

SIERRA LEONE LAND INVESTMENT CHECKLIST



PREFACE

Large-scale acquisition of land in Sierra Leone for mining or agribusiness has been plagued by many problems including lack of consent, lack of access to information and unclear processes to engage communities directly affected. The Sierra Leone Land Investment Checklist seeks to address these problems.

This Checklist provides important legal and practical guidance for companies interested in leasing land, land-owning communities and government agencies regulating various aspects of the land sector.

The Checklist is done in the form of an easy-to-read booklet with graphic illustrations showing the various steps and processes investors and communities should take in negotiating agreements for acquiring land leases. It groups the steps and processes parties have to take under three broad heads: Before Negotiations, During Negotiations and After Negotiations. Each category provides guidance on key actions and steps to be undertaken by companies, communities and government agencies in the course of initiating and finalizing large-scale land leases.

The Checklist draws from relevant laws currently in force including the Customary Land Rights Act 2022, the National Land Commission Act 2022, the Mines and Minerals Development Act 2022, and the Environment Protection Agency Act 2022. The document also draws inspiration from the 2015 National Land Policy and local and international best practices.

Many stakeholders including regulatory institutions, paramount chiefs, civil society organisations, and investment companies were consulted and provided invaluable input which have been reflected in the Checklist.

Crucially, the Checklist drew insights from the communities we work with across the country and was pre-tested in four chiefdoms with the final product benefitting from a stakeholders' validation.

We hope the Checklist will bring clarity to a once murky process and help promote responsible large-scale land investment and investor/community harmony in Sierra Leone.

We are grateful to the United Nations Development Programme (with funds from the United Nations Peacebuilding Fund) for supporting the production of the Checklist.

Namati Sierra Leone 2023

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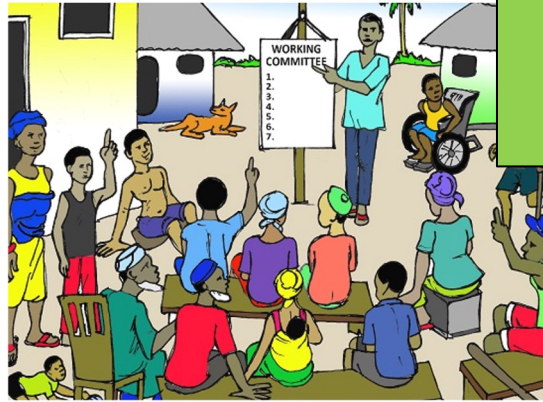


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BEFORE NEGOTIATIONS CHECKLIST

Step No.	Activity	Responsible Party	Check Box
1	Investor holds initial meeting with the Paramount Chief (PC)	Investor	<input type="checkbox"/>
	PC coordinates Chiefdom Land Committee (CLC) meeting with investor	Paramount Chief	<input type="checkbox"/>
2	The CLC engages relevant Village Area Land Committee(s) (VALCs) about the investment	Chiefdom Land Committee	<input type="checkbox"/>
3	The investor, CLC, and VALC meet with the communities: 1st meeting	Investor & Chiefdom Land Committee	<input type="checkbox"/>
4	The investor meets with the community/landowners to provide detailed information about the project	Investor	<input type="checkbox"/>
5	The community contacts and informs a legal aid provider to help them in the land negotiation process	Community/Landowners	<input type="checkbox"/>
6	The community seeks more information from the government	Community	<input type="checkbox"/>
7	Investor conducts an Environmental, Social and Health Impact Assessment (ESHIA).	Investor and consultant (w/ EPA guidance)	<input type="checkbox"/>
8	Investor secures an Environmental Impact Assessment license from EPA	Investor / EPA	<input type="checkbox"/>
9	The investor may consult with its lawyer.	Investor	<input type="checkbox"/>
	The community seeks legal assistance from lawyers and/or paralegals or the government.	Community	<input type="checkbox"/>
10	Community/landowners make informed decisions on whether to negotiate with investor	Community/landowners	<input type="checkbox"/>
11	Chiefdom Council certifies family decision	Chiefdom Council	<input type="checkbox"/>
12	Landowning families and communities register their land with the District Land Commission	Landowners and District Land Commission	<input type="checkbox"/>

BEFORE NEGOTIATIONS

STEP 1: The investor holds an initial meeting with the Paramount Chief (PC) who will help coordinate a Chieftom Land Committee meeting with the investor.



Per tradition and best practice, anybody visiting a chieftom should first meet with the PC as the first point of call. The chief can then direct the investor on next steps for engaging the Chieftom Land Committee and communities.

Relevant Laws & Policies:

*Best practice and tradition; The Customary Land Rights Act 2022 s. 9;
Chieftaincy Act 2009 s. 29 1(d)*

BEFORE NEGOTIATIONS

STEP 2: The Chieftom Land Committee engages relevant Village Area Land Committee(s) about the investment.



