise concerns about long-term sustainability, it is certainly worth considering and possibly replicating across other regions. Going forward, such an intervention could be institutionalized as a community support and advisory unit within the Lands Commission. Like the existing activities of the Lands Commission, funding for such a unit should come from the state, as a contribution towards socially responsible agricultural investment.

While the provision of pro bono legal services by the Lands Commission is promising, there is a danger that lawyers would work mainly with a few leaders from the community rather than striving for broad and representative community engagement. To ensure a higher level of objectivity and transparency, it may be advantageous to establish local assistance centres for communities engaging in or affected by large-scale land-based investments. NGOs could also provide professional services and other support to communities around investments, with joint funding from donors, the government, and/or investors. Assistance centres and NGOs would need to be particularly aware of which segments of the community have the potential to be disenfranchised (women, youth, migrants, and others) and make specific efforts to communicate effectively with those groups.

Gender considerations in implementing the guidelines

In general, women and men are affected differently by land transactions, and women often end up worse off as a result of land deals. This is partly because in most customary groups in Ghana, as in many countries, women have rights to land only through their relationship with a man, while men have land rights at birth due to their membership in a bloodline.

As secondary rights holders, women have fewer options than men when they are deprived of their land. As a result, land transfers can have a significant negative effect on women (Spichiger and Stacey 2014).

Yet women are centrally important to agricultural productivity in Ghana, and mounting evidence shows that households and communities benefit overall when women have secure rights to their land. In Ghana, while men tend to be the owners of land (Oduro and others 2011: 37), in many areas the majority of smallholder farmers are women, who contribute more than half of the food grown for household consumption (GCAP Diagnostic Review 2011: 33). Women also tend not to have a strong role in community decision-making in Ghana and are typically not viewed as having a say over land-related matters.

Because men and women tend to use land differently—and often have different information to contribute concerning land use, community needs, and development priorities in an affected community—it is important to take steps to ensure that women’s important input is captured in the investment process. For each of the phases of the investment process discussed below, these Guidelines provide specific examples and recommendations to show how communities, investors, and government actors can ensure that all women are included in participatory, meaningful consultations and engagement around commercial agricultural investments in land.

1 PHASE 1: PREPARING FOR COMMERCIAL AGRICULTURAL INVESTMENT

1.1 Overview

Communities and investors can take a number of preliminary steps to prepare for prospective investments, even before a particular investment opportunity or suitable location are identified. These steps can help lay the groundwork for choosing and nurturing a successful investment over time. The state can support these preparatory efforts in a number of important ways.

1.2 Recommendations for Stakeholders

1.2.1 Community

Establish a land governance committee to support and advise the customary authorities on matters regarding land. In many communities across Ghana, the administration and management of land, as well as relationships with investors, is a function left exclusively to the customary authorities. However, investments in the country have suffered, and some have failed because they were neither understood nor supported by a broad base of community members. The investor is in a position to insist on broader transparency and community buy-in as part of the investment process. Community Land Management (or development) Committees (CLMCs) can advise customary authorities and can help create a conduit of information between community members and leaders on important land-related decisions. Once negotiations begin for a particular investment, these committees can serve as a key point of contact for investor communication with the community.

While the structure and functions of a CLMC will necessarily vary based upon the needs of the community and the nature of the investment, successful CLMCs will:

- Build on existing customary governance structures and include customary leaders;
- Consist of members representing a cross-section of the community, specifically including women and youth in representative numbers to ensure that their views are heard;
- Be open and transparent in their dealings and decision making, posting information in a public place and in a language or depiction that can be understood by all members of the community; and
- Consistently make information available to the broader community and allow for community participation and input into decisions by creating a forum for participation that is accessible to all.

CLMCs can play a vital role throughout the different phases of the investment process, for example by: serving as a conduit of information exchange between the investor and the community, supporting and managing community involvement in the design and development of the impact assessments, representing the community in negotiations, and participating in monitoring and enforcement of the lease agreement. References are made throughout these Guidelines to different roles and functions that could be served by an effective CLMC.

Ascertain/agree on community land governance rules/by-laws through a participatory process. Most communities in Ghana do not have a written ascertainment of their customary

rules related to land, and rules can vary from community to community. This creates a significant impediment to investors, who may find it very difficult to understand what, if any, customary rules would apply to an investment in any given community. Communities that seek to understand and agree on rules and norms related to land in advance will be less likely to experience conflicts among themselves and also with any potential future investor. Because individuals and groups within each community have different roles, interests, and knowledge related to customary land use and governance, it is very important that all men and women in a given community have the opportunity to participate in, and contribute to, the ascertainment process.

Identify and record land rights holders and boundaries. Though customary rules provide for men and women in communities to access and earn a livelihood from land, customary land rights are seldom recorded in Ghana. As a result, boundary disputes within communities and between communities are very common in many areas. Sometimes latent disputes surface when an investor enters the scene. Such disputes can be very costly and risky for investors to address. Communities that seek to proactively resolve internal boundary conflicts and conflicts with neighbouring communities will likely be more attractive to investors. Recording these interests at a community level, possibly with support from the Customary Land Secretariat, where available, will further help to reduce disputes and present a clear land rights picture to the investor.

Conduct participatory land use planning to identify those areas available for investment (and those that are not). To prepare for possible future investment, a community can create a participatory mapping/land use plan that shows which areas are currently used or planned for future use and which (if any) are available for investment; an urgent need exists for this in peri-urban communities where land is in greater demand. The creation of such land use plans needs to be coordinated with the Town and Country Planning Department as stipulated in the Local Government Act, 1993 (Act 462). The most important aspect of this kind of planning is that it is participatory; that is, a wide variety of stakeholders can understand and take part and can see the end result (such as on a map). Because women often use land differently than men, it is very important to make sure that a mapping exercise includes women's current uses and plans for future use. Likewise, ensuring the participation of the youth—who are often more in tune with the current capacity and the future need for agricultural lands—is critical to developing a plan that will be accepted by the entire community. Communities may want to consider creating a land bank that identifies lands that are available for commercial agriculture investments (for more information on land banks see Losamills Consult Limited 2014).

Collaborate with neighbouring communities to identify lands that are available for investment. Where land holdings are fragmented, neighbouring communities can proactively decide to pool their available land in order to attract investment. They can also form a joint council or committee to negotiate as a single unit with potential investors. Under such an arrangement, there should be a clear understanding that potential costs and benefits will be fairly shared among the communities.

Become familiar with key concepts and issues around land use and investment options. Long before any particular investor enters the scene, communities can learn more about the

different kinds of investment that might be possible on their land, the commercial value of their land, how to negotiate with international ventures, the choices and options available for structuring an investment, and best practices in displacement/resettlement, per the World Bank's Resettlement Guidelines (see below). Communities should proactively seek this information from other communities, government officials, NGOs and investors, even if training is not readily available. Ideas for how to fund state or other mechanisms providing information to communities are discussed in the Introduction above.

