

Supplemental Resource

Developing Community By-Laws for Responsible Investment

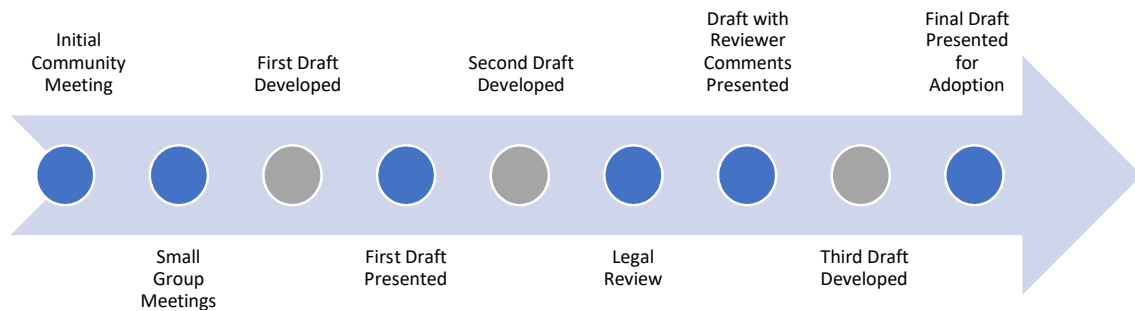
How to Use this Resource

Use this resource alongside Phase 1, Task 1, Step 5 of the Model Guidebook for Communities to develop local rules governing land investment in the community that support responsible, sustainable, and equitable investments. These rules, or by-laws, will establish how the community will make decisions about its land, who will represent the community in negotiations with prospective investors, and how compensation will be shared and used.

The guidebook outlines the steps the community can follow to develop these by-laws. This resource provides specific detail on how to implement each step in an inclusive, participatory and transparent manner. It provides sample activities, content topics and questions to promote community planning. These activities and ideas should serve as examples; the interim Land Investment Committee, community leaders and community members should work with the CSO partner to tailor this information according to the community's unique situation.

How to Draft Community By-Laws

This section presents the overall drafting process¹ alongside sample activities the community can perform to brainstorm ideas and set priorities to guide the process. The by-law drafting process relies heavily on community meetings and active participation, so it is critical that all community members have the opportunity to participate in developing these rules. Not doing so risks establishing rules that will be ineffective or harm vulnerable members of the community and promote the self-interest of a few against the interest of the whole community.



► **Step 1. Interim Land Investment Committee holds initial community meeting:**

The committee should begin the drafting process with an initial community meeting with as many community members as possible. In this meeting, the committee should:

- Outline the entire community investment by-law drafting process. It is important to establish a shared and clear understanding of the process.
- Set expectations and ground rules for community drafting meetings. Consider how the community would like to address the following questions:
 - How will we respect diverse opinions (such as avoiding personal attacks and name-calling)?
 - How will we resolve disagreements?
 - How will we finalize rules (e.g. 100% of people say yes, 66% of people vote yes, 51% of people vote yes, etc.)?
 - How will we record and document meetings?
 - How will the committee solicit information outside of big group meetings for those who cannot attend?
 - How will the committee follow-up on specific topics that require more information, thinking, discussion or expertise?
- Discuss the categories of content the community wants to include in the by-laws for responsible investment. Topics could include (refer to the section on by-law content below for more detailed information):
 - Composition, authority and governance of the Land Committee;
 - Communication channels and protocols;
 - Community objectives and rules for engaging and negotiating with investors; and
 - Community rules for investment compensation.

- Facilitate a community vision and planning exercise.² This activity can inform community by-laws and provide information for the committee and negotiators on community negotiation priorities.

Community Vision & Action Plan Exercise

Objective: Community members have a shared vision of the community's future. This can create a common sense of purpose and motivation. This activity can help the community develop an action plan that can be used to set priorities and help the community negotiate more effectively and strategically with prospective investors.

Supplies: Large pieces of paper, markers and post-it-notes.

Community Vision Activity

A community vision describes the desired future state of the community.