The Chieftom Land Committee manages land in each chieftom in the provinces and manages communal lands in their chieftom. The Chieftom Land Committee should adequately inform the VALC, the rightful landowners, and the community at large about interest shown in their land, and prepare them for a meeting with the investor.

Relevant Laws & Policies:

The Customary Land Rights Act 2022 ss. 9, 13, 14; The National Land Commission Act 2022 ss. 44 & 45

BEFORE NEGOTIATIONS

STEP 3: The investor meets with the community, Chiefdom Land Committee (CLC), and the Village Area Land Committee (VALC) in a general meeting.



This meeting is mainly for introducing the investor and providing basic information about the project to the community landowners and land users. The meeting must be held in one of the targeted communities.

Based on good practice.

BEFORE NEGOTIATIONS

STEP 4: The investor meets with the community/landowners to provide detailed information about the project: 2nd meeting.



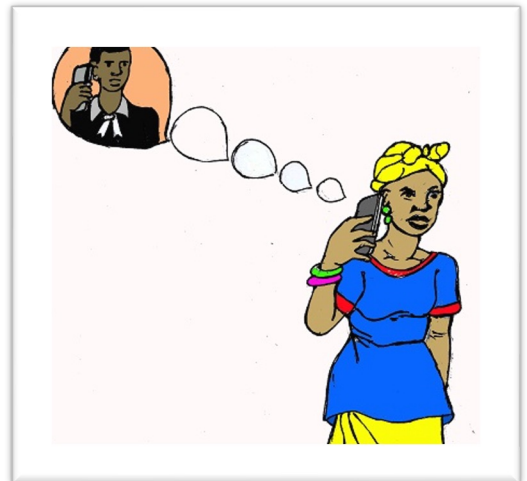
The investor is expected to provide all relevant information relating to the investment in the language of the community. It is the right of the people to be given information on the type of investment, the size of land required, the duration of the investment, crops that may be affected, the potential benefits of the investment, and how it will impact their lives, health, society, and environment.

Relevant Laws & Policies:

The Customary Land Rights Act 2022 s. 29. Right to Access Information Act 2013 s. 2

BEFORE NEGOTIATIONS

STEP 5: Community contacts a legal aid provider that can help them in the negotiation process.



Communities have the option to reach out to their lawyer, a trusted CSO/NGO or a lawyer from the government. After the 2nd meeting with the investor, the community and landowners discuss the information provided by the investor and make initial decisions, including whether they want to negotiate any land deal or benefit sharing agreement. The community informs their lawyer or trusted NGO/CSO and the investor of their decision.

Relevant Laws & Policies:

The Customary Land Rights Act 2022 s. 29; Right to Access Information Act 2013 s. 2

BEFORE NEGOTIATIONS

STEP 6: For better education on the proposed investment, the community seeks more information from the investor or relevant government agency.



The information will include the investor's registration, what they are registered to do in the country, who are the shareholders, the company's contact address, type of operations (if mining, kind of mineral; if agriculture, type of crops; if conservation, type of conservation).

Relevant Laws & Policies:

The Customary Land Rights Act 2022 s. 29. Right to Access Information Act 2013 s. 2

BEFORE NEGOTIATIONS

STEP 7: With the guidance of the Environment Protection Agency (EPA), the investor conducts an Environmental, Social and Health Impact Assessment (ESHIA).



The investor hires the services of a consulting firm to do the ESHIA. The community should be aware of the study and they should participate in the study from the inception to the public disclosure.

Relevant Laws & Policies:

Environmental Protection Agency Act 2022 s. 24. Mines and Minerals Development Act 2023 s (135) (1)(2).

BEFORE NEGOTIATIONS

STEP 8: Investor secures an Environmental Impact Assessment (EIA) licence from the Environment Protection Agency (EPA) and shares with the communities.