1.2.2 Investor

Register as a business at the Ghana Investment Promotion Centre (GIPC). The first step for an investor seeking to do business in Ghana is to register with the GIPC. The GIPC should help the investor to understand basic principles and conditions of doing business in Ghana. It should also direct the investor to other relevant government authorities (such as the Lands Commission) that will be helpful in determining potential locations and host communities for the investment.

Learn more about available land and cultural conditions in potential investment areas.

Begin working with the Lands Commission and/or with organizations recommended by the GIPC. Once the investor has determined the best region(s) for the venture, approach the Regional Lands Commission to ascertain potentially available land and likely owners, as well as key tenure issues or possible challenges.

Become familiar with the World Bank's Resettlement Policy (World Bank OP 4.12, 2001). Whenever displacement of people who are using land is contemplated, the parties to the agreement should follow the principles embodied in this policy. A Resettlement Action Plan should be prepared by the investor prior to the lease/investment agreement, describing exactly how the investor (together with the state and affected communities) will adhere to these Guidelines. Guiding principles include:

- Involuntary resettlement should be avoided wherever possible.
- If deemed unavoidable, resettlement should be designed in the form of sustainable development programs, providing displaced people with a fair share of the benefits from the project that caused the displacement.
- Any resettlement program must restore or improve the level of livelihood and standard of living of the displaced people to pre-displacement levels or levels existing at the start of the project, whichever are higher.
- If the displacement occurs on agricultural land, alternative land of equivalent value (in terms of agricultural productivity, location, etc.) must be offered.
- Care must be taken to ensure that needs of vulnerable groups—including women and children—are met.
- People to be displaced must be involved in the resettlement process, including meaningful consultation and participation in planning and implementing the resettlement programs.

Hold first meetings with district assembly/ies. Once the potential area for investment has been narrowed down within a particular region, the investor will want to meet with relevant district assemblies to share and obtain information about land, communities, and investment planning.

Research and understand the cultural and land tenure framework in the geographic area prioritized for investment. Investors can begin to compile this information from government officials, NGOs, academics, and other investors. Where this information is lacking or exists but is not current, investors need to commission land tenure assessment studies to generate vital tenure information. Investors should understand from the outset that each community—even within the same geographic area—is likely to have a different socio-economic and cultural framework that will affect the investment context.

Develop a business plan. An investor will need to have a well prepared business plan before approaching specific communities for a long-term lease. One best practice is for investors to create a sequential plan for business development, clearly identifying the timing of the sequential phases, the amounts and types of land needed in each phase, as well as the expected crops, returns, and employment projected in each phase. This will help both the investor and the community to understand what the demands for land will be over what period of time and may help to avoid initial acquisitions that are larger than necessary.

1.2.3 Government

Streamline the entry points for investors. Under the current arrangement, investors enter and commence business in Ghana through multiple channels such as the Ministry of Food and Agriculture, Trade and Industry, and in some cases, Finance and Economic Planning. This is despite the GIPC's statutory mandate to attract, license, and regulate investors. The different entry points mean there is the possibility of different sets of rules for different investors, which makes coordination and monitoring difficult. The government should promote cooperation among the various existing entry points in order to create a single channel of entry for investors through the GIPC.

Pre-screen the would-be investor. The government, most likely through GIPC, should strengthen its basic due diligence investigations on potential large-scale land-based investors in Ghana, given the substantial social and economic impact (both positive and negative) of such investments. This pre-screening might include, at a minimum: an assessment of the investor's financial strength and technical capabilities, its proposed approach with respect to consultations and impact assessments, its history in working with communities on other projects, and its commitments in terms of the benefits that the investor will bring to the host country. (See the Ghana National Lands Commission's "Large-scale Land Acquisition Guidelines: Fact Sheet for Consideration by the Lands Commission" and the registration form GIPC/R1 of the Ghana Investment Promotion Centre.)

Support the capacity of local traditional authorities and communities to understand the commercial land values and investment negotiation processes and choices. One way to do this would be through widespread dissemination and training on GCAP's Model Lease (and these Guidelines).

Provide information to communities and traditional authorities on relevant legislation and guidelines. This would include the Lands Commission Guidelines



for Considering Large-Scale Land Transactions for Agricultural and other Purposes, EPA’s Environmental Assessment Regulations of 1999, etc.

Communicate as early as possible with the investor and communities about any plan to displace people currently occupying land contemplated for investment, using World Bank Resettlement Policy as an operating standard. This activity is likely to continue into Phase 2.

2

PHASE 2: INITIAL ENGAGEMENT BETWEEN COMMUNITY AND INVESTOR

2.1 Overview

The initial engagement phase provides a critical opportunity for investors and communities to establish a good rapport. During this phase, the parties may develop initial agreements such as a memorandum of understanding (MOU) to help guide communications between the investor and the community throughout the negotiation process. This is also a very important phase for communities to establish open and transparent internal communications systems.

2.2 The importance of community consultation

For an investment to succeed over time, the investor must foster strong reciprocal relationships with communities through regular community consultations. These consultations should begin shortly after the investor makes initial contact with a community and should continue through the life of the investment. Therefore, in addition to the specific points in the investment process where community consultation may be necessary or required by law or policy, such as those identified in Box 1, the investor should view community consultation as part of a consistent and sustained set of actions for obtaining and maintaining the social license to operate in the community.

Box 1: Consultations required by law or policy

- As part of the design of a communication strategy with the affected community.
- During the design and development of the environmental and social impact assessments as required by the Environmental Assessment Regulations (Section 12) and the IFC Performance Standard (Standards 1 and 5).
- As part of the design of both the monitoring plan and a community grievance mechanism (see Phase 5).
- The Lands Commission requires investors, before entering into a lease agreement, to hold a community forum to share information about the project and its impacts.

2.3 Principles of community consultation¹

Community consultations and engagement are necessary at all stages of the investment process.

To be effective, community consultations must secure the participation of a broad cross-section of the affected community and must specifically seek to ensure that women can meaningfully participate.

Consultations should be premised on transparency and timely access to information. Timely information dissemination to all levels and groups within the community, and in a culturally appropriate manner, is a prerequisite to meaningful consultations.

Consultations should facilitate dialogue and exchange of information and should not consist of one-way communication by the investor to the community.

The use of an independent third-party facilitator with experience conducting consultations

¹ Source: UN REDD Program 2012.

can significantly improve the process and outcomes of consultations.

For consultation to be meaningful, it must occur before decisions have been reached on the subject of the consultation.

Box 2: Importance of including youth in community consultations

Records of consultations and reports on the outcome of consultations should be prepared and publicly disclosed in a culturally appropriate form to all stakeholders at community, district, regional, and national levels.

