

# COMMUNITY LAND CONFLICTS: HOW LOCAL LAND DISPUTES AFFECT PRIVATE SECTOR INVESTMENTS AND DEVELOPMENT PROJECTS







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## LIST OF ACRONYMS

ADR	Alternative Dispute Resolution	RAI	Principles for Responsible Investment in Agriculture and Food Systems
AFD	African Development Bank		
DFID	UK Department for International Development	NGO	Non-governmental organization
ESIA	Environmental and Social Impact Assessment	TC	Tribal Certificate
FAO	UN Food and Agriculture Organization	TIAA	Teachers’ Insurance and Annuity Association
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit	TMP	The Munden Project
IFC	International Finance Corporation	UNGP	UN Guiding Principles on Business and Human Rights
ILC	International Land Coalition	USAID	United States Agency for International Development
LEGEND	Land: Enhancing Governance for Economic Development	VGGT	Voluntary Guidelines for the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
LTSA	Land Tenure Security Activity		

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## EXECUTIVE SUMMARY

Over the past decade, a spike in demand for agricultural land in developing countries has generated a great deal of political and media attention. While many investments bring opportunities for local communities, some have wrongfully pushed residents and workers off their lands or have caused social and environmental harm. Some development projects (e.g. agroforestry initiatives, irrigation schemes) have also encountered land conflict.

In some cases, disputes between project developers and local communities were rooted, at least in part, in pre-existing conflicts within or between the communities. Local land conflicts are common in countries where land governance is weak, but they can be hard for outsiders to spot. Yet failure to identify and address these conflicts in a timely way can result in disputes escalating into wider conflicts also affecting commercial or development projects.

These wider conflicts can negatively impact communities, causing serious harm to vulnerable groups. This includes effects on local livelihoods, which may significantly depend on land and resources. But it includes wider effects too. Land is often more than a commodity to be traded. It can carry religious or cultural meaning and represent the backbone of local economies.

Left unaddressed, escalating land disputes can also result in project delays, increased operational, labor and legal costs, supply chain issues, damage to property, security concerns, and reputational harm. Costs may be high and drawn out, nullifying return on investments or resulting in stranded assets. Investors may be inadvertently complicit in the wrongful displacement of people, which can lead to revocation of operational licenses or undermine the “social license to operate.”

### Causes and types of land conflict within and between communities

Land conflicts can result from historical injustices, ill-advised government policies, conflicts of interest, corrupt leadership, or more generally from competition over land and resources. Conflicts can be clearly apparent, involving violence or damage to property, or may be latent or dormant. By raising the economic stakes in the area, new commercial or development projects can revive old conflicts, and ignite ongoing tensions. Watch out for the common examples of land conflict types detailed in the table below.

Disputes within communities	Disputes between communities
<ul style="list-style-type: none"><li>• <b>Leadership disputes:</b> Two or more people may claim to be the rightful traditional leader in a given community, and to have the authority to allocate land or approve transactions. Negotiating with one of them may expose the project to the risk of contestation from the other pretenders and their followers.</li><li>• <b>Generational disputes:</b> Young people may be contesting their exclusion from land allocation decisions, which is often in the hands of the elders. Failure to reach out to</li></ul>	<ul style="list-style-type: none"><li>• <b>Border disputes:</b> Disputes over borders with other communities often result from poor record keeping or boundary demarcation, and they may represent long-standing conflicts over power and control. In some cases, traditional leaders allocated land to commercial or development projects as a way to assert their ultimate control over the land vis-à-vis neighboring communities. Failure to engage all relevant communities could cause the project to be contested by neighboring communities.</li></ul>

<p>youths could create resentment against the project.</p> <ul style="list-style-type: none"> <li>• <b>Boundary disputes:</b> Families may dispute boundaries and disagree over access to resources, especially where population pressures are increasing. Local disputes may escalate if communities perceive the project to compensate the wrong people for loss of land and resources.</li> <li>• <b>Discrimination against women:</b> Women's land rights are often ignored where customary practices prevail. Widows and children also face abuse from relatives who attempt to grab land following the death of a male head of household. Merely adhering to local customary practices could entrench discrimination against women, and expose the project to contestation.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Disputes involving migrants:</b> Disputes between migrants and local landowners may exist, even if the so-called 'outsiders' arrived a long time before. Projects would need to reach out to migrants, but doing so in a context-insensitive way could cause suspicion among local landowners concerned that the project could end up strengthening migrants' tenure claims. Even 'innocent' issues such as naming the project after the closest village, or encouraging villagers to plant long-term tree crops, could spark tension if that village is inhabited by migrants without the necessary customary tenure rights.</li> <li>• <b>Disputes between pastoralists and settled farmers:</b> Disputes between these groups often arise over access to water, or when livestock destroy crops. New investments can add additional pressures to resources and pasture land, causing disputes to flare up—for example, if farming communities allocate to the project land traditionally used for grazing or transhumance.</li> </ul>
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## Five warning signs of community land conflicts

There are often signs that local land conflict may exist. Look for the following five drivers of land conflict as part of your due diligence checks.

1. **Population increases.** As towns and villages grow, people begin to compete over increasingly scarce land and resources. This can cause younger generations to worry about their future and families to fight over inheritance claims.
2. **Migration into the area.** Some communities may expand into new areas in search of farmland, forests, pastures or water. Authorities may also ask people to relocate to make way for new infrastructure. Such migration can drive up land value, put pressure on resources, and create tensions between ethnic groups.
3. **Increases in land value.** Where ownership is unclear, increases in land or resource values can trigger conflict. Officials and community leaders may be tempted to profit unfairly from such increases, and the discovery of valuable minerals can trigger a rush to lay claim to land.
4. **Previous land transfers.** Transfers may mean that communities lose homes, livelihoods and access to important resources or sacred sites. They may be unable to expand and provide lands for their children. This can lead to subdivision of land into increasingly small parcels.
5. **Unreliable land information.** Land records may be out of date, inaccessible or missing, and boundaries can be inaccurately mapped. Community understanding of borders may also not align with the official government position.

## **Project design and due diligence**

Effective conflict management is best achieved when community land conflicts are identified and addressed in the due diligence or project design phase. The following five steps, which likely will require support from experts, can be used to integrate community land conflict into enhanced project risk assessments. They will take time and cannot be rushed. Note that, while these activities will generally be required as part of a broader due diligence process aimed at identifying tenure rights holders, land and resource uses and the potential impacts of a proposed project, they are especially important in the context of local land disputes because these conflicts can be so difficult to identify.

### **Step 1: research the history, economy, culture and politics of the region**

Be well-acquainted with the local area—is there a history of insecurity and conflict over land or other resources? Is the population changing? What are the local power dynamics, income sources, and resource patterns? How do people resolve disputes? By answering these questions early an investor or implementer can identify “red flags” and create a strategy to address problems.

### **Step 2: understand the national legal framework on land and dispute resolution and customary rights and practices**

The national legal framework should be thought of as establishing the minimum necessary standards an investment or project must meet. Because countries with weak judicial and land governance systems may keep unreliable records and because important customary rights may go unrecognized in law, it is important to think beyond national legislation and take rural practices into account for project design.

### **Step 3: review reports and research on land disputes in the area and local land and court records**

Review formal land and judicial records and consult with responsible government officials about existing land disputes. Take care, as even government assurances of a clean title may not stand up in court or be accepted by local community members. Never rely solely on formal records, as they may be inaccurate, missing or inaccessible. Gather information from a broad array of stakeholders.

### **Step 4: engage directly with the affected community (most important step)**

Visit the project site early and often to engage communities and get a sense of existing/prior disputes and how they might interact with the project. Conduct broad consultations, including with women and any migratory groups that use resources, to identify all who use the land, how they use it, and the nature and source of their rights.

### **Step 5: where relevant, conduct participatory mapping exercises supported by GPS/satellite imagery**

Participatory mapping exercises can help communities reach agreement on boundaries and help bring land disputes to light. Use GPS and satellite imagery to clearly demarcate borders and improve landholders’ tenure security. Make the results of mapping exercises publicly available and be sure to validate findings with community members.



## **Greenlighting, adapting, or cancelling a project**

If disputes are identified, you will need to weigh up the costs and benefits of proceeding, relocating, modifying or abandoning the project. Compromises may be found in cases where a small percentage of the land is disputed. Where substantial resolution cannot be reached, however, serious consideration should be given to foregoing the project in the relevant area. If deemed feasible, resolution should be attempted before the final decision to proceed is made. To facilitate resolution, provide access to appropriate, equitable and accessible mechanisms; make technical or legal assistance available; and compensate or otherwise provide redress to claimants.

## **Formal versus informal resolution processes**

In attempting to facilitate resolution of land disputes, investors should seek to fit within existing, culturally appropriate resolution practices. Formal approaches, including courts or special land tribunals, can be expensive, slow, and entail geographic and cultural barriers. Alternative dispute resolution, often faster and more cost-effective, either involves mediation to reach a mutually agreeable solution, or third party arbitration to decide whose rights prevail. Some traditional processes may not adequately consider the rights of women or may be inappropriate where customary authorities are involved in the dispute. In cases involving politicized issues, it may be beneficial to set up or support a multi-stakeholder platform.

## **Agreement and operational phases**

In the operational phase, it is advisable to include in project agreements a mechanism for resolving active disputes. All parties should co-design and agree on dispute resolution procedures and grievance mechanisms. Once the site becomes operational, conduct ongoing community engagement to track disputes and put robust risk management and monitoring systems in place to flag budding conflicts. Affected communities should be included in monitoring activities. Understanding, managing and resolving disputes should be a key responsibility for staff.

## **Recommendations for private sector actors and implementers**

1. Engage a broad cross-section of a community when considering a project location. It is particularly important to speak with less powerful individuals (women particularly) and groups to understand if their rights have been abused and if new investments would further cement discrimination.
2. Seek guidance from knowledgeable local counsel and academics, consultants and land tenure experts, and business partners from the outset. International consultants can be helpful in locating local expertise.
3. Strengthen organizational policies and provide corporate training on land rights to ensure staff understand the importance of land conflicts, how to identify and assess conflicts and develop strategies to manage attendant risks and reduce harms. Consider tying performance review indicators to the effective community engagement activities.
4. Continue to monitor for signs that disputes might resurface. Integrate land tenure issues into social and environment impact assessments and risk management or risk assessment tools.

