GUIDELINES FOR LARGE SCALE LAND TRANSACTIONS IN GHANA
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GLOSSARY

CLMC  Community Land Management Committee
CSOs  Civil Society Organisations
DCE  District Chief Executive
EPA  Environmental Protection Agency
FAO  Food and Agriculture Organisation
FASDEP  Food and Agricultural Sector Development Policy
FC  Forestry Commission
FPIC  Free, Prior and Informed Consent
GIDA  Ghana Irrigation Development Authority
GIPC  Ghana Investment Promotion Centre
GSD  Geological Survey Department
LSLT  Large Scale Land Transaction
MoFA  Ministry of Food and Agriculture
MoU  Memorandum of Understanding
NDPC  National Development Planning Commission
NGOs  Non-Governmental Organisations
OASL  Office of the Administrator of Stool Lands
TCPD  Town and Country Planning Department
UN  United Nations
UNECA  United Nations Economic Commission for Africa

Definitions and/or explanations of terms used in the Guidelines.

_Free, Prior and Informed Consent (FPIC):_ This is the situation where customary landowners, and land-owning community members including women, the youth, opinion leaders, common and natural resource users and other vulnerable groups, are privy to sufficient information about a proposed land acquisition and project for effective decision-making based on
transparent and non-coercive engagement and negotiations. It involves an investor’s consultation with customary landowners and community members and obtaining their consent based on their informed understanding of the impact of a proposed commercial investment on their rights and livelihoods.

*Large-scale land transaction (LSLT)*: LSLT involves a transaction over land that on one hand covers a land area of about 20.23 hectares or 50 acres or more and on the other hand, a land transaction that covers an area less than 20.23 hectares or 50 acres but triggers social, economic and/or environmental concerns that needs to be safeguarded.

*Transparency*: Transparency as used in this Guidelines is a key pre-requisite for both customary landowners and investors during the LSLT process. From the perspective of customary landowners, it is a process that is devoid of information asymmetry between customary landowners and prospective investors over land ownership, tenure regimes, land and natural resource use rights and also devoid of absence of broad based consultation with principal elders and/or family members as well as community members by customary leaders over a proposed land transaction for commercial investment. From the perspective of an investor, it is a process that is devoid of information asymmetry about the commercial investment during community engagement and negotiations, lease execution and project execution stages. Thus, a prospective investor who denies customary landowners and/or community members from their rights and ability to understand and demand better governance over a commercial investment due to non-disclosure, partial disclosure, and/or misrepresentation about the investment during the engagement and consultation processes may be considered as not being transparent.
PREAMBLE

In recent times, there has been a spate of acquisitions of lands in Ghana involving large tracts of lands primarily for various agricultural ventures. The magnitude and frequency of these demands for land have been unprecedented. Apart from a few acquisitions that have been witnessed in the past for palm and rubber cultivation, most traditional authorities have never witnessed acquisitions of this magnitude.

It is worth-noting that even past acquisitions that have engulfed large areas have been undertaken by government for such projects. In the case of mining concessions, the traditional authorities have not been directly involved in the negotiation processes and often get involved only in matters pertaining to surface rights after the concessions have been granted. In that most acquisitions in this regard have been fait accompli and therefore have not called into play the appropriate technical and traditional know how. Recent acquisitions have been by private business entities often foreign but with local counterparts, private indigenes of these or other communities and in rare cases state institutions. This clearly is a new phenomenon that needs to be tackled with tact since it has several ramifications when analysed in the context of global changes in foreign investments.

The import of these events can be better understood when it is appreciated that:

a. most lands in Ghana are held by traditional leaders (family heads, clan heads, chiefs, priests etc). Many of these institutions do not have the experience and expertise in managing grants of lands of large-scale magnitude.

b. majority of land users in our rural areas where the demand for such lands is most in demand are smallholder farmers. Most of these farmers do not have registered interests over their lands either as natives or settlers. They are therefore vulnerable in several respects when their superior land owners are negotiating for the release of such lands without involving them;

c. although customary law requires consultation between the traditional leadership and the occupiers and users (usually the subordinate members of the landowning groups), these rules are regularly breached in the face of high monetary enticements and other considerations offered to the traditional leaders;
d. there are various forms of customary land rights under the different customary land tenure regimes in Ghana. Most of these rights are undocumented and have been overlooked and impacted negatively by acquisitions.

e. in some cases the rights of subordinate and other subsidiary rights holders are flagrantly violated and abused and therefore would require the intervention of the state in furtherance of Article 36(8) of the Constitution of Ghana to ensure social justice;

f. in some cases too, projects that are proposed to be executed on such lands would require appropriate safeguards to ensure the protection of the environment as provided under Article 36 (9) of the Constitution. This provision enjoins the State to take appropriate measures needed to protect and safeguard the national environment for posterity and protecting the wider international environment for mankind;

g. speculative acquisitions that appear to be jeopardizing State policy on land use and development; and

h. some acquisitions are being undertaken without due regard to land use planning considerations and as a result, such lands are not being put to their highest and best uses.

These guidelines, therefore, seek to introduce safeguards and provide measures that should be put in place in handling large-scale land transactions. Also, in conformity with good governance practices, it would be appropriate to prescribe standard procedures that would ensure effective grassroots consultation with persons who would be directly affected by such transactions.

1.0 AIM OF THE GUIDELINES

The main purpose of these guidelines is to provide a framework that:

a. establishes a means for informed, fair, inclusive and transparent decision-making by all stakeholders involved in large-scale land disposition by customary landowners;

b. outlines standard procedures regarding large-scale land acquisitions by investors and state agencies, as well as impose minimum responsibilities on investors, state agencies, CSOs and landowning communities, to ensure that large-scale land acquisitions are done in socially responsible manner;
c. ensures that investors, state institutions and communities recognise the differential impact of land-based investments on the different categories of people in affected communities, and that special consideration must be given to women, migrant farmers, the youth, the aged and the vulnerable, in the formulation of measures to mitigate the impacts.

d. recognises the District Assembly as a liaison institution in the implementation of the provisions contained herein, at the local level.

Thus, the guidelines are aimed at assisting customary landowners and customary land resource users, investors, Regional Lands Commissions and other decision makers to better appreciate the due process domestic and foreign investors whether private or public must follow to acquire land on a large-scale for investment purposes.

1.1 OBJECTIVES OF THE GUIDELINES

The objectives of the guidelines are to:

1. Minimise speculative acquisitions and any practices that would undermine state policy on land development with due regard to the National Land Policy of 1999.

2. Protect the interest of local communities by avoiding a situation where investors or individuals who acquire large tracts of land usurp the rights of the larger population and in the process subvert the intent of Article 36 (8) of the Constitution.

3. Safeguard the interest of genuine investors by ensuring that their acquisition lead to secured rights in the atmosphere of mutual trust so as to promote the principles in international law relating to foreign direct investments (FDIs).

4. Promote better land use and ensure that all acquisitions are made for uses that would conform to the land use plan of the areas involved.

5. Ensure that the differential impacts of acquisitions on women, migrant farmers, the youth, the aged and other vulnerable land users are properly identified and mitigated.