Exclusion of youth from decision-making processes concerning land undermines the development of social license and increases risks to the community and investor. Youth are seldom part of the traditional decision-making groups (such as councils of elders) that advise the chief in regard to land disposition. Youth are similarly excluded from decision making in regard to family lands, as young people may have their own nucleus family but have not yet risen to the level of family patriarch. In parts of the country where fertile land is in high demand and fragmentation of holdings is increasing over time and generations, youth are facing serious scarcity in customary lands that may be available to them to support their own families.

Because youth are left out of political processes and decision making about land, they are often among those who oppose investments, both during and after the negotiation processes. A number of investors underscored this point in discussions with the team. Ensuring that youth are meaningfully involved in community consultations and decision making around investment is essential to obtaining social license. Targeted efforts to benefit the youth through including them in outgrower programs and farm employment have met with some success.

2.4 Recommendations for stakeholders

2.4.1 Community

Community leaders should assess their capacity needs for negotiation and gain access to needed professional services. The level and type of capacity needed will depend in part on the type of investment being proposed. For large-scale investments, the community may need access, at a minimum, to lawyers and surveyors (or others experienced in land valuation), as well as to experts in commercial business planning, agricultural economics, impact evaluation, and negotiation. These professional advisors must be objective and not be provided directly by the investor or government.

Determine who will represent the community in the initial negotiations. The community will need to designate its official point person(s) for initial communication with the investor. This is important to avoid confusion and conflict and to ensure continuity of messaging on behalf of the community. Communities may benefit from establishing a negotiation committee that is selected in a transparent way and comprised of credible and trustworthy people, to ensure that the community readily accepts information from the committee and can entrust it with investor negotiations. The composition of such a negotiation committee should be determined by the individual community, but must have regard for gender balance, youth representation, opinion leaders, and traditional authorities. If a CLMC has been established it could serve as the primary negotiator for the community.

Consider entering into an initial agreement (such as an MOU) with the investor to guide the negotiation process. An MOU² can be a useful tool to ensure that each side of the investment transaction is well protected and well informed about the intent and process ahead and that the community members and other relevant stakeholders are explicitly included from the outset. An MOU could include:

- A promise by both parties to negotiate in good faith.
- A commitment to conduct participatory land use (community) and impact assessments (investor).
- A description of the participatory and consultative processes that will be used throughout the negotiations.
- A commitment to clear, open, and timely communication. This may be a brief statement reflecting the parties' intentions or may include a more detailed communications strategy (see below).
- An agreement as to who in the community will work with the investor to support the assessments, organize the forums, etc., and whether and how these persons will be paid.
- An agreement as to what aspects of the negotiations shall remain confidential.
- An agreement about who pays for all aspects of the process, including costs associated with the community forums (see below), and assessments and provision of any technical assistance required to address the needs identified in the community needs assessment (see point 1 above).

Establish a communications/engagement strategy. The community, working closely with the investor, should establish a robust communications strategy that clearly explains how each party and the affected communities will communicate and exchange information throughout the negotiation process. This can be done through an MOU or similar agreement. If the MOU addresses communications only briefly, a more detailed plan should be provided as an appendix or separate document. This strategy should provide mechanisms for sharing information both with external audiences and internally within the affected communities to ensure that information about the proposed investment reaches all community stakeholders. It should specifically include a strategy for ensuring that women, youth, and other community members who are not traditionally part of the leadership structure have access to project information and plans. The strategy should also set out a process for addressing concerns and complaints that may arise from within the community during the lease negotiation process.

Work with the investor and the Lands Commission to hold a series of community forums on the proposed investment to provide information and receive input from community members. Community forums are a requirement of the Lands Commission's Guidelines for Large-Scale Land Acquisitions (LSLA Guidelines), and community concurrence for an investment cannot be given until these requirements are met. According to the LSLA Guidelines, the investor must pay for the forums. Simply adhering to the LSLA Guidelines, as currently written, may not be sufficient to ensure adequate participation by women and youth. Community leaders will want to work with all parties to establish a good way to include women and youth fully in the process. Engaging the services of a local women's NGO, a gender expert, or a women's leader can be useful to develop a participatory process. This will be critical to ensuring these groups will buy in on the final agreement and receive a net benefit from it.

² "A memorandum of understanding (MOU) may be used as a confirmation of agreed-upon terms when an oral agreement has not been reduced to a formal contract. An MOU may also be a contract used to set forth the basic principles and guidelines under which the parties will work together to accomplish their goals." US Legal Definitions, available at: <http://definitions.uslegal.com/m/memorandum-of-understanding/>

2.4.2 Investor

Identify the key stakeholders for land acquisition within the area of interest. This step must be done very carefully, as it is common for investors to waste time and money (and create conflict) by incorrectly identifying the customary parties with whom to negotiate. Initial information may be provided by the Lands Commission and district assembly/ies. However, an investor will need to confirm this information by talking with people from customary communities within the area of interest. Engaging the services of a professional or NGO adequately knowledgeable of the local land tenure dynamics could be useful at this stage. Within stool and skin lands, it will be necessary to understand the hierarchies of chiefs who will need to approve of a deal in any particular area, as well as the protocol for approaching these chiefs and their elders. Within family lands, it will likely be necessary to identify the heads of a number of different families and to understand where their boundaries lie.

Hold an initial meeting with stakeholders. As part of the process of gaining entry to the community, the investor will want to understand well the protocol for approaching the customary leaders who have jurisdiction over the area of land identified. This protocol will vary by area and regime type (stool/skin versus family lands). In the interest of transparency and building trust within the community, it will almost always be preferable to include people drawn from recognized interest blocks such as traditional leaders, youth, men, women, elected councillors, farmer-based organizations, and opinion leaders, among others.

Share the business plan and possibly the feasibility study³ with the community. The investor will want to share detailed plans for the potential investment as soon as possible, to encourage an open, informed, and transparent negotiation process. The community should be given time to review and reflect upon the business plan before being pressed to make a decision.

Consider striking an initial deal (such as through an MOU) with the community to guide the investment process. (See description above.)

Develop a communications/engagement strategy with community. (See description above.)

Consider hiring dedicated community engagement personnel in order to:

- Learn about customary norms and expectations of the community.
- Understand the identity of key stakeholders (including those who may be marginalized from social/political processes within the community, such as women and youth), and determine how to build relationships with them to ensure they are represented in the negotiation process.

Work to build open communication pathways with community members.

While it may not be absolutely necessary that the community engagement person be a member of the community in which they are working, it is essential that they have the trust of the community and that they are familiar with the norms and customs of the community.

Ensure that community forums begin early and include processes to ensure robust participation by women, youth, and others in the community who are not usually represented among customary leaders and decision makers. Note that the impact assessment process (described in more detail in Section 3 below) will require the investor to engage early and

³ See Section 4.2.2

often with the community in the design and development of the impact assessments. Such consultations with the community should be designed to ensure that a diverse group of community stakeholders, including traditional leaders, men, women, youth, migrants, and the district assembly are involved, and that existing cultural and social inhibitions do not suppress the voice of any stakeholder in the deliberative process.