## **Recommendations for public sector actors**

1. Involve implementing partners and in-country staff with relevant experience in the design of projects, especially where they have knowledge relating to historical and current conflicts and local power dynamics.
2. Make land tenure security a project activity. This could include raising awareness of land rights, building the capacity of local governance institutions, and supporting conflict resolution.
3. Support participatory mapping exercises and, where appropriate, community dialogues and multi-stakeholder platforms.
4. Continuously monitor and adjust activities to reflect changes in ongoing conflicts and perceptions of tenure security. Include land conflict indicators in monitoring and evaluation documents.

## I INTRODUCTION

Over the past decade, a well-documented global rise in demand for farmlands, pastures and forest resources has led to increased investments in agriculture by private sector actors and by international development and finance agencies. While some investments and donor-backed projects have created new economic opportunities for local communities, others have imposed significant costs: local people have lost control over and access to land, suffered violations of human rights and experienced environmental and other social harms (Cotula, Vermeulen, Leonard, & Keeley, 2009; IFC, 2012; Global Witness, 2013; Iff & Joras, 2015; FAO, 2015; Cordes, Johnson, & Szoke-Burke, 2016; Thoumi, 2016). To avoid or mitigate harms, responsible investors need to understand the complex land tenure and resource rights environment where they operate.

Throughout the paper, we refer to investors and implementers. Investors may be public or private sector actors (development finance institutions, international development agencies, commercial lenders or equity investors). Similarly, implementers may also be public or private sector (government agencies, non-governmental organizations/NGOs, parastatals, commodity producers or processors). The growing need to attend to human rights concerns, sustainability issues and environmental, social and governance requirements should motivate both groups to gather needed intelligence and improve due diligence activities to identify, assess and address existing community land conflicts.

A first step is to identify, early in an investment or project design process, whether community conflicts exist, and if they do, what form they take. Underlying and unresolved community land conflicts can create uncertainty about who legitimately controls an area and who has rights to lease out or sell property. We explore common examples of community land conflicts in Section 3.0 to provide a clearer sense of the challenges investors may face in some contexts.

To take just one example, in Ghana, the social impact investing firm Africa Agriculture Development Company (AgDevCo) faced substantial delays developing a large irrigated farm because the company was initially unaware of a long-standing boundary dispute between the leaders of two ethnic groups who claimed rights over the project area (Tanko, 2016). The company has played an active role in developing the Babator Irrigated Farming Hub site in northern Ghana since 2011. With support from the UK's Department of International Development (DfID), AgDevCo spent about \$3 million between 2012 and 2016 conducting technical studies, working to secure land access and complying with environmental and other regulatory requirements. The firm carried out due diligence activities including consulting with the community and developing a social impact assessment of the proposed project.

Despite these investments and this work, the project faced significant delays because of a dispute between two chieftaincies claiming ownership over the project area. Both traditional authorities claimed they had the legitimate ownership rights over the Babator land and the right to receive land rental payments. The company originally received documents from the regional land commission that indicated the land belonged to the one chieftaincy. However, community engagement eventually indicated that people in the area identified with the other chieftaincy. The company then entered into negotiations with traditional leaders from both sides and with other stakeholders in the Babator area. Eventually, in late 2015, the traditional authorities agreed to jointly lease the project site to AgDevCo until the dispute is resolved by a relevant traditional court, and finally, the project was able to move forward (AgDevCo, n.d.).

While it can be challenging, understanding who has legitimate rights to land can help investors and implementers identify project beneficiaries and other stakeholders to include in negotiations, consultations and on-going community engagement efforts. In some cases, this may be the government. In many countries, the state is the titleholder over most or all land and an investor will need to negotiate a concession or leasehold with state officials. However, even when the state formally owns land, people may live on or use land. If people have legitimate customary claims to project lands, investors and implementers need to engage with them—they are important stakeholders. In Section 4.0 we provide practical recommendations on how to conduct background research on local tenure conditions, identify stakeholders, conduct community engagements and negotiations and monitor progress to promote beneficial investing.

It is important to recognize that if investments or projects provide benefits to groups whose rights are contested (or perceived as illegitimate) or to leaders who misuse authority, they can exacerbate underlying community conflict. Also, if government officials or traditional authorities supported a land transfer in the past that took land from a community, a new concession, lease or project may further increase land scarcity and exacerbate underlying community conflict.

In some cases, conflict over land and resources is caused by an investment or project itself. In other cases, proposed investments uncover or exacerbate existing local community land conflicts. In both cases, if local conflicts are not recognized and addressed at an early stage, investors or implementers may face a variety of costly problems. Even if conflicts are identified early – as with the AgDevCo example, resolving them may require prolonged community engagement in order to avoid a loss of the social license to operate. Recognizing any pre-existing community land conflicts and addressing them if projects move forward can help avoid the possible “land mines” that bedevil some investments in agriculture, whether public or private (Donor Representative #1, 2016).

This paper focuses on the issue of community land conflict as a potential barrier to launching and implementing investments in agriculture. It focuses on new, greenfield investments and projects as opposed to brownfield investments.<sup>1</sup> It also focuses on conflicts between or within local communities and leaders as opposed to conflicts between investors and local communities, which have been amply addressed elsewhere.

The paper discusses the importance of identifying and addressing these conflicts at an early stage to gain a nuanced understanding of local conditions and provides practical guidance on how to do so. It offers recommendations on actions investors and implementers can take to reduce risk related to local land conflicts. As one key informant observed: “Getting land wrong at the beginning can lead to absolute chaos and disaster” (Mediation Expert #2, 2016).

Recent international soft law documents including the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) and the Principles for Responsible Investment in Agriculture and Food Systems (RAI) note that state and non-state actors have a responsibility to respect human rights and legitimate tenure rights and act with

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<sup>1</sup> Land conflict associated with brownfield investments has been addressed in an earlier LEGEND Analytical Paper on legacy land issues. See: Lorenzo Cotula, Thierry Berger and Philippine Sutz, “Addressing ‘legacy’ land issues in agribusiness investments,” A LEGEND analytical paper, 2016.

due diligence to avoid infringing those rights. However, these high-level guidelines do not provide advice on how to resolve disputes with stakeholders.

To help avoid and better address risks in environments where land governance systems are weak and where formal ownership and de facto control over land is often divided (situations of legal pluralism), governments, civil society, the private sector and donor agencies have developed an expanding set of more detailed social safeguard documents and guidance on due diligence and engagement with local communities (e.g., IFC, 2012; AFD, 2014; USAID 2015; FAO, 2016; ILC/Oakland Institute/Global Witness, 2012; Interlaken Group, 2015). These documents reflect a building consensus around the need for state and non-state actors to respect, protect and fulfil human rights or remedy rights' violations, including those threatening the legitimate land rights of local people—whether these rights are customary or formalized. They also recognize the importance of identifying, avoiding and addressing land-related conflicts and provide advice on how to do so. This paper builds on and extends this work.

To address the risks posed by land-based investments, investors and implementers should also consider developing or strengthening organizational policies or, if needed, provide corporate and operations-level trainings on land rights to ensure staff understand the importance of land conflicts, how to identify and assess these conflicts and develop strategies to manage land risks and reduce harms. It is also important, if an investment in agriculture moves forward in an area with community land conflicts to continue to monitor stakeholders for signs that disputes might resurface or revive. Land tenure issues can be integrated into social and environmental impact assessments and into risk management or risk assessment tools to capture the variety of political, social and economic risks that investments in agriculture can face in some countries. Taking AgDevCo as an example, the company has incorporated learnings from the pilot phases into its project. The company engages actively with the local community, including participatory mapping, decision making, livelihood restoration and enhancement, to support the project and plan for future development on the concession land. Land tenure and livelihoods risks and opportunities are now central to the project's approach to engagement and future development.

### **The paper draws on three main sources of desk-based research:**

- A review of academic journals and “grey” literature dealing with the impact of community-based land conflicts on commercial agricultural investments.
- Semi-structured interviews with a set of experts from the land tenure sector, mediators working at the intersection of community conflict and land issues, non-governmental organization (NGO) experts, representatives from commercial agricultural firms, and representatives from donor organizations. All interviews were conducted with an assurance of anonymity.
- Analysis of case studies of commercial agricultural investments in sub-Saharan Africa, Latin America, and Southeast Asia that encountered some form of local land conflict. This review was based on corporate documentation, where available, research studies and media analysis. Cases are drawn from experiences in: Ghana, Kenya, Indonesia, Liberia, Mozambique, Mali, Myanmar, Senegal, Sierra Leone, and Uganda.

This paper has four further sections. Section II discusses why it is important for investors and implementers to identify and address local land conflicts. Section III then reviews some of the many kinds of local land conflicts that donor-funded projects and private sector investments may encounter.

Section IV presents suggested approaches that can be used to identify and address community land conflicts, based on existing international guidance and best practices and incorporating insights gathered from the case studies and expert interviews. Finally, Section V briefly summarizes key findings and outlines recommendations to help avoid or mitigate harms associated with local land conflicts.

## 2 THE IMPORTANCE OF ADDRESSING COMMUNITY LAND CONFLICTS

There are two important reasons why groups that fund or implement investments in agriculture should work to identify, assess and address community land conflicts. **First, if they are not adequately addressed, community land conflicts can escalate and negatively impact operations, reputation and investments.** Unfortunately, very little work has been done to disaggregate the costs associated with pre-existing community land conflicts from costs associated with land conflicts generated by an investment in agriculture or a donor project itself. Important research has been done in other sectors, identifying costs associated with land tenure risks in the extractives sector (The Munden Project, 2012; TMP Systems, 2015, Franks et al. 2014). And a wide variety of reports do explore the economic, social and environmental costs that some investments in land have imposed on local people (e.g., Hall, 2011; Rulli, Savioli, & D’Odorico, 2013; Davis, D’Odorico, & Rulli, 2014). However, more research is needed to clarify the direct and indirect costs of pre-existing community land conflict.

Given the paucity of direct evidence of costs investors and implementers experience from community land conflicts, it may be reasonable to look to costs associated with land conflicts sparked by investments in agriculture. For example, one recent study identifies social costs arising in the palm oil sector in Indonesia—including those associated with land (Barreiro, et al, 2016). The study created a data set of social conflicts experienced by 174 Indonesian palm oil companies and found that disputed claims over land and property rights, lack of consent to use land and inadequate compensation for land use were the most important factors driving social conflict (Barreiro, et al. 2016).