6. Promote government development policy objectives by facilitating development initiatives that would foster job creation and income generation, equity in resource distribution and balanced development in line with Ghana’s development agenda as
proposed under the National Development Planning Commission’s (NDPC) 40-Year Development Plan.

Ensure that the acquisition of large tracts of land conforms to international best practices as enshrined in the FAO/World Bank guidelines on Responsible Agricultural Investment (RAI).

2.0 BASES OF THE GUIDELINES

The procedures and requirements outlined in the guidelines follow statutory enactments, policies, international guidelines, principles and best practices which underpin large-scale land transactions. These include but not limited to the following:

2.1 THE 1992 CONSTITUTION OF GHANA

The 1992 Constitution of Ghana is the supreme law of the country.

a. Articles 34 to 41 of the 1992 Constitution outline the Directive Principles of State Policy, which provide a general framework for a holistic national development agenda.

b. Article 36 (8) stipulates that “The State shall recognise that ownership and possession of land carry a social obligation to serve the larger community and, in particular, the State shall recognise that the managers of public, stool, skin and family lands are fiduciaries charged with the obligation to discharge their functions for the benefit respectively of the people of Ghana, of the stool, skin, or family concerned and are accountable as fiduciaries in this regard.” (Requirement for transparency and accountability of fiduciaries in the management of public, stool, skin and family lands)

c. Article 266 (4) stipulates that “No interest in, or right over, any land in Ghana shall be created which vests in a person who is not a citizen of Ghana a leasehold for a term of more than fifty years at any one time.” (Stipulation on creation and vesting of interests or rights over land in non-citizens).

d. Article 267 (1) provides that “All stool lands in Ghana shall vest in the appropriate stool on behalf of, and in trust for the subjects of the stool in accordance with customary law and usage.” (Provision on fiduciary and
trust relationship over stool/skin lands in accordance with customary law and usage).

e. Article 267(7) provides for consultation with stool and other traditional authorities in matters relating to administration and development of stool land. (*Provision on consultation with traditional authorities on administration and development of stool/skin lands*).

f. Article 267(8) stipulates that “the Lands Commission and the Administrator of Stool Lands shall co-ordinate with all relevant public agencies and traditional authorities and stools in preparing policy framework for rational and productive development and management of stool lands.” (*Stipulation on collaboration amongst the Lands Commission, Administrator of Stool Lands, relevant public agencies, traditional authorities and stools/skins for land development and management*).

2.2 NATIONAL RESOURCE POLICIES AND DEVELOPMENT FRAMEWORK

The key policy and framework documents considered include:

b. Food and Agricultural Sector Development Policy (FASDEP II) 2007
d. National Irrigation Policy, 2010
e. Ghana Forest Wildlife Policy, 2012
g. Minerals and Mining Policy of Ghana, 2013
h. National Spatial Data Infrastructure Policy, 2013
i. National Environmental Policy 2014
j. Ghana National Spatial Development Framework 2015; and
k. Others

2.3 NATIONAL LAND POLICY, 1999

The National Land Policy of Ghana is key among the policies listed above. The guidelines are, therefore, in line with provisions in the National Land Policy as follows:
a. Section 4(b) of the Policy provides that decision-making with respect to disposal of land should take into consideration, among others, natural resources of the land; conservation of land for the future generation; protection of land rights of the present generation; and accountability to the subjects for whom the land is held in trust.

b. Section 4(c) provides: “No interest in or right over any land belonging to an individual, family or clan can be disposed of or declared stool, skin or traditional council land without consultation with the owner or occupier of the land.”

### 2.4 NATIONAL LAWS AND REGULATIONS

The guidelines lend support to compliance with a number of statutory enactments and regulations including:

a. Administration of Lands Act, 1962 (Act 123);
b. Administration of Lands Regulations, 1962 (L.I. 232);
c. Ghana Investment Promotion Centre Act, 1994 (Act 478);
d. National Development Planning Commission Act, 1994 (Act 479);
e. National Development Planning (Systems) Act, 1994 (Act 480);
f. Environmental Protection Agency Act, 1994 (Act 490);
g. Water Resources Commission Act, 1996 (Act 522);
h. Environmental Assessment Regulations, 1999 (L.I 1652);
i. Lands Commission Act, 2008 (Act 767);
j. Alternative Dispute Resolution Act, 2010 (Act 798); and
k. Others
2.5 INTERNATIONAL GUIDELINES AND PRINCIPLES

The generic and voluntary guidelines, international best practices and principles on large scale land transactions that provided a guide in conceptualising the Guidelines include the following:

a. Land Policy Initiative of the African Union Commission
b. United Nations Economic Commission for Africa (UNECA)
d. Africa Union’s Nairobi Action Plan on Large Scale Land Based Investments in Africa
e. UN-Special Rapporteur on the Right to Food Principles on Large Scale Land Acquisition and Leases
f. UN-Declaration on the Rights of Indigenous People.
g. FAO “Principles of Responsible Agricultural Investment (RAI)”
h. others

3.0 APPLICABILITY OF THE GUIDELINES

3.1 The Guidelines are applicable to land acquisitions of 20.23 hectares or 50 acres or more for agriculture. Such acquisitions must take into consideration the underlisted conditions that, they are:

a. not in violation of human rights, particularly the rights of women and other vulnerable groups and right to compensation;
b. based on Free, Prior and Informed Consent (FPIC) of affected landowners, women, the youth and common land resource users;
c. based on a thorough assessment of social, economic and environmental impacts, including the way they are gendered;
d. based on transparent negotiations and contracts that specify clear and binding commitments about corporate social responsibilities, activities, employment and benefits-sharing between the investor and the communities; and
e. based on consultative planning, independent oversight by a recognized body and meaningful participation by all stakeholders.
3.2 Notwithstanding the general applicability stated in 3.1:
   a. an acquisition below fifty (50) acres or 20.23 hectares may also be subject to the guidelines if there is the likelihood of displacing affected persons and/or violates human rights with due consideration to the location and nature of the proposed investment.
   b. where an individual, a body corporate or its subsidiary acquires land and subsequently secures additional land in the same area such that the aggregate area is 20.23 hectares or 50 acres or more, the guidelines shall apply.

The guidelines will be useful to customary landowners, natural resource users, interest groups, individuals, foreign and domestic investors, NGOs, CSOs and government agencies.