Complete a resettlement action plan (including for investments on state land, if presently occupied). This plan should follow the principles embodied in the World Bank Resettlement Guidelines (see discussion of Phase 1, above) and should be shared with all interested stakeholders.

2.4.3 Government

Support communities in developing and/or accessing capacity to negotiate commercial agreements for land-based investments. This capacity is an absolute prerequisite to ensuring that future large-scale land-based investments in Ghana create a net benefit for the communities they affect. (See the discussion in the Introduction, above, on ways to fund this support.)

Support clear identification of those who hold the land rights, through open and accessible land registry information. The registration of land rights is a long-term proposition in Ghana that will be essential to avoid confusion and conflict in land-based investments. It includes both the recording of customary land boundaries and the recording of rights within these boundaries, as well as clearly identifying and registering the boundaries of state land. This process should include a robust and targeted effort to record women's rights to land, both as individuals and as rights holders within households. In the short term, the Lands Commission should work with potential investors to provide any information available on land rights within the area of interest for development. This includes information on any claims to the land, whether formal or informal, about which the Lands Commission has knowledge.

Work with the community and the investor to hold a series of participatory forums on the proposed investment. The Lands Commission should provide advice to the parties on the forums and be present at them to ensure compliance with the LSLA Guidelines. The government should stress the importance of participatory consultation processes from the start and monitor the consultations to ensure that they adhere to certain minimum standards of inclusiveness, disclosure, and frequency.

Remain neutral. With respect to stool and skin lands, the government should in no instance become an interested party in the outcome of the negotiations. While the government has a very important role to play in ensuring a fair, transparent, and well-informed negotiation process, it must remain objective as to the outcome, lest it inappropriately influence whether the deal goes through and/or the terms of the final agreement.

PHASE 3: IMPACT ASSESSMENTS

3.1 Overview

Impact assessment is the process of identifying, evaluating, and mitigating the anticipated environmental and social impacts of a proposed project or development before major decisions are taken and commitments made. The purpose of impact assessments is for the investor and host communities to understand the environmental and social impacts and consequences of projects and to share this information with decision makers, regulatory agencies, and the general public so that informed decisions can be made as to whether or not to proceed with a project, whether the project should be modified, or whether mitigation measures will be required.

The Environmental Assessment Regulations of 1999 (LI 1652), as amended in 2002, outline the process for conducting environmental assessments in Ghana. The regulations require the development of an environmental impact assessment (EIA) for any proposed land development for agricultural purposes of 40 hectares or greater and any agricultural program necessitating the resettlement of 20 families or more. In Ghana, the EIA is an integrated impact assessment, meaning that it includes not only the project's impacts on the natural environment but also the “. . . socio-economic, cultural, and health effects of the undertaking.” Additional information about the EIA process in Ghana can be found in Appendix 1 below.

It is important to note that compliance with Ghanaian laws and regulations related to impact assessment does not ensure that the investor has followed other international standards (including IFC standards) or best practices related to impact assessment.

Box 3. Key principles for the development of impact assessments

For impact assessments to serve their intended purpose within the context of large-scale land transactions they must be conducted in accordance with the following principles:

Development of impact assessment must involve the impacted communities. Including the general public and affected communities—including marginal groups (migrants) and women—in the development of impact assessments provides a valuable source of information on key impacts, potential mitigation measures and possible alternatives, and public issues of concern. It is also a way to establish communication lines, facilitate trust, and ensure that projects meet citizens' needs.

Impact assessments must be conducted by appropriately trained professionals and be completed prior to entering into the lease agreement. Inadequate assessments are often the result of a failure to utilize appropriately trained and credentialed technical professionals with experience working with communities. Likewise, to be effective in informing communities about their options, impact assessments must be completed before any decision is made as to whether to enter into the lease agreement. It is important to note that the environmental assessment regulations in Ghana do not expressly require the completion of an EIA before the signing of the lease—a key area where the national law falls short of international best practice. The GCAP Model Lease Agreement addresses this issue by specifically requiring that the investor complete both the environmental and social impact assessment as a condition precedent to entering into the lease agreement.

Impact assessment must be shared broadly with the affected communities. Sharing the impact assessments with affected communities before entering into the lease is an essential element of free, prior, and informed consent. Communities that lack information about the social and environmental impacts of the projects cannot be said to be “informed” and therefore they lack the ability to consent. Because men and women community members often access information in different ways, it is important to share information about assessments in a way that is equally accessible to all community members.

3.2 Recommendations for stakeholders

3.2.1 Community

Identify a structure or point of contact for communicating with the investor during the impact assessment process. A common challenge for investors is a lack of clarity about whom in the community to engage and share information with during the impact assessment process. Establishing a community point of contact does not mean that other members of the community will not be involved in the assessment process. The full scope of community engagement in the assessment process should be outlined in the engagement plan, discussed in more detail below. If a CLMC has been established, it could be utilized to serve as the point of contact for the community.

Develop a process for sharing information received from the investor with the broader community. Just as it is important to communicate effectively with the investor, so too is it important to establish a process within the community for ensuring that information is shared broadly across all groups within the community. Ensuring that all community members have access to information about the impact assessment may require the development of new approaches beyond simply sharing at the community meeting, because many individuals are unable to attend these meetings. For example, women are often prevented by household duties and other work from attending meetings at certain times of day. Meetings should be held at a time and in a location that is broadly accessible. Often, it will be most effective to have a separate meeting for women, held at a time and in a location accessible to them.

Work with the investor to develop a community engagement plan throughout all phases of the assessment process. See below for details.

Develop an understanding of the Environmental Assessment Regulations of 1999, specifically including the right to submit a complaint protesting any action or decision taken by the Environmental Protection Agency related to the development and approval of environmental impact assessments (See EAR of 1999, Section 27).

3.2.2 Investor

Conduct a stakeholder mapping exercise to identify all potentially affected communities, organizations, groups, and individuals at the very beginning of the assessment process. Stakeholder mapping involves identifying the people and organizations with a stake in the project. Identifying these entities at the very outset of the project will enable the development of effective communication and engagement strategies for the various stakeholders involved. Mapping out stakeholders at this stage is also useful for helping identify how each stakeholder is likely to be affected. This, in turn, will help the interested parties assess the nature of benefits/compensation, financial or otherwise, that will be appropriate for each category of stakeholders.