While this study does not disaggregate types of land conflicts, it does point to the pervasive nature of land conflicts in one environment. For example, the report finds that 67% of the cases reviewed cited land conflict as the predominant driver of wider social conflict. In Central and East Kalimantan land disputes drove 73% and 76% of social conflict. These social conflicts, which often occur in early stages of production, resulted most frequently in procedural actions (including letters of complaint and court actions), 22% resulted in demonstrations or work stoppages and 2% resulted in violence to property. In one case, the dispute resulted in a death. Importantly, conflict recurred in 57% of cases. The study finds the “cumulative costs of social conflict are significant, undervalued and can pose a serious risk to investment return” (Barreiro et al, p. 5). While this research does not separate out costs of pre-existing community land conflict it does suggest the kinds and scope of costs associated with unidentified and unaddressed pre-existing community land conflict.

In more detailed case studies of five palm oil investments—all companies that participate in palm oil certification schemes—the report finds that land was the key underlying cause of conflict for all firms. The report also finds that the tangible costs per hectare of social conflict “are equal to 65% of total annual operational costs per hectare. These costs also represent 132% of annualized investment costs on a per hectare basis, considering the impacted hectares only” (Barreiro et al, p. 23). For these five case studies, conflicts lasted between three months and nine years. Per hectare costs of these conflicts were estimated to range from \$700,000 to \$10,000,000. The largest category of costs came from lost profits and income. The second largest category of costs was staff labor/time devoted to addressing conflicts and complaints. The report finds that companies rarely budget separately for conflict-related costs.

Underlying community land conflicts that are not adequately identified and addressed can have negative impacts across supply chains. In Cambodia, British firm Tate & Lyle Sugars was accused of illegally profiting from the wrongful displacement of over 400 families, whose land was taken by the government and given as a concession to the Thai-owned Koh Kong Sugar Plantation and Koh Kong Sugar Industry. The families initially brought suit (in 2007) against the two Thai firms in Cambodia. However, the case was not resolved and in 2013, 200 families filed suit against Tate & Lyle in the UK High Court. These families sought compensation, despite the fact that Tate & Lyle did not directly acquire their land—Tate & Lyle purchased sugar from the Thai firms. The case led to a boycott of the firm and other companies buying from the Thai companies. It also contributed to Tate & Lyle's suspension from the Bonsucro certification scheme. Tate & Lyle later resigned from Bonsucro and its offers to settle with local families have been rejected.

Raising awareness of community land conflict as a component, or driver of, community-level discord should help improve risk assessments and reduce financial, social and environmental harms and associated costs. Alternately, if not adequately addressed, community land conflicts have the potential to turn investments in agriculture into costly stranded assets.

**Second, triggering or ignoring these conflicts may lead to human rights violations (Cotula, 2014).** As more businesses, governments and development organizations align policies and practices with the UN Guiding Principles on Business and Human Rights (UNGPR), with social safeguard documents such as the International Finance Corporation (IFC)'s Performance Standards, and with institutional and sector-specific safeguards and codes of conduct,<sup>2</sup> the need to address land rights and tenure issues as a part of human rights impact assessments and due diligence processes also increases (GRI, 2016). If a project or investment takes place in a context where local discrimination is unwittingly cemented, this may mean that an investor or implementer is complicit in violations that contribute to negative human rights impacts.

For example, if investors or implementers are unaware of, or ignore, past actions that violated the legitimate tenure right of women, indigenous people and other vulnerable or marginalized groups and, as a result, only recognize rights held by male heads of household or by government they may violate recognized human rights. If traditional leaders monopolize or effectively shut out participation of community members to personally benefit from a land transaction, this may create costly local grievances and also violate rights of local peoples (Cordes, Johnson, & Szoke-Burke, 2016). As well, wrongful displacements or poorly managed resettlement efforts can violate rights to livelihoods. Guidance from US law firm Foley Hoag makes this point quite clearly:

[C]ompanies should not simply rely on government assurances that they have clean title. Even if such title stands up in court (and it may not), companies potentially face years of tension or open conflict with neighboring communities. They also could be considered to be complicit in human rights abuses related to population displacement. Ultimately, companies should seek to engage directly with potentially affected traditional land users

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<sup>2</sup> For a list of pertinent guidelines and standards in the agribusiness sector see: Agribusiness: Risks and Impacts in Conflict-Affected Areas, at: [http://reliefweb.int/sites/reliefweb.int/files/resources/Economy\\_AgribusinessRisksImpacts\\_EN\\_2015.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Economy_AgribusinessRisksImpacts_EN_2015.pdf).



to negotiate for access to land, and should consider adopting a policy on free, prior, and informed consent (Lehr, 2013).

Raising awareness of land conflict as a component, or driver of, community-level discord should help improve risk assessments and reduce financial, social and environmental harms and associated costs. Effectively assessing and addressing community land conflicts can help investors and implementers better ensure a social license to operate.

### 3 UNDERSTANDING COMMUNITY LAND CONFLICTS

There are many different types, and sub-types, of land conflicts (Wehrmann, 2008, 2017). This paper is concerned with conflicts that fall into two broad categories:

- Intra-community disputes
- Inter-community disputes and disputes with government or other outsiders (excluding the investor or project itself)

Sometimes these community land disputes are easy to identify: you may see fighting, witness or hear of cattle raiding, crop and property damage or see evidence of other destructive acts in the investment or project area. In other cases, conflicts may be difficult to spot: traditional leaders may be at odds over a boundary or government officials may have relocated a community without adequate consultation or compensation in the past, creating a grievance. Contested land transfers or conflicts can make it difficult to identify who has legitimate land rights and whose claims are perceived by local people as illegitimate.

Because investments in agriculture can put additional pressure on local people, local lands and the environment, investors and implementers should identify historic or current land conflicts in the project area and then determine if the project risks exacerbating or reigniting them. In addition, because investments in agriculture are likely to benefit some stakeholders and not others, investors and implementers should try to identify if benefits will flow to those who are perceived as legitimate rights' holders or to those who are perceived as illegitimate. If a project poses a risk of escalating or reviving community conflict, investors and implementers should consider relocating the project or put in place strategies to mitigate this risk, as discussed in section 4.

To identify if a community land conflict is likely to exist, investors and implementers can look for signs of key drivers of land conflict in the project area. The following questions can be used to identify if underlying community land conflicts are a risk factor in a project area. Answering these questions should be a part of due diligence efforts discussed in Section 4.

***Has the local population been increasing?*** As local population rises, groups and communities often compete and may fight (sometimes violently) to control increasingly scarce resources. In areas where land governance systems are weak and population pressures are rising, anticipate underlying land conflict between family or lineage members, between youth and elders and between women and men over access to land, borders and inheritance claims (Boone, 2013). Youth may be especially worried if they see that their opportunities to access land and resources are being constrained. Rising population pressure may also “push” communities into new areas, creating problems associated with migration. Rising population is one factor that drives community land conflicts.

***Has there been a movement of people into the area?*** Rising population and pressures on land may push some communities to new areas in search of farmland, forests, pastures or water. In other cases, migrants may have been invited to, or relocated to, the area by a traditional authority or government leader. If these movements make land and resources much scarcer or if local resources become more valuable, claims of “outsiders” to land may be seen as “illegitimate” and contestable. For example, in Côte d'Ivoire the government invited herders from Burkina Faso into the northern part of the country in the 1980s to bolster domestic livestock production (Diallo, 2001). Herders did bring cattle but also

imposed a variety of costs on farmers, including crop damage. With more herders in the area, local settler youth, some of whom had gone to cities to find work, had less access to land when they returned to rural areas. These community level problems were compounded by government officials who politicized ethnic tensions and legally privileged “native” Ivorians over migrants. This mix of grievances and discriminatory policies has driven conflict between the groups for decades. Investments in agriculture in such politicized environments require special care and attention to address risk factors.

***Has a local resource gained value?*** When land and other resources gain value, this can trigger conflict if there is underlying uncertainty over who has legitimate rights to the resource. This scenario can cause corrupt actions and self-dealing by leaders—government officials and traditional leaders—who transfer lands to benefit from the rising value. In other cases, discovery of a valuable mineral can trigger a rush to lay claim to land unless ownership is clearly established and enforced. Similarly, local conflict can be triggered if a government agency or donor project builds an irrigation system or a road to support farmers and access to markets. In Mali, an irrigation project in Niakoni proposed allocating land and water rights to heads of households who were typically men. Village women resisted this allocation because they had been responsible for cultivating the land and the proposal meant that they would lose rights to the newly valuable land. Faced with this resistance the project did allocate land to heads of households but a large majority (75%) of them agreed to “delegate” the rights to women within the household (Cotula, et al., 2006, pp. 21-22). When the value of land and natural resources found on land rises, competition to control the newly valuable asset can drive some community land conflict.

***Has land been transferred in the past, creating grievances?*** In communal land areas, as population increases people have traditionally been able to expand into “unused” areas by clearing lands and making claims (subject to counterclaims of neighboring groups). If, however, lands are less available due to past transfers by leaders, because of urban expansion or because government has created national parks, game reserves, or other protected areas or taken land to develop infrastructure this can create a grievance. Past transfers may have led to community members losing homes, livelihoods and access to important resources and sacred sites. They may no longer be able to provide new lands for youth and migrants. This can lead to subdivision of lands into increasingly small parcels. Grievances associated with past land transfers are another factor that drives some community land conflict.

***Is land information accessible and reliable?*** In many countries land information systems are out of date and not accessible to citizens, investors, or project implementers. This means that documents related to legal ownership of land may be inaccurate or missing. Land use plans may not exist or may be out of date. Boundaries between communities or between customary lands and state lands have not been mapped or have only been mapped and surveyed in the past. Local people may believe they know where borders are but their understanding may not align with that of government officials. Government agencies may not share land information and so registries, cadaster and official maps may be incomplete or inaccurate. Inaccessible and unreliable land information can lead to conflict within and between communities and with government. Poor land information systems create uncertainty that can drive some community land conflict.