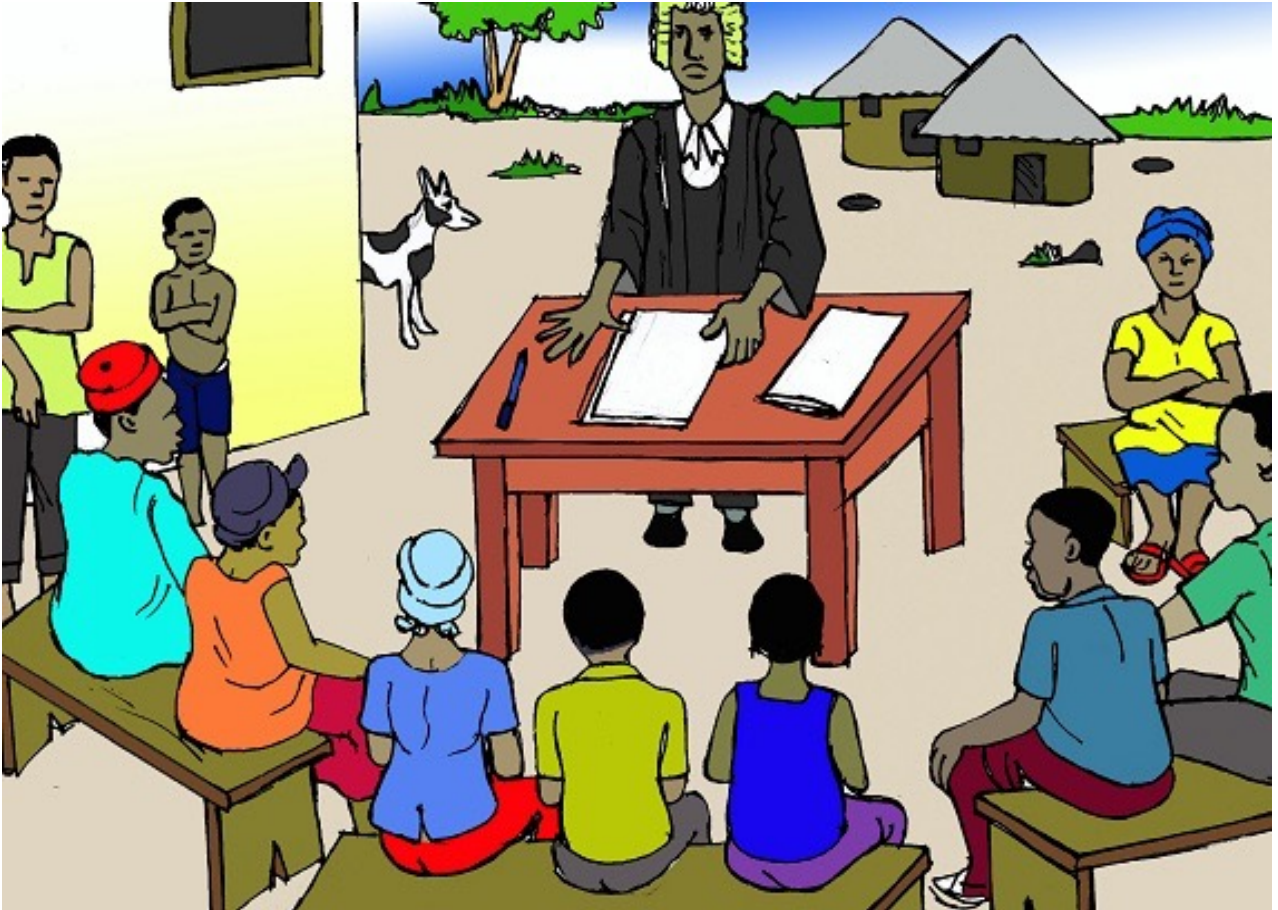
The outcome of the public disclosure is incorporated, and the EIA report is submitted to EPA for the board's approval. If the board approves, it will issue a licence with conditions the investor should follow. These documents should be shared with the community.

Relevant Laws & Policies:

Environmental Protection Agency Act 2022 ss. Mines and Minerals Development Act 2023 s135(1).

BEFORE NEGOTIATIONS

STEP 9: Education of the community on the EIA and licence conditions.



The Civil Society Organisation (CSO) / Non-Governmental Organisation (NGO), paralegals or the community lawyer educate the community on the contents of the EIA and license conditions. This will help the communities to make informed decision.

Relevant Laws & Policies:

The Customary Land Rights Act 2022 s. 30. Legal Aid Act 2012 ss. 1 and 20(2).

National Land Policy (NLP) 2015 s. 6.4 e(ix) (access to legal aid)

BEFORE NEGOTIATIONS

STEP 10: Community/landowners make informed and final decision on whether to negotiate with investors.



All adult female and male members of the community/landowning families should meet to decide whether to negotiate with the investor.

It is always prudent for communities to make the final decision at this stage. At this stage, all information has been made available to ensure communities/landowners make an informed decision.

Relevant Laws & Policies:

Customary Land Rights Act 2022 s. 28. NLP 2015; s. 6.4 e (Free Prior and Informed Consent- FPIC)

BEFORE NEGOTIATIONS

STEP 11: Meeting with the Chieftom Council to certify family decision.



Since the Chieftom Council oversees land acquisition in the chieftom, the document of the family's consent is presented to them for certification.

Relevant Laws & Policies:

The Customary Land Rights Act 2022 s. 9, 12(1)(2)

BEFORE NEGOTIATIONS

STEP 12: Landowning families and communities register their land with the District Land Commission



All land that an investor seeks to acquire must have been registered before negotiations begin. To register land, there must be a basic map of the land, a signed boundary agreement, markers around the land, an established VALC and byelaws on land and natural resource governance. People can get assistance from a paralegal or para-surveyor to register their land. Land registration can be done at the District Land Commission through the CLC.

NOTE: This is applicable when the district registry would have been established.