1. **Present State:** Community members should close their eyes and reflect on the community's present situation. Give people several minutes to reflect in silence. Then ask people to share their visions by raising their hands and sharing out loud. Have someone write down everything people say on large pieces of paper at the front of the meeting space. Questions to ask include:
 - What does the community look like?
 - What does the landscape look like? What is the quality of the water, soil and air? What resources are available?
 - How are your community's lands and resources being used now?
 - What kinds of livelihoods do people have? How does the community prosper?
 - Who manages and uses the community's natural resources?
 - What kinds of infrastructure or public services exist in the community?
 - How do neighbors treat one another?
 - How do schools look? How do children learn about your culture and customs?
 - What kinds of markets, festivals and events take place in your community?
 - How are sick people cared for?
 - What do community members care about most? What are their priorities?
 - Are you happy with the current situation? What is working well? What is not working well?
2. **Future State:** Ask community members to close their eyes a second time and think about how they want the community to be for their children 10 or 15 years from now. Repeat the question prompts if needed, and follow the same steps described in Step 1 to have the community share and document the future vision.

Community Action Plan Activity

A community action plan outlines clear goals that the community wants to achieve. It includes a timeline and prioritizes goals to help the community achieve its future vision. Goals should be achievable.

1. **Decide Timeframe:** The community should decide the timeframe of its action plan. Most action plans include short-term goals (such as 2 years) and long-term goals (such as 10 years).

2. **Brainstorm Goals:** Community members should reflect on their community vision. After several minutes of reflection, community members raise hands to share specific ideas that could help them move towards their vision. Someone should be at the front of the space to write down the ideas on a large paper. If the community has post-it-notes available, these can be useful to move goals to new pieces of paper in the next step.
3. **Prioritize Goals:** Next the community should review all goals to decide what goals to prioritize. It is recommended the community select no more than 10 goals for its plan. A goal could be prioritized for many reasons. For example, a goal could be prioritized because many community members agree it is very important to achieving the community's vision, it is time sensitive, or it could respond to a current problem that will have serious negative impact if not addressed quickly. Goals that are identified as priorities should be listed on new sheets of paper (if post-it-notes were used, the note can simply be transferred to the new page). One sheet of paper should be for short-term priority goals and a second sheet of paper should be for long-term priority goals. Short-term goals may be "quick-wins" or may be intermediate goals to help the community progress to its long-term goals.
4. **Agree on Next Steps:** The community should reflect on each goal and discuss what actions it can take to reach the goal. Facilitators should encourage the community to think of how these goals relate to actions for drafting community by-laws for responsible investment and formalizing the role of the Land Committee. Where goals and actions are outside of the scope of the investment preparation process (which is both likely and okay), the community should decide how to share the goals and next steps with the appropriate people, leaders, organizations and governing bodies to take them forward.

► **Step 2. Committee holds follow-up small group meetings and content specific meetings.** The Committee should next hold small group discussions with individuals representing different groups within the community (for example, women, youth, farmers' associations and members from different community sub-units). The Committee should also hold content-specific meetings to go in-depth into each of the by-law content categories decided in the initial community meeting.

► **Step 3. Committee develops first draft of the by-laws for responsible investment.** The Committee should use the input from the small group meetings together with the input from the first big community meeting to develop a first draft.

► **Step 4. Committee presents first draft in a large community meeting.** The Committee next presents the draft to the community. During the meeting, the community reviews the first draft of the by-laws and suggests revisions. This can involve creating new rules, changing or updating existing rules, and removing those that are no longer seen as valuable.

► **Step 5. Committee incorporates revisions to develop second draft.**

► **Step 6. Second draft is reviewed by an outside legal expert, local government and customary leaders.** A legal expert should review the second draft to check for compliance with the national constitution and other relevant laws. At this stage, the Committee can also solicit input from district and regional government

officials and trusted customary leaders as part of the “legal check.” This will help build buy-in and support for the implementation of the by-laws.

► **Step 7. Committee holds community meeting to share comments of legal expert.** The Committee should next hold a community meeting to share comments from the legal check, and the community decides what to revise based on the legal check.

► **Step 8. Committee incorporates community revisions into third draft.** If there is still significant discussion to be had or strong disagreement on certain issues, the Committee should continue with additional rounds of drafting and community meetings. Otherwise the third draft will become the final draft.

Content of the By-Laws

The below table presents five topics that should be covered in the community by-laws for responsible investment. Each topic has a list of questions the community should consider to inform the content of the by-laws. A number of the questions have example answers to serve as a **starting point** for discussions. Every community should decide for itself with the support of a trusted CSO what is most appropriate. These topics are:

1. Affirmative Statements
2. Rules to Create the Land Committee
3. Rules on the Land Committee & Communication
4. Rules for Engaging & Negotiating with Prospective Investors
5. Rules for Investment Compensation³