Once investors and implementers determine whether these drivers are present in a project area they can then work with local stakeholders, civil society representatives, local counsel, experts, government officials and others to understand the particular type of community land conflicts that exist. Gathering intelligence about the kinds of conflict that may be present in a project area will allow investors and

implementers to determine if a project should move forward in a particular location and if so, what strategies and activities should be taken to address these threats.

### 3.1 INTRA-COMMUNITY LAND CONFLICTS

A review of the literature on land conflicts indicates they take many forms. Examples of common **intra-community land** conflict that may negatively impact greenfield projects include the following:

- disputes between traditional leaders and the population they serve
- disputes between youth and elders
- boundary disputes between villagers
- disputes between settler families and more recent migrant families
- conflicts between marginalized groups (such as women, minorities) and dominant groups

These conflicts are described in more detail below.

**Traditional, religious and customary leaders** in many communities around the world hold rights to allocate land and determine land uses. They may discharge their responsibilities capably and equitably. In other cases, leaders are corrupt, have conflicts of interest and engage in self-dealing; they wrongfully lease out or sell land to investors and fail to consult with and acquire benefits for their community. Corrupt, or self-interested, leaders can generate intra-community conflicts that are particularly difficult to identify if investors and implementers only engage with chiefs, traditional authorities or other local elites. For example, as one report on agribusiness investments in Mozambique notes:

“In many cases, only the local elite are involved in the [legally required] process of consultation. Some community leaders were found to have personally approved projects in their communities, despite the generalized opposition within the community. It is evident that these local leaders enjoy enormous authority and, when criticized or questioned by the community regarding their decisions on community land use, members are threatened or even physically beaten” (Matavel, Dolores, & Cabanelas, 2011, p. 29).

Investors and implementers should always seek to engage a broad group of community members when considering a project location. It is particularly important to speak with less powerful individuals and groups, including women, to understand if their land rights have been negatively impacted by leaders and if a new investment would further cement discrimination.

**Youth and other vulnerable groups** may feel special grievances against leaders who allocate and transfer land rights to investors for agriculture projects. In Sierra Leone, for example, chiefs helped elite land owners acquire rights to land, which then made it more difficult for youth to gain access to land for housing, farming and to start their own families (USAID, 2010, p. 9). When chiefs continued to allocate land to others, including for use by a palm oil investment, youth were more aggrieved because they had even fewer economic and social opportunities (Sturgess & Flower, 2013). The presence of disaffected youth can be a risk factor for investments in agriculture. In this situation, investors or implementers

could mitigate risks to the project by supporting community dialogues with youth and elders and by working with affected youth to ensure they participate in project benefits including employment, training opportunities or access to credit. If youth have access to alternate economic opportunities this may offset grievances associated with lost access to land.

Households may have disputes over parcel **boundaries** or over access to specific local resources. For example, in Uganda, increasing population pressures coupled with weak land governance and poor land information systems played a role in rising numbers of boundary encroachments on neighbors' lands, family disputes over land rights and a widespread misappropriation of communal resources for private benefit (Knight, Adoko, & Eilu, 2013). While some community members have gained more secure rights to land, vulnerable people have lost access to lands, creating community-level grievances. In this situation, investors or implementers might have difficulty identifying legitimate land holders with whom consultations should occur or who should benefit from participation in out-grower schemes, or other support effort, such as investor-provided extension services or access to credit. In this situation, investors or implementers could mitigate risks posed by unclear or contested household boundaries by conducting a participatory mapping exercise that includes women, men, elders, youth and accessible secondary rights holders (including pastoralists or forest users). Investors and implementers could also consider using community dialogues to enable groups to raise concerns or grievances in a less contentious setting.

In some countries investors and implementers may encounter land disputes between so-called **“outsiders” and settled peoples**, even if the “outsiders” arrived centuries before. In Liberia, Muslim migrants arrived in the country in the 18th Century, primarily as traders. They acquired rights to land through a customary institution called *tutorat* which required them to pay tribute to respected elders and leaders. Over time, migrants took on important roles in society and their prestige grew.

In the 1980s, military leader Samuel Doe aligned with the migrants and recognized them as an official Liberian ethnic group and encouraged them to buy land (Rincon, 2010). This government-backed change related to land holding disrupted the pre-existing power relations between those people who considered themselves to be the true land owners and the migrants. It created new economic opportunities for migrants but put settlers' historic claims to land, and the economic benefits associated with land use, at risk. Tensions between these groups, who had lived together for centuries, increased and contributed to ethnic violence during Liberia's civil wars. Today, local land conflict is rampant, and has been identified as a threat to national stability.<sup>3</sup> Investors or project implementers who acquire leases or concessions in Liberia certainly need to be attentive to the politicized history of land conflict.

They also need to determine if their project involves the use of land claimed by both settlers and migrants. If both groups have historic and/or statutory claims to the investment area, the project should work with representatives of the communities and with a trusted third party to mediate the conflict and to identify strategies that allow both groups to share in project benefits, otherwise, the project may inadvertently strengthen land rights for one group and reignite tensions with the other group.

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<sup>3</sup> Liberia's Early-Warning and Response Network (LERN) lists 2,766 land disputes between Feb. 07, 2007 and Nov. 16, 2016. See here: <http://lern.usahidi.com/reports/?c=9>.

In the Sahel region, conflict between settlers and migrants has erupted over access to benefits (irrigated plots) created by government (and donor funded) irrigation projects. For example, in Senegal, a group of migrants settled in the Rural Community of Nabadji. However, the land in Nabadji is held under customary tenure rules by the Rural Community of Ogo. The government supported an irrigation project in Nabadji however, according to Senegalese law, only residents of Nabadji could receive allocated plots—the Ogo would have been excluded from benefiting from the project. This kind of long-term investment would increase land values and strengthen the “outsiders” claim to land. At the same time, if only the Nabadji benefited from this investment in land, the Ogo community’s claims would be less secure because long-term investments create stronger rights for those who make or benefit from the investment. In this case, the development project created tension between the two groups that required the lengthy negotiations and mediation by the Senegal River Development Agency. Eventually, an acceptable solution was found when some non-resident Ogo farmers were allowed to participate in and benefit from the irrigation project (Cotula, et al, 2006, p. 26). The case of Addax Bioenergy in Box 1 provides another example of a long-standing dispute between migrants and settlers that can be exacerbated by projects that bring rental income and other benefits to an area.

## **BOX 1. ADDAX BIOENERGY IN SIERRA LEONE**

Addax Bioenergy's sugarcane and biofuels project in Sierra Leone was commissioned in 2014 after an intensive four-year development process. It includes 10,000 hectares of irrigated sugarcane, an ethanol factory and a renewable electricity plant (to be fed by the sugarcane biomass) that will power the ethanol factory and provide approximately 20% of Sierra Leone's national grid. The actual land used for operations covers a total of 11,000 ha.

For the project to succeed, the company had to lease substantial areas of land from three chiefdoms and up to 51 land-owning families. Under lenders' rules the project was not allowed to lease land that was under dispute so any such disputes had to be resolved.

One dispute involved two villages (referred to here as the "Host" village and the "Guest" village). Long ago, the Host village allowed the Guest village to establish a settlement on the Host village's land. Later, the two villages were separated by a newly-established administrative boundary. The Host village, however, continued to claim historical rights to the land even though it was now in a different district and chiefdom. Despite a ruling by the Customary Law Officer in favor of the Guest village, the Host village refused to relinquish its claims. The dispute simmered for over 50 years.

Tensions heightened further when the Addax project arrived and it became clear that both villages could receive rental income and compensation for assets on the project land. The prior ruling by the Customary Law Officer entitled the Guest village to receive such payments from Addax for project activities on the Guest village land but the Host village argued that they should receive all payments from Addax for using land claimed by either village.

Addax became actively involved as a mediator and proposed solutions that it hoped would benefit both villages and allow the project to proceed. The company received assistance from the Paramount Chiefs, the Customary Law Officer and District Government officials, all of whom wished to see the project implemented.

After over two years of negotiations, the villages agreed to divide the rent and compensation equally, Addax having adjusted the project boundaries so that it would use the same amount of land in each village. The Customary Law Officer was appointed to be the independent overseer of the agreement.

The company appears to have engaged in an extensive stakeholder consultation process during the due diligence and project development phase, although some have criticized certain aspects of the consultation process. However, neither the local chiefs nor the paramount chiefs disclosed the existence, intractability and complexity of the dispute between the two villages. This may have been because the chiefs were competing to have as much of the project as possible located on their territories and they did not want to undermine this goal by informing Addax of pre-existing disputes (English & Sandstrom, 2014f; English & Sandstrom, 2016; Corporate Representative #3, 2016).

Another variety of intra-community conflict involves discriminatory actions against women. Most countries provide women with formal rights to equal protection under the law, including rights to acquire and hold property in the same way that men do. These formal rights are often ignored and customary practices prevail. When land is taken from vulnerable women, children and orphans consequences for food security, health, education and livelihoods can be especially severe. In this situation, investors and implementers should be attentive to risks associated with acquiring land if women and children have been wrongfully dispossessed or if women's legitimate claims to land or project benefits have been ignored by male elders, government officials or husbands' families. As discussed in section 4, they should consider supporting participatory mapping to understand the claims that women have to land and resources. They should also consider supporting community dialogues that discuss women's legal rights to land and value to the broader community of recognizing these rights.

For example, in Africa, **widows and orphans** may be dispossessed and moved off land and out of housing by more powerful relatives. In Uganda, nearly 40% of widows reported being subject to an attempt to grab their lands, or actually losing lands to relatives (International Justice Mission, 2014). These women often face physical and verbal abuse during these episodes. As noted above, an irrigation project in Mali was originally not attentive to the fact that women had legitimate claims to some of the land that would be irrigated. If male heads of household only received rights to irrigated, and more valuable plots, women would lose economic opportunities and would be disempowered. To avoid this negative outcome, the project worked with men to ensure that they provided women with secondary rights to the land. If an investment in agriculture leases or purchases land from elders, government officials or male relatives who wrongfully dispossessed women the project may face reputational risks from inadvertently supporting women's disempowerment. Particularly for investors and projects that emphasize positive engagement with women smallholders, having a clear sense that women were not harmed to make way for the investment is essential.