4.0 SCOPE OF THE GUIDELINES

The guidelines provide:

   a. A pragmatic approach to dealing with large-scale land acquisition by incorporating the principle of Free, Prior and Informed Consent (FPIC).
   b. Minimum requirements, obligations and standard procedures that grantors and grantees of large-scale land and State Agencies involved in the process of land acquisition must comply with and these include:
      i. The role of land-owning communities;
      ii. The role and responsibilities of the investor;
      iii. The role of NGOs and CSOs;
      iv. The role of the land sector agencies
      v. Pre-registration requirements;
      vi. Registration of the grant covering the acquisition; and
      vii. Post-registration requirements.
5.0 ROLE OF THE LAND-OWNING COMMUNITY

The guidelines are also intended to encourage land-owning communities, acting through their leaders or rightful representatives to:

a. have an open-door and investor-friendly policy and be vigilant in its dealings with the potential investor;

b. probe into the benefit-sharing options of the proposed project;

c. ensure that benefits from the acquisition are equitably shared. In this regard, the following benefit-sharing framework may be adopted, notwithstanding the provisions under subsections 9.1.5.0 and 9.1.6.0 of this guideline:

i. To mitigate the impact of the acquisition, the lumpsum payment (i.e., the ‘drink money’ payable) made for the entire lease period shall be negotiated and disbursed as follows:

   A. in respect of stool land area;

      i. a percentage allocated to and shared between the Paramount Chief and the Paramount Queen Mother;

      ii. a percentage allocated to and shared between the Divisional Chief(s) and Divisional Queen Mother(s) of the division(s) affected by the acquisition.

      iii. a percentage allocated to and shared among all the Sub-divisional Chiefs and Sub-divisional Queen Mothers under the affected division(s) but ensuring that the specific Sub-divisional Chief(s) and Sub-divisional Queen Mother(s) directly affected by the acquisition receive the greatest proportion.

      iv. a percentage allocated to and shared among all the families within each sub-division.

   B. In respect of skin land area;

      i. a percentage allocated to and shared between the Overlord and his female counterpart.

      ii. a percentage allocated to and shared between the Paramount Chief and Paramount Queen Mother of the Paramountcy affected by the acquisition;
iii. a percentage allocated to and shared between the Divisional Chief(s) and Divisional Queen Mother(s) of the division(s) affected by the acquisition.

iv. a percentage allocated to and shared among all the Sub-divisional Chiefs and Sub-divisional Queen Mothers under the affected division(s) but ensuring that the specific Sub-divisional Chief(s) and Sub-divisional Queen Mother(s) directly affected by the acquisition receive the greatest proportion.

v. a percentage allocated to and shared among all the families within each sub-division.

C. In respect of family/clan land area:

i. a percentage allocated to and shared between the Head of the family/clan or Tendana and his female counterpart.

ii. a percentage allocated to and shared among all leaders of the gates/sub-groups within the affected family/clan but ensuring that the specific leader(s) of the gate(s)/sub-group(s) directly affected by the acquisition receive the greatest proportion.

iii. a percentage allocated to and shared among the individual members of the affected gates/sub-groups.

d. where the investor commits to establish a Community Development Fund, ensure that the fund so established is managed by a board of trustees made up of members of the land-owning community and other stakeholders in the project area. The details of the Governance Arrangement for the Community Development Fund should be described in a separate document by the investor and discussed with the Community. The beneficiaries of the Fund shall be the entire community. The Governance Arrangement should among other things;

i. demonstrate the principles of transparency and accountability
ii. demonstrate commitment toward the management of the funds in a manner that will ensure intergenerational equity in the enjoyment of the benefits from the investment.

e. safeguard the communal interest of all its members in terms of common natural resource use, sources of livelihood, local food security and sovereignty, deprivation from loss of land and other rights;

f. consider long term benefits to the community rather than short term gains and hence, be guided by the benefits to be derived from inter-generational equity;

g. consider gender issues in the land acquisition process and the rights of women and other vulnerable persons to compensation;

h. involve female traditional leaders in all high-level discussions regarding land acquisitions.

i. disclose all relevant information on the acquisition and appropriately engage all potentially affected individuals for necessary measures to be taken to recognize and safeguard their interests, immediately following an investor’s expression of interest.

j. establish Community Land Management Committees and also ‘buy into’ future land information banks to be introduced by the Lands Commission and

k. endeavour to engage the Lands Commission, professionals from relevant bodies, NGOs and CSOs from the outset of the project to advise them on their dealings with investors in terms of negotiating skills, issues to probe and what answers to get back.

6.0 ROLE OF NGOs AND CSOs

The roles of NGOs and CSOs in the acquisition process are as follows:

a. Keep an eye on details that the bureaucrats may overlook in the process of the acquisition;

b. Serve as a ‘watch-dog’ over the interest and rights of the community including the rights of women, youth and other vulnerable groups.

c. Support in sensitizing local communities of their rights and building their capacity to negotiate with investors and what questions to ask and what answers to get back.
d. Create awareness on the benefits, risks and externalities of large-scale land acquisition on the livelihood of the community, the vulnerable, women and youth.
e. Sensitize and hold traditional authorities to good land governance standards.
f. Advocate and dialogue for the recognition and participation of female traditional leaders in discussions regarding land acquisitions.
g. Ensure responsible investments through engagement and sensitization of investors and their representatives on the differential impacts of large-scale land acquisition and collectively deliberate on how these impacts can be mitigated.
h. Ensure protection of the environment and land user rights.
i. Ensure transparency of the acquisition process.
j. Ensure that persons at the low level of representation within the land-owning community are well represented at the community land forum.
k. Strengthen the capacities of Traditional Authorities to be able to adequately represent the wider interest of their communities in the land negotiation process.
l. Sensitize communities on the need to document their land rights to avert losing them during large-scale land acquisition.
m. Beyond sensitization, work together with communities to institute mechanisms for documenting their land rights.
n. Promote the establishment of Community Land Management Committees (CLMC).
7.0 ROLE OF THE LANDS COMMISSION

A. The land acquisition process involves the Lands Commission as the lead agency, working closely with the District Assembly and in co-ordination with one or more of the underlisted collaborating state agencies (listed in no particular order of relevance):

a. Ghana Investment Promotion Centre (GIPC)
b. Environmental Protection Agency (EPA)
c. Land Use and Spatial Planning Authority (LUSPA)
d. Office of the Administrator of Stool Lands (OASL)
e. Forestry Commission (FC)
f. Energy Commission
g. Minerals Commission
h. Water Resources Commission
i. Geological Survey Department (GSD)
j. Ghana Irrigation Development Authority (GIDA); and
k. Others

B. The Lands Commission shall also be the lead agency working in co-ordination with one or more of the above listed collaborating state agencies to enforce the observance of the commitments contained in the lease or other relevant attachments to the lease.

C. In order to make information available to CSOs and other interest groups, the Commission shall continuously publish information on potential acquisitions by investors, on the notice boards of the Commission. Such information shall also be published on notice boards of post offices, district assemblies and other public places within the affected communities.