QUESTIONS TO CONSIDER	EXAMPLES
1. Affirmative Statements	
<p>What principles or beliefs should preface the by-laws?</p> <p>These statements can be included at the beginning of the by-laws as a preamble to give the community the opportunity to state important principles that ground the intent and content of the by-laws.</p>	<ul style="list-style-type: none"> • We affirm our commitment to nurturing and protecting the well-being of the individuals and families that make-up our community. • We affirm our pride in our community’s heritage and our goal to sustain it for the benefit of future generations. • We affirm our respect for our community’s ethnic, cultural and religious diversity. • We affirm the supremacy of the Constitution. • We affirm our right to explore new opportunities for our community, such as those brought by prospective land investment, to bring prosperity to

	<p>community members and future generations.</p> <ul style="list-style-type: none"> • We affirm the recognition and respect for all legitimate land rights for individual land users (both women and men) and communities, including those with customary, secondary, seasonal and other use rights as we explore investment opportunities. • We affirm the principles of FPIC as we explore potential investment opportunities.
2. Rules to Create the Land Investment Committee	
<p>What will the Land Investment Committee be responsible for?</p> <p>The Land Investment Committee has an integral role in leading the community through all four phases discussed in the guidebook.</p> <ul style="list-style-type: none"> • Phase 1 - strengthening community systems and safeguards for land investments. • Phase 2 – engaging with the business on behalf of the community about a potential investment project and supporting the implementation of community assessments. • Phase 3 – negotiating a contract with the business on behalf of the community. • Phase 4 – representing the community as the investment project is being implemented and establish systems that facilitate a responsible investment. 	<ul style="list-style-type: none"> • Working with CSO partners to hold trainings and/or conduct awareness-raising campaigns within the community to promote legal literacy, land rights knowledge and skills building. • Leading the community in participatory land rights identification and mapping. • Leading the community in land use planning to identify areas suitable and available for investment. • Supporting the community to participate in consultations with prospective investors. • Supporting the community to participate in the capacity assessment, ESIA and land valuation. • Representing the community in negotiations with prospective investors. • Liaising with third-party experts to review, analyze and sign investment contracts. • Supporting the community to raise grievances or otherwise communicate with the investor’s representatives throughout the investment project. • Managing and reporting on financial aspects of the investment (such as compensation for community-held land). • Developing protocols, reports and tools to implement the by-laws for responsible investment. • Reviewing the by-laws for responsible investment on an annual basis with community members and updating as needed.
<p>How many people will be on the Land Investment Committee?</p>	<ul style="list-style-type: none"> • Experience shows committees typically work best with 10 to 15 members.
<p>What groups will be represented?</p> <p>How will the committee ensure that women, youth and minority groups will be included? Will</p>	<ul style="list-style-type: none"> • The committee will be demographically representative of the different socio-economic groups within the community and its different sub-units. There will be balance in terms of gender (males and females), age (young, middle aged and elders), land uses (agriculturalists, forestry and

the community use a quota?	pastoralists, and geographic sub-units.
<p>How will the Land Investment Committee function?</p> <p>Will there be particular roles on the committee like chairperson or treasurer, or will all members play an equal part?</p>	<ul style="list-style-type: none"> • Consider having a designated negotiating team. A 3-person team is a good starting point. • Consider having a designated chairperson and treasurer/budget manager. • Consider if members can also be members of other community governing bodies (e.g., Village Council) while serving on the Land Committee.
<p>What kind of skills, qualities or qualifications should Committee members have?</p>	<ul style="list-style-type: none"> • Members should live in the community as land users and have basic knowledge about the community's residences, farms, grazing areas, forests, etc. • Members should be respected and trusted by community members. They should have integrity and be considered honest and transparent. They should be role models who can demonstrate the path forward by example. • Members should be hardworking, determined and reliable. • Members should have effective leadership abilities. This includes good mediation and conflict-resolution skills. • Members should be good communicators and have a basic level of literacy. • Members should not be afraid to have tough conversations and address challenging issues. • Members should be able to work well with others, especially other community leadership and government officials. A good leader knows how to share leadership. • Members should know how to listen and foster collaboration and consensus-building. • Members should be passionate about the community's well-being, protection and prosperity. • Certain Committee positions may require different skills and qualifications. For example, it may be important to have familiarity with legal framework for investments, financial management skills or proficiency in the language spoken by prospective investors.
<p>How will Committee members be elected? Are there terms and term limits?</p>	<ul style="list-style-type: none"> • The community designates two committee positions per each geographic sub-unit. Of the two positions, one will be filled by a man and one by a woman.