### **3.2 INTER-COMMUNITY LAND CONFLICTS**

Local land conflicts often exist between communities. A non-exhaustive list of **inter-community land conflicts that can disrupt investments in agriculture and donor-backed projects** include the following:

- disputes between government officials and rural communities
- boundary disputes between neighboring communities or local authorities
- conflicts between migratory pastoralists and settled farmers

**Disputes involving government officials** and rural communities can manifest in many ways. In some cases, past government policies or actions may have resulted in displacements of people. When people are moved to make way for a national park, game reserve or protected area or to build infrastructure this can create a grievance between government and the community, particularly if communities were not consulted and did not receive adequate compensation. If a greenfield investment or donor-backed project threatens to displace people once again, this can reignite or exacerbate the older grievance.

In other cases, conflicts are associated with past actions that reflect conflicts of interest, self-dealing or corruption. For example, government officials may use their knowledge and influence to acquire rights



to a valuable piece of land in a rural area for themselves or in exchange for a bribe. If local people with legitimate claims to the land are dispossessed and lose rights to access land and resources this can create localized conflict. The transfer may be perceived as illegitimate or corrupt and local people, who hold legitimate customary rights may lose homes, livelihoods or access to sacred sites. If an investor or implementer leases or purchases contested land this can be seen as cementing an existing injustice and threaten the project's social license to operate and reignite underlying conflicts.

In some countries, these problems can be widespread. For example, much land in Kenya has been transferred from local communities to government officials and politically well-connected families who have used their knowledge and power to seize lands from local land holders (Manji, 2012). Investors in agriculture that utilize land acquired from political elites should understand if the current owners are viewed as legitimate or illegitimate owners. In these politicized environments investors and implementers may need to adopt a different approach to reduce the risks associated with leasing, purchasing or acquiring concession rights over land.

In situations like this, it may be useful to consider supporting multi-stakeholder platforms to encourage discussion of sensitive policies and practices. Some investors or funders may wish to avoid highly politicized land environments altogether. In addition, engaging with communities directly to understand the history behind land transfers is an important component of due diligence efforts and should include participatory mapping of areas under dispute. As Section 4 discusses, investors and implementers should not rely solely on government officials or on local counsel to ensure that past land transfers were legitimate. Investors and implementers should ascertain whether national elites have inappropriately gained control of project area lands or if they have misused or abused influence to acquire land rights in the project area. If an investment in agriculture is proposed on lands that were illegitimately acquired or acquired through use of political influence, local people may seek to re-exert lost rights or re-acquire access to lost lands and resources, creating the potential for project delays, additional costs and reputational harm.

In other cases, conflicts involve **border disputes between communities**—as with the Addax Bioenergy and AgDevCo investments described above. Sometimes these conflicts are the result of the poor land information systems—maps and land documents may be out of date or inaccurate. In other cases, these may be long-standing conflicts over power and control. As one expert that we interviewed said: “Investors can easily get snarled up in these boundary conflicts. These boundary conflicts may not have been a really big deal until investors or development projects come and then the stakes get high” (Land Tenure Expert #4, 2016). When a project or investment benefits only those inside a contested boundary, those outside the boundary may protest or contest the demarcation and the project activities. These kinds of disputes reflect the concerns related to power dynamics mentioned above and they may be mitigated or avoided by working with both communities to ensure that project activities provide contract, employment, extension service, input or credit opportunities for both groups.

Another common source of inter-community disputes arises when transient herders arrive, claiming traditional rights to pasture, water and to move through an area.

**Conflicts between migratory pastoralists and settled farmers**

are common across the African Sahel, throughout East Africa and in other parts of the world (Massay 2017). Disputes between the groups often arise when livestock destroy crops (Linkow, 2016) or when herders can no longer access water sources. Also, pastoralist communities themselves often engage in cattle raiding and retaliatory violence. These conflicts can re-ignite or escalate in the face of external investments that further restrict the pastures, migratory routes and water sources pastoralists depend upon for their livelihoods. As the ScanFarm example (Box 2) highlights, rising competition for fertile land and water contributed to local land conflicts between farmers and pastoralists. In this case, when an investment in agriculture added to pre-existing land pressures, local support eroded and the firm faced legal action and associated costs.

**BOX 2. CONFLICT WITH PASTORALIST GROUPS**

In 2008 Norwegian firm, ScanFarm Ltd. (formerly ScanFuel) acquired thousands of hectares of forest areas, grasslands and access to water for jatropha production in the Agogo traditional area of Ghana, east of Kumasi (the company has since shifted focus to other crops). The paramount chief of Agogo negotiated this transaction and did not consult with local people about acquisition or terms of the transfer. Fulani herders had also acquired rights to land from the Agogo traditional authorities or directly from local families (Kuusaana and Bukari, 2015). Thus, at the same time that ScanFarm was acquiring a large tract of land, demand for land from other larger-scale agricultural firms, smaller-scale farmers and from pastoralists had been rising. This increasing competition over resources heightened conflict among pastoralists and farmers—leading to attacks and the destruction of farms. As Kuusaana and Bukari note: “confiscation of Fulani acquired lands became common place...there were organized evictions of Fulani pastoralists from their lands” (2015, 3). These confiscations and attacks led to resistance from pastoralists. ScanFarm’s acquisition of grasslands not only reduced the area of land available to them, it also reduced the amount of fertile lands available to farmers, allegedly driving them onto more marginal and less productive land. This further exacerbated local land conflicts. ScanFarm ran into operating problems when local people refused to be relocated, refused the compensation that the company offered and when a local family took the company to court for failure to provide adequate consultation to relevant and affected families (Food Security Policy Advocacy Network, 2012).

While by no means exhaustive, Table I identifies common drivers of community land conflicts and the kinds of intra and inter-community conflict that are likely to occur in the presence of these drivers. Section 4 explores in greater detail specific strategies that investors and implementers may wish to use to address common community land conflicts.

**TABLE I. IDENTIFYING POTENTIAL FOR COMMUNITY LAND CONFLICTS**

Common drivers of community land conflict	Manifestations—investors and implementers should be especially alert for ....
Rising population	<ul style="list-style-type: none"><li>• Youth/Elders disputes</li><li>• Migrant/Settlers disputes</li><li>• Vulnerable Groups, Women/Male Leaders, Family disputes</li><li>• Boundary disputes</li></ul>
Movement of people	<ul style="list-style-type: none"><li>• Government/Community disputes</li><li>• Border disputes</li><li>• Pastoralist/Farmer disputes</li></ul>
Newly valuable resource/s	<ul style="list-style-type: none"><li>• Leader/Community disputes</li><li>• Government/Community disputes</li><li>• Vulnerable Group, Women/Male Leaders, Family disputes</li></ul>
Past land transfers	<ul style="list-style-type: none"><li>• Government/Community disputes</li><li>• Leader/Community disputes</li><li>• Boundary disputes</li></ul>
Poor land information	<ul style="list-style-type: none"><li>• Boundary &amp; border disputes</li><li>• Government/Community disputes</li><li>• Leader/Community disputes</li></ul>

## **4 IDENTIFYING AND ADDRESSING COMMUNITY LAND CONFLICTS**

In this section, we discuss in more detail ways to identify and address local land conflicts in a greenfield scenario. The analysis is organized into three phases which track a typical project lifecycle. These are: (1) the due diligence/project design phase which takes place before a decision is made to proceed; (2) the project agreement phase, which focuses on what provisions relating to land disputes should be included in the agreements or project documents that govern project implementation; and (3) the project operational phase, during which the project is implemented. The bulk of the discussion focuses on phase 1 as that is the most crucial period for identifying and seeking to facilitate resolution of land disputes.

The substantial negative impacts of community land conflicts discussed above can be prevented in many cases if investors and implementers take reasonable steps to identify those disputes, determine the extent to which they may affect the project and then, if feasible, do what they can to facilitate resolution of the disputes. Inquiry into the existence of community land conflicts should be part of a larger, critically important process of identifying all legitimate tenure rights holders in or around the project area before a decision is made whether to proceed with an investment (USAID, 2015; AFD, 2014).

### **4.1 STRATEGIES FOR IDENTIFYING COMMUNITY LAND CONFLICTS IN THE DUE DILIGENCE PHASE**

A thorough process to identify community land disputes in the project due diligence phase can include these analytical steps: (1) research on the history, economy, culture and politics of the region; (2) developing an understanding of the national legal framework as it relates to land and dispute resolution; (3) review of formal land records, court records, reports and research papers on land disputes in the area; (4) engaging directly with the affected community (by far the most important step in identifying land disputes); and (5) review results from participatory mapping and available geospatial/satellite imagery of the area. The overall objective is to look for signs of the presence of the types of conflicts discussed in the previous section and the common drivers of those disputes. For donor agencies designing projects, implementing partners, staff in country and at headquarters who have experience in the proposed areas may be able to contribute to some or all of those steps, allowing them to provide information on historical and current conflicts and local power dynamics.

Private sector investors may have access to knowledgeable local counsel, consultants and business partners. However, advisors with the expertise to understand and address local conflicts may not be available or easily located in all areas. International experts on land tenure and responsible investments sometimes can assist in locating local expertise.

#### **4.1.1 RESEARCH ON HISTORY, ECONOMY, CULTURE AND POLITICS**

A logical first step in identifying local land conflicts in the area of a proposed project is to conduct research to develop an in-depth understanding of the history, economy, culture, politics and resource use patterns of the targeted region, with an emphasis on the presence of any of the drivers of community conflicts discussed above: land scarcity, previous population movements, past conflicts, natural disasters and other events that may have caused displacement or other disputes over land. It is important to gain an understanding of the local community and culture, which persons or groups hold influence, how people maintain their livelihoods (including pastoralists who may use resources in the area only seasonally) and how disputes are resolved, among other things (AFD, 2014; Land Tenure Expert #1, 2016; Land Tenure Expert #3, 2016; USAID, 2015). As most investors or implementers will lack expertise in these areas, it may be advisable to involve experts at this early phase.

### **BOX 3. CHALLENGES FACED BY DONORS**

Donors are especially prone to mistakes given time constraints and competing demands staff often face; this may make it difficult to develop a good understanding of the local political economy of the area where they want to work and may lead them to be unaware of conflicts such as boundary disputes, often arising over competing claims to land and other assets. And if donors rely solely on what they hear from government policymakers and do not take other steps to understand local dynamics related to land and resources, “the result is that they step on landmines” (Donor Representative #1, 2016).