Relevant Laws & Policies:

Customary Land Rights Act 2022 s. 35. National Land Commission Act 2022 ss. 65, 68, 70, and 71

DURING NEGOTIATIONS CHECKLIST

Step No	Activity	Responsible Party	Check Box
1	The landowning family or community forms a negotiating committee and develops rules	Community/Landowning families	<input type="checkbox"/>
2	Multi-stakeholders meeting to discuss responsible investment	Investor	<input type="checkbox"/>
3	Investor and community meet to decide on timelines for the lease agreement negotiation	Investor & community	<input type="checkbox"/>
4	Participatory mapping/survey conducted to ascertain the area for the investment	Investor & communities/landowners	<input type="checkbox"/>
5	Do crop assessment and pay compensation	Investor (w/ guidance from Min. of Agriculture)	<input type="checkbox"/>
6	Community and Investor/company begin negotiations: production of the first draft of the agreement	Community & investor	<input type="checkbox"/>
7	The second phase of negotiation- draft two of the agreement.	Community/company	<input type="checkbox"/>
8	Hold joint community-investor meetings to discuss outstanding issues and finalize agreement	Investor & community	<input type="checkbox"/>
9	Signing of agreement	Investor and Community	<input type="checkbox"/>
10	Payment and compensation to landowners	Investor	<input type="checkbox"/>

DURING NEGOTIATIONS

STEP 1: The landowning family or community forms a negotiating committee and develops rules.



The family or community can form a negotiating committee that includes the head of the family and a fair representation of women and men.

The community develops rules on how the committee should operate.

Relevant Laws & Policies:

The Customary Land Rights Act 2022 s. 11(3).

Chapter III section 26(1) of the 1991 Constitution (right to association)

DURING NEGOTIATIONS

STEP 2: Multi-stakeholder meeting to discuss responsible investment.



This meeting should consist of the chieftom council, landowners, land users, investor, and other stakeholders including government officers, security forces, etc.

The content of this meeting should include:

- The community's land is **NOT FOR SALE**;
- There should be a lease agreement before operations commence, and for mining projects, before the mining licence application.
- No payment of lease/surface rent before the signing of the lease agreement;
- No documents signed until the community gets legal assistance;
- The community should not be pressured to take action or make decisions;
- Investors should be allowed to do studies and other related surveys;
- No one should take the law into their hands. Everyone should use the appropriate mechanism(s) to resolve disputes.

Best Practice VGGT 2012

DURING NEGOTIATIONS

STEP 3: The investor and community should meet and decide on timelines for the agreement negotiation.



To manage expectations, the community and investor should hold a bilateral meeting and agree on specific timelines for the entire negotiation process. The lawyers/paralegals/NGOs can help facilitate this process.

Relevant Laws & Policies:

VGGT section 12.8 (principles of consultation and participation). Best Practice. NLP 2015.

DURING NEGOTIATIONS

STEP 4: Participatory mapping/survey conducted to identify the area for the investment.



The investor and community/ landowners enter the land to be leased or conserved and jointly survey and map the land.

The community has the right to say which land they want to lease and which they don't want to lease.

All environmentally sensitive and protected areas should be excluded from the area to be mapped for the investment.

Female and male community reps/young people should be trained in the use of the mapping device and allowed to participate in the process.

Relevant Laws & Policies:

The Customary Land Rights Act 2022 ss. 40 & 42. Forestry Act 2022 s. 21(2).

The Customary Land Rights Act 2022 ss. 21 and 25

DURING NEGOTIATIONS

STEP 5: With the guidance of the Ministry of Agriculture, the investor does crop assessment and then pays compensation.



With the active participation of the landowners'/crop owners' and with the assistance of the Crop Department of the Ministry of Agriculture, all crops on the mapped land are assessed. The assessment is done in line with the policy of the Ministry of Agriculture.

Relevant Laws & Policies:

*Ministry of Agriculture Revised Crop Compensation List 2014. The Customary Land Rights Act 2022 s. 39.
Mines and Minerals Development Act 2023 s. 35.*

DURING NEGOTIATIONS

STEP 6: Community and Investor/company begin negotiations: production of the first draft of the lease.



The community meet in a general meeting with their lawyers/paralegal/CSO to state the things they want to see in the lease. The information gathered is used to produce the first draft and share with the company. The lease should contain at least the minimum provisions in the 2nd Schedule of the Customary Land Rights Act 2022.



The investor and their lawyers make inputs and counter offers and send them back to the community's lawyers for the attention of the community.



In an open/public meeting, the input and offers from the investor are read to the community for further consideration and counteroffers.

Make sure women, youths, physically challenged persons and land users are involved in the negotiation decisions and meetings.

Relevant Laws & Policies:

The Customary Land Rights Act 2022 ss. 33, 34, and Second Schedule. NLP 2015, section 6.4 c(v). Investment Policies and Incentives For Private Sector Promotion in Agriculture in Sierra Leone 2009. VGGT 2012.

DURING NEGOTIATIONS

STEP 7: The second phase of negotiation- draft two and more of the lease agreement.