	<p>Community members in each sub-unit voice interest in position. Each geographic sub-unit elects one male and one female representative from candidates in a community meeting.</p> <ul style="list-style-type: none"> • The community designates one or two positions it will hold specific elections for (e.g. chairperson and treasurer). Community members with necessary qualifications voice interest in the position. Community members elect individuals to fulfill designated positions in a community meeting. • The Committee will have two-year terms with a limit of four consecutive terms.
<p>How often will the Land Investment Committee meet? Where will it meet?</p>	<ul style="list-style-type: none"> • The Committee meets at least 4 times a year. The Committee will meet regularly and with frequency if the community is in active communication with a prospective investor.
<p>What can the Land Investment Committee do to enforce its decisions?</p> <p>For example, what happens if certain elders/leaders agree to lease or sell a large amount of land without community participation and approval?</p>	<ul style="list-style-type: none"> • The lease or sale of community land by elders, leaders or Committee members that does not comply with these by-laws will be considered invalid.
<p>What are the criteria and process for evaluating member performance and removing a member for bad behavior?</p>	<ul style="list-style-type: none"> • A Committee member can be removed by a Committee vote with cause. Three or more Committee members can submit a petition to the Chairperson. A petition can also be brought to the Chairperson by community members when signed by “___” people. After a petition is received by the Chairperson, the individual will be given opportunity to respond in writing or in person. A Committee vote is then held. A member can be removed by a committee vote of “___” people. • The Committee will develop a Code of Conduct within one year of its establishment and ask all committee members to sign. A Code of Conduct can be used by the community and Committee members alike to hold leaders accountable and establish cause.
<p>3. Rules on the Land Investment Committee & Communication</p>	
<p>How will the Land Investment Committee relate to/interact with community leaders or community committees that are already in existence?</p>	
<p>How will the Land Investment Committee relate to</p>	

government officials?	
How will the Land Investment Committee interact with companies looking to invest?	
How will the Land Investment Committee communicate with the community?	
Who will represent the community when meeting with companies and investors? <ul style="list-style-type: none"> • Will the community set up a negotiating team to talk to companies and investors? How will the community make sure everyone's interests are represented by the negotiating team? • What can the community negotiating team decide on their own and what must they bring back to the entire community to decide together? 	
4. Rules for Engaging & Negotiating with Prospective Investors	
Is the community willing to lease or sell part of its land to a company?	<ul style="list-style-type: none"> • The community will only lease its land; it will never sell.
What land can be shared, and what land should not be shared?	
Is the community willing to engage in land deals that would involve the resettlement of local people?	<ul style="list-style-type: none"> • The community always prefers to explore alternative options such as contract farming, management contracts and other inclusive business arrangements that avoid the resettlement of anyone. • The community, in almost all cases, is not willing to engage in investments that require the resettlement of people. If the community moves forward on an investment that necessitates resettlement, the principles of FPIC must be followed and full and fair compensation must be timely paid.
If individual families own land privately within the community, can they sell or lease land to investors without consulting the community?	
What types of companies are	

<p>welcome, and what types are not welcome?</p>	
<p>If leasing the land, how long of a lease would be allowed?</p>	<ul style="list-style-type: none"> • The community will never lease land longer than “__” years.
<p>What information must a prospective investor provide, or steps the investor must take, in order for the community to proceed with an investment?</p>	<ul style="list-style-type: none"> • A company must provide information on the prospective investment, including its purpose, what and how much land is desired, and the desired start and end dates of the project. A company must provide its proposed business plan in writing. • A company must provide information about its operational track record, location of headquarters and operations, annual profits and expected revenue to be generated by the investment, main investors in the company/proposed project, and contact people and how the community can reach them. • The government or business must hire independent and mutually-agreed upon experts to conduct an ESIA to identify and assess the potential environmental and social impacts of a proposed project, evaluate alternatives, and design measures to mitigate risks. • An ESIA must occur prior to the negotiation of a lease or sale agreement. • An ESIA must also evaluate tenure rights and any actual or potential impacts on human rights and land tenure rights. These assessments must recognize and respect all legitimate land rights for individual land users (both women and men) and communities, including those with customary, secondary, seasonal and other use rights. • ESIA findings and recommendations must be presented to the community in a format that the community can understand and before the community agrees to the investment.
<p>How will the Committee make decisions about proposed investments involving community land?</p> <ul style="list-style-type: none"> • What must the Committee do if approached by investors or elites seeking to rent or buy community land? • At what stages of the investment process or on what decisions must they provide information? Consult community 	<ul style="list-style-type: none"> • The Committee must request information from prospective investor on the proposed project and complete an initial evaluation to determine if the company and its proposed plan meet with the community’s land use plan and by-laws. • The Committee takes initial vote. If at least “__” % of the Committee approves, it will facilitate a public information meeting with the investor and entire community if the proposed project involves leasing or selling land over “__” hectares. • The Committee will hold a Village Assembly meeting for initial input to halt or proceed with the investment process. At least “__” % of community members must participate in this meeting when leasing or