Current land conflicts may be the result of events that occurred many decades in the past. For example, one key informant described a situation in Côte d’Ivoire which was based on events over a century old. In this case, those with real power over the project land lived far from the intervention area. They had arrived in the area 100 years earlier and had maintained influence over a newer community that had arrived 50 years later and currently occupied the project area. Conflict ensued because the older settlers felt disempowered when they were excluded from project decision-making. (AFD 2014; Land Tenure Expert #1, 2016). Local counsel, local academics and land tenure experts may be well placed to support this kind of work.

#### 4.1.2 UNDERSTANDING THE NATIONAL LEGAL FRAMEWORK ON LAND AND DISPUTE RESOLUTION AND CUSTOMARY RIGHTS AND PRACTICES

An understanding of the national legal framework as it relates to land will help determine how much one can rely upon the content of formal government records to identify disputes over land. Countries with weak judicial and land governance systems often do not maintain accurate and easily accessible records that would allow identification of disputes involving statutory land rights. Moreover, in many such countries national law does not officially recognize customary land rights so a review of government land records or court records is unlikely to reveal any evidence of disputes involving such rights. Thus, it is not enough to understand only the formal legal framework governing land and dispute resolution. In many developing country settings, customary law and practices, including methods for resolving disputes, prevail widely, especially in rural areas so gaining an understanding of such laws and practices is important. In many settings, customary practices may be most relevant in identifying and understanding community land disputes.

#### **BOX 4. UNRELIABLE LAND CERTIFICATES IN LIBERIA**

In Liberia, the Land Rights Policy of 2013 decentralized control of the land to the level of communities. While many stakeholders thought that most of the country's land was sitting with customary communities, they realized that land had been parceled out via Tribal Certificates (TC) to both clan members and private individuals since the 1970s. In some cases, clan members attest that these private claims to their land are fraudulent and vice versa. This is a significant issue for potential investors since they can't rely on negotiating with either the government or community leaders. Currently, the Land Rights Act is stalled and solutions are being developed to deal with TCs.

#### 4.1.3 REVIEW OF FORMAL LAND RECORDS, COURT RECORDS, REPORTS AND RESEARCH PAPERS ON LAND DISPUTES IN THE AREA

With an understanding of the overall legal and customary rights framework on land, the next step is to review formal land and judicial records and consult with responsible government officials about existing land disputes (New Alliance for Food Security and Nutrition, 2015). This review must be done as part of a comprehensive effort to identify disputes. But it cannot be stressed enough that in the developing world investors and implementers can never rely solely on formal records as they may be inaccurate or simply inaccessible as described in Boxes 5 and 6. Additional steps are required, as detailed below.

### **BOX 5. LOCAL COUNSEL IS NECESSARY BUT NOT SUFFICIENT IN MYANMAR**

It is usually unwise to rely solely on land ownership documents provided directly by those claiming rights to the land. The dangers of doing so also can be seen in Myanmar where investors or those working on donor-supported projects sometimes ask for and review documents to verify land ownership but fail to investigate whether the documents were obtained through an equitable and legitimate transaction. Few see any easy way to resolve land conflicts that are in some cases decades old. “The main advice for foreign investors is: don’t rely on lawyers,” says Vicky Bowman, a former British ambassador to Myanmar, who heads the Myanmar Centre for Responsible Business, which seeks to promote good corporate behavior in the country. “Even if the documents say, ‘These people signed over the ownership’, it can still be dodgy. You need to do the due diligence to understand why they signed. For example, was it under duress?”

Another former British diplomat who has worked in Myanmar says: “There is every chance anyone who buys land will find themselves in a dispute.” (Peel, 2016)

Another case study shows the danger of relying solely on government land records. For example, AgDevCo (discussed above) received official records from the Land Commission in northern Ghana purporting to show that one chieftancy was the owner of land on which the company proposed to develop an agricultural project. AgDevCo engaged repeatedly with local officials, local leaders and local communities as part of their efforts to move the project forward and this engagement revealed the existence of long-standing boundary conflicts between two chieftancies and ethnic groups. The company was left to cope with this dispute before it could proceed with the project. Had the company relied solely on the land documents provided by the government, it quite likely would not have discovered the dispute until after investing a significant amount of money in the project. Spending that time with the community may have saved the company millions of dollars (Land Tenure Expert #4, 2016; Corporate Representative #2, 2016).

#### **4.1.4 ENGAGING WITH THE COMMUNITY ABOUT LOCAL LAND CONFLICTS**

The most important step in identifying local land conflicts during the project design/due diligence phase is visiting the project area to engage with the community about past, ongoing or potential disputes and begin to develop a sense of how they might be exacerbated by the proposed project (USAID, 2015). This is also an opportunity to learn more about the history, political economy and culture of the area. Best practice guidance strongly suggests community-level engagement and participation from the start of a project’s conception through to close out. Engaging with the community to identify land disputes should be part of a broader consultation process aimed at identifying tenure rights holders, land and resource uses and the potential impacts of the proposed project (FAO, 2016). Information about conflicts should be revealed during participatory stakeholder mapping exercises that help to identify all who use land, how they use it, geographic boundaries and the nature and source of their rights. This should include specific questions about disputes. Publicly displaying the results of the mapping process can further help to identify disputes and possibly facilitate their resolution (Land Tenure Expert #1, 2016; USAID, 2015).

For public sector investors, greater attention may be needed to assess whether proposed development programming could trigger or exacerbate an existing land conflict in a way that causes local harm and could derail the project. To avoid this, donors could support more robust surveying or participatory mapping of local areas—not just in cases that involve resettlement but in all larger-scale commercial agricultural projects. Donors can also adopt more comprehensive approaches to identifying conflicts and risks that actively involve local people, such as those outlined in Box 6 below.

#### **BOX 6. USING PARTICIPATORY APPROACHES TO REDUCE CONFLICTS IN SENEGAL**

In the late 1980s the Government of Senegal adopted a more decentralized, private-sector driven approach to irrigation development projects. At the same time, the government emphasized the importance of family farms, creating tensions in the area between private-sector investors and families and among vulnerable groups and more powerful locals. Recognizing these underlying tensions, the Millennium Challenge Corporation developed a Land Tenure Security Activity (LTSA) as an important part of its five-year (2010–2015) Compact with Senegal. The LTSA conducted baseline studies in 9 communes within the project area. Customary land systems remained pertinent if weakened in these locations. The project identified stakeholders and worked to secure existing land rights which were held primarily by families, by formalizing them. The project supported community-level negotiations among stakeholder groups to develop new land allocation criteria and rules for accessing land within the irrigation areas. The LTSA built capacity of local land management institutions to support these newly formalized rights' holders. This included improving local land registries, digitizing land information systems, raising awareness of rights including women's rights to land, training locals to use mapping tools including GPS instruments to identify boundaries, and providing training in conflict management and support to conflict management institutions. As a result, women, pastoralists, immigrants and the landless—often former captives and servants—were included in land allocation criteria. Communities now decide how to allocate lands to investors and businesses and other commercial agricultural investments in the Senegal River Valley have adopted the LTSA model (Diouf, Elbow & Seck, 2015).

Both public and private investors and implementers can benefit from implementing a conflict analysis, possibly using a conflict matrix, as a part of early program development to provide additional insights into active or potential conflicts that will have a direct bearing on the decision whether to proceed. Such an analysis can be done independently or incorporated into a robust environmental and social impact assessment (ESIA) in the due diligence/project design phase (Mediation Expert #2, 2016; FAO, 2016).

In fact, firms and organizations that have pledged to recognize, respect and remedy human rights should ensure that land tenure and resource rights issues are addressed in their environmental and social impact assessments or in human rights impact assessments. Investors and implementers that adopt conflict-sensitive practices that raise awareness of local land conflict as a component, or driver of, community-level discord should help improve risk assessments and reduce financial, social and environmental harms and associated costs.

In virtually all settings it is essential to devote a significant amount of time to community engagement in seeking to identify any actual or potential land disputes. While this is likely to be a slow process, the costs of addressing unidentified conflicts during project implementation are likely to justify allowing



sufficient time for effective community engagement. Information must be collected on an ongoing basis, likely over a period of weeks or months (Land Tenure Expert #1, 2016). In so doing, it is important to find culturally appropriate ways to engage with women, youth, and other groups within the community to get their perspectives. For example, to get the input of women it may be necessary to have separate, women-only meetings, possibly facilitated only by women (FAO, 2013). This may reveal conflicts that might not otherwise come to light.

After gathering all available information, it may be useful to organize the data in the form of a conflict matrix. In Table 2 we present an abbreviated version of a conflict matrix for a boundary dispute.

**TABLE 2. SAMPLE CONFLICT MATRIX—LONG-TERM BOUNDARY DISPUTE BETWEEN TWO COMMUNITIES**

Type of Conflict	Boundary dispute
Manifestation of Conflict	Conflict escalated when proposed investment in the area was announced and communities saw possibility of receiving substantial revenues and other economic benefits.
Stakeholders	Two communities; senior traditional authorities; investor; district officials; non-governmental organization (NGO); development finance institution
Causes	Lack of demarcation of traditional boundaries; lack of recognition and registration of customary land rights; possibly corruption
Potential	Resolve long-standing dispute; bring economic benefits; document agreed-upon land boundaries
Risks	Continuing tension between villages, possibly leading to violence. Loss of economic benefits
Possible Solutions	Use traditional dispute resolution process to arrive at compromise. Support from investor or state in mediation that results in agreed-upon boundaries. Negotiated sharing of benefits derived from the investment project.

Source: Wehrmann 2008.

#### 4.1.5 REVIEW RESULTS OF PARTICIPATORY MAPPING AND USE GEOSPATIAL TECHNOLOGY AND SATELLITE IMAGERY

In some countries, geospatial technology and satellite imagery can be used to augment the results of participatory mapping to clarify boundaries and improve customary landholders' tenure security. It is important to carefully review with all stakeholders the results of the participatory mapping. In a project in Liberia, for example, the communities participated in a workshop where they created maps of the land uses and boundaries and then overlaid satellite imagery with the community mapping data. Doing so helped to validate the overall results. In Côte d'Ivoire, project implementers printed Google Earth satellite imagery maps of the applicable area then worked with representatives of the contending villages to resolve boundary disputes. The representatives knew where the conflicts were and marked the disputed areas on the maps. This led to a discussion over where the boundaries should be and, ultimately, an agreement was reached (Land Tenure Expert #1, 2016).