Develop a participatory plan for involving affected communities throughout the assessment process. Community involvement and participation in the impact assessment process should not consist of ad hoc consultations by the investor. Rather, the investor and the community should meet early in the investment process and agree on an engagement plan that stipulates how communities will be involved at each phase of the impact assessment process, including:

- **Scoping.** This part of the plan should focus on designing mechanisms that involve the community in identifying key environmental and social issues to be analysed during the assessment. By involving the community in this process, the investor better understands the issues and impacts that are important to the community and where specific emphasis should be placed during the impact assessment process. Communities are not homogenous: groups of individuals within communities will be affected differently by planned investments. Investors should take steps to understand these impacts by seeking out a range of community members, both men and women.
- **Identifying impacts and mitigation measures.** The community should be actively engaged in identifying impacts and acceptable options for eliminating or reducing impacts. By involving the community in this process at the outset, the likelihood of disagreement over the appropriateness of mitigation measures will diminish. Investors should work to ensure that all affected individuals participate in identifying impacts and devising mitigation measures.
- **Sharing information throughout the EIA process with the community.** The engagement process should also include mechanisms for periodically sharing completed studies and analyses with communities and for providing updates on the process and schedule. To ensure that all members of the community—both women and men—are well informed and able to participate in engagement activities, communication efforts should be conducted using a manner, medium, time, and location that is accessible to men and to women.
- **Monitoring impacts and mitigation measures.** The engagement plan should also identify how the community will be involved in monitoring the environmental and social mitigation plans.

Identify mechanisms for providing communities with independent technical support during the assessment process. Many communities will lack the technical expertise to review the EIA and judge the appropriateness of the mitigation plan. To address this issue, investors should provide financial support to communities to retain independent technical experts that can provide assistance to the communities throughout the assessment process. The mechanism for providing this support, and the level of support to be provided, should be recorded in the impact assessment engagement plan and the MOU, if utilized.

Seek approval of the draft EIA from the affected communities before submitting it to the Environmental Protection Agency (EPA) of Ghana. At the conclusion of the draft EIA, the investor should seek the community's approval of the report before submitting it to the EPA for approval and issuance of an environmental permit. This will further build trust between the investor and the community and may reduce the likelihood of disputes between the parties over the findings of the report.

3.2.3 Government

Serve as a resource to investors and communities by providing data, maps, and other government information essential to the impact assessment process. The government is the repository for vital environmental, economic, and demographic data and maps that are



crucial to the development of a fully informed EIA. This information should be made readily available to investors and communities involved in the EIA development process.

Provide oversight for the impact assessment process and ensure that the Environmental Assessment Regulations are strictly adhered to by the investor.

Use the discretion granted to the EPA under Section 17 of the Environmental Assessment Regulations to require that a public hearing be held for all draft EIAs involving large-scale land transactions.

4.1 Overview

The negotiation phase encompasses ongoing consultations and, ultimately, a consent agreement between the parties. During this phase, the parties will work out the specific terms of the lease agreement. Both parties will need to understand the full spectrum of options available to them, determine their priorities, communicate these effectively, and negotiate a final agreement.

The critical outcome for the investor is to obtain a broad social license to proceed. This will require that community leaders understand and incorporate the perspectives and needs of a broad range of community stakeholders in developing their negotiation priorities. The form of “consent” will vary in different customary contexts in Ghana. For an investment to succeed over time, however, consent must incorporate not just the approval of community leaders but also the approval and backing of a diverse range of community stakeholders.

4.2 Recommendations for stakeholders

4.2.1 Community

Designate the community’s negotiation team, and continue to ensure access to needed professional services (such as land economists and lawyers experienced in commercial negotiation and contracts). A community that lacks access to objective professional services should almost never continue through the negotiation process, because the gap in negotiations skill and experience between an investor and the community is usually too great to foster a fair and equitable outcome for the community. If a CLMC has been established, it could be utilized to represent the community in the negotiations.

In the case of family lands owned by multiple families in close proximity, consider constituting a joint committee to negotiate with the prospective investor. This committee should consist of representatives from each family, as well as the chief executive officer of the district and the regional lands officer of the region.

For vested lands, consider including the affected skin or stool as a party to the agreement and active participant in the negotiations phase. Although vested lands are managed and administered by the State, including the relevant traditional authorities as a party to any agreement involving vested lands, they will increase the likelihood that the community is involved in negotiations and is fully supportive of the decisions of the state in granting the lease.

Keep in mind that the proposed investment is not a “done deal” during the negotiations stage. It is very important to create a negotiations/consent environment that allows time for deliberation and ongoing consensus building over key points within the community. Men and women community members need time to discuss the potential deal with their leaders and designated representatives. Communities should request (and demand if necessary) sufficient time to deliberate and freedom from interference of any kind by outside interests.

Understand the full range of choices available regarding different terms of the agreement and the implications of each of these for the community’s social and economic wellbeing. Solicit input from all members of the community—women, youth, and others—to ensure that benefits reflect the aspirations of all community members. GCAP’s Model Lease Agreement can serve as a guide for this.

Consider developing and negotiating a community development plan (CDP) with the investor, district authorities, local government officials, and non-governmental organizations. A CDP offers a mechanism for communities to better tailor the non-monetary benefits from a land investment to the community’s specific needs and to harmonize benefits with existing NGO and governmental initiatives and plans. (More details on CDPs can be found in Appendix 1 of the GCAP Model Lease Agreement.)

Box 4: Benefits versus compensation: what is the difference?

The word “benefits” has been used to describe a wide range of promises, commitments, potential impacts, and payment terms related to large-scale land-based investments. In the past, investors have often paid very low amounts for land because of the range of non-monetary benefits to the community that are supposed to flow from the investment. These may include social benefits such as school and clinic support, improved community water supply, employment for community members on a nucleus farm or processing facility, or income to community members from participation in outgrower arrangements. Often, however, these promised benefits from an investment are: (1) provided as a substitute for a binding compensation package and (2) not included in a written lease agreement. The community thus lacks any assured way to realize or enforce these benefits if, as has often been the case, they do not materialize as promised.

Four points about benefits and compensation may be useful to communities and investors as they negotiate the terms of the final agreement:

- ◆ Payment or compensation should be considered as distinct from possible benefits that could accrue from an investment, such as jobs and outgrower opportunities. Payment can be monetary or non-monetary.
- ◆ The community is giving up its land—which for most rural people constitutes the primary asset of production—for the long term. In exchange, the community will in most cases want to seek a form of payment that will provide equal or greater food- and income-generating opportunities for current and future generations. While social goods such as clinics and schools are important, they cannot usually replace the productive value of land to community members.
- ◆ Using monetary compensation to spark productive economic investment by the community: The structure of monetary compensation for a lease can help to facilitate long-term socioeconomic development in a community. The community could thus recommend cash income from an investor that goes into a community fund for income-generating activities. Or the community could request payment from the investor in the form of a revenue- or equity share in value-added processing facilities related to the investment, which could also be channelled into a community development fund.
- ◆ Using non-monetary compensation to spark productive economic investment by the community: Non-monetary compensation could include direct in-kind payment by the investor in the form of productive goods. For example, the investor could provide tractors to the community in partial payment for the lease, so that the community could plough its own fields and rent out services to neighbouring communities. Another idea is for the investor to pay for the construction and operation of a private school that would be open to community members for free and available to others on a fee basis. Payment could also be made in the form of support for other livelihoods-oriented infrastructure as identified by the community. Some investors interviewed by the team stated a preference for directly providing in-kind goods to the community rather than paying into a community development fund, noting greater efficiency in delivery and control over the process. Parties agreeing to this route, however, should be careful to ensure that in-kind goods align with community development goals.

