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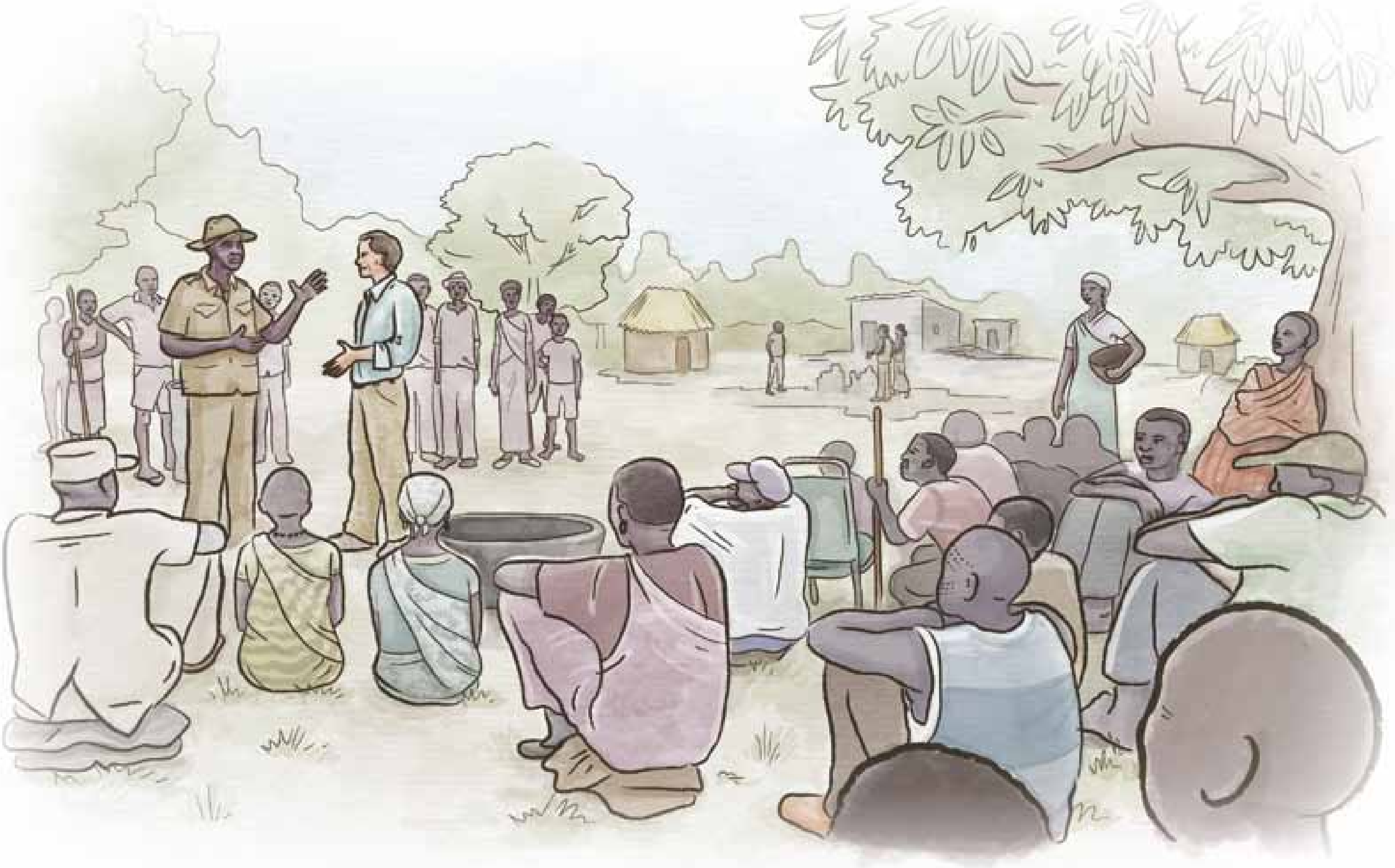

Handbook on Community Engagement

A ‘good practice’ guide to negotiating lease agreements with landowning communities in South Sudan

By David K. Deng

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About the Law Society

The South Sudan Law Society (SSLS) is a civil society organization based in Juba. Its mission is to strive for justice in society and respect for human rights and the rule of law in South Sudan. The SSLS manages projects in a number of areas, including legal aid and paralegal training, human rights awareness-raising, and capacity-building for legal professionals, traditional authorities, and government institutions. David K. Deng is the handbook author and Morris Ladu provided research assistance.

Acknowledgements

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Ben Johnson and Free Range Studios provided the illustrations for this document. For more information on Free Range, visit www.freerange.com.

Acronyms

ACT	Abyei Common Trust
CBO	Community-based Organization
CHRGJ	Center for Human Rights and Global Justice
CIEL	Center for International Environmental Law
CPA	Comprehensive Peace Agreement
ESMAP	Energy Sector Management Assistance Program
FPIC	Free, Prior and Informed Consent
GIS	Geographical Information Systems
ICMM	International Council on Mining and Metals
ICSS	Interim Constitution of Southern Sudan
IDP	Internally Displaced Person
IDS	Institute for Development Studies
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
MOLACD	Ministry of Legal Affairs and Constitutional Development
MOU	Memorandum of Understanding
NGO	Non-governmental organization
NPA	Norwegian People's Aid
PILC	Public Interest Law Center
SAAR	Secretariat of Agriculture and Animal Resources
SSLS	South Sudan Law Society
SPLM/A	Sudan People's Liberation Movement and Army
SSCCSE	Southern Sudan Centre for Census, Statistics and Evaluation
SSRRC	South Sudan Relief and Rehabilitation Commission
RSS	Republic of South Sudan
TFD	The Forests Dialogue
USD	United States Dollars
USIP	United States Institute of Peace
WCD	World Commission on Dams
WRI	World Resources International

Foreword

By Dr. Jok Madut Jok
Professor of African Studies,
Loyola Marymount University
California, United States

This handbook on community engagement, a guide to land use, ownership, and acquisition for affected communities and private investors, is most timely and unique. Its importance at this stage in the history of the new Republic of South Sudan cannot be overstated. There are two assumptions currently competing in South Sudan regarding land, its use, acquisition and ownership. The first is that land is abundant, sparsely populated and therefore, much of it is unused or unoccupied. The second assumption is that since land is currently underutilized due to a lack of capital and skilled labor, and since the need for local food production and self-sufficiency are the most immediate requirements for prosperity in the new republic, any large-scale investments aimed at increasing the productivity of land should be encouraged and access to land be facilitated and made easy. Both assumptions suggest that land could not possibly be a source of conflict, as there is more than enough land to accommodate everyone. These assumptions are half truth and half myth, and they have serious consequences for both the future welfare of the people and political stability of the country. One consequence has already manifested itself in the actions of some ruthless individuals who have calculated that they must get into the action early on and take control of as much land as they can get their hands on, whether or not their actions adhere to any kind of regulatory standards or ethics of transparency.

With the new Republic of South Sudan weighing its economic problems and prospects, it is common to hear leaders and lay persons alike talking about the importance of developing non-petroleum land-based economic sectors in order to transition the country away from its unhealthy dependence on oil; a product that is known to be finite, fraught with the political tensions of independence from Sudan, and heavily reliant on unpredictable and volatile international commodity markets. The calls for the development of the agricultural sector, in the context of the above assumptions, has led to speculation that land will become valuable in the near future as a result of large-scale agricultural projects. As land becomes more valuable, competition for its access and control become more pronounced. The calls that are now being made by political leaders on the citizens of the country to turn to farming are surely in place. After all, peasant farming is the trade more easily accessible to the majority of South Sudanese, so promoting and improving it, with a view to increasing production is the surest way toward food security. But It is also important to underscore the reality that these calls are being issued amidst a dangerously opaque system of land ownership, without clear national regulations to guide land acquisition, ownership, and use.

While there are laws and regulations on the books, their lack of clarity and limited dissemination have left citizens and potential investors in a quandary about where and with whom the final authority lies with regard to land ownership, its acquisition, sale and purchase. The prevailing popular dogma about land ownership is that land is communally owned. The phrase ‘land belongs to the community,’ is a popular concept that is as old as the struggle of South Sudan for freedom from the North. It was an argument widely used by both political leaders and activists to counter Khartoum’s myriad schemes to grab land for large-scale mechanized commercial farming, mineral prospecting, and other state-owned investments. At independence, with so many expectations being placed on land-based investments, it has become paramount that this concept is unpacked for all to understand what it means. Determining who or what the word ‘community’ refers to has become a challenge for the state, for potential investors and for ordinary individuals, even those interested in no more than just a residential plot of land. The concept has been thrown around for some time and has puzzled many would-be development experts, relief workers, local self-help initiatives and more. In some cases it means a collection of local associations, appointed officials, local administrators or traditional authorities such as tribal chiefs. So, how does a government development program or a business corporation wade through the opacity surrounding land use?

No matter how much confusion may surround land ownership, one thing is clear – land is the foundation upon which the majority of South Sudanese build their livelihoods. That a piece of land does not have a home or a farm or a cattle camp standing on it at any given moment is no reason to think that it is unused. Some areas have been considered sacred grounds for generations, others are used seasonally, and yet others are used in rotations to allow them to fallow. Some have been abandoned for reasons to do with climate change, soil erosion, and above all, forced relocation during the war. But there is no such thing as unused, unoccupied or unowned land. Land-based investments that acquire land on the pretext that it is unowned are bound to make South Sudanese victims of development projects, or else create conflict that will lead to the failure of such projects.

As pressures weigh down on the government to wean itself from its reliance on oil, the calls for a return to land, so to speak, have increased; and as the people demand that the government assists them in developing and expanding the agricultural sector, it is clear that South Sudanese are not objecting to large land-based investments. Instead, they simply need to be involved in the planning, the implementation, and discussions about the benefits that accrue to their communities. They also need to know what they will lose in exchange for any benefits. If such understanding is missing and the negative consequences reveal themselves in the future, it will create tensions that will undermine the cordial relationships that must exist in order for any project to bear fruits. This handbook is a plea to all the parties – government, large private investment companies, and individual investors – to pay attention to this reality. It is a plea that they may not jump on the popular assumptions about the nature of land use and start projects that the local people have not signed on to.

This handbook counsels both local communities and potential investors to keep in mind that big land-based investments can create much-needed material progress, but first all the parties must carefully weigh the consequences. Failure to do so would lead to haphazard land acquisition and land use whose potential long-term cost would be immeasurable. That is not a recipe for future stability, nor can our nation afford to trump anyone's basic rights just to make a quick profit. Anyone among the current political leadership in South Sudan will know that the ordinary people who paid the cost of the war in material contribution or with the blood of their loved ones did so in the name of the land. It was always the land that they expected would become their compensation. South Sudan, government and citizen, must demonstrate that development programs are people-centered. Someone prayed on July 9, 2011, South Sudan's independence, and said the following: "May the spirits of our ancestors and all those who came before us guide us, so that the names of men and women who gave their lives to make this day possible are not dishonored by bad policies that rob the people of their hard-earned rights." I think this is a prayer that underscores the aspirations of all South Sudanese. Equitable use of land is one of these rights that the government must safeguard if it is to protect the honor of the liberation struggle.

The plea in this handbook, however, is not just a question of morality but one of business-sense and legal procedures. It nudges the government to allocate land for investment and sign large contracts only in a transparent manner and to monitor project implementation to ensure adherence to South Sudanese laws. The way that some contracts have so far been signed for large tracts of land, especially for foreign investment, has already made many communities suspect that their government has given away their land in exchange for nothing. Right or not, this perception needs to be corrected, by running future proposals by local communities and by investigating the existing allegations. The handbook also urges the initiators of development projects to view the importance of their adherence to law and involvement of local people as a matter of defense against possible legal action the communities might take against them should major problems arise down the road. One of the issues that companies must be extremely vigilant about and try to avoid is the bribery of public officials in order to get quick deals. This has been known to happen in a lot of developing countries and South Sudan would not be a stranger to such practices, but it is in the interest of the companies that their acquisition of land is as transparent as possible, if they are to avoid both the tainting of their reputation and possible future class action lawsuits.

August 4, 2011

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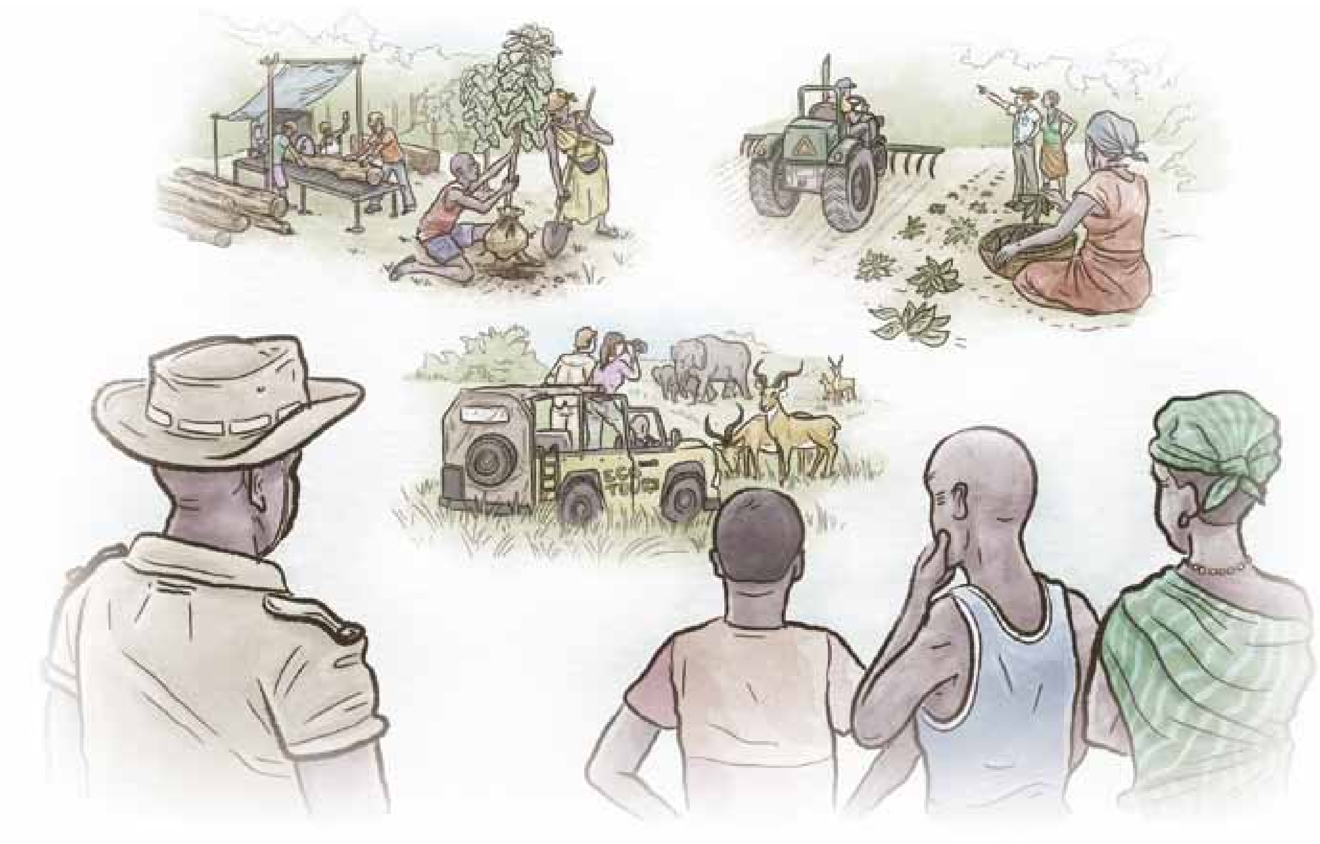


Investment is coming to South Sudan. Commercial farms, timber plantations, biofuel projects, and wildlife parks are springing up across the ten states.

Introduction

South Sudan has developed a reputation throughout the world as a place of opportunity. Investors flock to access new markets in the region, to expand existing businesses, and to establish new ones. Large-scale land-based investments are particularly attractive, due to the region's large size, low population density, and impressive natural resource wealth. Commercial farms, timber plantations, biofuel projects, carbon credit schemes, and wildlife parks are springing up across the ten states of South Sudan. Major expansions are also expected in the oil, gas, and mining sectors.

With opportunity, comes risk. The civil war has damaged the social fabric in South Sudan. Political parties struggle to establish themselves after decades of fighting as guerilla movements. Conflict is a constant threat. Investments in this environment pose unique challenges for investors and host communities alike. For investors, the potential for large returns justifies the risk. For South Sudanese, investment brings the hope for a better life.

This handbook provides a guide to community engagement for commercial land-based investments in South Sudan. It covers a variety of engagement processes, ranging from community consultations and participatory impact assessments to grievance mechanisms and community financial management. The practical tips contained in this handbook can help companies to successfully negotiate investment agreements with land-owning communities. They can help communities to prepare for the changes that come with high impact projects and more efficiently harness their benefits. They provide the government with a tool that can be used to promote responsible investment and sustainable development. Simply put, community engagement makes good sense.

Simply put, community engagement makes good sense.

About the Handbook

This handbook was prepared as part of a yearlong project on community engagement in large-scale land investments. Over the course of the year, from August 2010 to July 2011, the South Sudan Law Society (SSLS) held ten roundtable discussions with communities, companies and government institutions involved with large-scale land investments in South Sudan and the 'Three Areas' of Abyei, Southern Kordofan and Southern Blue Nile.[1] The first phase of five roundtables was designed to solicit participants' input on the important elements of community engagement in the South Sudanese context. The project team supplemented this information with field interviews, a review of already existing manuals on community engagement, and visits to investments across the region.[2] The second phase of roundtable discussions, started in March 2011, was used to refine the draft text and tailor it to the South Sudanese context.