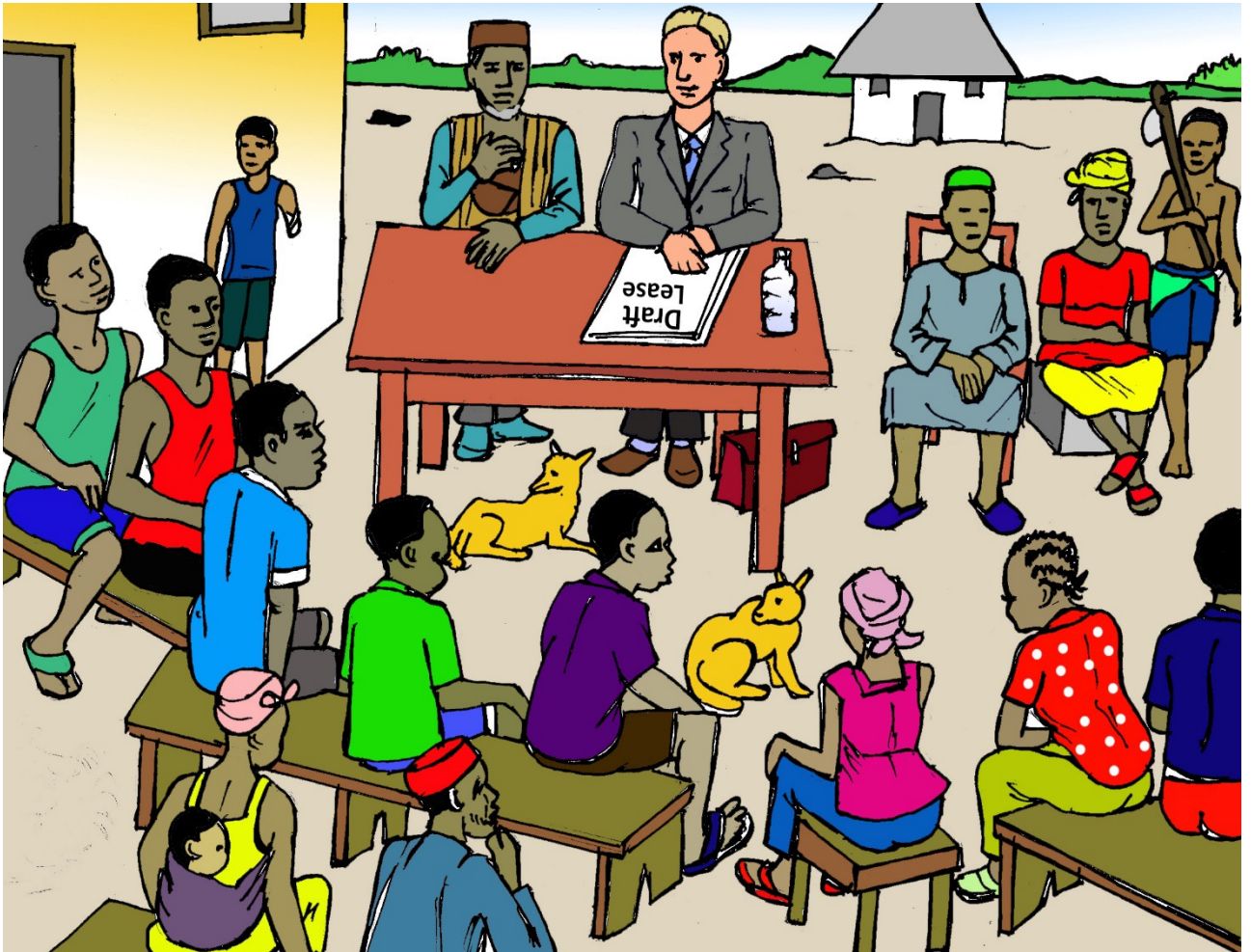


The community's concerns/comments/counter offers are incorporated into the second and subsequent drafts and sent to the investor and their lawyers for further comments.

Relevant Laws & Policies:
VGGT; NLP 2015, section 6.4 c(v).

DURING NEGOTIATIONS

STEP 8: Hold joint community-investor meetings to discuss outstanding issues and finalize agreement.



In an open/public community meeting, the investor and the community are brought together to discuss any unresolved issues, find common ground, and finalize the agreement.

Good Practice

DURING NEGOTIATIONS

STEP 9: The signing of the agreement.



The agreement should be signed by representatives of the landowning families and the investor in an open public gathering in the community. This should be witnessed by all stakeholders.

Relevant Laws & Policies:
The Customary Land Rights Act 2022 s.31

DURING NEGOTIATIONS

STEP 10: Payment and compensation to landowners.



The investor pays rent to landowners' designated bank accounts and pays other forms of compensation according to the law and/or terms of the agreement.