The best agreements may incorporate several different kinds of compensation and benefits, such as periodic cash revenues going toward a community development fund; an equity or revenue share interest in a value-added processing facility; employment and training opportunities on the nucleus farm and in the processing facility; and an outgrower program providing opportunities for women, youth, and other community members.

Compensation received as payment for a lease of the community's land should be aimed at improving the wellbeing of the community as a whole, with an emphasis on those within the community who have lost land or opportunities as a result of the investment. It is particularly important to include women in community-based discussions on what type of benefit/payment to seek from the investment and to ensure that women benefit equally in the outcome.

Compensation and benefits discussed between the parties must be reflected in the written lease agreement in order to be enforced. The lease must incorporate, at a minimum, the precise terms of compensation—both monetary and non-monetary. This written agreement should form the basis of the deal; it should clearly specify which non-monetary aspects (such as clinics, tractors, boreholes, etc.) are considered a binding part of the compensation package. If the investor promises additional benefits outside of the direct compensation package, such as jobs or outgrower opportunities for community members, these should also be noted in writing; ideally, they would be incorporated into the required timelines and milestones.

Ensure that all negotiated terms are clearly and transparently represented in the lease agreement. The community's negotiation team should make sure that all terms to which the parties have agreed are reflected in the written agreement. This includes commitments made by the investor around a range of benefits (Box 4). Promises made outside of the written agreement are unlikely to be enforced. Referring to GCAP's Model Lease Agreement will help communities to understand the types of issues and commitments that should be incorporated into the written agreement. (See Appendix 2 to these Guidelines for a summary of important terms contained in the Model Lease Agreement.) Contractual agreements can be complex and difficult to understand. As such, community leaders should ensure they understand the precise contents of the lease and freely request explanation about any terms, conditions, or agreements between the parties that do not appear to be included in the draft lease. This underscores the need to comprehensively explain the contents and implications of the Model Lease Agreement as part of the implementation of these Guidelines, so that all stakeholders gain understanding, using local languages to achieve this where possible.

Establish open and transparent channels within the community for incoming revenue streams from the investment. One approach to this is to establish a community fund, with oversight resting in a revenue management board that meets periodically (e.g., quarterly) to determine how funds should be spent. Use of these funds should also align with the community development plan. Customary authorities and members of the CLMC should be represented on the revenue management board, and consideration should be given to including a representative from the company. It will be important to designate in advance the percentages of revenues to be allocated to customary authorities versus other community members. This decision-making process will likely differ among communities, but ideally it would incorporate input from a number of stakeholders (e.g., the CLMC). In almost every customary community the final decision will lie with the traditional authorities.

Share terms with the community at large prior to signing. Community leaders should continue to communicate with community stakeholders throughout the negotiation process, keeping men and women community members informed and seeking feedback on issues as they arise in discussions with the investor. The CLMC could coordinate the information exchange between the investor and the community during the negotiation process.

Conduct the signing of the agreement with as many witnesses as possible, representing a broad range of community interests. This will help to ensure community ownership of, and backing for, the agreement. All chiefs in the relevant hierarchy for stool/skin land should be present. Signing should be on behalf of the skin, stool, or family, rather than on behalf of the individual community leaders. This helps to clarify that the entire community, including successors to the current individual leader(s), is party to the agreement.

4.2.2 Investor

Continue participatory consultations with the community throughout the negotiation process. (See discussion of consultations in Phase 2.) Though consultations may be expensive and time consuming, they are a key step in developing a strong relationship with local communities and long-term positive socioeconomic outcomes, in achieving financial and operational success, and in helping to minimize the risk of land disputes.

For vested lands, consider including the affected skin or stool as a party to the agreement and an active participant in the negotiations phase. (See discussion above.)

Complete a feasibility study before signing any final agreement and share it with the community. Preparing some parts of the feasibility study will be

necessary to gain concurrence from the Lands Commission. A feasibility study is a detailed analysis that provides information on the proposed project, including: background of the investor, an outline of the business plan, a description of the physical and financial and human resources needs of the project to achieve success, analyses of the economic and financial viability of the project, and a schedule outlining milestones for project development.

Wherever possible, support the community’s need for additional information, for enough space and time to deliberate, and for a process that is free from outside interference. The investor will almost always be operating at an advantage in terms of understanding commercial contract terms. It is very important to the long-term health and success of the agreement that the community also arrive at a solid understanding (and support for) the terms. This may take time, especially as community leaders work to reach consensus among community stakeholders on key points, but supporting a true “consent” process from the community is likely to yield significant longer-term pay-off.

Present evidence of outcomes of community engagement and EIA to the regional lands commission with jurisdiction over the prospective area(s) to be acquired. This should be done at a meeting of the regional commission as a way of showing compliance, and how this compliance was achieved. The commission can then decide whether to grant its concurrence with the lease agreement or to make a recommendation to the National Lands Commission.

Box 5: Tracking performance

An effective monitoring program can be used to track a broad range of investor commitments, including:

- Compensation and rent obligations
- Environmental and social mitigation responsibilities
- Community grievances
- Reporting and information sharing requirements
 - Land development obligations
 - Employment and training guarantees

Ensure all relevant representatives from the community (and as many witnesses as possible) are present at signing. Ensuring that a range of individuals are present to bear witness to the signing will support the legitimacy and awareness of the agreement and its content over the long term. Ensuring that women and men community members—both within and outside of the traditional leadership—witness the signing will help to limit misunderstandings among community members about the status, import, and parties to an agreement. Investors should also insist that lease documents are signed in the name of the stool, skin, or family, rather than in the name of a single individual. (See discussion above.)

4.2.3 Government

Support a robust consultation process throughout the negotiations phase. The Lands Commission should help to support additional community forums as necessary to explain and receive feedback on key terms to the agreement.

One or more government representatives ought to be witness the signing of the agreement. These might include, at a minimum, a representative from the Lands Commission and the district chief executive or director of agriculture.

5

PHASE 5: MONITORING AND ENFORCING THE AGREEMENT

5.1 Overview

The long-term sustainability and success of land transactions between investors and communities ultimately depends on each party living up to its obligations and responsibilities in the lease agreement. Many of the problems and conflicts that have been experienced between investors and communities both in Ghana and across Africa are the result of a failure to develop and implement effective mechanisms to monitor and track timely performance of the lease agreement. An effective monitoring program can help investors and communities identify problems early and collaborate on solutions before problems escalate into major conflicts between the parties.