Purpose

The purpose of this handbook is to promote the fair and efficient use of community-owned land and natural resources in a manner that is responsive to community needs. The handbook has five strategic objectives:

1. Foster an understanding among potential investors about their legal obligation to negotiate and secure lease agreements directly with community landowners or their legally authorized representatives.
2. Support constructive relationships between communities, companies, and government institutions involved with large-scale land investments.
3. Promote operational excellence for companies doing business in South Sudan.
4. Identify, prevent, and mitigate negative impacts that can undermine livelihoods and threaten project viability.
5. Promote the equitable distribution of investment benefits between companies, communities, and government institutions, as well as within communities themselves.

Scope

The handbook provides guidance on how to structure internal engagement processes within companies and communities, as well as external engagement processes between companies, communities, and government institutions. It is not intended as a detailed guide for large and complex projects. Rather, it is meant to provide field-level guidance and practical tips tailored to address the unique challenges that investors and host communities confront in the fragile post-conflict setting of South Sudan.

The handbook is most directly applicable to large-scale land-based investments in rural areas, whether they are located on community-owned land or public land.[3] Applicable projects include commercial farms, timber concessions, biofuel projects, carbon credit schemes, and ecotourism ventures, as well as investments in the petroleum and mineral sectors. That being said, many of

[1] These three border areas were given special provision in the 2005 Comprehensive Peace Agreement. South Kordofan and Southern Blue Nile lie north of the border between Sudan and South Sudan. The status of Abyei remains a point of contention between the two states, both of which claim ownership over the area.

[2] Annex II lists the secondary sources used to develop this handbook.

[3] For the purposes of this handbook, an investment is defined as 'large-scale' if the project area covers 500 hectares or more of land.

the principles contained in this handbook can be applied to any type of investment. For instance, a manufacturing plant or processing facility on the outskirts of an urban center may draw on our advice in negotiating a lease agreement with community landowners in the area, or construction companies can use these guidelines to design a participatory environmental and social impact assessment process that is tailored to suit their particular needs.

Audiences

The handbook's main target audiences are companies, communities and government institutions involved with land-based investments. Depending on their

level of organization, some communities may require third-party assistance to design and implement the community engagement processes detailed in this handbook. They can obtain assistance from any number of sources, including non-governmental organizations (NGOs), civil society organizations, universities, independent researchers, or government institutions. In some circumstances, companies themselves may provide the necessary assistance. However, communities cannot afford to be complacent and wait for help to come to them. There are many activities that they can organize for themselves, such as establishing community-level bodies to manage relationships with prospective investors or putting in place procedures for transparent and accountable community financial management.

Companies too should be proactive in planning for community engagement. In this respect, the handbook can provide a valuable supplement to already existing manuals and company policies on the subject. The handbook should be seen as a starting point from which the private sector can obtain important information on the legal requirements and practical necessities of community engagement in South Sudan. It can also help companies fulfill their obligations under international law to respect the human rights of individuals and groups affected by their business activities. Companies will need to adjust from the handbook's specific instructions on case-by-case basis to accommodate the unique demands of the particular situation. They will also need to conduct due diligence to determine whether there are additional local requirements in their project areas, or whether changes have been made to the national laws since this handbook was published.

The government's use of the handbook is somewhat more nuanced. Governmental oversight is critical to ensuring that community-owned land and natural resources are used in a manner that is responsive to community needs. According to South Sudanese law, however, companies and communities must negotiate investment agreements directly with one another in a bilateral manner. Government institutions are responsible for monitoring these negotiations, and they have a right to veto agreements that are "against principles of equity and fairness," but their role in the negotiation process does not figure as prominently as that of companies and affected communities.[4] International human rights law also requires that communities be the primary decision-makers about investments in their home areas. The principle of free, prior and informed consent (FPIC), for example, recognizes the right of indigenous peoples and other communities to grant or withhold their consent for proposed investment projects. Communities have a right to say no to investments and their decision must be respected. The procedures outlined in this handbook can help the government to give meaning to these rights while at the same time fulfilling its obligations under both domestic and international law.

[4] *See* Land Act, ch. V, § 15(7)(d) (2009) (stating that for land acquisitions above 250 feddans (or 105 hectares), state authorities shall verify that the "allocation does not exceed such a size that the Minister finds against principles of equity and fairness").

Setting the Scene

South Sudan, The New Frontier

South Sudan has a long and turbulent history of conflict. It has suffered through two lengthy civil wars since independence in 1956. The second North-South civil war lasted from 1983 to 2005 and was the longest running civil conflict of its time. The war killed an estimated two million people and left 4.5 million displaced, making it among the costliest wars in terms of civilian casualties since World War II. The war was brought to an end with the signing of the Comprehensive Peace Agreement (CPA) in 2005.

Perhaps the most important element of the CPA was its provision for Southern self-determination. On January 9, 2011, South Sudanese voted in a referendum on self-determination to decide whether to remain united with the North or secede and form an independent nation in the South. As expected, South Sudanese voted overwhelmingly for independence, with 98.8 percent of the electorate opting for secession.

> Facts and figures
>
> - *Total land area of 620,000 km²*
> - *Population of 7.5 to 9.7 million*
> - *Third largest oil producer in Sub-Saharan Africa*
> - *Most people practice Christianity or traditional African religions*

The Republic of South Sudan (RSS) formally declared its independence on July 9, 2011 amidst jubilant celebrations and festivities across the country. With their hardfought independence finally a reality, South Sudanese have now embarked on the difficult journey of building a nation. The government of South Sudan and its international partners have made some progress in the six years since the signing of the CPA, but South Sudan remains one of the least developed countries in the world.

The challenges are daunting:

- Until recently, there was only seven miles of paved road in all of South Sudan.
- The World Food Program (WFP) estimates that 3.3 million people – more than a third of the population – are moderately or severely food insecure.
- According to the South Sudan Center for Census, Statistics and Evaluation (SSCCSE), fifty percent of the population lives below the poverty line, defined as those earning less than 25 USD per month.[5]
- Seventy-three percent of the adult population cannot read or write and half of the civil servants lack primary education.
- South Sudan has the world's worst maternal mortality rate. A 15-year-old girl in South Sudan has a greater chance of dying in childbirth than finishing school.

Despite the sobering statistics, South Sudan has a wealth of natural resources to draw upon in building the nation. Large oil deposits are found throughout the country and there are reports of considerable, though as yet unexplored, mineral resources, including copper, gold, tin and uranium. The country has vast tracts of fertile land and forests of exotic trees, such as mahogany, teak and ebony. The Nile River and its tributaries provide ample water supplies and many regions enjoy high levels of seasonal rainfall.

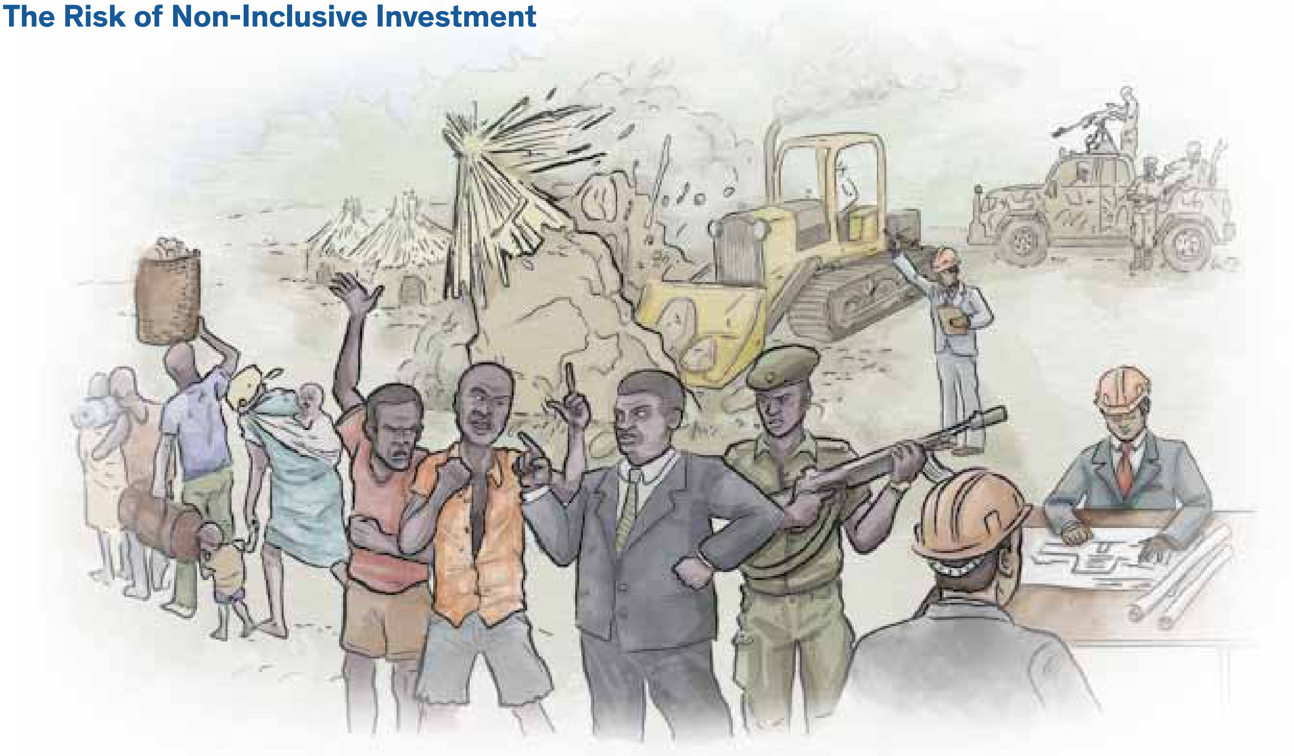
South Sudan is also among the most culturally diverse countries in the world. It is home to some 65 ethnic groups whose territories span the entire region. There is no *terra nullius*, or no man's land, in South Sudan. The government of South Sudan has put in place a land administration system whereby communities, defined mainly in terms of tribal and subtribal affiliation, own almost all of the land in the country.[6] The government's landholdings are limited to a handful of national parks, game reserves, forest reserves and pre-war agro-industrial complexes, most of which were gazetted by either the British colonial administration or the national government in Khartoum after independence from colonial rule.

> *There are three levels of government in South Sudan:*
> *1) Central government*
> *2) State governments*
> *3) Local government (comprised of the county, payam and boma administrations, with the payam and boma roughly corresponding to the district and village levels, respectively).*

[5] With independence, the SSCCSE was renamed the National Bureau of Statistics (NBS).

[6] *See* Land Act, ch. II, § 8(6) (2009) (stating that "customary land rights including those held in common shall have equal force and effect in law with freehold or leasehold rights").

The Risk of Non-Inclusive Investment



Investments carry risk. If community land is taken without meaningful consultation and without benefit to the community, investment can lead to increased poverty, hunger, and conflict.

South Sudan and the 'Global Land Grab'

There has been a dramatic increase in large-scale land-based investments in the Global South in recent years. Driven by a convergence of global crises, from climate change and water scarcity to food price instability and global economic collapse, investors are increasingly viewing land as a safe investment in an otherwise unpredictable environment. The majority of these investments – seventy percent according to the World Bank – are located in sub-Saharan Africa. Some analysts see opportunities in the trend. For decades, the agricultural sector in sub-Saharan Africa has been neglected in both domestic public policies and development cooperation. If done responsibly, proponents argue, the influx of foreign investment can increase public revenues and improve farmers' access to technology and credit, leading to a revitalization of agriculture. Others are more skeptical. Critics have dubbed the surge in investments a 'global land grab', warning that land acquisitions on this scale will undermine food security and entrench rural poverty by denying land users access to vital natural resources.

South Sudan is among the global hotspots for large-scale land investments. According to a recent study, at least 28 projects implicating an astonishing 51,500 square kilometers were planned or underway in the agriculture, biofuel, forestry, carbon credit, and ecotourism sectors by the end of 2010.[7] With independence, it is likely that investment activity will increase further. These investments display serious shortcomings in terms of a lack of community participation and one-sided contracts that strongly favor the private investor. Companies rarely negotiate investment agreements directly with

[7] This is revised figure from a 2011 report by the author. *See* David K. Deng, the new frontier: A baseline survey of large-scale land-based investment in Southern Sudan, Norwegian People's Aid (NPA) (2011), *available at* http://www.npaid.org/en/News_Archive/?module=Articles;action=Article.publicShow;ID=17086 (last accessed June 19, 2011).

landowning communities or their legally empowered representatives as required by the 2009 Land Act, preferring instead to enter into lease agreements with government ministries.[8] Many projects also involve long-term leases of up to 99 years, despite government regulations limiting foreign investments to much shorter terms.[9]

Not only do illegal dealings such as these undermine the rule of law in South Sudan, they also introduce considerable operational risks for the company. When companies do not respect community ownership rights, it greatly increases the risk of local opposition arising when the company comes to the ground to begin construction. The lack of community involvement in investment decision-making also gives rise to investment agreements that threaten to impoverish, rather than empower, host communities. This can spur conflict and undermine peacebuilding efforts. In certain circumstances, it may also constitute a violation of international human rights law.

A Legacy of Dispossession and Resistance in the 'Three Areas'

Companies seeking to invest in South Sudan should be aware of the historical significance of land-based investment in the country. The border areas of Abyei, Southern Kordofan and Southern Blue Nile have a well-documented history of forced displacement and human rights abuses associated with large-scale land investments. These abuses were particularly pronounced in the Nuba Mountains of Southern Kordofan, where community land was taken in order to establish large-scale mechanized farms. By 1990 the national government had allocated 55,000 square kilometers of customarily owned lands in Southern Kordofan and Southern Blue Nile to non-local investors for mechanized farming. This undermined livelihoods for local populations and caused mass displacement to Khartoum and South Sudan. The destabilizing effect of these land investments also contributed to the conflict in the South by prompting many Nuba in Southern Kordofan and Ingessana in Southern Blue Nile to join the SPLA's rebellion against the Northern government.

The legacies of dispossession and investment-related conflict in the 'Three Areas' highlight the importance of community engagement in the post-conflict setting. There are, however, differences in the regulatory frameworks governing land in South Sudan and Sudan that must be bourn in mind. Whereas the land administration system in South Sudan is based on community land ownership, in Sudan, the vast majority of rural lands are deemed to be the property of the state. Since Southern Kordofan and Southern Blue Nile are in Sudan, investments in these areas may legally proceed even if they do not have the full support of local populations. Nonetheless, as this brief recounting of history should have made clear, there are large risks associated with non-inclusive investments in these areas. Therefore, regardless of the government's regulatory system, 'good practice' requires companies to engage affected communities in investment decision-making.

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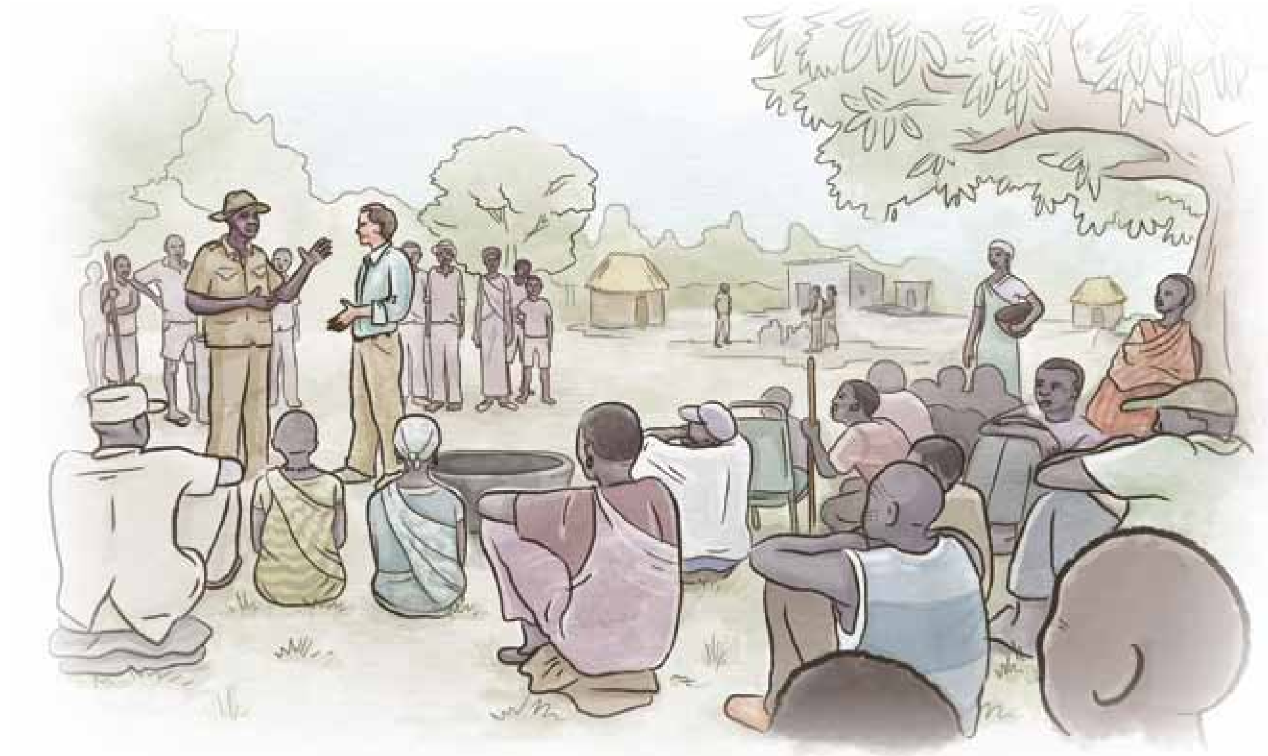
[8] See Land Act, ch. V, § 15 (2009) (stating that traditional authorities "may allocate customary land rights for residential, agricultural, forestry, and grazing purposes," and "Any allocation of a piece of land beyond 250 feddans [105 hectares] for commercial, agricultural, forestry, ranch, poultry or farming purposes shall be approved by the Concerned Ministry in the State…").