D. The Commission shall also establish a customary land support desk for receiving and addressing complaints from customary land actors and providing technical assistance to community members on land acquisition process.
7.1 ROLE OF THE DISTRICT ASSEMBLY

The District Assemblies, in working with the Lands Commission to facilitate the land acquisition processes at the local and district level, shall:

i. monitor investors’ observance of the provisions in this guideline and report any issue of non-observance to the Lands Commission.

ii. assist in the publication of information on potential acquisitions in local and national dailies to ensure such information reach a wider audience.

iii. disclose all relevant information on the acquisition and appropriately engage all potentially affected individuals, immediately following an investor’s expression of interest.

iv. sensitize and advocate for the interest of women, youth, aged, migrant farmers and other vulnerable groups to be appropriately considered during acquisitions.

v. create awareness on the required processes of assessing and paying compensation, to avert any instances of discrimination based on gender, especially where women are co-owners of affected farms.

vi. assist in the resolution of disputes by collating all grievances from affected individuals during the acquisition process and liaising with the regional Lands Commission for remedies.

vii. ensure that benefits from the acquisition is equitably shared at the community level according to the framework outlined at section 5c of this guideline.

viii. make this guideline and other relevant documents and information available at the local/district level to investors.
8.0 ROLE OF THE INVESTOR

The large-scale land acquisition process entails the investor(s) identifying the land he is interested in and liaising with the relevant State Agencies for advice. The process requires investors knowing their responsibilities and financial commitments, facilitating the production of various reports such as environmental impact assessment, social impact assessment, a land acquisition and compensation framework, and a livelihood restoration plan, as well as having an understanding of the facilitating roles of NGOs, CSOs and accredited professionals in the land sector.

The investor shall satisfy, among others, the following requirements:

a. Conduct land tenure due diligence with the assistance of relevant agencies and professionals.

b. Provide social, economic and environmental impact assessment reports, a land acquisition and compensation framework, and a livelihood restoration plan, by engaging relevant professionals.

c. Provide a report that discusses the differential impacts of the acquisition on women, migrant farmers, the youth, the aged and other vulnerable groups in the community, as well as the appropriate mechanisms for mitigating the disaggregated impacts identified. This report shall be attached to the application for lease registration at the Lands Commission.

d. Submit to the Lands Commission as a requirement for registration of the lease, documented evidence\(^1\) of a meaningful engagement with the female traditional leaders in the community and how their inputs have been considered in the land acquisition process.

e. where there is commitment to establish a Community Development Fund, ensure that the details of the governance arrangement for the fund is described in a separate document and discussed with the Community.

\(^1\) Such documented evidence could be minutes, briefing notes or reports that provide details of discussions or consultations with female traditional leaders.
f. Operate in a transparent manner, which includes FPIC and allow for third-party scrutiny both of which inure to reducing risk and transaction cost, sustainability and long-term profitability of the investment.

g. Ensure that the investment does not harm food security and sustainability of livelihood of the affected communities but rather strengthen them.

h. Publish information on potential acquisitions in local and national dailies to ensure such information reach a wider audience

i. Disclose all relevant information on the acquisition and appropriately engage all potentially affected individuals, from the onset of negotiations.

j. Ensure that contractual agreements are situated within the proper legal framework of Ghana.

k. Identify and engage the holders of the different layers of land rights and interests other than the alodial title holders, including those with lesser land rights that may not be clearly defined but recognised within the landowning community.

l. Ensure that there are clearly defined mechanisms to mitigate the differential impacts of the acquisition on all land right holders.

m. Work with communities to adopt and implement the proposed benefit-sharing framework in Section 5.0 of this guideline.

n. Bear the cost of all pre-contractual arrangements regarding the acquisition of the land.

o. Bear the cost of all permits required for the acquisition and development of the land.

p. Obtain consent to compensation and bear the cost of compensation due to all affected persons including women, migrant farmers, the aged, the youth and other vulnerable groups.

q. Abide by the contractual arrangements and fulfil their social and other responsibilities to the land-owning community in good faith.

In the case of foreign investors registered in Ghana, the investor will have to seek necessary investment guide from the GIPC.
9.0 THE LARGE-SCALE LAND ACQUISITION PROCESS

The acquisition process involves three stages: Pre-registration, Concurrence/Registration and Post-registration (monitoring and compliance).

9.1 STAGE ONE: PRE-REGISTRATION STAGE

This stage involves the identification of the land by the investor, community engagement, negotiations, holding of local fora based on FPIC, gender considerations and presentation of the investment proposal with justification for the extent of land required.

9.1.1 Identification of Land and Stakeholders by Investor

This process is mainly to be done by the investor by identifying land that meets his/her requirements. It also involves the investor identifying stakeholders, which includes all persons who hold interest in the land, the type of interest they hold and all land users on the land and sample their opinions about the intended project to ascertain whether the acquisition is likely to succeed.

Having secured an initial agreement with the land owners to permit the use of the land, the investor shall engage the services of a licensed surveyor to survey the land to determine the extent of land and its suitability for the intended project. Subsequently, the investor shall conduct a search at the Lands Commission for registered interests in the land. The investor shall also check from the Minerals Commission whether any mineral prospecting or concession has been granted over the land.

9.1.2 Community Engagement and Negotiations

This involves making contact with relevant land-owning and interest groups within the community and negotiating the date, time and venue for holding an initial consultative forum. This should be done in consultation with the Lands Commission, which should facilitate the
engagement process with other government agencies such as the District Assembly, TCPD and Ministry of Food and Agriculture.

The investor must seek relevant professional advice and conduct due diligence on the investment. The investor shall prepare a dossier containing the site plan, proposed development, information on investor profile, partners, communication strategy and affected communities as well as conduct a preliminary Environmental, Social and Economic Impact Assessments of the proposed project to aid the negotiation process. Apart from these assessments already stated, there should also be an assessment of the differential impacts of the acquisition on women, migrant farmers, the youth, the aged and other identifiable vulnerable groups in the community, as well as the appropriate mechanisms for mitigating the disaggregated impacts identified. The investor shall apply for concurrence to the Lands Commission after the initial community engagement.

9.1.3 Investor Identity or Screening

Prior to holding a consultative forum, the investor should provide relevant information such as the identity of the investor; track record of the investor (or partners); nature and source of funding for the investment; communication strategy with the community; proposed business plan and phases of land development to the Regional Lands Commission.

9.1.4 The Forum

This is the high-point of the acquisition process. The purpose is to ensure that all stakeholders are fully informed of the acquisition and its likely effect on the community so that the stakeholders will be able to give an informed opinion on the project. In line with this, a local hearing/forum should be held for the community members to accept, turn down or modify the nature of the proposed project before any final documentation is prepared. It is, however, anticipated that a preliminary
agreement would have stated the essential aspects of the grant such as the location, size, term and proposed use of the land.

9.1.4.1 Purpose of the Forum:

To ensure effective consultation at the grassroots level, a local hearing (public forum) within the area where the land is to be acquired must be organised. The purpose is to:

a. provide an opportunity for all persons likely to be affected by the proposed acquisition of the land to have first-hand detailed information on how much land will be involved, where the land is, its limits, what use it is proposed to be put and what possible impacts the proposal will have on the local community;

b. identify and address the concerns of the local community members including women with regard to the acquisition; and

c. seek the informed consent of the local community member including women and other vulnerable groups to the project.

9.1.4.2 Financing of the Forum

Financing of the public hearing/forum shall be by the investor or acquiring body. The investor or acquiring body must submit to the Regional Lands Commission proposals on the process to be followed in organising the forum for advice.

9.1.4.3 Facilitation of the Forum

The forum should be facilitated by the Regional Lands Commission with an option of facilitating through a local NGO or CSO operating in the area. The Regional Lands Officer in close liaison with the Representative(s) of the particular District Assembly on the Regional Lands Commission will organise this forum. The Regional Lands Officer will upon consultation with the traditional leaders give sufficient notices to all persons/stakeholders required to attend the forum at the specified
time and place of the meeting, preferably within the locality. The purpose of the forum should be made known to all the parties including the acquiring body, person or investor.