Strategies for identifying land disputes in the due diligence phase, along with key questions related to each strategy, are summarized in Table 3.

**TABLE 3. DUE DILIGENCE/PROJECT DESIGN PHASE: STRATEGIES FOR IDENTIFYING COMMUNITY LAND CONFLICTS**

Strategy	Key Questions
Research on history, economy, culture and politics	<ul style="list-style-type: none"> <li>• Is the country and project area generally characterized by serious insecurity and conflicts over land and natural resources because of its political history, natural disasters, increased pressure or conflict over land, major population displacements, heavy emphasis on large-scale agri-business, or tensions between users over natural resource management?</li> <li>• Has the project budgeted sufficient time and resources to understand the political economy of the project area?</li> </ul>
Understand the national legal framework on land and dispute resolution, including customary rights and practices	<ul style="list-style-type: none"> <li>• Are customary rights recognized, especially in rural areas where they are most likely to exist?</li> <li>• How secure are rights that have not been formalized?</li> <li>• How are land rights, both formal and customary, documented?</li> <li>• How does the law deal with seasonal rights to grow crops, fish or gather forest resources?</li> <li>• If rights are taken by government through a process of expropriation do local people have rights to receive fair compensation?</li> <li>• What authorities, institutions and conflict resolution mechanisms are available to ensure that rights to land and resources are respected?</li> <li>• Are those mechanisms accessible, effective and speedy?</li> <li>• Have knowledgeable national experts, local NGOs and civil society organizations been identified and consulted?</li> </ul>
Review of formal land records, court records, reports and research papers on land disputes in the area	<ul style="list-style-type: none"> <li>• Are records accurate, current and accessible?</li> <li>• Do the records reflect land disputes based on customary rights?</li> </ul>
Engaging with the community about land conflicts	<ul style="list-style-type: none"> <li>• Are project operators engaging with the community from the beginning of the due diligence/project design phase?</li> <li>• Is community engagement to identify land disputes a part of a broader consultation process (often incorporating participatory mapping) aimed at identifying tenure rights holders, land and resource uses and the potential impacts of the proposed project on tenure rights, human rights, food security and the environment?</li> <li>• Does the ESIA include questions and analysis aimed at identifying land disputes?</li> <li>• Is it possible to communicate directly with the parties to disputes to better understand the issues?</li> <li>• Are project staff using culturally appropriate methods of communication in attempting to identify disputes?</li> </ul>
Use of geospatial technology and satellite imagery along with participatory mapping	<ul style="list-style-type: none"> <li>• Is geospatial data available to assist in identifying disputes?</li> </ul>

#### **4.2 STRATEGIES FOR ADDRESSING COMMUNITY LAND CONFLICTS IN THE DUE DILIGENCE PHASE**

After identifying local land disputes, project proponents will be faced with making a threshold decision on whether to proceed with the project. This decision is likely to be made as part of a broader analysis of the results of the due diligence process, including the findings of the ESIA. The existence of multiple local land conflicts may often lead to a decision to abandon, relocate or otherwise attempt to substantially modify the project to avoid operating in the conflicted area.

If local community-level land conflicts are identified during the project design phase, public sector investors and implementers should consider adding a land tenure security activity to the project. This could include raising local awareness of stakeholders' rights, building the capacity of local governance institutions, support for conflict resolution activities and careful monitoring and evaluation to track numbers of conflicts, numbers of conflicts resolved and local perceptions of tenure security.

For private investors, The New Alliance's Analytical Framework for Responsible Land-Based Investments in African Agriculture advises not to proceed with investment projects if land disputes cannot be resolved and/or if the project will exacerbate those disputes (New Alliance for Food Security and Nutrition, 2015). Similarly, a recently published UN Food and Agriculture Organization (FAO) Technical Guide on the VGGT identifies the presence of numerous unresolved disputes over land as a high-risk factor that should usually prompt investors to abandon the project (FAO, 2016).

While many of the tools and guidelines that address due diligence in the investment context suggest that even one conflict is too many, investors may take a more nuanced approach. One key informant stated that the existence of land disputes constitutes a "red/orange flag" and, if they could not be addressed effectively, might cause the firm to cancel an investment. But they must apply an element of materiality to the analysis. If, for example, only 5% or 10% of the land is under dispute, the company would look for a way to reach an agreement or compromise, rather than abandoning the project completely (Corporate Representative #1, 2016).

If, after assessing the nature or extent of local land disputes, the proposed project is deemed to be potentially feasible, implementers—private or public—can attempt to facilitate resolution of the disputes before making a final decision whether to proceed with project implementation. This can take several approaches, including providing support for: (1) access to appropriate dispute resolution mechanisms; (2) making technical or legal assistance available to some or all the parties; and (3) compensating or otherwise providing redress to claimants.

#### **4.2.1 SUPPORTING MEDIATION, COMMUNITY DIALOGUE AND OTHER DISPUTE RESOLUTION MECHANISMS**

Having decided to attempt to proceed with project design and development in the face of active disputes, developers can opt to try to support the resolution of these disputes. They can do so through existing dispute resolution mechanisms, through the use of a community dialogue process or possibly through introducing a new mechanism that is locally recognized and approved (USAID, 2015). In some cases, involving politicized issues, it may also be useful to support the development of or participation in a multi-stakeholder platform.

Methods for resolving local disputes over land are varied and cannot be addressed in depth in this paper. Generally speaking, formal approaches exist within the national judicial system, such as courts or perhaps special land tribunals. There are also various forms of alternative dispute resolution. In many developing country settings, people may resort to traditional dispute resolution processes governed by customary law. In others, some may rely upon religious-based fora (Wehrmann, 2008). Experts, NGOs and others with knowledge of the project area can help to determine which approach is best. Whichever dispute resolution mechanism is chosen, it may be best if it fits within existing processes since they will most likely be familiar to the conflicting parties. Strengthening existing processes may also

help the region or country build more sustainable and effective mechanisms as a whole (Land Tenure Expert #2, 2016).

#### 4.2.2 FORMAL JUDICIAL PROCESSES

In many parts of the developing world, those with grievances face significant barriers to accessing justice in the formal judicial system. Courts are often expensive and slow, entail geographic and cultural barriers, and can have a deficit of appropriately educated judges and lawyers. While outsiders might expect land disputes to be resolved by government courts, they may not be a viable option. Indeed, while land disputes are often among the main source of backlogs in formal courts, very few such disputes ever go through the entire judicial process to resolution and if they do, the process can take many years (FAO, 2016; Munden Project, 2012; UN Office of High Commissioner for Human Rights, 2015; GIZ, 2016). Thus, the national courts may be the last resort due to time, cost, and, in many countries, lack of equity in resolving the underlying hostility between the parties. Even special land courts may be too slow or expensive (Massay 2017).

#### 4.2.3 ALTERNATIVE DISPUTE RESOLUTION

There are a range of state or non-state alternative dispute resolution (ADR) options that can be employed to resolve disputes. Some are based on customary practices (discussed below). Some ADR approaches, such as mediation and conciliation, aim to reach a mutually agreeable solution to the dispute. Others, such as arbitration, ask a third party to decide whose rights should prevail. Consensual ADR approaches aim to find a compromise that is acceptable to all parties through negotiations and may be more likely to be satisfactory to all parties than arbitration. In most cases, ADR will be faster and far less expensive than formal courts (Wehrmann, 2008; FAO, 2016).

In Sierra Leone, Addax Bioenergy used mediation and pressure from paramount chiefs and the government to bring the two villages to a settlement (see Box 1). This process did not utilize an existing mechanism per se, but it did involve the authority of traditional leaders and the national government. Addax also made it clear to the villages that the project would not and could not proceed unless the dispute was resolved (Corporate Representative #3, 2016).

#### 4.2.4 TRADITIONAL (CUSTOMARY) DISPUTE RESOLUTION PRACTICES

Indigenous peoples (and others) often govern their land through customary practices. Disputes over land must be settled in a culturally appropriate, comprehensive manner that takes into account these complexities. Customary conflict resolution systems can do that and provide a relatively speedy and inexpensive way to resolve land disputes (Wehrmann 2008; FAO 2016a).

Customary dispute resolution mechanisms can take a variety of forms. Many combine an element of conciliation (consensual) with something akin to arbitration, where a third party (often a group of community elders, usually men) ultimately arrives at a binding decision (non-consensual). The main objective of the process is to re-establish harmony within the community as such conflicts are seen as affecting the entire community. It is important to recognize that establishing harmony may not necessarily mean that all parties are satisfied with the outcome. Moreover, some traditional processes may not adequately consider the rights and circumstances of women (Wehrmann 2008), which may be

the case when these are founded on religious principles. Moreover, customary mechanisms are likely to be ineffective if the customary authorities themselves are involved in the dispute.

In sum, as the formal court systems are often slow, expensive and inaccessible to the poor—especially in rural areas—investors and implementers may be well-advised to promote the use of non-formal processes that focus on dialogue and mediation in seeking to help resolve community land conflicts affecting their investments. These may involve traditional mechanisms or one of the ADR methods described above.

#### 4.2.5 PROVIDING TECHNICAL OR LEGAL ASSISTANCE

In addition to facilitating negotiations and access to dispute resolution mechanisms, the investment or donor project implementer might also provide technical or legal assistance to the parties to the conflict. This can take many forms such as providing financial assistance that allows parties to retain a lawyer or other advisor. Another alternative is to help the parties gain access to NGOs that may provide advice and support to local community members seeking to enforce their rights (GIZ, 2016).

Implementers might also provide technical and financial support to help to identify and clarify boundaries, if doing so can lead to resolution of the dispute. Land-based projects will generally need to identify tenure rights as part of the broader due diligence and project planning analysis. Funders or implementers can consider whether to include assistance in clarifying and officially documenting such rights as part of the project. Doing so will almost always require reaching consensus among local stakeholders on the location of boundaries and documenting what is agreed to and, consequently, resolving boundary-related disputes.