[9] According to the Investment Promotion Act, foreign investments in agriculture and forestry are limited to renewable 30 and 60-year terms, respectively. Some government institutions continue to issue 99-year leases in violation of this provision. See Investment Promotion Act, Second Schedule (3) (2009).

Community Engagement Makes Good Sense



South Sudanese law requires prior consultation with landowning communities. By engaging communities before any decision is made on the investment, companies and government institutions can enhance the benefits for all parties involved.

Community Engagement: A legal requirement and a practical necessity

Community engagement – or the set of processes by which businesses and communities develop and sustain their relationship with one another – is of central importance to land-based investment in South Sudan. As noted above, the government of South Sudan has established a system whereby communities own the land in their collective capacity and traditional authorities administer the land through community consensus decision-making processes.[10] To operate in this system, companies are legally obligated to negotiate investment agreements directly with landowning communities when seeking to invest on community land. Community consent is often a *de facto* requirement on public land as well. Communities will typically demand to be included in the development of any investment that affects them, whether that investment is located on community land or public land.

[10] Land Act, ch. V, § 15 (2009).

These heightened standards are understandable. Land is everything to South Sudanese. Most rural people are entirely dependent on land-based livelihoods for their daily survival. Their fathers and forefathers were buried in the land and they expect that one day it will provide for their children and grandchildren. Land is central to South Sudanese identity. As one Nuer woman characterized it:

"The land is our own as our [black] color is our own. It is like our body. We have lost our husbands and sons in this war, but we will not be sad because we know that we have been struggling for this land."[11]

Given the importance of land to rural communities in South Sudan, communities naturally expect companies and government institutions to respect their decisions

[11] *See* William Kon Bior et al., A study on customary land tenure systems, customary institutions and customary laws governing access, control and management of land and natural resources (prepared for SAAR and NPA) (2004).

about community land and natural resources. Yet, communities often lack the tools with which to meaningfully participate in investment projects. By structuring community participation in the design and implementation of investments, community engagement can help communities to:

- Harness the productive capacity of their land without undermining livelihoods in the process;
- Channel investment benefits towards their local development priorities; and
- Promote the equitable distribution of investment benefits between companies and communities, as well as within communities themselves.

Companies are legally obligated to negotiate investments agreements directly with land-owning communities when seeking to invest on community land.

Community engagement is also an important tool for companies. The business world is increasingly viewing community engagement as a useful means of managing risk associated with high impact investments. Investments that proceed in a non-participatory manner can give rise to local resentment and community opposition. In extreme cases, they can even lead to destruction of property and loss of life. A carefully planned and implemented process of community engagement helps companies to manage these risks by easing tensions and promoting the peaceful resolution of grievances. When communities participate in the design and implementation of an investment, they are more likely to understand and support changes brought on by the project. Community engagement also helps companies to better identify and mitigate environmental and social impacts that can threaten project viability, and build social capital that can be of use further down the line if problems arise with host communities.

Despite the advantages, community engagement presents its own unique challenges in South Sudan. Although the Land Act explicitly recognizes community land ownership, institutional practice has not yet come into full conformity with the law.[12] As a result, businesses often have to conform to ad hoc requirements and discretionary decision-making by government officials who may or may not understand the legal implications of community land ownership. There are also certain definitional problems that arise. The very idea of a well-defined 'community' obscures divisions that exist within local societies. Communities often host displaced populations who may have lived in the area for generations, each with their own leadership structures. Divisions may also exist between recent returnees and people who remained in the community during the war, or host communities and neighboring communities who enjoy rights of access for grazing, fishing or gathering forest products.

The land is our own as our [black] color is our own. It is like our body. We have lost our husbands and sons in this war, but we will not be sad because we know that we have been struggling for this land.'

Given the complex and often volatile relationships between these various groups, it is of utmost importance that companies and their stakeholders adopt a conflict-sensitive approach to their business activities. This requires careful analysis of the environment and a detailed assessment of social and political dynamics both within in the community and between neighboring communities prior to undertaking any investment. Companies involved with land investments must alsobe attentive to the human rights impacts that their business activities have on local populations. These principles have been streamlined into this handbook. By carefully following its guidelines, adjusted as needed to accommodate the particular set of circumstances, project proponents together with host communities and government institutions can manage or avoid many of the common pitfalls associated with investments, and better reap the rewards of sustainability and profit from their business activity.

[12] Land Act, ch. II, § 8(6) (2009).

Procedures for Land Acquisition in South Sudan

There is currently no law that lays out comprehensive procedures by which foreign interests may acquire land for investment purposes in South Sudan. The main applicable law can be found in Section 15 of the Land Act. The Land Act places responsibility for allocating community land with traditional authorities, subject to oversight by the state government. Traditional authorities do not own the land; the community in its collective capacity owns the land. Traditional authorities are merely trustees who administer the land on behalf of the community. In reviewing land allocations by traditional authorities, the state government must verify that a number of standards have been met, including: consensus on the allocation among members of the local community, that the anticipated negative impacts are within acceptable limits, and that the size of the land area is not against principles of equity and fairness.[13]

While the Land Act gives some insight into applicable procedures of land acquisition under South Sudanese law, it does not clearly indicate the role that the central government plays in the process. Nonetheless, there seems to be a general consensus that companies should start with the central government and work their way to the local level. As the highest authority in the region, the central government is responsible for oversight and monitoring of large-scale investment projects. Companies should first register with the RSS Ministry og Justice, where they can obtain a referral to the relevant line ministry; this may be, for example, the RSS Ministry of Agriculture and Forestry or the RSS Ministry of Wildlife.[14]

The relevant ministry will then refer to the investor to the state government in the area where the investor is interested in acquiring land. Finally, the relevant state-level ministry will refer the investor to the county administration, which is tasked with facilitating relations between the investor and the community. It should be stressed, however, that for investments on community land, the Land Act requires bilateral negotiations between investors and host communities, and the government's role is restricted to oversight and facilitation only. In areas held under customary land tenure, communities own the land – not the government.

Due to the lack of clear jurisdictional boundaries, there is often a great deal of tension between the central and state-level governments over the question of land. When seeking to acquire government-owned land, companies should be aware of the high potential for jurisdictional disputes between the various levels of government. Generally speaking, the central

government takes the lead in investment negotiations for national projects. For projects on state-owned land, the state authorities typically take the lead. However, it is often unclear which level of government owns the land in question. If any government institution feels as though it is being excluded from the investment negotiations, the project will become susceptible to jurisdictional wrangling, which can lead to considerable delay in concluding investment agreements. To minimize these risks, project proponents should make sure to keep all the various levels of government informed about their investment plans by following the approach outlined in the paragraph above.

There are also regional differences in how state governments manage land investments. As of December 2010, in Western Equatoria State, for example, all large-scale land acquisitions had to be debated in parliament and the council of ministers prior to approval. This adds an-

[13] Land Act, ch. V, § 15 (2009).

[14] With independence, the government is likely to rename many of these ministries.

In areas held under customary land tenure, communities own the land – not the government.

other layer of transparency and accountability to the process, since members of parliament are able to relay information about investments to their constituencies on the ground. In other states, state governors or ministers of agriculture may allocate land unilaterally. If these state institutions are allocating land held under customary land tenure, then these leases are subject to legal challenge since, as the rightful landowners, communities are legally responsible for allocating community land for investment purposes.

PART ONE:

COMMUNITY ENGAGEMENT FUNDAMENTALS

Part One provides an overview of the fundamentals of community engagement. Section 1.1 defines a number of key concepts that recur frequently throughout the handbook. Section 1.2 discusses five guiding principles of community engagement that should inform all aspects of the relationship between companies, host communities, and government institutions.

1.1 KEY CONCEPTS

Community Engagement

Community engagement refers to the set of processes by which project proponents and affected communities develop and sustain their relationships with one another. It is one part of a broader stakeholder engagement strategy, in which companies seek to manage relationships with individuals and groups who are affected by, or who may themselves influence, business activity.

Stakeholders

A company's stakeholders are those people who have an interest in the business venture. This could be either because they stand to be affected by the business or because they themselves can affect the business.[15] Typical stakeholders include affected communities, relevant government institutions, non-governmental organizations (NGOs), academic institutions, and international organizations. They do not include other companies in a contractual relationship with the project proponent, such as suppliers, distributors, sub-contractors, or financing institutions. They also do not include company employees. The relationship among these types of parties is more appropriately structured through contractual agreements and they do not require the more nuanced tools of community engagement highlighted in this handbook.

Affected Communities

The affected communities are those communities who stand to be impacted, for better or worse, by a company's business activities. They include communities living within the project area, but may also include communities outside the project area, such as those who depend on the land for grazing their animals and collecting firewood, or communities living downstream from the project. In most cases, the level of impact will vary from one affected community to another. While companies should make sure to engage all of the affected communities before proceeding with the investment, it is usually a good idea to prioritize engagement with those communities who stand to be impacted the most.

Traditional Authorities

The term 'traditional authority' refers to various institutions of community leadership that exist at the local level in South Sudan. Traditional authorities may include kings, queens, paramount chiefs, sub-chiefs, and clan headmen, among others. Many communities also have 'landlords' who specialize in issues relating to land in the community, or 'spear-masters' who are recognized as having a divine gift to bless and curse people.

These traditional institutions have their roots in colonial or pre-colonial customary systems, yet it would be wrong to consider them as ahistorical or unchanging. To the contrary, traditional authorities are dynamic institutions that continuously adapt in response to changing circumstances. During the civil war, for instance, one of the major roles of traditional authorities was to mediate the relationship between the state and various armed groups, on the one hand, and local communities, on the other. Many institutions of traditional authority suffered greatly from the imposition of political and military interests during the war and are sorely in need of training and capacity building to support their decision-making in the post-independence context. In most cases, traditional authorities continue to enjoy a high degree of legitimacy among South Sudanese.

Project Proponents

The project proponents are the company, investor, government institution or other entity responsible for developing and implementing the investment project. Quite often, several project proponents are involved. They may be related to one another in any number of ways, whether as parent and subsidiary companies, two parties involved in a joint venture, or as financing and implementing partners. This handbook focuses primarily on project proponents that are private parties. However, the tools contains herein can be applied more broadly with respect to various types of project proponents, including government institutions or state-owned companies.

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[15] While many indigenous peoples shun the term 'stakeholders', believing that it undermines the consideration of indigenous peoples as 'rights-holders', we use the term throughout the handbook because of its familiarity to our target audiences.

Free, Prior and Informed Consent (FPIC)

Free, prior and informed consent is a principle of international human rights law that recognizes the right of indigenous peoples and other communities to participate in decision-making about development projects on their ancestral homelands. Communities have the right to grant or withhold their consent and their decision must be respected. More specifically, community consent must be:

- Free – given without coercion;
- Prior – secured before any decision is made on the project; and
- Informed – based on a full understanding of the activity in question.

The Project Cycle

The project cycle refers to the different stages in the life of an investment project. Though projects vary, each passes through a similar progression of stages. Different types of engagement are required at each stage. The four basic stages in the project cycle are:

1. Project planning – The company identifies investment opportunities, obtains necessary permits and licenses from the government, conducts feasibility studies and develops land use plans and conducts environmental and social impact assessments. The community negotiates its lease with the company and participates in the design of impact assessments, grievance mechanisms and participatory monitoring programs.
2. Construction – The company leases the land, if necessary, clears and prepares project areas and begins construction of project facilities. The community participates in the implementation of impact assessments, grievance mechanisms and participatory monitoring programs.
3. Operations – The company transitions from construction to operations and begins its operations management system. Communities continue to participate in community engagement processes.
4. Closure – The company begins to close down the project facilities. It revises and updates its project closure plans to accommodate changing community needs.

The Rewards of Responsible Investment

If done right, investment can bring jobs, food, development and services to affected populations.

1.2 GUIDING PRINCIPLES

To deliver on their promises of sustainable development and rural poverty alleviation, land investments must meet and surpass certain minimum standards. The following five guiding principles, drawn from participant contributions during roundtable discussions and a review of the existing literature on community engagement, are indispensible elements of responsible investment in South Sudan.

Principle One: Be transparent.

The timely and accurate disclosure of information associated with investment agreements is a constitutionally protected right in South Sudan. According to the 2011 Transitional Constitution:

"Every citizen has the right of access to official information and records… except where the release of such information is likely to prejudice public security or the right to privacy of any other person."[16]

In order to give meaning to this right, project proponents must adopt a presumption in favor of disclosure, whereby they pledge to make information associated with investments publicly available unless there is a compelling reason to do otherwise. Feasibility studies, environmental and social impact assessments, memorandums of understanding (MOUs), investment agreements, contracts, and leases must be kept in easily accessible locations at the central, state, and local levels. The information must be open to public review and procedures for accessing it should be publicized in affected communities.

From transparency flows accountability. When the public has access to information about how investments are structured, it leads to stronger relationships between companies and their stakeholders and more sustainable investments. It also becomes easier for negatively impacted individuals and groups to assert their rights.

A degree of information filtering may be appropriate in certain circumstances, such as when disclosure would violate personal privacy or introduce security risks, but withholding basic information about the investment

[16] Transitional Constitution of the Republic of South Sudan (RSS), pt. 2, § 32 [hereinafter Transitional Constitution].

> *Project proponents must adopt a presumption in favor of disclosure whereby they pledge to make information associated with investments publicly available unless there is a compelling reason to do otherwise.*

does not serve the company's interest. Disclosing issues relating to lease terms, the land area being leased, the intended business activities, the number of jobs that will be created, and the terms of employment are all indispensible to informed decision-making on the part of affected individuals and groups. Some sensitive issues, such as the process by which land was acquired or a company's plans for resettlement, can even introduce risks if not properly disclosed. In these circumstances, prompt disclosure can help to prevent misinterpretations and lessen social risk.

Principle Two: Start engaging early.

Companies that engage with communities from the earliest stages of the project set a good tone for the relationship from the very start. By engaging communities in the design and planning of investments, companies can avoid the misunderstandings that arise when communities are not well informed about the nature of the investment and the process through which it will be negotiated. This makes it easier for companies to secure the community's consent and increases the likelihood of mutual benefits for all parties involved.

> *Companies that engage with communities from the earliest stages of the project set a good tone for the relationship from the very start.*

Companies often delay engagement with affected communities out of a fear of not having all the answers or unjustifiably raising their expectations. However, in all likelihood, the com-munity's expectations will have already been raised, and engaging people from the very start can help to ensure that their expectations remain realistic. Companies can also inform communities that they do not yet have all the answers and that when the relevant information becomes available they will inform the community. If, on the other hand, the company waits until a problem occurs to begin engaging host populations, then it won't have channels of communication with which to manage the situation.

Principle Three: Strive for maximum inclusivity.

To limit the damage that a non-inclusive approach to community engagement can have on internal community relations, companies and host communities should ensure the meaningful participation of all affected groups, including internally displaced persons (IDPs) and minority ethnic groups. Women's participation is especially important. Many South Sudanese communities severely restrict women's participation in public life; some even bar women from owning land. When companies prioritize engagement with adult men, they reinforce these chauvinist attitudes. They also lose access to important reservoirs of local knowledge. Marginalized groups experience impacts from investment projects differently than others, and their input is crucial to a company's understanding of how its business is impacting upon the local environment.

> *To limit the damage that a lopsided approach to community engagement can have on internal community relations, community engagement should be as inclusive as possible.*

Companies and affected communities have a variety of tools at their disposal to promote the involvement of marginalized groups in investment decision-making. Stakeholder analysis and social assessments can help companies to identify those groups that do not have a strong voice in political decisions. Community mapping can help to show how different groups rely differently on community resources. Companies and communities should be sensitive to these differences when designing and implementing community engagement processes. They should disaggregate economic and social data so that they can measure impacts across different social groups. They may also consider holding different meetings with different groups and establishing quotas for women's participation. This can help to create a setting where different groups are comfortable speaking frankly about the investment.

In addition to intra-community inclusivity, companies and affected communities should also ensure inter-community inclusivity. They should engage with all communities that stand to be affected by their business activity, including neighboring communities with secondary rights of access and communities living downstream from the project site. This approach will help them to manage their investments more efficiently and avoid exacerbating inter-community tensions.

Principle Four: Negotiate in good faith.

Successful negotiations are not possible without good faith between the negotiating parties. Good faith goes beyond any legal definition to encompass the general attitude that the parties adopt in protecting their interests and seeking mutually satisfying solutions. There are at least four essential ingredients in good faith negotiations: First, negotiations must be free from coercion or intimidation. In South Sudan, many communities have faced years of abuse at the hands of government officials and military personnel. Project proponents should be sensitive to perceptions of threat that may be implied in relationships, even if no obvious threat is present.