Before the forum, copies of information on the proposed acquisition and developments as well as ten (10) copies of the site plans should be supplied to the Lands Commission which includes the copies to the District Assembly, TCPD and MoFA and representatives from relevant participating State Agencies. Copies of the site plans submitted to the District Assembly shall be used for publication under Land Administration Act 123.

9.1.4.4 Presiding Over the Forum

The Regional Lands Commission in consultation with the traditional authority and opinion leaders of the land-owning community shall identify a prominent member of the community who is also a person of repute to preside over the forum.

9.1.4.5 Participation at the Forum

Participants at the forum shall include the following:

- The District Chief Executive (DCE) of the area or his/her representative.
- The Traditional Ruler/Grantor/Clan or Family Head(s) or their elders involved in land matters, including their female counterparts;
- Persons occupying and using any land within and contiguous to the land that is the subject matter of the acquisition;
- The Member(s) of Parliament for the affected communities (optional);
- The Officer(s) in the District(s) responsible for the following Government establishments:
  i. The District Planning Office of the Assembly
  ii. Ministry of Food and Agriculture
  iii. Environmental Protection Agency
iv. Lands Commission
v. Office of the Administrator of Stool Lands
vi. Town and Country Planning Department
vii. Minerals Commission (optional depending on specific case)
viii. Forestry Commission (optional depending of specific case)
ix. Ghana Irrigation Development Authority (optional) and
x. Others (optional depending on specific case)

• Concerned NGOs and CSOs.
• Vulnerable and natural resource user groups (women, youth, and elderly indigenous people)
• The investor(s) or their accredited representative(s) with informed knowledge of the proposed project shall also participate in the forum.

Each of the above-mentioned state agencies and groups may be required to provide a detailed but succinct report on the proposal from the perspective of their establishment. This will enlighten the participants on the issues at stake, enable the local community appreciate the import of the proposal in a wider context and help inform their decision on the project.

9.1.4.6 Issues to be Considered at the Forum

Key issues to be considered at the forum will include the following:

a. Disclosure of the approximate extent of land under consideration;

b. The plan for the proposed project must be displayed, the intended use adequately explained (including any phased development);

c. Known impacts of the project disclosed, including the differential impacts of the acquisition on all the different categories of land users within the acquired area, with special attention to impact on women, migrants, youth, aged and other vulnerable groups in the community.

d. The level of community engagements conducted and how all land users, including those without clearly defined land rights, have been identified and engaged (these are expected to have been captured in the land rights inventory report which will be submitted to the Lands Commission as part of the requirements for registration).
e. Proceedings should be open, transparent and participatory enough to enable every issue to be heard by all persons including women, the aged, other vulnerable groups and the youth.

f. Evidence of engagement with relevant stakeholders including female traditional leaders within the community.

g. The needs, concerns, and expectations expressed and how the investor intends to address them should be recorded;

h. Compensation/resettlement issues should be noted;

i. Concerns raised by women, the youth, migrant farmers and other vulnerable groups and affected persons, including those with unclearly defined land rights, about the project should be noted for consideration by the investor;

j. Dissenting views and objections should be noted to allow for balanced reporting;

9.1.4.7 Outcome of the Forum

a. A duly signed/marked attendance list of all participants at the forum should be prepared and attached to the report of the forum.

b. Proceedings must be recorded (in writing and on video) and signed/marked by:
   i. The Chairperson of the forum;
   ii. The Traditional Ruler/grantor or his representatives;
   iii. District Chief Executive (DCE) – optional
   iv. The Member(s) of Parliament for the affected communities (optional).
   v. The District(s) Officer(s) responsible for the following Government establishments:
      • Ministry of Food and Agriculture
      • Environmental Protection Agency
      • Lands Commission
      • Office of the Administrator of Stool Lands
      • Town and Country Planning Department
      • Minerals Commission (optional)
• Forestry Commission (optional)
• Concerned NGOs and CSOs
• District Police Command (optional)
• Vulnerable groups and natural resource users (women, migrant farmers, youth and elderly indigenous people) – (optional)
• The investor(s) or their accredited representative(s)

The Regional Lands Officer should ensure that:

a. Proceedings are well recorded;
b. Minutes of the forum must be certified by the chairman/person and recorder;
c. Each technocrat at the session should provide his/her informed detailed and succinct preliminary opinion on the proposed acquisition and its conformity or otherwise with their plan in the District;
d. An independent preliminary informed assessment and opinion from NGOs and CSOs on the proposed investment should be prepared and added to the dossier on the land submitted by the investor; and
e. All forms provided as appendices in the Guidelines are properly completed under his/her supervision or delegated officers.
9.1.4.8 Dissemination of the Outcome of the Forum

The ultimate decision of the forum should be disseminated to the following:

a. The Metropolitan, Municipal or District Assembly
b. The Regional Lands Commission
c. The Traditional Ruler
d. The Traditional Council
e. Affected Clan and Family Heads and their Principal Elders
f. All those who affirmed the proceedings
g. The Media
h. Traditional leaders/ affected clan and family heads and Contiguous land-owning communities to the acquisition
i. Member(s) of Parliament of the affected communities (optional).
j. All affected individuals and groups

9.1.4.9 Memorandum of Understanding (MoU)

MoU as an interim agreement between affected local communities and investors may be prepared before a final lease is prepared. The MoU shall make clear provisions in regard to the following:

a. Identity of the parties to the agreement and their contact address;
b. Language of the forum and evidence that the import of the MoU was understood based on FPIC and where necessary, with interpreters in attendance;
c. Identification of the rights and list of all potentially affected community members, groups including women and individuals;
d. Substantive issues serving as the basis for negotiations;
e. Commitment of all parties to abide by the stipulated terms of the negotiations;
f. Dispute resolution process which should be fair and accessible to all parties;
g. Developmental phases of the land agreed on with timelines;
h. What constitutes a breach of the agreement should be specified and the consequences for the breach and non-compliance;
i. Re-entry clauses and to whom the land should revert;
j. Basis and mode of compensation taking into account women and other vulnerable groups; and
k. List of facilitating agencies in the acquisition process.