A successful monitoring program will incorporate the following concepts:

Participation: Monitoring should involve a collaborative effort between host communities, the investor, and regulatory agencies. It is important that all men and women in the community feel that they have an active role in monitoring the investment and participating in the relationship with the investor. The host community should be integrally involved in both the design and implementation of the monitoring program.

Transparency: Effective monitoring efforts require transparency—with respect to the design, makeup, and objectives of the program, as well as to the availability and sharing of key documents and information with project stakeholders. True transparency requires taking steps to make sure that information is available, clear, and understood by all community members. In some cases this will require specific efforts to ensure that women and youth receive and understand information pertaining to the investment.

Grievance mechanisms: Monitoring must be reinforced through the inclusion of a community grievance mechanism that can serve as an effective way to resolve complaints and disputes before they escalate into significant conflicts or even violence in the host community. Grievance mechanisms should be fair, prompt, and accessible to the entire community. Grievance mechanisms should not limit the ability of community members to access the courts when a dispute cannot be resolved.

Timing: The monitoring program should be developed and agreed to early in the investment process and provisions should be incorporated into the lease agreement to support the implementation of the program.

Box 6: Provisions for an effective monitoring program

The GCAP Model Lease Agreement builds in a number of provisions aimed at supporting the development and implementation of an effective monitoring program:

- Creation of community land management committees (CLMCs) that offer the opportunity to create a more open and participatory structure for managing the relationship between the community and the investor, including responsibility over design and implementation of the monitoring program (see GCAP Model Lease Agreement Section 10).
- Strategic clauses and provisions for ensuring that the ongoing relationship between the company and the landowner is open and transparent, including requiring that the lease agreement be a public document and that the company submit annual company activity reports (Section 13).
- A structure for the implementation of an environmental and natural resource management plan (Section 14).
- A community grievance mechanism that can serve as an effective way to resolve complaints and disputes before they escalate (Section 15).

5.2 Recommendations for stakeholders

5.2.1 Community

Distribute copies of the lease agreement to a broad range of community stakeholders, including traditional authorities, the Lands Commission, Town and Country Planning Department, NGOs, community-based organizations (CBOs) and farmer-based organizations (FBOs), women's groups, the district assembly, well in advance of community forums. Increasing community and stakeholder knowledge and understanding of the rights and obligations imposed in the lease agreement can improve compliance monitoring and help to minimize misunderstanding around project performance. Toward this end, ensuring that the lease, or at minimum a summary of key provisions, is translated into the local language will be important.

Collaborate with the investor early in the investment process (before signing the lease) to design a monitoring plan for regular and participatory monitoring of the agreement. The monitoring plan should address key issues such as:

- The institutional arrangement for implementing the monitoring program specifying the roles for the community (the community land management committee could play a significant role), the investor, and third party stakeholders such as regulatory agencies and NGOs/CBOs/FBOs.
- The issues to be monitored and the methodology for collection of data.

- The strategy for accessing and sharing information between the investor and the community, as well as the mechanisms to be used to ensure that the information is broadly accessible within the community.
- The strategy for funding the monitoring program.

Collaborate with the investor to design a community grievance mechanism that can serve as an effective way to resolve complaints and disputes by community members. The grievance mechanism should be fair, prompt, and accessible to all community members. Ensuring that women have access to the grievance mechanism is particularly important given that they historically have had limited access to justice institutions. The grievance mechanism should not limit the ability of community members to access the courts when a dispute cannot be resolved.

Negotiate with the investor to insure that the lease agreement contains provisions that reinforce and support implementation of the monitoring and grievance mechanisms.

5.2.2 Investor

Ensure that the lease agreement is properly registered with the Lands Commission. For a lease to be valid in Ghana it must be registered with the Lands Commission. Therefore, an important way to protect the right to enforce the lease is to ensure that it has been properly registered by the investor.

Early in the investment process, collaborate with the community and other stakeholders to design a plan for regular and participatory monitoring of the lease agreement obligations.

Collaborate with the community to design a community grievance mechanism that can serve as an effective way to resolve complaints and disputes.

Support fair and equitable funding arrangements between the investor and the community for the monitoring program and the community grievance mechanism.

Promote the inclusion of provisions in the lease agreement that reinforce and mandate the implementation of both the monitoring program and the community grievance mechanism.

5.2.3 Government

Support the monitoring process by enforcing the Environmental Assessment Regulations related to:

- Submission and implementation of an environmental management plan that mitigates project impacts (Environmental Assessment Regulations, Section 24).
- Submission of an annual environmental report (Environmental Assessment Regulations, Section 25).
- Hearing and resolving complaints by persons aggrieved (Environmental Assessment Regulations, Section 27).

To the extent feasible, assist communities in the monitoring process by serving as a technical resource and data source.

Consider options for providing legal support and/or improved access to dispute resolution services to communities and community members when grievances and complaints cannot be resolved by the parties to an investment. Some disputes between communities and investors may not be resolvable through informal grievance mechanisms, and in those instances the courts may be the only option available to aggrieved parties. Unfortunately, access to courts is often not feasible due to prohibitive costs and/or lengthy delays. To address this challenge, the government should continue to support and strengthen ongoing efforts under LAP II to widen access to justice in land matters, such as by establishing special land courts and legal aid institutions.

CONCLUSION

The long-term health and productivity of an investment will require a sustained effort by both the community and investor, beginning with preparations before negotiations get underway and continuing through the lifetime of the investment. Once an agreement is in place, parties will need to strike a balance between maintaining the stability of the agreement and accommodating unexpected outside factors as they may arise. Parties will want to pay particular attention to implementing their joint communications strategy. One of the most important safeguards for both parties is proactive and prompt engagement with the other party in the event of problems or unforeseen circumstances that affect the investment. This engagement in itself can significantly reduce conflicts. Community leaders will also need to critically review and further develop the community's governance systems related to the investment to ensure maximum levels of transparency and inclusivity.

Once an agreement is signed and an investment underway, the company becomes part of the community, or at least carries the status of a long-term guest in the community. It is important for the investor to act accordingly, honouring community traditions and contributing where possible to the community's needs around funerals, festivals, and other occasions. The up-front costs of doing so will likely be minimal in comparison to the gains from building trust with the community over time.

APPENDIX 1:

ENVIRONMENTAL IMPACT ASSESSMENTS IN GHANA

The Environmental Assessment Regulations of 1999, LI 1652, as amended in 2002, outline the process for conducting environmental assessments in Ghana. The regulations require that any activity that is likely to have an adverse effect on the environment is subject to environmental assessment and the issuance of a permit before commencement of the activity. While the level of assessment varies depending on the nature of the project, the regulations specifically require the development of an environmental impact assessment (EIA) for any land development for agricultural purposes of 40 hectares or greater and any agricultural program necessitating the resettlement of 20 families or more (Environmental Assessment Regulations of 1999, Schedule 2).