Good faith goes beyond any legal definition to encompass the general attitude that the parties adopt in protecting their interests and seeking mutually satisfying solutions.

Second, negotiations should be flexible, willing to consider many options, and willing to compromise. Negotiations that seek only to win and achieve the best solution for one side often result in unsustainable relationships and fail to build trust among the parties.

Third, the negotiations should be fully informed, meaning all groups have equal access to the best information. In some cases, companies may need to undertake capacity building activities to educate communities about technical aspects of the investment plan. This is particularly important with respect to carbon credit schemes and biofuel investments, which lie outside the worldview of many rural South Sudanese.

Finally, project proponents should make sure that they negotiate with the legitimate representatives of the community. Communities may have multiple leaders, including local politicians, civil servants, traditional authorities, and religious leaders. Project proponents need to engage with all of them.

Principle Five: Make legally binding commitments.

Community consent for the investment project should be formalized in a stand-alone agreement that lays out a blueprint for all aspects of the investment, including impact assessments, project monitoring, and grievance management. Formalities provide local authorities and host communities with a means of monitoring the investment to ensure that the project proponents deliver on their promises in a timely manner. Formalizing commitments can also help project proponents to demonstrate to host governments, financial institutions, and other stakeholders that they have obtained community consent for the project.

Community consent for the investment project should be formalized in a stand-alone agreement that lays out a blueprint for all aspects of the investment.

While there is no substitute for detailed contracting, in some circumstances, a flexible approach to formalization may be appropriate. For example, a community leader's prayer and an animal sacrifice may serve the same purpose under customary law as signatures and witness attestation serve under formal law. However, even if a highly formalized document is not appropriate, the parties to the investment should still try to provide some form of written documentation for all engagement processes. During community consultations, for example, project proponents should record input from community members and demonstrate how they have factored it into their decisions. Such documentation provides an important means of monitoring the progress of the investment and will assist the parties in making informed decisions as the investment develops.

Jur Land Blessing Ceremony

When a husband and his wife obtain a plot of land among the Jur, they must conduct the following ceremony to bless the land:

When a husband and his wife obtain a plot of land among the Jur, they must conduct the following ceremony to bless the land:

Husband:

This land given to me by God.
I do not want sickness,
I do not want fighting,
I do not want disasters.
I want only food.
I want peace.
Let my family multiply,
Let your child be in peace.
God, take my hand,
Hear me my land.

Wife:

I was married on this land,
My land,
Let no evil come to this land,
All visitors, may they be welcomed,
Let me stay in peace with my neighbors.

The landlord, called the Bodo Yay, then sprinkles water onto the land. The land is now blessed and ready for use.

PART TWO:
A GUIDE TO COMMUNITY ENGAGEMENT

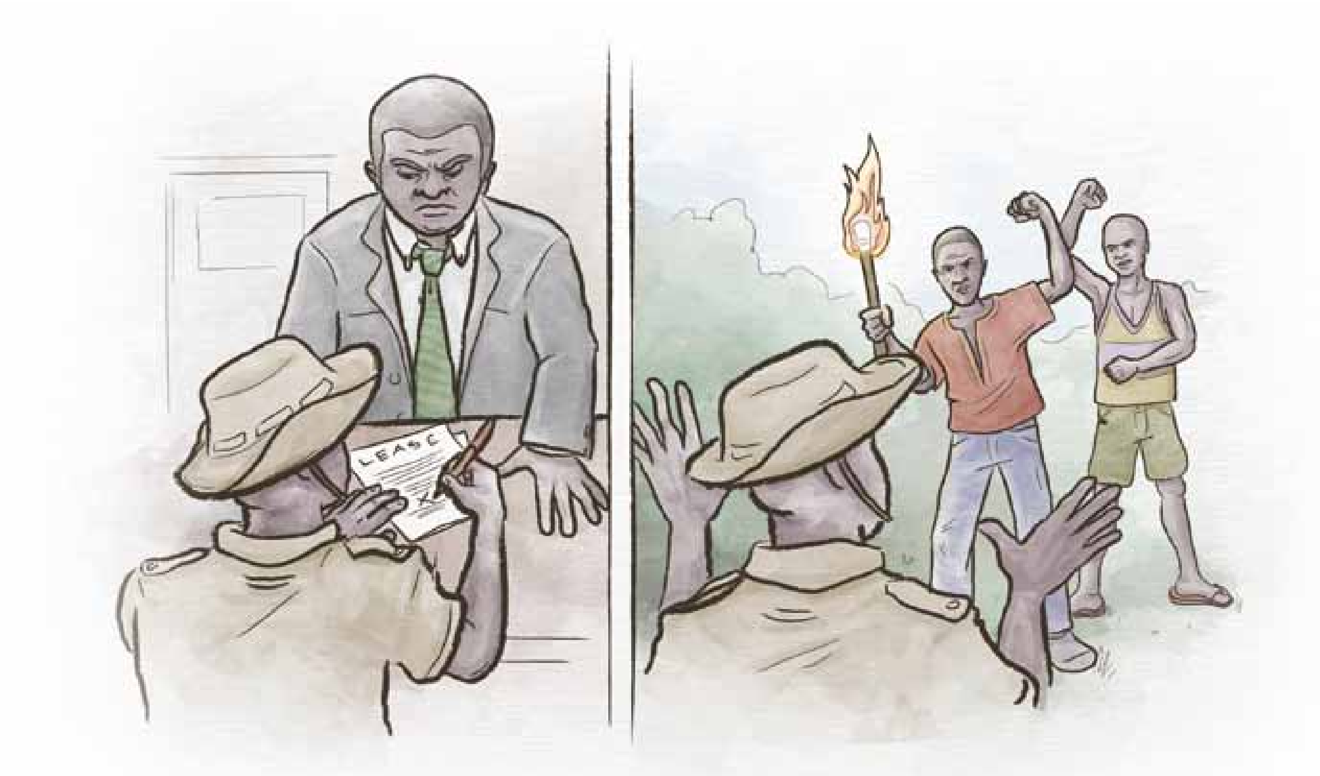
The sections below provide overviews of six processes of community engagement:

(1) Pre-investment planning
(2) Community consultation
(3) Participatory impact assessments
(4) Participatory monitoring
(5) Grievance mechanisms
(6) Community financial management

Each section begins with a short story taken from an actual investment in South Sudan, followed by an introduction to the community engagement process, a statement of its goal, a series of 'tools and tips' that outline key concepts and practical considerations, and a step-by-step guide to the engagement process. The sections conclude with extracts from South Sudanese law and a list of next steps for impacted communities.

2.1 PRE-INVESTMENT PLANNING

Brewing Conflict in a Disorganized Community



There is a community in a remote part of Central Equatoria State that is desperate for investment. Local education and health services are virtually nonexistent. The road to the nearest town has not been serviced in many years and is totally impassable during the rainy season. Yet, the high levels of poverty belie a wealth of untapped natural resources. Community dwellings are interspersed with forests of exotic trees, including mahogany and teak. The area has some of the most fertile agricultural land in South Sudan and there are large gold deposits scattered throughout the community's territory. Over the past six years, seven different companies have approached the chief, an elderly man with primary level education, seeking to lease large areas of land in the community. At the instruction of a group 'intellectuals' from the community, the chief signed a lease agreement with one of these companies without consulting the rest of the community. When the lease surfaced, the community became worried and confused. They did not know if the chief's signature was sufficient to authorize the deal and they feared that they would be displaced from their ancestral homeland. The issue divided the community. Tensions rose and there were calls for the perpetrators to be arrested. Several youth in the community even threatened to burn the chief alive. Many of the problems that this community has experienced with disorganized investments could be avoided through proper pre-investment planning.

Introduction

Pre-investment planning helps communities to prepare for future investments. In order to avoid conflicts of interests, communities should usually conduct these activities independently of the company. Poorly planned community engagement is at best non-effective; at worst, it can cause conflict and jeopardize livelihoods. When communities are unprepared for investments, they become susceptible to fraud by opportunistic companies and self-interested community members. Disorganized communities may also discourage investments by increasing transaction costs associated with the negotiation of investment agreements. One useful activity that communities can do to plan for investments is to develop a community protocol. Community protocols outline the methods of land acquisition that the community finds acceptable, along with other relevant background information, such as community development priorities, land use patterns, and natural resource distribution. By properly preparing themselves beforehand, communities can promote more meaningful communication with companies seeking to invest in their areas. This may take some time up front, but it will help to maximize community benefits and minimize the potential for conflict arising further down the line.

Primary audience: Communities

GOAL

Community members clearly understand their collective priorities and the division of roles and responsibilities with respect to community engagement activities. When investment projects are proposed, they are able to effectively communicate their preferences and demands to companies through efficient, representative and accountable institutions.

Tools and Tips

Capacity building

Capacity building activities educate community members about what to expect out of their relationship with companies. Community members often lack knowledge of project development and will need to learn certain fundamental aspects of investment. Over the years, traditional institutions of leadership in South Sudan have been undermined by poverty and the imposition of military interests, and community leaders will be in need of capacity building to inform their decision-making. There are a number of capacity building activities that communities and companies can undertake to prepare themselves for investments, including: training seminars, consulting independent technical experts and site visits to investments in other parts of the country. These activities could be funded by the company or through programs initiated by government institutions or civil society organizations. If they are sufficiently organized, communities can also take it upon themselves to organize capacity building activities for interested community members.

Community development committees

Community development committees are specialized bodies that act as intermediaries between companies and the community. Communities can elect representatives from each of the bomas in the area to serve on the development committee. This will help to ensure that the various clans and subgroups are fairly represented. They should also take steps to ensure the equitable representation of women and minority ethnic groups. The participation of these groups allows for more balanced decision-making that better reflects the views of the community as a whole. It is vitally important that communities select committee members who can maintain a regular presence within the community. This will help to ensure that information is disseminated in a timely manner and minimize the chances for manipulation by self-interested community members.

Community-level institutions with legal status

Communities can also consider creating institutions with legal status to manage investments on community land. Similar to development committees, these institutions allow traditional leaders to retain a degree of independence from the investment while supporting a more balanced form of decision-making. Legally recognizable institutions that have the authority to speak on behalf of the community can also help to attract investment, since they give companies an entity with which it to legitimately enter into reciprocal contractual obligations. There are several types of institutions that are available, including community trusts and community-level corporate entities. For additional information on community trusts in South Sudan, communities can refer to the work done by the Ngok Dinka community in creating the Abyei Common Trust (ACT). Though not yet active, the ACT is designed to invest community oil revenue in secure, low-risk investments. A trust board uses the interest that accrues from these investments to fund community development initiatives.

Community protocols

Community protocols are documents that outline the investment procedures that are acceptable to host communities. They can also list community development priorities, territorial boundaries, land use patterns, and the location of natural resources. Once developed, they are made available to companies seeking to invest on community land. Most communities will require the support of a third-party facilitator to develop a community protocol. If sufficiently organized and resourced, however, communities may be able to develop community protocols for themselves. To avoid conflicts of interest, prospective investors should not be involved in the process.

A Guide to Community Protocols

There are five basic steps to follow in developing a community protocol: (1) prepare the community, (2) gather data through meetings in the community, (3) develop the first draft of the community protocol, (4) finalize the protocol through follow-up meetings with community members, (5) disseminate the protocol document.[17]

STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
Prepare the community.	**Gather data.**	**Develop draft community protocol.**	**Finalize community protocol.**	**Disseminate the protocol document.**

STEP ONE: PREPARE THE COMMUNITY.

Careful preparation is of utmost importance to the integrity of a community protocol. In many cases, this will be the first time that the community commits its customary norms to written form. The individuals and groups involved with the mapping process should therefore be careful to ensure that the data they gather is as accurate as possible.

If third-party assistance is required to facilitate the process, the facilitator must have a deep understanding of the community and the way that it makes decisions. Individuals or organizations that have an established track record of work with the community are often best positioned to secure the community's trust in this regard. Suitable facilitators include academic researchers, church leaders or NGOs. As noted above, parties with an interest in the outcome, such as companies seeking to invest in the area or government institutions with regulatory oversight over business activity, can compromise the legitimacy of the process and should not be directly involved.

The facilitator should first obtain the community's express consent for the exercise. This requires the facilitator to explain to community members the purpose of the community protocol and what the process will entail. The facilitator should also explain the basis of community's rights under both national and international law. According to the Land Act, traditional authorities within the community are responsible for allocating community land to outside interests.[18] State authorities play an oversight role, to ensure that, among other things, consensus exists for the investment among members of the host community. International human rights norms that require local participation in development initiatives may also be relevant.

Depending on the particular circumstances, it may take a considerable amount of time to develop the community protocol. The parties should carefully think through the timing issues beforehand to ensure that community members will be present to participate in the mapping process. For instance, it may not be advisable to conduct mapping of pastoralist communities during the dry season since that is when the young men in the community typically travel away from community to find suitable grazing lands for their herds. Efforts should also be made to secure the participation of community members residing in urban areas or those displaced to other regions of South Sudan.

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[17] These steps are adapted from a guide developed by the Center for International Environmental Law (CIEL), supplemented with information drawn from roundtable discussions and field research in South Sudan. *See* CIEL, Promoting Authentic Local Community Decision-making and Participation in Development, A guide to facilitate development by communities of protocols that describe how to seek community consent (on file with CIEL, contact info@ciel.org).

[18] Land Act, ch. V, § 15 (2009).

STEP TWO: GATHER DATA THROUGH COMMUNITY MEETINGS.

After the preparatory phase, the facilitator then proceeds to gather data through consultations with community members. The facilitator should focus on gathering information about processes of collective decision-making that the community finds acceptable. The process may also cover other issues that are relevant to investments, such as information on community development priorities, boundaries, land use patterns and the location of natural resources. The process should be fully transparent, allowing for all segments of the community to participate. Meeting with different groups in the community will help to ensure higher quality data. For instance, elders are likely to have access to information of which younger people in the community may not be aware. Since women and children are often marginalized in decision-making processes, it is particularly important to include their perspectives in the process.

Documenting each step of the process will help to strengthen the legitimacy of the community protocol document and increase the likelihood that it will be used and respected. Such documentation may include, for instance, videotaping community consultations or compiling written transcripts of meetings with community members.

Once the data has been gathered, the facilitator should review the data with the community. This may require the facilitator to compile the data in a written document to share with community members. For natural resource mapping, the facilitator can draw a rough sketch of a map showing the location of natural resources on the spot with community members. The facilitator should review this draft through consultations with different segments of the community.

STEP THREE: DEVELOP THE DRAFT COMMUNITY PROTOCOL.

Once the community has approved the data, the facilitators can then compile a draft of the community protocol. If the protocol is to include maps, it may require the assistance of someone with geographical information system (GIS) skills. Below is a suggested format for a community protocol:

- Introduction – This section sets the context and explains why the community is creating the protocol. The introduction can also include a statement of the community's relationships to its land and natural resources and their right to make decisions on matters of importance to them.
- Purpose and objectives – This section explains the purpose and objectives of the community protocol. Typically, the protocol provides standards for how outsiders can engage with the community and presents a map of community lands, including areas suitable for different kinds of investment.
- Applicable areas – This section lays out the geographic area to which the protocol applies. It describes important features of the landscape, relevant political boundaries, land use patterns and the location of natural resources. A detailed description of the area's outer perimeter is especially important. In South Sudan, accurate maps are not available for many areas and boundaries can be fiercely contested. It is therefore important to compile information on community boundaries in collaboration with neighboring communities, to ensure that the maps indicate boundaries that are acceptable to all groups involved.
- Communities involved – This section lists the communities that are involved with the development of the protocol and its eventual use. It also explains the relationship between the communities, indicating whose consent should be sought for the use of specific resources. In many instances, the groups involved will have complex and overlapping rights to certain territories. It is therefore important to be as inclusive as possible in the development of the protocol, providing for the involvement of all groups who claim rights to the land areas in question.
- Authorized representatives – This section lists the individuals to whom the community has delegated decision-making authority. It provides the name of each person or group together with information on where they can be located and how best to contact them.
- How to engage – This section describes the engagement processes that the community finds acceptable, including the kind of information the community requires in advance of meetings with

outsiders. It can also list the community's preferences for the frequency, location and timing of meetings between outsiders and community representatives.

- Timeframe – This section indicates the time period that the community will require to make decisions relating to their land and natural resources.
- Evidence of consent – This section describes what the community considers to be legitimate evidence of community consent. For instance, it may explain that project proponents obtain a certificate of consent signed by the authorized representatives of the community before they may proceed with the investment.

STEP FOUR: FINALIZE THE COMMUNITY PROTOCOL DOCUMENT.

Once the draft community protocol is finished, the facilitator should again review the document through meetings with community members. After incorporating the community's feedback the facilitator then finalizes the community protocol. If communities decide to endorse the finalized document, they should have community representatives acknowledge it with their signatures or thumbprints.

STEP FIVE: DISSEMINATE THE PROTOCOL DOCUMENT.

Once the community protocol is finished, it should be distributed widely among institutions that might be involved with activities in the community's territory. Such institutions may include:

- Central and state-level ministries involved with investment planning
- County commissioners' offices
- Private investors or companies interested in investing in South Sudan
- International Financial Institutions (IFIs) such as the World Bank or International Finance Corporation (IFC)
- Local or regional chambers of commerce

NGOs and civil society organizations can assist the community in disseminated the protocol among interested parties. They can also help to ensure that the protocol is used and respected by organizations interested in investing on community land.