9.1.5.0 Assessment and Payment of Compensation

a. An investor shall prior to the acquisition conduct a land rights inventory (see Appendix F), to identify and engage all persons;
   i. who claim interests in the land to be acquired, including those with lesser land rights that may not be clearly defined but recognised within the landowning community, whether such interests or rights are documented or not.
   ii. whose rights or interest have been affected in any manner by the acquisition, irrespective of their gender.

b. Information on specific land to be acquired shall be published in national and local dailies, posted at market places, churches, mosques, schools, as well as announced through gong-gong beating, community radios, and information centres in the affected community.

c. The investor should provide the affected persons with qualified valuers who shall:
   i. determine the particulars of the affected persons’ interest in the land.
   ii. the manner in which their interests have been affected by the acquisition, taking note of instances where women interplant crops on farms belonging to their male relatives;
   iii. the extent of damage anticipated on the land;
   iv. the amount of compensation due; and
   v. particulars of any other person known to the claimant whose interest has been affected by the acquisition, especially women who interplant crops on farms belonging to their male relatives.

d. The investor shall upon receipt of the compensation claim enter into negotiation with claimants for the settlement of the compensation amount, based on the timelines of the project implementation.
e. A claimant may contest the assessed compensation values, where they are unsatisfied. Such claimants may then appoint their own valuers to conduct the valuation, after an agreement has been reached with the investor on the remuneration of the valuer so appointed.

f. Where parties are unable to agree on the compensation due, the dispute shall be referred to the Lands Valuation Division of the Regional Lands Commission for determination.

9.1.6.0 Compensation principles

In the assessment of compensation which a claimant is entitled to, the underlisted principles shall be considered,

a. In respect of crops,
   i. loss of expected income depending on the nature of crops and their life expectancy.
   ii. loss of earnings or sustenance suffered by the farmer under any customary tenancy or any other interest the farmer may hold in the land.
   iii. any other disturbance suffered as a result of the acquisition.

b. In respect of deprivation of use or a particular use of the natural surface of land,
   i. the disruption of the socio-economic activity of the claimant.
   ii. duration of the lease.
   iii. severance from any part of the land or
   iv. any surface rights or access.
9.2 STAGE TWO: CERTIFICATION (CONCURRENCE) AND/OR REGISTRATION

This stage involves the formal submission of the lease document to the Lands Commission for concurrence and/or registration. Upon the receipt of the formal application, for either concurrence for stool/skin lands or registration of family lands, which must include a copy of the Feasibility Report on the proposal with justification for the extent of land, and all other accompanying attachments which have been listed in APPENDIX 2, the Regional Lands Officer must:

a. Satisfy himself/herself that Stage One has been complied with and that statutory declaration has been made and there is majority agreement on the acceptability of the proposal and the grant of the land;
b. Cause an inspection of the land to apprise the Regional Lands Commission of the key elements about the land and to ascertain the veracity of the report of the local hearing;
c. Satisfy himself/herself that the relevant Impact Assessment reports have been submitted and permit obtained from EPA and these are included in the application received for processing by the Lands Commission
d. Make a recommendation to the Regional Lands Commission for its deliberation if the land is 1000 acres or (approximately 405 hectares) or less;
e. Provide a summary report which must capture the essentials facts per the fact sheet/checklist attached to this Guidelines and his recommendation to the Regional Lands Commission.

The Grantor will then be appropriately advised in writing by the Regional Lands Commission on its opinion regarding the application received.

9.2.1 RECOMMENDATION TO THE LANDS COMMISSION

Where the land exceeds thousand (1000) acres (approximately 405 hectares) a recommendation must be made to the National Lands Commission for its consideration. This referral must be accompanied by:

a. The report of the local forum/hearing; and
b. A brief report from the Regional Lands Officer together with his/her recommendations, including the fact sheet or checklist.

9.2.2 TERM OF YEARS AND SIZE OF LAND TO BE GRANTED

In considering applications the provisions of the Administration of Lands Act, 1962 (Act 123) section 12, are produced here in extenso:

a. 12 (1) Except as provided in subsection (4), a grant of mining or timber rights in a land subject to this Act shall not, subject to articles 266 and 267 of the Constitution, exceed a term of thirty years for mining and thirty years for timber despite anything to the contrary contained in any other enactment.

b. 12 (2) Except as provided in subsection (4), and despite anything to the contrary in any other enactment, a grant of a farming right to a land subject to this Act shall not exceed

i. In the case of land for poultry rearing or the cultivation of cereals, a term of ten years; or

ii. In the case of ranching or the cultivation of mixed or permanent crops, a term of fifty years.

c. 12 (3) Except as provided in subsection (4), a grant of a stool land to any one person and the aggregate of the grants shall not exceed as regards

i. mining rights, 51.80 square kilometres for a grant or, in the aggregate 155.40 square kilometres,

ii. timber rights, 103.40 square kilometres for a grant or, in the aggregate 621.60 square kilometres, and

iii. the right to collect rubber, to cultivated products of the soil, other than timber, or relating to the pursuit of animal husbandry,

- for an individual, 2.59 square kilometres or in the aggregate 7.77 square kilometres;
• for a body corporate or unincorporated body of persons established or registered in Ghana 12.95 square kilometres or in the aggregate 25.90 square kilometres.

d. 12 (4) The President may, in the case of a particular land where the President is satisfied that special circumstances exist that render compliance with the limits prescribed by this section prejudicial to the national interest or to the interest of a stool, direct that the grant of that land or any other interest in that land shall exceed the areas specified in subsection (3) and the land or an interest in that land may be granted although the limits are exceeded.

9.2.3 COMPLIANCE WITH PROVISIONS OF ADMINISTRATION OF LANDS REGULATIONS, 1962 (L.I.232)

All grants and processing of documents for stool/skin lands should also comply with all provisions of the Administration of Lands Regulations, 1962 (L.I. 232).

9.3 STAGE THREE: POST-CONCURRENCE AND/OR REGISTRATION STAGE

This stage involves the community, investor and relevant state agencies collaborating to perform their roles in accordance with the following:

a. Monitoring compliance with statutory enactments and terms of the agreement particularly regarding the fulfilment of investor’s corporate social responsibility, mitigation of impact of the project and the duties of the community.

b. Enforcement of sanctions for non-compliance of terms of agreement by either the community or the investor.

c. Review of the terms and conditions of the agreement in the face of extenuating circumstances.

In addition to the above, the relevant state agencies such as the Lands Commission, Office of the Administrator of Stool Lands and Town and Country Planning Department shall perform the underlisted roles respectively:
d. Serve as a repository for the registered transaction documents, evidence of proceedings at the public forum and Memorandum of Understanding signed between the parties for future referencing.

e. Ensure that revenues collected are disbursed in accordance with the formula prescribed in Article 267 (6) of the Constitution.

f. Ensure that the project implementation conforms to the approved land use for the area at all points in time.

APPENDICES

The forms provided in the Guidelines as appendices are to be duly completed under the supervision of the Regional Lands Officer and submitted to the Lands Commission.

Appendix 1: Factsheet form, which elicits basic information about the investor company.

Appendix 2: A checklist on the compliance of the Guidelines.

Appendix 3: Requires information on formal engagement with stakeholders from community entry up to the organisation of public forum and thereafter. The form, which is a sample, is expandable by row and should be reproduced in landscape format.

Appendix 4: Sample of attendance list of community members who participated in the public forum organised in respect of the land transaction. The table is expandable by row and should be reproduced in landscape format.

Appendix 5: Sample of attendance list of CSOs, NGOs, Public officials and Investor or their representatives who participated in the public forum organised in respect of the land transaction. The table is expandable by row and should be reproduced in landscape format.

Appendix 6: Sample of objection form to land transaction or project implementation by community member(s). The table is expandable by row and should be reproduced in landscape format.
Appendix 7: Checklist of key elements to be contained in a land agreement between the community and an investor.