<p>members? Seek consent from community members?</p> <ul style="list-style-type: none"> • What land and natural resource decisions are so important that the Committee must convene a large community meeting to decide together by vote? • What land and natural resource decisions can the Committee make by itself on behalf of the community? 	<p>selling community land over “___” hectares. At least “___” % of community members must approve of the decision to move forward when leasing or selling community land over “___” hectares.</p> <ul style="list-style-type: none"> • After facilitating the required community impact assessments, the Committee will hold a large public meeting inviting all community members for decision to halt or proceed with negotiations. At least “___” % of community members must participate in this meeting when leasing or selling community land over “___” hectares. At least “___” % of community members must approve of the decision to move forward when leasing or selling community land over “___” hectares. • After negotiating the final agreement terms with the investor, the Committee will hold a Village Assembly meeting for decision to sign agreement. At least “___” % of community members must participate in this meeting when leasing or selling community land over “___” hectares. At least “___” % of community members must approve of the decision to sign agreement when leasing or selling community land over “___” hectares. • The Committee cannot sign an agreement to sell or lease community land if an ESIA has not been conducted. • The Committee cannot undertake negotiations without legal or technical support. • The Committee cannot sign an agreement until it has been reviewed by a lawyer.
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5. Rules for Investment Compensation

<p>What kinds of compensation and benefits would the community ask for and how should it be decided?</p>	<ul style="list-style-type: none"> • The government or business must use land valuation that establishes the price/value of property using market and non-market values such as social, cultural, religious, spiritual and environmental values to ensure that compensation and benefits are fair, just and equitable for land users (both women and men) and communities. • The community is open to negotiating for fixed cash payments or royalty payments (such as royalty based on volume of outputs, value of production or profits). • Monetary compensation for community land should be paid over the life of the investment, rather than one lump sum, to a community account managed by the Land Committee in trust for the community. • The Committee should always pursue other benefits during negotiations, such as job opportunities at the project, training programs associated with the
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	<p>project and employment opportunities, and access to project infrastructure and facilities.</p> <ul style="list-style-type: none"> • After ESIA findings have been presented and before investor negotiations begin for a specific project, the committee will hold a consultation inviting all impacted community members to generate a list of top community concerns and priorities.
<p>How should the community use the financial compensation and who decides?</p> <p>Examples include:</p> <ul style="list-style-type: none"> • Infrastructure projects such as building schools, roads and pumps. • Community services such as social, educational or health programs • Payments distributed equally among households • Payments to CSO partner, lawyers and other experts supporting the investment process. 	<ul style="list-style-type: none"> • Monetary compensation for community land should be put in a bank account at a local bank, registered in the name of the community. • The Committee will manage the account on behalf of the community. Managing the money means the Committee will control the money, plan and budget for how the money is spent, and be responsible for knowing how much money has been received and spent. • A community budget should be prepared on an annual basis. The Committee should hold at least “___” public meetings a year to receive input on community priorities for the budget. At least “___” Committee members must approve of the community budget. • The Committee will manage funds according to the community budget for the year. Expenditures deviating more than 10% from the original budget require approval of at least “___” Committee members. • At least “___” Committee members must be present to withdraw money from the community bank account. • The Committee will develop a Financial Manual within one year of its establishment to outline detailed financial practices and rules.
<p>How will community money be tracked and reported to the community?</p>	<ul style="list-style-type: none"> • The Committee will be responsible for maintaining up-to-date financial records. This includes a record of financial transactions and supporting documents like receipts and invoices. • Any community member can request a copy of the financial records, which the committee must provide within “___” days. • An independent expert will review the financial reports once a year. • The Committee will present the financial and audit report to the community at a public meeting every year.

¹ The process for by-laws adoption outlined here is adapted with permission from Namati's experiences working with communities to adapt by-laws for community land governance. *See id.* at 95-104.

² The Community Vision and Action Plan Exercise described in the following box is adapted with permission from Namati's experience working with communities in community land governance protection efforts. *See id.* at 69-72.

³ These topics are adapted with permission from Namati's experiences working with communities as part of community land governance protection efforts. *See id.* at 105-122.