The protocol is a living document and may need to be updated from time to time. Simple changes can be made on an as needed basis, but more fundamental changes will require formalized community approval for the changes. The community should designate an individual or institution within the community to be responsible for the safeguarding the protocol. This person would be responsible for maintaining all the documentation associated with the protocol and updating it as necessary.

Legal Framework

The following excerpt from the transitional constitution outlines the objectives of community-led development in Southern Sudan. Companies should also check with state authorities in the areas where they are investing to determine if there are any state laws that apply to pre-investment planning:

TRANSITIONAL CONSTITUTION OF THE REPUBLIC OF SOUTH SUDAN

Part Three, Chapter I, § 37(2)
All levels of government shall: …(d) encourage private initiative and self-reliance and take all necessary steps to involve the people in the formulation and implementation of development plans and programmes that affect them and to enhance as well their right to equal opportunities in development.

NEXT STEPS FOR IMPACTED COMMUNITIES

Communities can take the following steps to begin a pre-investment planning process:

- Invite all interested community members to participate in a meeting where they elect representatives to staff the community development committee. Aim for geographic and demographic representativeness in selecting committee members.

- If necessary, register the organization through the appropriate procedures for registering community-based organizations (CBOs) in your area.

- In consultation with the broader community, determine the community's development priorities and establish a community financial system (see Section 2.6 below).

- Visit a local civil society or non-governmental organization and ask whether they would be willing to support a process to develop a community protocol in your area.

2.2 COMMUNITY CONSULTATION

Community Complaints Fall on Deaf Ears.

There is a defunct government-owned agro-industrial complex that lies next to an important port along the Nile River in South Sudan. The land was expropriated from the local community in the late seventies. The government had only managed to construct a food processing facility and start trial planting when the civil war reached the area in 1985 and the project was quickly abandoned. Today, some crumbling walls and dilapidated equipment are the only evidence that it ever existed. The community has long since moved back onto the land and established a thriving marketplace where the agro-industrial complex once stood. The government recently entered into negotiations with a foreign company to revitalize the facility for sugarcane production and processing. The community was not involved in the investment negotiations. The government asserts that it does not need to consult the community until it is time to relocate them from the government-owned land. Meanwhile, community leaders maintain that the land belongs to the community and that they will oppose any government attempts to unilaterally implement an investment project in the area. Armed groups from the community have clashed with the SPLA several times in recent years. The high potential for conflict associated with this investment could be reduced if the project proponents were to consult the community prior to making any decisions that would affect the people or their environment.

Introduction

Community consultations are the means by which companies and communities communicate with one another. In this sense, community consultations are not an end in and of themselves, but rather a means of developing and sustaining relationships between companies and host communities. When government officials or community leaders negotiate investment agreements without adequately consulting the broader community, they risk engendering local resentment that can manifest in community opposition to the investment. With the unpredictable conflict dynamics in South Sudan, community opposition can easily spill over into social unrest. It also increases political, financial and reputational risks for the company. Prior consultation helps to limit these risks. By engaging with communities before making decisions, companies can take advantage of local knowledge to design the investment plan in a way that is responsive to local conditions. Community consultation takes on added significance in the South Sudanese context, given the importance that South Sudanese attach to cultural sovereignty, consensus decision-making and community land ownership.

Primary audience: Companies

GOAL

Companies and communities initiate broad-based dialogue from the earliest stages of investment planning and continue to communicate in an open, inclusive and formalized manner throughout the life of the project.

Tools and Tips

Prior consultation

In South Sudan, companies are legally obligated to consult affected communities prior to taking any actions that affect the community, including the issuing of leases and the finalization of investment agreements. Both the Land Act and the 2009 Local Government Act require prior consultation; it is also good business practice. Other actions that require prior consultation include: the selection of project location, the scoping of impact assessments and the design of impact management plans.

Earning a 'social license to operate'

Community consultation should not be seen as an isolated event that happens only at the start of the investment. It is better conceived of as iterative, on-going process through which the company develops and maintains the consent of host communities. The consultative process thus becomes the mechanism through which companies earn their 'social license to operate'.

Inclusivity

Community consultation, by definition, requires the participation of a broad cross-section of the affected community. Simply talking to a community leader and getting his consent for a project is not consultation. Companies should make special effort to ensure that community members understand investment plans and likely impacts and that community consent is expressed through consensus decision-making. Special efforts may be required to ensure the meaningful participation of marginalized groups in the community, such as women and minority ethnic groups.

Government's role

The government's role in community consultations is primarily that of a facilitator. Government officials will often be the first people who meet company representatives upon their arrival in South Sudan. As such, it is important that they stress the importance of consultation from the start and monitor the consultations to ensure that they adhere to certain minimum standards of inclusiveness, disclosure and frequency.

Internal consultations

Consultations require internal negotiations and discussions within the community that run parallel to the negotiations and discussions with the company. Communities can use these internal consultations to debate investment proposals and inform community members about the changes that will come with the investment. If done correctly, internal consultations can help to promote accountability within the community and prevent divisions from arising between those who support the investment and those who oppose it. As with consultations between the company and the community, these internal consultations should be inclusive, providing for the participation of all groups in the community.

A Guide to Community Consultation

There are six basic steps for the company to follow in a community consultation: (1) identify and analyze stakeholder groups; (2) develop a community engagement plan; (3) provide the community with notice; (4) carry out the consultation; (5) incorporate the community's feedback; and (6) report back to community.[19]

STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6
Identify and analyze stake-holder groups.	**Develop a community engage-ment plan.**	**Provide notice.**	**Carry out consul-tation.**	**Incorpo-rate feedback.**	**Report back.**

STEP ONE: IDENTIFY AND ANALYZE STAKEHOLDER GROUPS.

In planning for a consultation, companies start by identifying the individuals, groups and institutions who stand to be affected by the project, as well as those who may themselves influence the project, collectively known as the company's stakeholders. Next, the company analyzes this information to determine how the investment would affect these individual and group interests. This process helps companies determine how to approach the consultation, including who should participate and the type of information with which they should be provided.

Stakeholder identification also requires companies to verify the status of community leaders within the community. Engaging with actors who are considered illegitimate in the eyes of the community can irreparably damage the company's reputation among the local population. Identifying legitimate community leaders can be a complicated process in the South Sudanese context. In many cases, community leadership may be distributed between hereditary chiefs and elected chiefs, or the community may be divided into returnee groups, internally displaced groups and host groups, each with its own leadership structure. In such circumstances, the company should consult with all the decision-making bodies to avoid alienating segments of the community.

One approach to stakeholder identification in these circumstances would be to ask how the community makes decisions, rather than asking who the decision-makers are. Companies can ask how communities make decisions for other purposes, such as negotiating rights of access or reconciling with neighboring communities, and then use that information for determining how they would approach decision-making for investment purposes. This can help to divert the inquiry away from internal community politics and determine more constructive points of entry. The company should also periodically reassess stakeholder groups and decision-making processes, as they may shift over time when leaders are replaced or new groups move into the area.

In some cases, communities may have developed community protocols, as discussed in the preceding chapter on pre-investment planning. Companies and government institutions should use these protocols when seeking to access community land. If host communities do not have community protocols, however, it should not be used against them, and companies should still engage with host communities through their own decision-making processes.

> **County Commissioner**
>
> *The county commissioner at the local government-level is responsible for facilitating interactions between outside investors and community members in South Sudan. Companies should seek the input of county commissioners from the beginning of the stakeholder identification process. In doing so, companies should keep in mind that the county commissioner is a stakeholder as well, with unique interests and responsibilities. They should therefore be careful not to become so closely affiliated with the commissioner that they lose independence in the eyes of the community.*

STEP TWO: DEVELOP A COMMUNITY ENGAGEMENT PLAN.

After stakeholder analysis, the company then proceeds to develop an engagement plan. The engagement plan is

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[19] These steps are adapted from guides developed by: the International Council on Mining and Metals (ICMM), the World Bank and the Energy Sector Management Assistance Programme (ESMAP), the International Finance Corporation (IFC) and Oxfam, supplemented with information drawn from roundtable discussions and field research in South Sudan. *See* Icmm, World Bank and Esmap, Community Development Toolkit (2005); Ifc, Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets (May 2007); Christina Hill, Serena Lillywhite And Michael Simon, Guide To Free, Prior And Informed Consent, Oxfam (June 2010).

an internal document that the company uses to structure engagement with host populations. As consultations vary with the circumstances, so do engagement plans. At the very least, the engagement plan should address the following points:

- Purpose of the consultation – Present the strategic reasons for consulting with affected communities at the particular phase of the project.
- Requirements for the consultation – List the requirements that the consultations are seeking to satisfy. Discuss the terms of community protocols, if they exist.
- Communities who will be affected – Identify the affected communities and discuss their interests.
- Priority issues – Discuss special measures that need to be adopted with respect to high-risk groups.
- Techniques to be used – Discuss the forms of participation that are best suited to the various groups. Consider use of customary communication methods.
- Roles and responsibilities – List who within the company is responsible for what activities.
- Approach to documentation – Describe how will the results be documented.

For simpler projects, the community engagement plan can be a rather short and straightforward document. For complex projects affecting multiple communities, the community engagement plan may be a bit more complicated. In these circumstances, the company may want to hire a community liaison officer to help develop its engagement plan. This position should be integrated with core business functions and involve senior management.

STEP THREE: PROVIDE NOTICE.

Providing communities with information before decisions are to be made allows for more informed participation. This can be done in any number of ways, including: public meetings, smaller gatherings of stakeholder subgroups, use of individual conduits and intermediaries, newsprints, broadcast media, or roadside displays. Companies should leave sufficient time between the provision of information and the start of consultations so that people are not forced to make decisions on the spot. As always, information should be provided in languages and formats that are meaningful to target groups. Companies should provide the following information in their provision of notice for forthcoming consultations:

- Purpose and scope – Explain the reasons for the consultations, the matters that will be discussed and the people that will be involved.
- Project details – List project plans, benefits, and harms; key dates in the life of the project, including those regarding impact assessment procedures; and information regarding the implementation of commitments.
- Logistical arrangements – Include time, place, and date of the engagement and contact details of company representatives.
- Legal obligations – Identify any legal requirements that the consultations are seeking to satisfy, including those under South Sudanese law, national law or international agreements.

Groups with Secondary Rights

Some investments may impact communities that reside outside the immediate vicinity of the project. These communities may lose access to pastures, forests and fisheries, or there may be downstream impacts. By consulting groups with secondary rights, companies can design their investment plans in ways that support, rather than undermine, constructive relationships among local groups.

Consultation with pastoralist groups is of particular importance in South Sudan, with its large number of pastoralist communities. The Land Act gives special protection to pastoralists, stating that, "no person shall without permission… carry out any activity on the communal grazing land which may prevent or restrict the residents of the traditional communities concerned from exercising their grazing rights."[20]

While it is important to include groups with secondary rights, companies should generally prioritize engagement with those communities who face the most serious impacts. This can be done through tiered consultations that start with the group that is the most affected. To avoid exacerbating tensions among these groups, the company should design any such consultations in collaboration with each of the affected groups.

[20] Land Act, ch. X, § 67 (2009).

STEP FOUR: CARRY OUT CONSULTATION.

Companies should conduct consultations with affected groups in their own communities. They should plan well for the logistical difficulties that they are likely to encounter in traveling to remote rural areas in South Sudan. They may need to schedule consultations during the dry season, lasting roughly from November to March in most areas. Company representatives should also solicit advice from security advisors prior to travel to ensure that there are no security risks in the areas through which they will be traveling.

Companies should also be prepared to translate discussions to and from local languages. In choosing an interpreter, the company must be careful not to select a person with an interest in the investment, as they are more likely to skew interpretations in their perceived self-interest. To avoid these risks, the company could approach a local university or civil society organization to see if they could suggest qualified and impartial interpreters.

STEP FIVE: INCORPORATE COMMUNITY FEEDBACK.

After the company gathers community input through the consultation process, they must factor it into their decision-making process. Companies should be clear with community members about which decisions are fixed and which are open to change. In some cases there will be limitations preventing companies from meeting community expectations, in others companies will be obligated to comply with community decisions. This should all be clearly communicated to communities during the consultations.

STEP SIX: REPORT BACK.

After the consultations, companies should report back to the communities in timely manner. This involves publicly demonstrating how the community's input influenced their decision-making or improved the project design. In addition to promoting transparency in decision-making, full disclosure in these circumstances can also help to avoid consultation fatigue from setting in among community members.

Legal Framework

The following legal provisions proscribe the requirements of community consultations in South Sudan. Companies should also check with the relevant state authorities to determine if there are any state laws that apply to community consultation:

TRANSITIONAL CONSTITUTION OF THE REPUBLIC OF SOUTH SUDAN

Part Twelve, Chapter II, § 170(10)

Communities and persons enjoying rights in land shall be consulted in decisions that may affect their rights in lands and resources.

LAND ACT (2009)

Section 63. Community Interest

1) The activity to be carried out by the investor shall reflect an important interest for the community or people living in the locality.

2) It shall contribute economically and socially to the development of the local community.

3) The Concerned Ministries in the Government of Southern Sudan and the State and the Investment Authority shall consult with the Community concerned on any decision related to the land that the investor intends to acquire and the view of the community shall duly be taken into consideration.

LOCAL GOVERNMENT ACT (2009)

Section 89. Land Acquisition

a) The procedure for acquiring community land within a Local Government Council area for Government and other uses, shall be the function of the respective Council, save that the concerned Council shall:

b) respect the existing customary practices, protect local heritage and observe international trends and practices in land acquisition;

c) consult the community concerned on the Land acquisition or usage as the case may be; and

d) protect the rights and interests of the Communities in areas within the local council, where subterranean natural resources are being explored and or exploited, to ensure their rights to share in the benefits accruing from such resources.

Section 91. Establishment of Council Land Committees or Authorities

3) Without prejudice to the provisions of the Land Act, 2009, the functions and duties of the Council Land Committee or Authority, inter alia, shall be as follows:

g) mediation of consultation processes of land lease between the community and other investors;

NEXT STEPS FOR IMPACTED COMMUNITIES

Communities can take the following steps to prepare for a community consultation:

- Identify a venue for people to gather for the meeting. Make sure that the space is quiet and bright and that there is enough space to accommodate everyone.
- Notify community members about the consultation well in advance. As the date approaches, send a reminder to people who are interested in attending.
- Make sure that all the different groups in the community are represented, including women and minority groups.
- Identify those individuals in the community who can provide translation services from English or Arabic to the vernacular, in case the company does not have its own interpreter.
- On the day of the community meeting, arrive early to make sure that everything is in place.

2.3 PARTICIPATORY IMPACT ASSESSMENTS

The Unforeseen Consequences of a Poorly Planned Investment

An oil company in Unity State was looking for the fastest and most direct route to construct its supply road to a local airport. Without seeking any input from the local community, the company proceeded to construct a bridge across a nearby river leading directly to the airport. As it happens, the river was an important transport route for the host community. Community members used dugout canoes to carry goods to and from markets and to visit family and friends. When it built the bridge, the company constructed it too low for canoes to pass. Without the traffic of canoes, the downstream tributaries became choked with overgrown weeds and water supplies for a number of downstream communities were restricted. The reduced water supplies also affected the seasonal migration route of Arab pastoralists who travel into Unity State during the dry season to access water and grazing land for their cattle. As the tributaries dried up, the Arab pastoralists were forced to travel further south to find water, which led to increased conflict between them and Dinka and Nuer pastoralist communities in Unity State. Companies can identify and prevent these types of negative impacts by conducting environmental and social impact assessments in collaboration with affected communities prior to undertaking any activities that stand to affect the people or the environment.
Introduction

Introduction

Environmental and social impact assessments are studies that companies commission in order to predict, remedy and avoid negative impacts on affected communities. Impact assessments provide information on the likelihood and severity of potential impacts. They also provide details about the company's plans for mitigating negative impacts and enhancing positive ones. The Land Act requires companies to conduct impact assessments before any decision can be made about the land allocation.[21] However, this is rarely done. Companies are usually eager to get the investment up and running and as a result, fail to conduct the prior impact assessments required by law. While such an approach may save project proponents some costs in the early stages of a project, it can lead to major cost increases or delays when unexpected impacts arise further down the line. 'Good practice' also requires companies to adopt a participatory approach to their impact assessment studies. Community participation in the design and implementation of impact assessments allows companies to take advantage of local knowledge to better identify risks and make mitigation measures more effective.

Primary audience: Companies

GOAL

Companies and communities work together to identify positive and negative impacts of the proposed project and to design impact management plans in a fully transparent and participatory manner. Copies of impact assessment reports are kept in easily accessible locations at the central, state and local levels and are open to public review.

Tools and Tips

Timing

As noted above, the Land Act requires companies to conduct environmental and social impact assessments before any decision may be made on the land allocation. It also stipulates that companies must conduct impact assessments before undertaking any activities that stand to impact the people or the environment. For high impact projects, companies must therefore conduct impact assessments at each stage of the project cycle: when assessing project feasibility, determining the viability of project design, preparing for construction, commencing operations, and closing down the project.

Participatory aspect

Environmental and social impact assessments will probably involve some of the most intense community engagement of the entire investment. Many communities in South Sudan have not had experience with large-scale land-based investment in the past and may have unrealistic expectations about what investment projects can deliver. Community participation in the impact assessment process can help them to better understand the risks that come with high impact investment projects. In addition to community participation in the assessment studies themselves, companies should also seek community approval for the draft impact assessment report prior to its finalization.