Appendix 8: Guidance on how to conduct a land rights inventory (i.e., a stocktaking of all land rights that have been affected by an acquisition).

APPENDIX 1: FACTSHEET ON COMPANY (Please indicate the name of the Company)

<table>
<thead>
<tr>
<th>S/N</th>
<th>FACTOR</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Full name of the Company</td>
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<tr>
<td>2</td>
<td>Company registration date</td>
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<tr>
<td>3</td>
<td>Company registration number</td>
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<tr>
<td>4</td>
<td>Registered address of the Company</td>
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<tr>
<td>5</td>
<td>Commencement date of business</td>
</tr>
<tr>
<td>6</td>
<td>Ownership status of the Company</td>
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<tr>
<td>7</td>
<td>Proposed Operational Location</td>
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<tr>
<td>8</td>
<td>Name of Director(s)</td>
</tr>
<tr>
<td>9</td>
<td>Land area required (Hectares &amp; Acres)</td>
</tr>
<tr>
<td>10</td>
<td>Purpose</td>
</tr>
</tbody>
</table>

APPENDIX 2: LANDS COMMISSION’S APPLICATION VETTING CHECKLIST

<table>
<thead>
<tr>
<th>S/N</th>
<th>FACTOR</th>
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<tbody>
<tr>
<td>1</td>
<td>Is the company registered in Ghana?</td>
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<td>2</td>
<td>Has evidence of certification of incorporation been provided</td>
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<td>3</td>
<td>Has evidence of certificate to commence business been provided?</td>
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<td>Is the company</td>
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<tr>
<td>4</td>
<td>(a) Wholly Ghanaian-owned?</td>
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<td></td>
<td>(b) Wholly foreign-owned?</td>
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<tr>
<td></td>
<td>(c) Mixed holding: Ghanaian-Foreign holding?</td>
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<tr>
<td>5</td>
<td>Does the company have any track record of the intended project or does it have a partner with the requisite track record? If yes, give details as attachment.</td>
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<td>6</td>
<td>What are the sources of funds for the investor or any evidence of the availability of funds for the investment? If yes, give details as attachment.</td>
</tr>
<tr>
<td>7</td>
<td>Has the company provided a feasibility study report or a project proposal? Attach a copy, if yes.</td>
</tr>
<tr>
<td>8</td>
<td>Has the company provided documented evidence of meaningful engagement with female traditional leaders? Attach a copy, if yes.</td>
</tr>
<tr>
<td>9</td>
<td>Has the company provided a Land Rights Inventory (LRI) report? Attach a copy, if yes.</td>
</tr>
<tr>
<td>10</td>
<td>Has the company provided a Land Acquisition and Compensation Framework (LACF)? Attach a copy, if yes.</td>
</tr>
<tr>
<td>11</td>
<td>Has the company provided a Livelihood Restoration Plan (LRP)? Attach a copy, if yes.</td>
</tr>
<tr>
<td>12</td>
<td>Has the company provided a summary of the differential impact of the acquisition on women, migrant farmers, youth, the aged and other identifiable vulnerable people in the area of the acquisition? Attach a copy, if yes.</td>
</tr>
<tr>
<td>13</td>
<td>Has the company committed to establish a Community Development Fund? If yes, attach a copy of the document that discusses the details of the fund to be established.</td>
</tr>
<tr>
<td>13</td>
<td>Has the size of the land been indicated?</td>
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<tr>
<td>14</td>
<td>Has a statutory declaration been made by the customary land owner(s)?</td>
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<tr>
<td>15</td>
<td>Are there any objections to the statutory declaration?</td>
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<tr>
<td>16</td>
<td>Is the land intended for agricultural purposes?</td>
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<tr>
<td>S/N</td>
<td>FACTOR</td>
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<td>-----</td>
<td>------------------------------------------------------------------------</td>
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<tr>
<td>17</td>
<td>If land is not for agricultural purposes, has the intended use been disclosed?</td>
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<td>18</td>
<td>Will the produce/product primarily be for:</td>
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<td></td>
<td>(a) Domestic market only?</td>
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<td></td>
<td>(b) Export only? or</td>
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<td></td>
<td>(c) Both export and domestic market?</td>
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<td>19</td>
<td>Has the primary economic activity of the community in which the land is situated been disclosed?</td>
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<tr>
<td>21</td>
<td>Does the proposal seek to integrate the local communities in the implementation process?</td>
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<td>If yes, how? (Attach details)</td>
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<td>22</td>
<td>Does the proposed use conform to the planning framework of the area?</td>
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<td>23</td>
<td>Has the outline of the nature of the land holding system in the area been provided?</td>
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<td>24</td>
<td>Does the report of the local hearing disclose the effects of the acquisition on the rights of the members of the community?</td>
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<tr>
<td>25</td>
<td>Does the report of the local hearing disclose the effects of the acquisition on the rights of women?</td>
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<tr>
<td>26</td>
<td>Does the report of the local hearing disclose the effects of the acquisition on the rights of migrants?</td>
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<tr>
<td>27</td>
<td>Are there any settlements within the land? If Yes, how are these settlements likely to be affected by the grant (To be obtained from the local hearing)</td>
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<tr>
<td>28</td>
<td>Does the report disclose the concerns, expectations and dissenting views of community members?</td>
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<tr>
<td>29</td>
<td>Does the report make provisions for the compensation of community members adversely affected by the acquisition?</td>
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<tr>
<td>30</td>
<td>Does the report of the local hearing provide sufficient evidence that the acquisition process was done on the basis of Free, Prior, and Informed Consent of community members?</td>
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<tr>
<td>31</td>
<td>Does the acquisition cover wildlife conservation areas, forest areas, water sheds, mining and mineral concessions? If yes, specify.</td>
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The following tables should be reproduced in landscape format.

**APPENDIX 3: STATEHOLDER ENGAGEMENT AND CONSULTATION PROCESS FORM**

Name of proposed project/investment (Delete and type) ..................................................

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Date</th>
<th>Engagement</th>
<th>Stakeholders Involved</th>
<th>Purpose</th>
<th>Outcome</th>
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**APPENDIX 4: LIST OF PUBLIC FORUM PARTICIPANTS (COMMUNITY MEMBERS)**

**Name of Proposed Project** (delete and type)

**Location and Venue** (delete and type)

**Date of the forum** (delete and type)

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<thead>
<tr>
<th>Serial No.</th>
<th>Name</th>
<th>Gender (M or F)</th>
<th>Community</th>
<th>Designation</th>
<th>Telephone No.</th>
<th>Signature/Thumbprint</th>
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**APPENDIX 5: LIST OF PUBLIC FORUM PARTICIPANTS (CSOs, NGOs, PUBLIC OFFICIALS, INVESTORS)**

**Name of Proposed Project** (delete and type)

**Location and Venue** (delete and type)

**Date of the forum** (delete and type)
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<tr>
<th>Serial No.</th>
<th>Name</th>
<th>Gender (M or F)</th>
<th>Organisation</th>
<th>Designation</th>
<th>Telephone No.</th>
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APPENDIX 6: **LAND TRANSACTION AND PROJECT IMPLEMENTATION OBJECTION FORM** (Print in Landscape format)