The recognition and documentation of customary land tenure rights is often seen as a way of preventing land conflicts. Registering customary rights, either for individuals or communities, can provide a measure of legal protection against unauthorized encroachments, but it can also help to resolve existing disputes. If this approach is used, however, great care must be taken to avoid negative impacts on some land rights holders or users, possibly creating new disputes. Registering customary rights can be very complex due to the nature of customary tenure. Done wrong, the result can be the conversion of tenure rights from one form to another such that communal or secondary rights are extinguished or undermined. The rights of women can be especially at risk if not reflected appropriately in the registration process (FAO, 2016).

#### 4.2.6 PROVIDE PROJECT BENEFITS, COMPENSATION OR OTHER REDRESS TO RESOLVE THE ISSUES

Investors or donors might also consider providing resources to compensate aggrieved individuals or communities to resolve existing disputes, even though their greenfield project did not cause the dispute. This could be a cost-effective way to proceed with the investment (Interlaken Group, 2015). That is, resources may be required not only for the dispute resolution process but to fund the remedy that arises from the process. For example, in circumstances where contemporary conflicts were caused by a land taking by a previous government (such as in Myanmar), resources will be required for restitution, whether in the form of cash, alternative land that must be acquired or both. The potential development or financial benefits of the project may be such that expending resources to provide compensation and resolve ongoing disputes may be justified. In addition, investors and implementers can make efforts to design their projects so that both parties to the dispute receive benefits—employment, access to

markets for local agricultural production, etc.—from the investment. An example of this approach is the AgDevCo project at Babator. In addition to direct employment opportunities, the project is piloting an in-grower scheme. This will create irrigated plots with technical agronomy support which should provide additional food security and income by achieving much higher productivity than traditional cultivation. All directly affected households will be invited to participate in the scheme as part of wider livelihood restoration activities.

Strategies for addressing land disputes in the due diligence phase, along with key questions related to each strategy, are summarized in Table 4.

**TABLE 4. DUE DILIGENCE/PROJECT DESIGN PHASE: STRATEGIES FOR ADDRESSING COMMUNITY LAND CONFLICTS**

Strategy	Key Questions
Facilitating access to dispute resolution mechanisms	<ul style="list-style-type: none"> <li>• Are there existing dispute resolution mechanisms that are suitable for attempting to resolve the land dispute?               <ul style="list-style-type: none"> <li>– How equitable, accessible and effective are formal judicial processes?</li> <li>– If ADR processes are available, would consensual or non-consensual approaches be most effective?</li> <li>– Are traditional dispute resolution processes available and, if so, are they likely to help the parties resolve their dispute?</li> </ul> </li> </ul>
Providing technical or legal support	<ul style="list-style-type: none"> <li>• If the parties each had legal advice would it be more likely that the dispute could be resolved?</li> <li>• Could the dispute be resolved if the parties received assistance demarcating boundaries, clarifying and/or officially documenting land rights subject to dispute?</li> <li>• Could registering land rights as a way of resolving the dispute have a negative impact on the rights of women or communal or secondary rights?</li> </ul>
Provide compensation or other redress to resolve the issues	<ul style="list-style-type: none"> <li>• Could the dispute be resolved by providing resources to compensate aggrieved individuals or communities?</li> </ul>

#### **4.3 STRATEGIES FOR IDENTIFYING AND ADDRESSING COMMUNITY LAND CONFLICTS IN THE AGREEMENT AND OPERATIONAL PHASES**

Investors and implementers should seriously consider whether to proceed with the project if the land disputes were not resolved or have reignited in the due diligence/project design phase. Indeed, as stated above guidance on responsible investments advise proponents to cancel projects when there are unresolved conflicts (e.g., New Alliance for Food Security and Nutrition 2015). That is why this paper focuses primarily on identifying and addressing land conflicts in that phase.

If, however, project proponents, the local community and other stakeholders agree to proceed despite unresolved disputes, it may be appropriate to include in the project agreements, or in project design documents, a mechanism for resolving those still-active disputes. This may or may not be the same mechanism in the agreement to deal with future disputes that may be caused directly by the project (FAO, 2016). The type of mechanism chosen should be agreed to by all parties and is likely to be one of those described in the previous section.

Creation of an appropriate dispute resolution procedure or grievance mechanism is one of the subjects that investors and implementers should discuss with the affected communities from the outset of the due diligence phase. They should be designed with the community so that either pre-existing conflicts or disputes that arise during the project can be resolved fairly, promptly, transparently and in a culturally appropriate fashion. Investors and implementers may wish to consult with local experts to help in determining the most appropriate mechanisms (FAO 2016).

Once the project becomes operational (including site preparation, construction, etc.), the task is to avoid exacerbating or reigniting community land disputes identified and possibly left unresolved in the due diligence phase. Ongoing community engagement to better understand local disputes and grievances and what is happening in the community is essential. In especially complex cases, it may be useful to establish and work through conflict issues via a multi-party platform. Such a strategy may be especially appropriate for public investors or implementers. Investors also can insist that implementers put in place robust risk management or monitoring systems that, among other things, can help to identify budding conflicts whether or not caused by the project itself. Such systems can be part of a proactive effort to address all tenure risks affecting or caused by project operations (Interlaken Group, 2015; FAO, 2016).

One interviewee from the private sector noted that it is important that project operational staff understand clearly that managing and, if possible, avoiding land disputes is a key responsibility. In this company, one of the key performance evaluation indicators for company personnel involves how well they manage boundary issues and encroachments. The agricultural team is told to work together with land staff to identify any land issues that may arise and ensure that they are dealt with through appropriate grievance mechanisms (Corporate Representative #1, 2016).

Adopting a monitoring and evaluation plan that will effectively track land disputes and their resolution is another component of effectively managing land and project-related disputes. Monitoring should be one of the subjects covered by ongoing consultations with affected communities and community representatives should take part in monitoring activities. In addition to disputes, a monitoring plan can cover other important aspects of the project, such as the extent to which all parties are complying with project agreements and compliance with environmental and social impact assessment mitigation plans (FAO 2016).

Recommendations and key questions related to the project agreement and operational phases are summarized in Table 5.

**TABLE 5. PROJECT AGREEMENT AND OPERATIONAL PHASES: STRATEGIES FOR IDENTIFYING AND ADDRESSING LOCAL LAND CONFLICTS**

Strategy	Key Questions
Ensuring access to dispute resolution mechanisms	<ul style="list-style-type: none"> <li>• Are there existing dispute resolution mechanisms that are suitable for attempting to resolve the land dispute?</li> <li>- Does the project agreement contain a suitable mechanism for resolving disputes and grievances created by the project? If so, is that mechanism suitable for resolving the existing disputes or is a different one required?</li> </ul>

Community engagement and monitoring

- Has a process been established through which to engage regularly with the community to maintain awareness of land disputes and grievances and otherwise engage in ongoing monitoring of disputes?
-



## 5 KEY MESSAGES AND RECOMMENDATIONS

1. Community land conflicts are common in rural areas of the developing world and may be difficult for outsiders to identify and understand. These conflicts can have many underlying causes. At a high level, they can be categorized as either intra-community or inter-community disputes.
2. In seeking to understand community land disputes, it can be helpful to look for any of five common drivers of such disputes: (1) large increases in the local population; (2) migration people into the area from outside; (3) rising value of land or other local resources; (4) past transfers of land that may have created grievances; and (5) land information is not accessible or accurate.
3. It is essential for investors and implementers of greenfield investments in agriculture to identify, assess and attempt to address community land conflicts because, if left unaddressed, they can undermine the success of the project and generate negative impacts for local communities, including human rights violations.
4. Investors and implementers should take action early in the due diligence/project design phase of a proposed agricultural investment or project to identify community land conflicts. This may require working with a land tenure or other specialist to review project documents or conduct a social impact assessment. By far the most important way of identifying conflicts is to engage effectively and at length with the local communities, seeking to identify conflicts as part of a broader process of identifying tenure rights and the potential impact of the project on the community.
5. In addition to community engagement, investors and implementers can: (1) conduct research on the history, economy, culture, politics and resource use patterns of the targeted region; (2) gain an understanding of the national legal framework on land and dispute resolution, including both formal and customary law and practices; (3) review formal land and judicial records and consult with responsible government officials for evidence of existing land disputes; and (4) review results of participatory mapping and use geospatial/satellite imagery to augment and validate the results of community engagement regarding land rights and boundaries.
6. If land disputes are identified, investors and implementers can try to facilitate resolution of the disputes in the due diligence phase. Approaches for doing so are: (1) help to provide access to culturally appropriate, accessible and equitable dispute resolution mechanisms; (2) provide financial and technical assistance to the parties to the conflicts; and (3) allocate project benefits and financial resources to provide compensation or other forms of redress to help resolve land disputes. For politicized conflicts, it may be helpful to support or join multi-stakeholder platforms that address land policies and sensitive issues.
7. If community land conflicts are not resolved in the due diligence phase, investors and implementers should consider withdrawing from or substantially revising the project. If the project proceeds, investors and implementers should ensure that suitable dispute resolution and grievance mechanisms are established to address existing disputes and those that may arise during the life of the project. As the project is implemented, it is important to continue to engage regularly with the community to maintain awareness of land disputes and grievances and otherwise engage in ongoing monitoring of disputes.

### **Recommendations for project implementers:**

1. Engage a broad cross-section of a community when considering a project location. It is particularly important to speak with less powerful individuals (women particularly) and groups to understand if their rights have been abused and if new investments would further cement discrimination.
2. Seek guidance from knowledgeable local counsel and academics, consultants and land tenure experts, and business partners from the outset. International consultants can be helpful in locating local expertise.
3. Strengthen organizational policies and provide corporate training on land rights to ensure staff understand the importance of land conflicts, how to identify and assess conflicts and develop strategies to manage attendant risks and reduce harms. Consider tying performance review indicators to the effective community engagement activities.
4. Continue to monitor for signs that disputes might resurface. Integrate land tenure issues into social and environment impact assessments and risk management or risk assessment tools.

### **Recommendations for project financers:**

1. Involve implementing partners and in-country staff with relevant experience in the design of projects, especially where they have knowledge relating to historical and current conflicts and local power dynamics.
2. Make land tenure security a project activity. This could include raising awareness of land rights, building the capacity of local governance institutions, and supporting conflict resolution.
3. Support participatory mapping exercises and, where appropriate, community dialogues and multi-stakeholder platforms.
4. Continuously monitor and adjust activities to reflect changes in ongoing conflicts and perceptions of tenure security.
5. Include land conflict indicators in monitoring and evaluation documents.

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