Relevant Laws & Policies:

*Lease Agreement or Beneficiary Agreement; Customary Land Rights Act 2022 ss. 38, 39 and 41;
Mines and Minerals Development Act 2023 ss. 33(4), 35 and 36.*

AFTER NEGOTIATIONS CHECKLIST

Process No	Activity	Responsible Party	Check Box
1	Registration of the lease agreement or legal instrument	Investors and their lawyer	<input type="checkbox"/>
2	The investor (if mining) applies for a mining license at the National Minerals Agency (NMA).	Investor & NMA	<input type="checkbox"/>
3	Form or maintain a strong committee of landowners, land users, women and youths. Amend, maintain, or develop rules on how the committee works	Community/ Landowners	<input type="checkbox"/>
4	Facilitation of Community Development Agreement between the investor and the community	NMA	<input type="checkbox"/>
5	Submission of CDA to Minister for approval	Investor/Community	<input type="checkbox"/>
6	Formation of the chiefdom Development Committee (CDC)	Chiefdom Authorities	<input type="checkbox"/>
7	Access all information and documents relating to the investment	Community	<input type="checkbox"/>
8	Hold periodic joint investor-community meetings with landowners and stakeholders (Multi Stakeholders Platform - MSP)	Investor	<input type="checkbox"/>
9	Bring all social and environmental harms and violations to the attention of the village or chiefdom land committee and appropriate government body.	Community & Company whistleblowers	<input type="checkbox"/>
10	Prompt payment of rent and other associated payments	Investor	<input type="checkbox"/>
11	Company develops friendly, easy-to-use and functional Grievance Redress Mechanism (GRM)	Investor	<input type="checkbox"/>
12	Monitoring of investment area and facilities	Regulatory bodies and Community	<input type="checkbox"/>
13	No violence	Communities	<input type="checkbox"/>

AFTER NEGOTIATIONS

PROCESS 1: Registration of the agreement.



The investor should ensure that any agreement is registered with the relevant government body within 60 days of the lease signing and that copies of the agreement are made available to the respective landowners and chiefdom stakeholders.

Relevant Laws & Policies:

Cap 256 (registration of instruments), s. 4. The Customary Land Rights Act 2022 s. 32(3b)

AFTER NEGOTIATIONS

PROCESS 2: The investor (if mining) applies for a mining license at the National Minerals Agency (NMA).



After the signing of the lease agreement, the mining investor applies for licence (s) from the NMA. If the nature of the project changes at any point after the lease is signed, the investor may need to reapply for an EIA licence and re-engage the community on the terms of the lease.

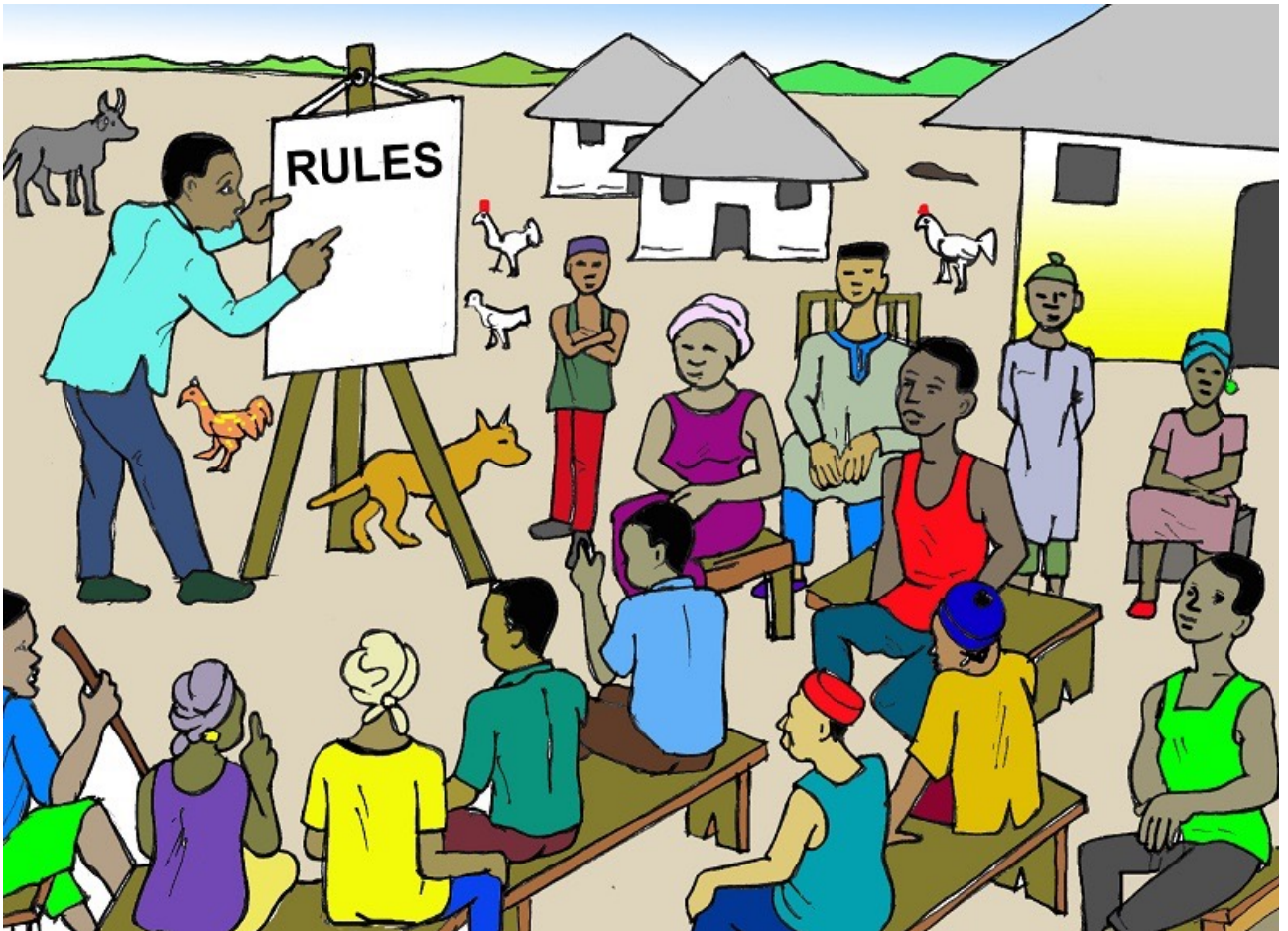
Relevant Laws & Policies:

Mines and Minerals Development Act 2023 ss. 24, 33(2), 33(3), 94, 95, 105 and 106..

Environmental Protection Agency Act 2022 ss. 25 and 26.

AFTER NEGOTIATIONS

PROCESS 3: Form or maintain a strong committee of landowners, land users, women and youths. Amend, maintain, or develop rules on how the committee works.



The community should form a new committee or maintain the existing one. In an open meeting, the community should make new or amend existing by-laws on how the committee should work. The investor should recognise the committee and work with it.

Relevant Laws & Policies:

The National Land Commission Act 2022 ss. 49 and 55 Customary Land Rights Act 2022 ss. 9, 13, 23(4) Chapter III section 26(1) of the 1991 Constitution (right to association).

AFTER NEGOTIATIONS

PROCESS 4: Formation of the Chiefdom Development Committee (CDC).



After the signing of the Community Development Agreement, a Chiefdom Development Committee (CDC) is set up to manage and implement the CDA. The committee is set up through an election as per the provisions of the CDA.

Relevant Laws & Policies:

Mines and Minerals Development Act 2023 ss. 141 and 142.

AFTER NEGOTIATIONS

PROCESS 5: Facilitation of Community Development Agreement between the investor and the community.



The process should be a consultative one with several meetings:

1st consultative meeting with chiefdom stakeholders.

2nd chiefdom-wide meeting with representatives from various sections and groups within the section.

Validation meeting- representatives of various communities affected by the operations of the company, and chiefdom stakeholders before signing of the agreement.

Relevant Laws & Policies:

Mines and Minerals Development Act 2023 s141, 142.

AFTER NEGOTIATIONS

PROCESS 6: Submission of Community Development Agreement to Minister for approval.



The CDA is submitted to the Minister of Mines and Mineral Resources for approval.

Relevant Laws & Policies:
Mines and Minerals Development Act 2023 s 142

AFTER NEGOTIATIONS

PROCESS 7: Access to all information and documents relating to the investment.



To enhance effective monitoring, the investor should make available to the community all related documents in their possession. The Landowners Committee, with the help of the lawyer/paralegals, or NGOs, should work with the community to access all documents relating to the investment. This includes the agreement, ESHIA, Memoranda of Understanding (MoU) between government and investors (for agribusiness investments), registration documents, survey maps, etc. The community should educate themselves using these documents. The paralegal/NGO can help by holding community education sessions.

Relevant Laws & Policies:

Right to Access Information Act 2013 s. 2. The Customary Land Rights Act 2022 s.29.

Mines and Minerals Development Act 2023 s190/191

AFTER NEGOTIATIONS

PROCESS 8: Hold periodic joint investor-community meetings with landowners and stakeholders (Multi Stakeholders Platform- MSP)

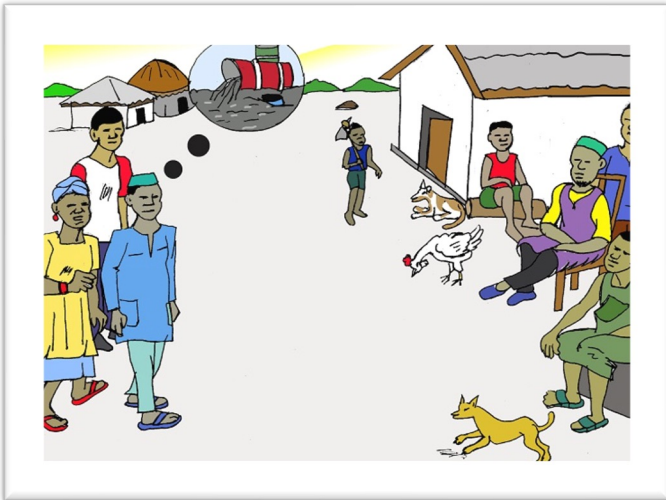


The landowners/stakeholders and the investors should hold periodic meetings (monthly/bi-monthly/quarterly as may be determined). The meeting will discuss updates from the company, Corporate Social Responsibility (CSR), Chiefdom Development Agreement (CDA) issues, community concerns, investor concerns, and other emerging issues. This meeting will bring together the different stakeholders in the community/chiefdom including the chiefs, landowners, land users, security personnel, investors, NGO/CSO, relevant government reps, etc.