Checks and Balances

Since the funding for impact assessment studies typically comes from project proponents, the consultants that they hire are often pressured to conduct quick assessments in order to cut costs. Practically speaking, it is almost impossible for a consultant to advise the company not to proceed with the project. To counteract this tendency, the impact assessment team should be as independent as possible from the company that is paying for their services. 'Good practice' also requires independent review of the draft impact assessment report. This helps to ensure that the study is of adequate breadth, depth and quality. In some circumstances, additional checks may be required. These may come in the form of regulatory oversight, financier auditing, and civil society review, or mediation, arbitration, and litigation through the court system.

Human Rights Impact Assessments

Impacts on the human rights of local populations are an important part of the environmental and social impact assessment. However, in post-conflict situations, 'good practice' often requires additional clarity on the human rights impacts of investment projects. One way for com-

[21] Land Act, ch. XI, § 70(1) (2009) (stating that "Any allocation of land for investment purposes shall be subject to a social, economic and environmental impact assessment to ensure that the social, economic and environmental implications of the activities on the land are taken into account before any decision is made thereon.").

panies to achieve this is through specialized human rights impact assessments. Under international human rights law, private companies are required to respect the human rights of local populations. They must also avoid complicity in states' human rights abuses. These obligations require companies to undertake measures to assess the risks to the human rights of affected populations, build employee awareness of human rights, and incorporate human rights principles into management systems.

Human rights impact assessments help companies to plan investments ways that minimize the risk of business-related human rights abuses. Mitigation measures ensure that if human rights violations do occur, affected individuals and groups are given prompt, effective, and adequate remedies. For additional guidance on human rights risks in the South Sudanese context, the company can also visit the Southern Sudan Human Rights Commission, an independent commission that was set up under the transitional constitution.[22]

A Guide to Participatory Impact Assessments

There are four basic steps for the company and affected communities to follow in conducting participatory impact assessments: (1) design the assessment study; (2) carry out the impact assessment; (3) prepare and review the impact assessment report; and (4) monitor impacts and mitigation measures.[23]

STEP 1	STEP 2	STEP 3	STEP 4
Design the assessment study.	**Carry out the impact assessment.**	**Prepare and review the impact assessment report.**	**Monitor impacts and mitigation measures.**

STEP ONE: DESIGN THE ASSESSMENT STUDY.

First, determine the level of detail needed.

The project proponents begin the impact assessment design phase by calibrating the level of assessment to the significance of likely impacts. This ensures that more rigorous assessments are put in place for projects with more severe impacts. For projects with little or no adverse impacts, this exercise may show that no impact assessments are necessary. To maximize the relevance to stakeholders, the company should take into account the views of the affected community in the process, together with the professional opinions from relevant authorities, experts, and NGOs.

Second, determine the issues to be addressed.

Next, the project proponents gather primary information to identify issues of primary concern to affected communities. This is meant to generate consensus among the project proponents and their stakeholders on the key issues to be addressed in the impact assessment. This stage is usually the first opportunity for affected communities to be substantially involved. Information gathered through community consultations can supplement field research, assessments based on professional judgment and reviews of secondary sources. Once they have identified the key issues, the project proponents can determine those areas where there may be need for specialists on the assessment team. For example, this exercise would be able to determine if resettlements were likely, in which case social scientists or human rights experts would need to be included on the assessment team.

COMMUNITY ENGAGEMENT DURING THE DESIGN PHASE

During the design phase, the company will need to conduct community consultations in order to solicit input from community members on likely impacts. The company should design its approach to these consultations in a written community engagement plan, developed according to the steps presented in Section 2.2 above. Toward the end of the impact assessment studies, the engagement plan can be updated to provide a roadmap for community participation in monitoring the mitigation measures.

The company should also develop a terms of reference that stipulate how the impact assessments will be managed in the coming years. At the end of the design phase, the terms of reference should be signed by all the parties involved, including the project proponents, sponsors, relevant government authorities, project financiers, affected communities, and the team that is responsible for carrying out the impact assessment.

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[22] For more information on how to conduct human rights impact assessments, visit http://www.guidetohriam.org/welcome (accessed December 8, 2011).

[23] These steps are adapted from guides developed by the ICMM, World Bank and ESMAP, the IFC and the World Resources Institute (WRI), supplemented with information drawn from roundtable discussions and field research in South Sudan. *See* ICMM, World Bank and ESMAP, Community Development Toolkit (2005); IFC, Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets (May 2007); Robert Goodland, WRI's Informative Memo for Access Law & Practice: Environmental and Social Assessment (n.d.).

STEP TWO: CARRY OUT THE IMPACT ASSESSMENT.

First, put together the assessment team.

Using the data collected during the preparation phase, the company, in collaboration with its stakeholders, can now assemble the assessment team. The company should hire independent third party experts to staff the team. The design phase will have helped them to determine which particular skills they should be looking for in potential candidates.

Second, engage the community in the assessment studies.

Input from affected communities is essential for a thorough impact assessment. The assessment team can use community input to supplement their other forms of assessment, such as laboratory analyses, surveys and desk research. Community consultations can help the assessment team to identify the options available to eliminate or reduce potential adverse environmental and social impacts. They can also help to determine what compensation measures communities will find acceptable, and how to design mitigation programs that are targeted and culturally appropriate. Before consulting the community, the assessment team should provide them with a list of the environmental and social impacts that are to be discussed, as well as any planned mitigation measures. Although many community members will already be familiar with much of this information through their participation in the design phase, providing them with it again during the implementation phase will help to refresh their memory and ground the discussions.

As the impact assessment studies progress and the project design is modified, it is important to keep communities updated about changes on an on-going basis. This can be done through the regular dissemination of information via community representatives. The assessment team should also meet with project designers on a regular basis to ensure that community concerns are accounted for in the project design.

Once a first draft of the impact assessment report is complete, the assessment team can carry out another series of consultations to amend the proposed mitigation and benefit measures in the draft text. Guided by the communities input, the team then finalizes the draft report and discloses it to stakeholders within the agreed upon time period laid out in the terms of reference.

STEP THREE: PREPARE AND REVIEW THE IMPACT ASSESSMENT REPORT.

The impact assessment report outlines likely impacts along with mitigation, monitoring and capacity strengthening mechanisms. In each area, it proposes implementing measures, timelines, project costs and funding sources. The report should also document all the community consultations that were carried out during the assessment process. Below is a sample outline of an impact assessment report:

- Executive Summary – This section summarizes key points. The executive summary is often the only part that people will read.
- Policy, Legislative and Legal Framework – This section lists the requirements of South Sudanese law, international law and lender requirements, along with any other relevant laws, policies and standards.
- Project Description – This section briefly summarizes the investment project.
- Baseline Data – This section summarizes relevant socioeconomic, physical and biological conditions.
- Identification of Impacts – This section identifies the project's likely positive and negative impacts. It also indicates those issues that are not of concern.
- Analysis of Alternatives – This section looks at lower impact alternatives. It may also contain the 'no project' scenario.
- Environmental Management Plan – This section identifies mitigation measures and compensatory measures for negative impacts that have been listed. It also covers monitoring programs, institutional strengthening, budgets, schedules, responsibilities and disclosure plans.

Companies should seek community approval for the draft impact assessment report before it is finalized. Community members must be familiar with the process from the start in order to give their informed approval for the report. The company should explain when and where interested parties can review the document. It should also develop a mechanism for receiving, documenting and addressing the comments that are submitted on an on-going basis. All revisions after the initial disclosure should be made public.

Once the report is finalized, the company must make it publicly available. It may be a good idea to publicize the report's release through print or radio media. The report should be kept on file in key locations for easy access; at the very least, it should be kept at relevant central and state-level ministries, and with the county authorities. Copies can also be left with universities, civil society organizations and other key stakeholders.

The company may also want to separately prepare and disseminate the executive summary of the report. The executive summary is often the only part of the report that people will read. This is the company's opportunity to clearly communicate the upcoming changes to be brought about by the proposed project and the project's efforts to mitigate impacts and enhance benefits. It also provides an opportunity for the company to demonstrate that it took the consultations seriously.

DECIDING WHETHER OR NOT TO PROCEED

During the impact assessment studies, project proponents must ask themselves if there is sufficient support from the affected community to proceed with the project. If not, they should terminate the project. In making the determination about whether to proceed, they should be guided the following questions:

- *Is the community satisfied with the manner and extent to which they've been consulted?*
- *Are there ways of resolving the community's objections?*
- *How widespread is the dissatisfaction? Does it come from within the community or from outside?*
- *How would government or lending authorities view the community's concerns?*

STEP FOUR: MONITOR IMPACTS AND MITIGATION MEASURES.

The management plan should identify monitoring objectives, specify the types of monitoring, and link the monitoring mechanisms to the corresponding impacts and mitigation measures. This allows companies and stakeholders to evaluate the success of mitigation measures as part of project management and to take corrective action when needed. For a more in-depth explanation of participatory approaches to monitoring, refer to Section 2.5.

Legal Framework

The following legal provisions proscribe the requirements of impact assessments in Southern Sudan. Companies should also check with the relevant state authorities to determine if there are any state laws that apply to impact assessments:

LAND ACT (2009)

Section 70: Environmental, Economic and Social Impact Assessment

Every person shall have the right to have the environment protected for the benefit of present and future generations, through appropriate legislative action and other measures that:

1) Any allocation of land for investment purposes shall be subject to a social, economic and environmental impact assessment to ensure that the social, economic and environmental implications of the activities on the land are taken into account before any decision is made thereon.

2) The process shall involve an analysis of the possible effects on the environmental, biodiversities, people and assets.

3) A social, economic and environmental impact assessment shall be undertaken by both public and private sectors prior to any activities that may have impact on the environmental and the people as determined by law, this Act or any other law or regulations.

NEXT STEPS FOR IMPACTED COMMUNITIES

Communities can take the following steps to ensure that companies abide by their legal obligation to conduct environmental and social impact assessments before undertaking any activities that could impact people or the environment:

- Visit the company's offices and request to see a copy of their environmental and social impact assessment.

- If the company has not conducted an impact assessment or if they are unable to produce the report, petition the relevant government authorities and demand that the company's business activities be put on hold until they conduct a participatory impact assessment and make copies of the report available to the public, as required by law.

- Seek legal advice to determine if any legal remedies are available, including a court-ordered injunction requiring the company to cease all activities until it has conducted an impact assessment and made copies of the report available to the public.

2.4 PARTICIPATORY MONITORING

Behind Closed Doors, Labor Abuses Go Unchecked

Shortly after the signing of the CPA, the government of South Sudan granted concessions in several government-owned teak plantations to a foreign company. The government had little capacity to monitor investments at the time and the company was given free reign to operate without public oversight. Labor conditions on the project site quickly began to deteriorate. Employees were paid just seven pounds per day for ten-hour workdays. Those who were injured on the job were not provided with workers' compensation as agreed upon in their employment contracts. Dissatisfaction ran high. Then, in a series of incidents, a foreign supervisor began physically abusing employees. When a group of employees showed up late for work, the supervisor gave them a choice to either accept to be beaten with a wooden stick or else lose their jobs. Since there were few other employment opportunities available, the employees accepted to be beaten. The supervisor would also lock employees in pit latrines as punishment for various infractions. Eventually, word of the abuse got to the plantation manager who promptly fired the supervisor, but the damage to the company's reputation had already been done. The groups involved with this investment could better enforce labor standards by embedding a participatory monitoring program in the investment agreement.

Introduction

Participatory monitoring is a process through which companies and host communities collaboratively identify and solve problems associated with investment projects. Monitoring programs can be used to track a range of issues, including the timely performance of investment commitments, social and environmental impacts, and the management of community grievances. Without a mutually agreed upon mechanism to monitor these kinds of issues, disputes among parties to lease agreements are more common. To maximize the monitoring program's usefulness, communities must be involved in its design and implementation. The program should allow for the physical presence of affected individuals when monitoring takes place and incorporate methods and indicators that are meaningful to affected communities.

Primary audience: Companies

GOAL

Companies, in collaboration with affected communities and other stakeholders, conduct credible monitoring activities that provide an early warning for systemic problems. The monitoring program contributes to a more stable business environment and enhances business accountability to host communities.

Tools and Tips

Timing

Monitoring systems should be put in place early in the project cycle, while local enthusiasm for the project is still high and it is easiest to build trust among the various parties. It is more difficult to establish a monitoring system after a breach of trust has occurred, because the program designers will need to take into account existing grievances and suspicions in addition to potential impacts.

During the project concept phase, the company can use simple and low cost monitoring methods since the impacts are usually still minor. The project proponents and stakeholders can gear their activities towards gathering baseline information at this stage. When the company begins constructing its project facilities, however, the monitoring system will need to be more robust to address the heightened impacts.

Participatory aspect

Community participation in the monitoring program allows companies to take advantage of local knowledge to better identify systemic problems and design more informed remedies to adverse impacts. It also presents an opportunity for companies to educate the public about their business activities, thereby minimizing the chances for misperceptions to spread among host communities.

A Guide to Participatory Monitoring

There are four basic steps for companies and their stakeholders to follow in creating a monitoring program: (1) define the purpose and scope the monitoring program; (2) engage affected communities in the design of the monitoring program; (3) monitor the investment; and (4) evaluate the results and adjust activities as needed.[24]

STEP 1	STEP 2	STEP 3	STEP 4
Define the purpose and scope.	**Engage communities in the design process.**	**Monitor the investment.**	**Evaluate the results and adjust.**

STEP ONE: DEFINE THE PURPOSE AND SCOPE OF THE MONITORING PROGRAM.

First, create a planning team.

The planning team makes initial decisions about the purpose and scope of the monitoring program. It should include representatives from the company, affected communities and the concerned government ministries. If the need for monitoring was identified by a third party, that third party could also participate in the design of the program. For example, if a social activist called for the monitoring of pollution from fertilizer and pesticide runoff, he or she could be offered a place on the planning team.

[24] These steps are adapted from guides developed by the ICMM, World Bank and ESMAP, the IFC and the Multilateral Investment Guarantee Agency (MIGA), supplemented with information drawn from roundtable discussions and field research in South Sudan. *See* ICMM, WORLD BANK AND ESMAP, COMMUNITY DEVELOPMENT TOOLKIT (2005); IFC, STAKEHOLDER ENGAGEMENT: A GOOD PRACTICE HANDBOOK FOR COMPANIES DOING BUSINESS IN EMERGING MARKETS (May 2007); IFC AND MIGA, COMPLIANCE ADVISOR/OMBUDSMAN (CAO), PARTICIPATORY WATER MONITORING: A GUIDE FOR PREVENTING AND MANAGING CONFLICT (2008).

The planning team should start by developing a code of conduct to guide their efforts. The code of conduct should be formalized and signed by all members.

Second, define the purpose and scope of the monitoring program.

The planning team must carefully consider the purpose and scope of the monitoring program at the beginning of the process. Monitoring may be required to investigate a certain problem, to evaluate the effectiveness of environmental management programs, or to establish a technical basis for compliance with investment commitments. For example, a monitoring program may be established at the beginning of an investment to track investor performance with regard to the delivery of health and education services to the host community. The results of the monitoring program could then be used to develop more efficient means of administering these services.

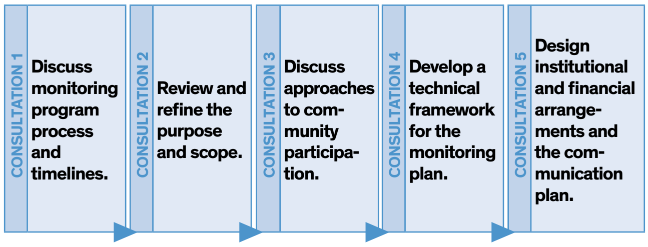
Third, assess the local context.

The planning team should assess the geographical, institutional and social setting in which the investment operates. Much of this information will have already been compiled in the stakeholder analysis and the environmental and social impact assessments. However, some issues may be unique to project monitoring and should be addressed independently.

STEP TWO: DESIGN THE MONITORING PROGRAM.

First, involve the affected communities in the design process.

The planning team then conducts a series of consultations to engage affected communities in the program design process. It may be a good idea to ask an individual who is respected by all parties involved to convene these consultations. This individual could also provide leadership in cases of disagreement. Appropriate candidates for this role include, among others: the Chairperson of the South Sudan Land Commission, the Chairperson of the Southern Sudan Human Rights Commission, or a High Court Judge. Below is one option for such a series of consultations:



Second, choose an approach to community participation.

In addition to community participation in the design phase, affected communities should also participate in the actual implementation of the monitoring program. There are a number of possible options for community participation in project monitoring, ranging from fairly simple initiatives such as community watches to more complicated multi-stakeholder monitoring committees. The planning team can use the community consultations as opportunities to discuss the various options with affected communities. Before introducing their proposals to the community, the planners should conduct a preliminary assessment of available resources to ensure that adequate resources are available to implement the proposed process. Below is a short list of possible options for community participation in the monitoring program:

- Community watch – In this approach, community members themselves monitor the investment. This process does not require much technical expertise since it is based on field observation rather than laboratory analyses.
- Observer – This is a joint approach to monitoring in which community members accompany company representatives while they conduct their monitoring activities. Community observers then communicate what they observe to the wider community.
- Monitoring committee – This is an integrated approach that incorporates company, civil society and government monitoring bodies. A technical working group analyzes data gathered by volunteers in the field. The working group then engages the company in joint problem solving.
- Independent technical expert – This approach involves a team of experts that are contracted to conduct the monitoring. The experts meet with company, community and other stakeholders as part of each field visit. They then draft a report, which is made public.