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<tr>
<th>No</th>
<th>Name</th>
<th>Gender (M or F)</th>
<th>Community</th>
<th>Designation</th>
<th>Objection to Land Transaction</th>
<th>Objection to Project Implementation</th>
<th>Comments</th>
<th>Signature / Thumbprint</th>
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APPENDIX 7: **KEY ELEMENTS OF A LAND AGREEMENT**

In this part, the main elements (‘a’ to ‘e’) represent the ingredients of any valid lease or land document, whiles the list under the last element (‘f’) are the additional issues that must be present in a lease agreement to ensure that communities and investors benefit mutually from the investment.

a. **Parties to the Agreement** - The parties to the agreement must be clearly described in a way that makes them identifiable. The description should state the respective names of the parties, the capacities in which they are transacting the land and their addresses or where they are physically located.

b. **Property Description** – The land which is the subject matter of the agreement must be easily identifiable and should not be in doubt. Although the plot number and or coordinates of the subject land would usually be found on the accompanying site plan, these must also be mentioned in the body of the lease.
c. **Consideration for the Land** – The agreed sum being paid for the use of the land by the investor must be mentioned in the agreed currency. The payment plan/schedule must also be clearly laid out in the lease document. The consideration may not always be money, but anything done or given in exchange for the right to use the land.

d. **Period of the lease** – The agreed period for the use of the land must be negotiated and categorically stated, without any ambiguity on the start and end dates.

e. **Signatures of Parties and Witnesses** – The parties must sign the agreement to indicate their endorsement of the lease. The witnesses of the respective parties must also be present at the time of signing and must also indicate their names and signatures as well.

f. **Terms of the Agreement** – The terms of the lease agreement among other express covenants should include the following.

   i. **Purpose of the Acquisition** – The proposed use of the land must be stated to ensure that the land is used for the purpose for which it was acquired and will not be changed except through re-negotiation. This is because the agreement for the grant of the land is based on the intended use which has been fully assessed and received the buy-in of the community and other relevant stakeholders.

   ii. **Investor’s Commitments Under the Lease** – where an investor agrees to the fulfilment of specific commitments, such as the implementation of a Livelihood Restoration Plan, a Land Acquisition and Compensation Plan or to establish a Community Development Fund among other similar commitments, these must be mentioned in the body of the lease. The timelines for the fulfilment of the respective commitments must also be agreed and stated in the lease. Beyond mentioning such commitments in the lease, copies of the accompanying separate documents that contain the details of those commitments must also be attached to the signed lease during the application for registration. This is to ensure that the community and the Lands Commission are privy to the provisions of the commitments for the purpose of monitoring and enforcement.

   iii. **Dispute Resolution and Grievance Redress Mechanisms** – The agreement must outline clear procedures by which any dispute arising out of the agreement would be resolved. Parties should not assume that disputes would not arise.

   iv. **Rent Review** – As a hedge against the effect of inflation the periodic sums payable must be subject to review, based on an agreed review period and rate. By so doing, it will help ensure that payment reflect the real/time value of money.
APPENDIX 8: FRAMEWORK FOR CONDUCTING LAND RIGHTS INVENTORY

In line with the provisions under Section 9 of this guideline, an investor is required to identify the land rights and provide a list of all potentially affected community members and groups, including women and individuals. In the fulfilment of this requirement, the investor must necessarily conduct a land rights inventory – an undertaking which is aimed at identifying, clarifying and recording the nature and extent of rights and interests held in land by individuals and groups within a defined geographical area, at a given time. Thus, the conduct of a land rights inventory offers the best means of capturing all land rights that have been affected by an acquisition.

Approach

a. After the necessary engagements and negotiations on a land acquisition, the actual land rights inventory starts with a preliminary collection of primary data on the customary land rights practices and arrangements in the project area, through the conduct of key informant interviews to ascertain among other issues:

- the main types of land rights that are granted in this community;
- those who have capacity to grant each of the identified land rights;
- the specific arrangements that exist between the land rights holders and their grantors;
- the available forms of documentation of land rights in the community;
- the common land related disputes in the area and how can that influence the process for compensation assessment and payment;
- the vulnerable groups with respect to compensation assessment and payment;
- the potential risks to the vulnerable groups;
- how vulnerable people could be effectively organised to be part of the land rights inventory process;

The results and lessons from these preliminary key informant interviews are valuable and will provide clear context and guidance to the rest of the exercise, especially, in ensuring that measures are put in place to capture those seemingly unfamiliar land rights that would have been otherwise overlooked.

b. The second stage of the process involves clearly defining the boundaries of the project parcel, through the conduct of a land survey by a licensed surveyor. This exercise requires an extensive mobilization and sensitization of all the boundary sharers, including those whose lands are not part of the acquisition but share boundaries with the project parcel.

c. The third stage is the sensitization of the affected community on the inventory to be conducted, with focus on the land users because; even though the traditional leaders will be involved in the identification, demarcation and confirmation of the boundaries and farmers on their lands, the land users will need to be engaged directly on the identification of the farmlands they occupy.

Since the identification of all eligible parties for any compensation payment depends on the inventory to be done, the sensitization should also emphasize the need for the
active participation of all land rights holders, including those with lesser land rights that may not be clearly defined or documented but recognised within the landowning community. At the end of the sensitization, community members and leaders should have clear understanding on what is to be done, why, how and the responsibilities of the leaders, the land users and the community members on one hand, and the investor on the other.

d. After demarcating the boundaries of the project parcel, sensitizing and mobilizing the community for the exercise, the next activities include;

1. the internal mapping out of the individual parcels of land occupied by individual farmers and households, where the land rights holders go with the project team undertaking the inventory, to show their respective farm parcels, in the presence of those they share boundaries with. The team undertaking the inventory must take care not to overlook the rights of women who interplant crops on farms belonging to their male relatives. These data should be accurately captured using the appropriate tools and validated with land owners/traditional leaders.

2. data collection on the land users on the parcels that have been mapped out. The data to be collected include, but not limited to the following;

   - the name(s) of land user(s)
   - origin of the land user (indigene/migrant)
   - age
   - gender
   - location (residential address)
   - passport picture
   - the next of kin
   - the estimated size of parcel held
   - location
   - description of the land use
   - type of rights and interest held in the land
   - nature and parties to the land transaction
   - period of occupation and use granted
   - number of years so far spent on the land
   - obligations under the land transaction
   - boundary sharers

e. On the completion of the inventory, the field data should be collated into a complete inventory list, preferably on a Microsoft Excel spreadsheet. At this stage, the compiled data would need to be triangulated, so that all discrepancies can be eliminated. This can be done by sharing and discussing the data with the traditional leaders and community leaders.

f. The final stage of the land rights inventory exercise involves a validation of the data at the community level. In mobilizing for these sessions, the investor’s project team must ensure that the participants in the exercises include the affected people and their
respective landlords. The final product should be shared with the traditional leaders and the community leaders.
Prepared by the Lands Commission