The regulations define an EIA as a “process for the orderly and systematic evaluation of a proposal including its alternatives and objectives and its effect on the environment including the mitigation and management of those effects” Significantly, in Ghana the EIA is an integrated impact assessment, meaning that it includes not only the project’s impacts on the natural environment but also the “ . . . socio-economic, cultural, and health effects of the undertaking” (Environmental Assessment Regulations of 1999, Section 30).

The EIA development process consists of several critical steps:

Scoping: Scoping is the first step in the EIA process. Its purpose is to identify the “scope” or extent of the review to be carried out by the project applicant and to begin focusing the EIA on issues of concern to the impacted communities. Including the public early in the scoping process is critical to identifying public issues of concern, establishing communication lines, and facilitating trust.

Development of the draft EIA: The draft environmental impact assessment examines the social and environmental consequences of the project and includes, but is not limited to, the following information:

- Project description, including an analysis of project alternatives.
- A baseline survey that evaluates existing environmental and social conditions at the project site.
- An impact assessment that looks at the potential positive and negative environmental, social, economic, health, and cultural impacts of the project.
- An impact mitigation and management plan that identifies measures to eliminate, offset, or reduce impacts.

Publication, comment and public hearing: The project applicant must submit copies of the draft EIA to the EPA and other relevant government stakeholders. The Environmental Protection Agency (EPA) is responsible for publishing the document in the media and posting the document in public places so that it is available to the general public. The general public may comment on the document at this time. Public hearings are only required when (1)

there is “great adverse public reaction” to the project; (2) the project involves dislocation or resettlement of communities; or (3) if the agency believes that project will have “far reaching effects on the environment.” As a practical matter, investors are advised to strongly encourage the EPA to hold a public hearing so that communities will have the opportunity to provide comments and suggestions on the draft EIA.

Technical review of the draft EIA: In this step, the EPA reviews the draft EIA and the comments received from the general public and other stakeholders, and it makes a determination on the adequacy of the document. The EPA may require changes to the document, including additional studies, or may approve the document. If it approves the document, the EPA may issue any required environmental permits to the applicant.

Environmental management plan (EMP) and annual environmental report: Projects that have an approved EIA are required to submit to the EPA, within 18 months of commencement of operations, an environmental management plan that documents the steps that will be taken to manage significant environmental impacts from the project. The investor is also required to annually submit an environmental report to the EPA. Note that under the Model Lease Agreement, the EMP is to be completed, with consultation from the community, before entering into the lease agreement.

Grievance mechanisms: The regulations allow an aggrieved person to submit a complaint to the Ministry protesting any action or decision taken by the Environmental Protection Agency related to the development and approval of environmental impact assessments. Complaints must be in writing and submitted to the Ministry within 30 days of the complainant becoming aware of the decision or action to which the complaint relates.

APPENDIX 2:

KEY CLAUSES AND PROVISIONS IN THE MODEL LEASE AGREEMENT

Term of Years: The term section defines the duration of the lease agreement and also identifies the date on which the lease commences.

Parties: This part outlines the persons or entities of the lease. Significantly, grant of stool, skin, or family lands is a transaction by the stool, skin, or family as a legal entity that is capable of perpetual succession and not the chief, family head, or community elders who may be signatories to the lease.

Grant of Rights and Reservation of Rights: A common source of conflict between investors and communities is misaligned expectations over the use of leased land by both the investor and the community. The “Grant of Rights” provisions outline permitted and prohibited uses of the land by the investor. A reservation of rights clause is one mechanism that can be utilized by the parties to clarify acceptable uses of the leased premises by the local communities.

Compensation: The Model Lease Agreement contains options for both monetary and non-monetary forms of compensation for the community. Monetary compensation can include either fixed annual or periodic payment arrangements and/or revenue sharing models. Forms of non-monetary benefits addressed in the Model Lease Agreement include employment and training provisions that evidence the investor’s commitment to employ and train local people, and provisions requiring the creation of an outgrower program.

Communications Plan: The Model Lease Agreement contains provisions requiring the development of a communications plan that clearly explains how the investor and the affected communities will communicate and exchange information over the lifetime of the lease.

Obligation to Develop Leased Premises: A common concern voiced by communities across Ghana is the failure of investors to develop commercial agriculture projects consistent with stated plans and commitments. The Model Lease Agreement contains a provision that requires the investor to develop the leased premises consistent with the development plan that has been shared with the community.

Dispute Resolution and Community Grievance Mechanism: Disputes and conflicts are a natural part of any social interaction; therefore, mechanisms to resolve disputes and community grievances are incorporated into the Model Lease Agreement.

Review and Modification of Agreement: The Model Lease Agreement contains a requirement that the parties periodically review the agreement to determine if changes in circumstances require modifications to the lease, including review of the adequacy of the compensation or benefit paid by the investor under the agreement.

While the Model Lease Agreement seeks to make available to the prospective contracting parties a range of local and international best practices relevant to responsible and sustainable commercial agricultural investments, it is not a substitute for negotiation between the contracting parties of key terms and provisions.

APPENDIX 3:

GHANA LANDS COMMISSION GUIDELINES FOR CONSIDERING LARGE-SCALE LAND TRANSACTIONS FOR AGRICULTURAL AND OTHER PURPOSES

The Government of Ghana has recognized that large-scale agricultural investments pose challenges and potential threats to traditional communities. To protect the interests of local communities and to promote transparent and sustainable development and investment policies, the Lands Commission has developed Guidelines for Considering Large-Scale Land Transactions for Agriculture and Other Purposes. The Guidelines cover considerations and recommendations for the land acquisition process, including:

- The timing and details of required forums and consultations with the local community, including: the purpose of the forum; the financing and facilitation of the meeting/s; the required participants and issues to be considered at the forum; and the dissemination of information to stakeholders and the public on the outcome.
- The process for the regional lands officer to review the proposed transaction.
- Environmental impact assessment.
- Requirement that transactions exceeding 1,000 acres be reviewed by the National Land Commission.
- Legal requirements related to the terms of years and land size that may be granted.

While the Lands Commission Guidelines represent a significant achievement in promoting more consultative and socially responsible investment, they likely do not go far enough to ensure that communities are meaningfully informed about proposed investments, broadly and adequately consulted, and receive fair and equitable benefits from the project. For example, the Guidelines: (1) only technically require one community hearing on the proposed transaction, and recommend that this hearing be held after a preliminary agreement has been reached between the grantee and the grantor; (2) do not address the key issue of how to ensure adequate participation of women and youth in the hearing process; (3) contemplate that the environmental impact statement be conducted after the grant has been concluded—which effectively deprives communities of key information that is necessary to make an informed decision on whether to accept the project; and (4) are silent on the issue of benefit-sharing within communities.

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