Second, choose an institutional arrangement.

The planning team then discusses with affected communities the institutional arrangements that are available for hosting and implementing a participatory monitoring program. Again, various options are available depending on whether the monitoring program is to be hosted by the company itself or by a third party. The decision about which institutional arrangements are appropriate will depend on the degree of trust that exists between project proponents and host communities, as well as the capacity of the institutions involved. Below is a short list of possible institutional arrangements:

- Company hosts – The benefit of this approach is that it can be initiated quite rapidly. However, in some circumstances it may lack credibility since the company controls the process. It is most appropriate for situations in which there is a high degree of trust between the company and host population.
- Government institution hosts – This approach is most appropriate when both civil society and the company lack the capacity and credibility to conduct the monitoring. However, the government institution can only host the monitoring program if it has the necessary credibility and expertise.
- Civil society hosts – The advantage of this approach is that the funds for the monitoring program can be managed independently of organizations that are directly involved with the investment. The civil society organization may be a local NGO, church or university. One challenge is that the company may not perceive these organizations as neutral.
- A mixed approach – In this approach, one organization hosts the monitoring mechanism and other organizations provide various services and capabilities. For example, the company could host the program and a local NGO could manage the technical aspects.

Third, choose a funding arrangement.

There are various options for funding arrangements. The monitoring program can be funded directly by the project proponent, by a government institution responsible for monitoring investment activity, or by a neutral third party. In choosing a funding arrangement, the planning team should be cognizant of a central dilemma in funding: Typically, civil society wants the project proponent to fund the monitoring program, but when the project proponent provides the funding, civil society organizations often say it is not an impartial process. To resolve this dilemma, it is usually a good idea for all parties involved to contribute in some manner. If some stakeholder groups are not in a position to contribute financial resources, they can offer in-kind support in the form of volunteering, providing meeting facilities and equipment, or assisting with transportation.

The parties should also develop a realistic budget early in the process to ensure that the monitoring mechanism has sufficient resources to meet its goals. Some items to include in the budget include: salaries for staff and fees for consultants, costs of equipment and materials, training, transportation, laboratory fees and communication materials.

STEP THREE: MONITOR THE INVESTMENT.

First, draft a monitoring plan.

Before implementing the monitoring program, the planning team must draft a monitoring plan that incorporates community feedback from the design phase. The monitoring plan describes in detail how the monitoring program will function. It should include mechanisms for community participation, as well as the agreed upon institutional and funding arrangements. The plan should also list the issues that the program will monitor, the methods that it will use to collect data, and how it will ensure that the data is of sufficient quality. The plan should include clear standards and propose mitigation plans for impacts beyond certain thresholds.

Second, compile credible information.

The organizations identified in the monitoring plan then proceed to implement the monitoring program. After compiling data in a credible manner according to the processes laid out in the monitoring plan, they interpret the data and put it into a form that is accessible to the public. The entire process must be well documented and transparent. It should also include a mechanism for resolving differences that arise over the interpretation of the data.

STEP FOUR: EVALUATE THE RESULTS AND ADJUST ACTIVITIES AS NEEDED.

Finally, using the indicators laid out in the monitoring plan, the parties should evaluate the process and its outcomes, and make the necessary adjustments in line with the monitoring program's findings.

Legal Framework

The following legal provision proscribes environmental rights in South Sudan. Companies should also check with the relevant state authorities to determine if there are any state laws that apply to environmental protection and participatory monitoring:

TRANSITIONAL CONSTITUTION OF THE REPUBLIC OF SOUTH SUDAN

Part Three, Chapter I, § 41(3)

Every person shall have the right to have the environment protected for the benefit of present and future generations, through appropriate legislative action and other measures that:

a) prevent pollution and ecological degradation;

b) promote conservation; and

c) secure ecologically sustainable development and use of natural resources while promoting rational economic and social development so as to protect genetic stability and bio-diversity.

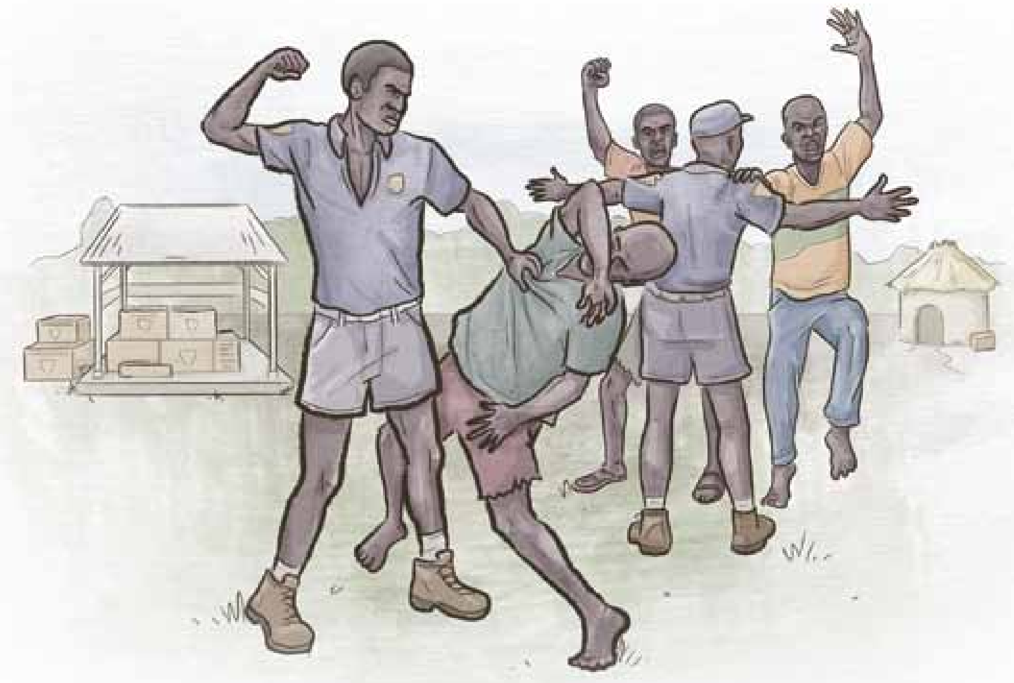
NEXT STEPS FOR IMPACTED COMMUNITIES

Communities can take the following steps to establish a participatory monitoring program:

- If an investment is planned for your area, petition the government and the company seeking to do business in the area to ensure that a participatory monitoring program is embedded in the investment agreement.
- If the investment is already operational, determine whether there are issues that warrant the establishment of a monitoring program. Relevant issues may include environmental degradation or alleged labor abuses.
- If a monitoring program is deemed necessary, engage the government and the project proponents in a discussion about establishing a system to monitor the business activity and propose solutions for adverse impacts.

2.5 GRIEVANCE MECHANISMS

An Unaddressed Grievance



A few years after the signing of the CPA, the government of South Sudan granted a large concession in a national park to a foreign company for a high-end ecotourism venture. The area is among the most ethnically diverse regions in South Sudan. After concluding the agreement with the government, the company called leaders from each of the affected communities to meet in a central location in order to discuss the planned project. Among the promises that the company made during that meeting was that the lion share of employment opportunities would go to local people. When the company began constructing its offices and accommodations for its guests, it hired people from one of the communities living adjacent to the project area to work as casual laborers. This angered a group of youths from one of the other communities that had not received any of the jobs. The youths decided to take their complaints directly to the company. When they arrived at the company offices, an altercation ensued with the company guards. Two of the young people were killed. Tensions rose and government representatives threatened that communities would be forcibly evicted from the park if they did not cooperate with the company. A set of fair and accessible procedures for grievance management could help to manage these kinds of issues before they escalate into conflict through dialogue and a mutually acceptable remedy.

Introduction

Grievance mechanisms – or the set of procedures that companies put in place to accept, assess and resolve community complaints arising from their business activities – allow companies and host communities to peacefully resolve complaints before they escalate into violence. Typical community grievances include: inadequate consultation, pollution, problems with the land acquisition process, failure to provide agreed upon community benefits, and abuses by project employees or security personnel. While litigation through the formal court system must always be left open to individuals harmed by business activity, in some cases litigation may be too costly or otherwise out of reach for host communities. Lawsuits can also be time consuming and damaging for company reputations. By addressing community grievances early on, through processes that are acceptable to both the company and the host community, companies can reduce operational and reputational risks that may result from leaving such issues unresolved. Successful grievance mechanisms also allow companies to systematically identify and correct weaknesses in their management and production processes, thereby reducing adverse impacts on local populations. In order to take advantage of local reconciliation processes that are familiar to host communities, grievance mechanisms should also take into consideration customary approaches to dispute resolution.

Primary audience: Companies

GOAL

Companies provide prompt, effective and adequate remedies to individuals and groups that have been adversely affected by failures to comply with the agreed upon obligations. The process is transparent, accessible, and culturally appropriate. People are informed that no cost or retribution will be associated with the program.

Tools and Tips

Timing

Ideally, the grievance mechanism should be put in place from the start of the impact assessment process and operate throughout the life of the investment. This allows the company to preempt grievances, rather than trying to manage rising tensions after the fact. Grievances are often minimal at the preconstruction stage and peak during construction when both the scale of impacts and community expectations about investment benefits begin to increase. The grievance mechanism can track this progression of grievances by being more informal at the start of the process and gaining additional complexity as impacts begin to accrue.

Companies should be aware of several timing issues when responding to complaints: First, they should try to resolve issues as soon as possible and at the lowest possible level, bearing in mind that the legal system is available if a resolution is not achieved. Companies should also commit to a certain time frame in which to respond to complaints. This time frame should be stated publicly and enforced.

Second, during certain sensitive periods in the project cycle, such as construction, companies should be able to provide an immediate response to time-sensitive complaints. In these circumstances, company personnel in charge of resolving grievances should have the authority to resolve basic grievances themselves, without having to seek approval from management.

Participatory aspect

A participatory approach to the design of the grievance mechanism allows companies and host communities to better identify the kinds of disputes that are likely to arise, the types of resolution methods that affected communities prefer, and the availability of local dispute resolution systems. Generally speaking, joint or community-led grievance mechanisms are preferable, since those managed solely by the company can create conflicts of interest. The participation of representative stakeholder groups in the design and oversight of the grievance mechanism will help to promote community trust and a sense of shared ownership over the process.

When multiple communities are involved or relations are particularly tense, the company may wish to involve a neutral third-party to facilitate the design process together with relevant stakeholders.

Accessibility

To maximize its accessibility, the grievance mechanism should incorporate a simple, convenient and culturally appropriate method for filing complaints. The procedures should be put in writing, publicized, and explained to affected communities. They should not be overly complicated or require legal counsel to navigate. The mechanism should also be free of cost, including hidden costs that may arise when people have to pay for the means to access it.

To increase the accessibility of the system, the company may want to support awareness-raising activities in the community to inform people about their rights. This will help to manage expectations by letting community members know what they can reasonably expect from the company in addressing their concerns. These awareness-raising activities can be done in coordination with NGOs, chambers of commerce, or other respected organizations.

Adequate protection

Grievance mechanisms cannot supplant other judicial or administrative remedies, but instead constitute a less adversarial alternative. To ensure adequate protection, the grievance mechanism must provide a number of safeguards, including: a clear policy of non-retaliation, measures to ensure confidentiality and physical protection of complainants, and an option for complainants to submit anonymous grievances where necessary. Even if people are not satisfied with the outcome of the process, by ensuring that they are treated with respect and that they understand how the decisions are made, the company can reduce the risk of an escalation of conflict.

A Guide to Grievance Mechanisms

There are six basic steps for companies and their stakeholders to follow in creating and implementing a grievance mechanism: (1) design the grievance mechanism; (2) publicize the procedures for grievance management; (3) receive and document grievances; (4) investigate grievances; (5) develop options for resolving grievances; and (6) monitor the process and adjust as needed.[25]

STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6
Design the grievance mecha-nism.	**Publicize the procedures.**	**Receive and document grievances.**	**Investigate grievan-cees.**	**Develop options for resolving grievances.**	**Monitor and adjust as needed.**

STEP ONE: DESIGN THE GRIEVANCE MECHANISM.

First, establish a joint planning team.

The company and host community start the design process by establishing a joint planning team to design the grievance mechanism. The planning team is responsible for moving the process forward and ensuring that the grievance mechanism is acceptable to host populations. The team should be manageable in terms of size, ideally about 8 to 12 members. It should also be representative, including people of mixed levels and functions from within the company and different constituencies and demographics from within the community. In South Sudan, it is usually a good idea to include representation from women's groups, youth groups, and elders from within the host community. Special efforts may also be required to secure the participation of minority ethnic groups and internally displaced persons (IDPs) residing in the area.

[25] These steps are adapted from guides developed by the ICMM, the IFC and the MIGA, supplemented with information drawn from roundtable discussions and field research in South Sudan. *See* ICMM, World Bank and ESMAP, Community Development Toolkit (2005); IFC, Addressing Grievances from Project Affected Communities: Guidance for Projects and Companies on Designing Grievance Mechanisms, Good Practice Note No. 7 (Sept. 2009); IFC, Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets (May 2007); IFC and MIGA, Compliance Advisor/Ombudsman (CAO), A Guide to Designing and Implementing Grievance Mechanisms for Development Projects (2008).

The planning team should develop a terms of reference that outlines team goals, roles and responsibilities, level of decision-making authority, reporting lines, tasks, time frame, and products. For complex projects, the company may want to employ the services of a professional design consultant or facilitator with experience in developing grievance mechanisms to help the team get started.

Second, assess the context

The planning team must then conduct research to better understand the context, including the types of grievances that are likely to arise, the capacity of local institutions for dispute resolution, and different options for company-community grievance mechanisms. The stakeholder analysis and impact assessment studies can be valuable resources in this research. The team should also conduct interviews and consultations with affected communities to supplement the already existing information. These outreach efforts are an opportunity to explain to people why the system is being put in place, while at the same time gathering information about local expectations and perceptions on dispute resolution.

The planning team should also take this opportunity to build its own background knowledge about grievance mechanisms. Team members should familiarize themselves with basic principles of grievance management. On-site visits and interviews with companies and communities where grievance mechanisms are already operational in South Sudan can give the company useful insights on what works and what does not work in the South Sudanese context.

Third, define the purpose and the scope.

The planning team then sits down to define the purpose and scope of the grievance mechanism. They can start by asking themselves the following questions:

- Why is a grievance mechanism being established?
- What do we hope to achieve in both the short term and the long term?
- Will the grievance mechanism be oriented primarily around concerns of the community or around joint concerns of the company and community?
- How can the grievance mechanism be structured in a way that does not perpetuate power imbalances, both between the company and the community and within the community itself?

Fourth, design the grievance mechanism.

Finally, the planning team can proceed to design the grievance procedures. The procedures should provide information on the following:

- Receiving a complaint
- Assessing the complaint
- Formulating a response
- Settling the issues
- Tracking and evaluating the results
- Communicating back to all the parties involved

To accommodate individual and cultural preferences, the grievance mechanism should offer a range of options for resolving complaints. Some complaints can be resolved informally through discussions among those directly involved, such as aggrieved community members and a company employee. Other types of complaints, particularly those that are systemic in nature or impact a large number of people, may require formal arbitration by a neutral third party. In all cases, the aggrieved party should be given leeway in choosing which resolution method he or she prefers. Whenever possible, customary forms of dispute resolution should be evaluated and incorporated into the system.

STEP TWO: PUBLICIZE THE GRIEVANCE MANAGEMENT PROCEDURES.

In order to ensure that the grievance mechanism is accessible to affected populations, the company must publicize the procedures that it has put in place to resolve complaints. The company should clearly communicate the objectives of the grievance mechanism, the types of complaints that it is able to address, the types of remedies that are available, and the individuals and groups that have standing to raise a complaint. The procedures for filing complaints should be explained in detail, including when, where, how and with whom to raise complaints. The company should also inform affected individuals of their rights, including the right to file a complaint through the formal court system.

A number of different methods are available for publicizing the grievance mechanism. The company can use roadside displays or disseminate written materials in areas where community members are known to congregate, it can hold training sessions that bring together company representatives and community members to discuss the grievance mechanism, or it can take advantage of social gatherings and town meetings to educate people about the relevant procedures. Whatever method is used, the key is to ensure that the information is delivered in an easily digestible and culturally appropriate format.

STEP THREE: RECEIVE AND DOCUMENT GRIEVANCES.

The company is now in a position to begin receiving grievances. The processing of grievances involves: collecting complaints, recording them into a central grievance log and tracking their status throughout the process. When confronted with a complaint, the people responsible for receiving complaints start by gathering certain basic information about the incident, such as: where, when and how it occurred; who was involved; what the aggrieved party expects as a remedy; the date and place the grievance was received; and previous records of similar incidents. The company should acknowledge receipt of the complaint as soon as possible with a formal confirmation letter to the aggrieved party.

After receiving the complaint, the company enters the information into a centrally located grievance log. The grievance log outlines the details of the incident and indicates the part of the company responsible for resolving the complaint. It also includes a field for tracking the status of the complaint.

STEP FOUR: INVESTIGATE GRIEVANCES.

In investigating grievances, the company starts by assessing the complaint to determine how to proceed with the investigation. All grievances require some degree of investigation, but some complaints may fall outside the scope of the grievance mechanism. For instance, if the complaint is not related to project operations or if the person does not have standing to bring a complaint, the grievance mechanism may be unable to resolve the issue. Minor issues may be resolved by providing information on the spot or by referring the complainant to the company's community liaison personnel. More complex grievances will likely require a more extensive investigation.