Good practice.

AFTER NEGOTIATIONS

PROCESS 9: Bring all social and environmental harms and violations to the attention of the village or chiefdom land committee, the investor and EPA.



No one should take the law into his/her hands. All social or environmental harms should be brought to the right authorities (e.g. the company, chiefs, VALC, CLC, EPA, NMA, police, CSO/NGO, etc) for discussion and resolution.

Relevant Laws & Policies:

The Customary Land Rights Act s. 44 VGGT; section 21.6.

AFTER NEGOTIATIONS

PROCESS 10: Prompt payment of rent and other associated payments.



The investor should ensure all payments are made on time as per the agreement and law. This is to avoid protests, strike action, or problems.

Relevant Laws & Policies:

The Customary Land Rights Act ss. 38, 39, 41 Lease Agreement.
Mines and Minerals Development Act 2023 ss. 33(4)(a), 35, and 37.

AFTER NEGOTIATIONS

PROCESS 11: Investor to develop a friendly, easy to use, and functional Grievance Redress Mechanism (GRM).



With the participation of the communities, the company should develop a grievance redress mechanism for the proper and professional handling of complaints relating to the company's operations. All grievances and violations should be channeled through the appropriate company representatives, chiefdom authorities, and/or government institution, depending on the nature of the grievance.

Examples of GRM include: toll-free lines, decentralised suggestion/complaint boxes, dedicated GRM officers, etc. Communities should use a civil and non-confrontational approach in addressing issues within the company.

Relevant Laws & Policies:

National Land Commission Act s.80 VGGT; section 21.6.

The Environment Protection (Mines and Mineral) Regulations, 2013. R. 61.

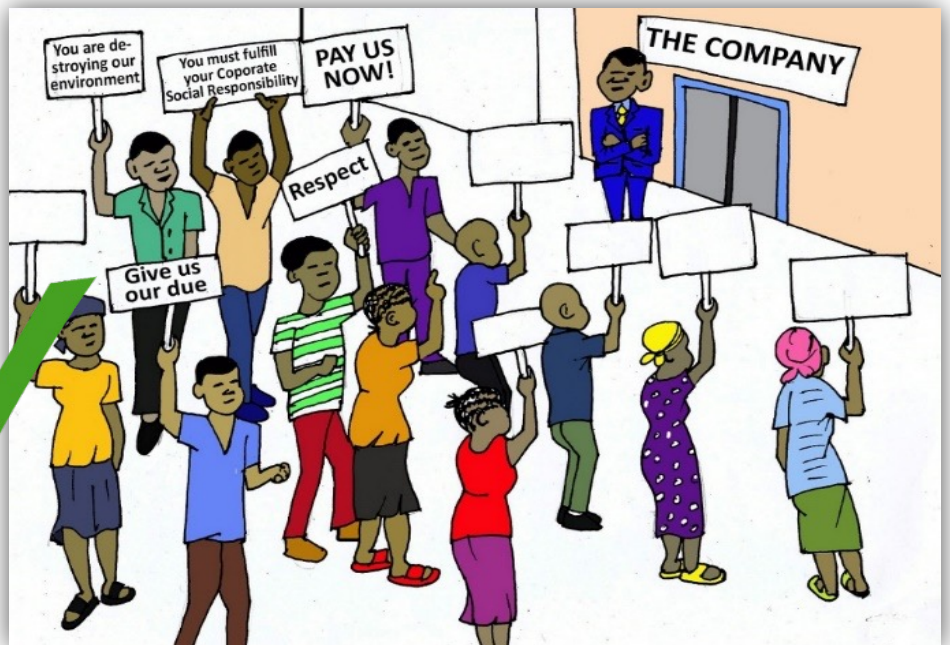
Mines and minerals Development Act 2023 ss 190, 191

AFTER NEGOTIATIONS

PROCESS 12: No violence.



No one should take the law into their hands as a way to address a grievance. They must follow the steps above.



AFTER NEGOTIATIONS

PROCESS 13: Monitoring of investment area and facilities.



A few selected members of the community, with prior notice and agreement of the investor, can visit the investor's operational area and facilities. The visits can be conducted by only the selected members of the community or as part of joint monitoring with regulatory agencies.

Relevant Laws & Policies:

Lease agreement VGGT, section 12.14; Customary Land Rights Act 2022 2nd Schedule.

About Namati

Namati is a legal empowerment organization comprising paralegals and lawyers dedicated to putting the law in people's hands. Namati partners with communities, government, civil society organisations to take on great challenges.





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