When conducting investigations, investigators should strive to develop a complete a picture of the particular circumstances that gave rise to the incident. They should avoid summary decisions based on cursory investigations, and should make sure to treat all claims equally. If an investigation team is formed internally within the company, the company should ensure that the team members do not have personal or professional interests in the outcome. In some cases, the investigators may need to bring in outside parties to help with the validation process, especially with respect to damage claims where impartiality is of utmost importance.

STEP FIVE: DEVELOP OPTIONS FOR RESOLVING GRIEVANCES.

Next, if the claim is accepted, the company should provide a preliminary response proposing options for resolving the grievance within a stipulated period of time. Rather than mandating a specific procedure for every complaint, the company could propose a list of options for different types of grievances. Possible options include: the cessation of harmful activities, restricting their timing or scope, monetary compensation, apologies, replacing lost property, or renegotiating existing commitments. The company may propose a solution unilaterally, bilaterally through discussions with the complainant, through a third party, such as a civil society organization or government institution, or through traditional and customary practices.

Once a decision has been made on the appropriate resolution method, the company should deliver a final response that documents the final proposed resolution. The response should be communicated to complainants, and the company representatives should ask for the complainants' agreement on the proposed solution. If the complainants are not satisfied with the proposed resolution, they should be free to take their grievances to a dispute resolution mechanism outside of the company. After the agreed-upon corrective actions, it is a good practice to collect proof that those actions have taken place, for instance, by collecting documentary evidence, keeping internal record of the resolution, and getting written confirmation from complainants for successfully resolved grievances.

THE ROLE OF CUSTOMARY LAW IN GRIEVANCE MANAGEMENT

Resolving grievances in accordance with the host community's customary laws is a particularly attractive option in the South Sudanese context. During the war, formal institutions of law were nonexistent or inaccessible to most people and the vast majority of disputes were handled according to customary law. These dispute resolution processes typically seek to reconcile aggrieved parties through non-adversarial mediation by community leaders. Traditional practices such as these can help ground the company's approach to grievance management in local values and norms, increasing the acceptability of eventual settlements, both for the complainants directly involved and for the broader community.

The planning team should also be aware that in some circumstances, a resort to local reconciliation processes might not be appropriate. Many communities have been sorely affected by the lengthy civil war and lack the capacity to resolve disputes in a fair and efficient manner. Some customary systems also discriminate against certain groups within the community, such as women or individuals from outside the community, and may therefore fall below international human rights standards. In such cases, companies can still seek out respected community leaders for advice on how to settle complaints, even if the customary systems are not involved in a more formal manner.

STEP SIX: MONITOR THE PROCESS AND ADJUST AS NEEDED.

In order to maximize the effectiveness of the grievance mechanism and account for grievances that were not anticipated at the start of the process the mechanism must be periodically updated. First, the company should track complaint statistics to assess the effectiveness of the process. This involves periodically analyzing the data in the grievance log to look for patterns in grievances and the ways in which they are being resolved. Next, the company adapts the mechanism to correct its inefficiencies. Possible adjustments may include focusing resources on grievance methods that communities prefer or trying to remedy disproportionate impacts on certain segments of the community. Finally, the company uses its monitoring results to report back to the community on the implementation of the grievance mechanism. By holding community consultations to communicate this information to the community, the company can obtain increased support for the grievance mechanism.

Legal Framework

The following legal provisions proscribe the right to litigation and the role of traditional authority in South Sudan. Companies should also check with the relevant state authorities to determine if there are any relevant state laws that apply to grievance management:

TRANSITIONAL CONSTITUTION OF THE REPUBLIC OF SOUTH SUDAN

Part Two, § 20
The right to litigation shall be guaranteed for all persons; no person shall be denied the right to resort to courts of law to redress grievances whether against government or any individual or organization.

TRANSITIONAL CONSTITUTION OF THE REPUBLIC OF SOUTH SUDAN

Part Eleven, Chapter II, § 167(1)
Legislation of the states shall provide for the role of Traditional Authority as an institution at local government level on matters affecting local communities.

NEXT STEPS FOR IMPACTED COMMUNITIES

Community members who have been harmed by a company's business activities can take the following steps to have their grievances resolved:

- Visit the company offices to determine if there is any existing company-community grievance mechanism. If no mechanism exists, submit your complaint to the management and be prepared to propose a remedy that you would find acceptable.

- Submit your complaint to your traditional authorities, local government officials, state parliamentarians, and other local leaders.

- Seek legal advice to determine if a legal remedy is available.

- Notify civil society and non-governmental organizations about the company's transgressions and ask if they can lobby the government and the company on your behalf.

2.6 COMMUNITY FINANCIAL MANAGEMENT

Misappropriation of Community Wealth Made Easy

Communities in Unity State suffer severe environmental and social harms as a result of oil exploration in their home areas. The oil companies dump harmful chemicals into local rivers, which make the water so toxic that it kills people's livestock when they drink from the river. The people sometimes eat the dead animals and become sick themselves. Oil companies also dig large holes throughout the landscape, which become deadly traps for children. After the establishment of the government of South Sudan in 2005, oil companies began paying compensation to community members harmed by their business activity. First, the companies seek approval for the payment from the central government in Khartoum. They then pay the monetary compensation directly to the county authorities in the area where the incident occurred. Sometimes the money finds its way to the aggrieved parties; other times, it disappears into the pockets of the county commissioners or traditional authorities. Simple procedures of community financial management can help to minimize the opportunities for this kind of theft by self-interested government officials and community leaders.

Introduction

Community financial management refers to the basic set of structures and procedures that are necessary components of any transparent and accountable administrative system. Although communities often establish financial management procedures independently of any particular investment project, these procedures are also integral to community management of investment revenue, and are therefore appropriately considered among the other community engagement processes in this handbook. Without the necessary oversight, well-meaning community leaders may waste investment revenue on poorly planned development projects, or individuals within the community may misappropriate the money for their personal use. Through transparent budgeting and accounting procedures, community development committees can take full advantage of investment revenue to finance sustainable development initiatives in the community. This requires that they develop fair and transparent rules for managing income and expenditure and submit themselves to periodic third-party review.

Primary audience: Communities

GOAL

Community development committees manage investment revenue in a fair and transparent manner. They efficiently budget for costs that the committee will need in order to function, while ensuring that maximum funds remain for development projects within the community.

Tools and Tips

Budgeting

Budgeting involves the planning and control of money that community receives (i.e. income) and money that it spends (i.e. expenditure). Budgeting serves two purposes: First, it lays out expected income and planned expenditures. Second, if actual income and expenditure differs from what was laid out in the budget, then budgetary adjustments help to ensure that money does not remain idle and costs do not exceed income.

Accounting

Accounting involves the recording of money that the community receives and money that it spends. It requires the community to have systems in place for recording transactions, issuing receipts, making payments, depositing checks and withdrawing cash from bank accounts.

Banking

Banking refers to the process that the community development committees use to safeguard community money. Committees should restrict the amount of cash that is kept within the community to the bare minimum needed in order to pay for line items in the budget. Any excess money should be kept in a bank account where it can accrue interest.

Treasurer

One of the offices in a community development committee is that of the treasurer. The treasurer is responsible for developing budgets, monitoring funds, making and receiving payments, maintaining records and reporting back to the institution. In some cases, the treasurer shares these responsibilities with the other committee members.

Relationship to community

To function in accordance with community expectations and interests, the development committee must maintain open channels of communication with the broader community. At least some committee members should reside in the community on a permanent basis. Those who reside elsewhere should maintain a schedule whereby they spend time in the community on regular basis. They should also keep the committee budget and accounting materials at the local level and make them fully available for review by other community members.

A Guide to Community Financial Management

There are four basic steps for community development committees to follow in managing investment revenues: (1) determine community development priorities; (2) develop procedures for financial management; (3) develop a budget; (4) make and receive payments.[26]

STEP 1	STEP 2	STEP 3	STEP 4
Determine community priorities.	**Develop financial management procedures.**	**Develop a budget.**	**Make and receive payments.**

STEP ONE: DETERMINE COMMUNITY DEVELOPMENT PRIORITIES.

Ideally, communities will already have determined their development priorities as part of the pre-investment planning process. However, they will not be able to determine the specifics about what kind of development projects are feasible until they get a sense of the amounts of revenue associated with the particular investment. The development committee should therefore revisit the community development priorities after the investment has been announced as part of their financial planning process. Among the factors that the development committee should consider are:

- Sustainability of the development initiatives
- Correspondence with other national, regional and local development initiatives
- Accessibility of the goods, services or infrastructure being delivered
- Equitable distribution of benefits within the community
- Implications of proposed development initiatives for relationships with neighboring communities

In reviewing the community's priorities, the committee should devote special attention to the sustainability of the venture. For example, if the community decides to build a health dispensary, the committee should think about how they will ensure an adequate inflow of medical supplies to keep the dispensary operational. The committee should also think proactively about opportunities for coordination among different development initiatives.

For instance, if the community has identified education and water facilities as two of their planned activities, they should coordinate the two activities so that schools will have access to steady supplies of drinking water. While minor changes to the development plan may be within the committee's discretionary authority, major changes will require community approval.

Companies interested in investing in the area may be able to assist in these efforts. The company's technical expertise and experience in project development can help the development committee to maximize the efficiency and coherence of its development plan. However, committee members must take care to ensure that company interests do not exert undue influence on the process and that community interests remain paramount.

STEP TWO: DEVELOP PROCEDURES FOR FINANCIAL MANAGEMENT.

The development committee should develop written procedures for financial management at the outset. This will ensure that the procedures are not forgotten when committee members change. There are a number of key issues that the committee will have to address: First, the committee should identify a safe keeping place for financial documents and cash. Ideally, it will have a secure office where these materials may be kept. Otherwise, the treasurer may want to make an arrangement with the county or payam administration to store the material in their offices. Wherever financial documents are kept, the location must be clean, dry and secure.

Second, development committees should choose a bank. Banks provide a safe place to keep investment revenue while it accrues interest. In choosing a bank, committee members should consider its distance from the community. In the last few years, a number of regional banks have moved into South Sudan, including Kenya Commercial Bank (KCB) and Equity Bank. For the first time, reasonably reliable banking services are available in South Sudan. The committee should also inquire into the services that the bank offers, such as the procedures that it uses for issuing bank statements, how it calculates bank fees, and the bank manager's responsiveness to the needs of rural communities.

[26] These steps are adapted from a guide developed by WWF-World Wide Fund for Nature (WWF), supplemented with information drawn from roundtable discussions and field research in South Sudan. *See* WWF, FINANCIAL MANAGEMENT MANUAL, WILDLIFE MANAGEMENT SERIES (2002).

Third, the committee must designate those committee members whose approval is required to authorize financial transactions. A common procedure is to designate three committee members to this role and to require signatures from any two of them to authorize a given transaction. This allows transactions to proceed even if one of the three people are ill or absent. If the committee replaces one of these three people, the change must be brought to the bank's attention immediately.

STEP THREE: DEVELOP A BUDGET.

The committee as a whole is responsible for developing the budget. The treasurer and the secretary lead the process, but they must also provide for the participation of other committee members. The budget should address both recurrent expenditures and anticipated costs for development projects. The recurrent expenditures are costs that regularly recur over the course of the year. They include the costs necessary to keep the development committee functioning, such as transport and office supply costs. While the costs for recurrent expenses can be estimated from previous year's budgets, the committee will need to get quotes from suppliers to estimate costs for new development projects.

Below is a series of four steps that the development committees can follow in developing a budget:

1. Estimate the income for the year – Income includes any remaining balances from the previous year, expected payments from the company and other sources of revenue, such as profits from other moneymaking ventures on community land.
2. List and estimate the recurrent expenses – Start by listing all the known recurrent expenses. Then estimate the cost of each recurrent expense. This requires the committee members to agree on both the quantity of each item that will be needed over the course of the year and the per unit cost for each item. The committee should strive to minimize recurrent expenses to the extent possible without compromising their ability to function effectively. This will ensure that sufficient amounts of money remain in the account to implement development projects.
3. Calculate the balance leftover – The balance left over after deducting the recurrent expenses from the income is the amount of money that is available for new development projects.
4. Decide how to spend the remaining balance – In deciding how to spend the remaining balance, the committee should be guided by the community development priorities as determined at the start of the process. However, the committee will still need to make discretionary decisions about how to spend the money for the specific development projects. For example, if the committee has decided to build a school, it will have to decide which contractors to hire and which design option to choose.

The yearly budget should be broken down into months to facilitate review periodic review. Each item in the budget should include:

- The description of the goods and services required
- The prices of goods and services
- The quantities that will be bought or sold in a given period
- The activity to which the total cost will be allocated.

STEP FOUR: RECEIVE AND MAKE PAYMENTS.

Depending on how the investment agreement is structured, communities will be receiving periodic payments from companies, often on an annual basis. When the treasurer receives a check, it should immediately issue a corresponding receipt to the person paying the check. The person paying the check is given the original of the receipt and the treasurer retains a carbon copy.

In making payments, the treasurer must be sure to only make payments that are budgeted for and fully authorized. Whenever payments are made by check, the details must be recorded in the cash record book. The treasurer should also demand an invoice from the supplier to ensure that the goods requested actually cost the given amount. For major purchases, the treasurer should get quotations from multiple sources to ensure that they choose the most cost effective option.

It may also be advisable for the committee to put a maximum limit on the amount of money that can be issued by check. Although this may render large purchases a bit more complex, it also prevents the entire bank account from being withdrawn in a single transaction.

Legal framework

The following legal provision proscribes the objectives of local government in community-led development in South Sudan. Companies should also check with the relevant state authorities to determine if there are any relevant state laws that apply to community financial management:

TRANSITIONAL CONSTITUTION OF THE REPUBLIC OF SOUTH SUDAN

Part Ten, Chapter II, § 165(6)

The objects of local government shall be to:

…

c) encourage the involvement of communities and community based organisations in the matters of local government, and promote dialogue among them on matters of local interest;

…

f) promote self-reliance amongst the people through mobilisation of local resources to ensure the provision of health and educational services to communities in a sustainable manner;

…

j) involve communities in decisions relating to the exploitation of natural resources in their areas and promote a safe and healthy environment.

NEXT STEPS FOR IMPACTED COMMUNITIES

Communities can take the following steps to develop a financial management system:

- Identify a clean, dry, and secure place to keep financial documents and cash.
- Select three development committee members to be responsible for authorizing financial transactions. Require any two of these three committee members to sign off on a given transaction.
- Visit a local bank and determine the specific requirements for opening a joint bank account.
- Shop around. Find out which banks have the most attractive services for your purposes. Choose the most reliable and cost-effective option.

Concluding remarks

Investment is coming to South Sudan. If done right, it will bring jobs, development, food and services. But there are risks. If community land is taken without consultation and without benefit to the community, investments will lead to increased poverty, hunger, and violent conflict. The key to successful investment lies in strong relationships between companies, host communities, and government institutions. These strong relationships can only be forged by a carefully planned and implemented process of community engagement that starts early and continues throughout the life of the investment project.

Community engagement is not only a practical necessity in South Sudan; it is also a legal requirement. The government of South Sudan has put in place a land administration system whereby communities own land in their collective capacity and traditional authorities administer the land through community consensus decision-making processes. In South Sudan, areas held under customary land tenure belong to communities – not the government.

The purpose of this handbook is to ensure that community-owned land and natural resources are used fairly and efficiently, in a manner that is responsive to community needs. The handbook's practical tips and step-by-step instructions can help companies to successfully negotiate lease agreements with landowning communities. They can help communities to prepare for the changes that come with high impact projects and more efficiently harness their benefits. They provide the government with a tool that can be used to promote responsible investment and sustainable development. Simply put, community engagement makes good sense.

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Annex II: sample community protocol

Procedures for seeking community permission to use land and other natural resources used or occupied by the Mursi

Introduction:

We believe that, by virtue of our significant and long-standing relationship to the lands and other natural resources described below, we have community-based property rights and other rights that entitle us to make decisions regarding use of these lands and other natural resources. We believe these rights must be respected, and provide the following procedures to secure respect for these rights.

Objectives:

These procedures (1) describe community expectations regarding the behavior of those seeking to use/occupy/extract from the land and other natural resources occupied or traditionally used by the Mursi people and (2) provide guidance to those seeking to use/occupy/extract from land and other natural resources occupied or traditionally used by the Mursi.

Applicable Areas:

The geographic location for which these procedures are applicable include the cultivation areas starting in the North on the west bank of the Omo River where the Dum River meets the Omo on the east bank. This is known as Maniala-be. The east bank here is shared by Mursi and Bodi. Mursi cultivation territory then includes both the west and east bank of the Omo River going south from here where the Mursi live including the sites:

Makoro, Kuduma, Benna, Marukelee, Garassa, Mara Kido Tugo, Baru, Koibatha, Alaka, Dup, Kea-it, Kiliki, Karbu tuo, Makaro, Bulgi, Golati, Luann, Rom, Kennakoro, Nili, Shiri, Ilissy, Kiri Su, Kure Goladi, Chin, Be-a-hola, Gulu, Gutuli, Goba, Donait, Kohotu.

After here the Mursi cultivate only on the east bank. The west bank is cultivated and lived in by the Nyangatom. Mursi cultivation stops on the west bank at a place the Mursi called Dul.

Hunting grounds on the west bank of the Omo River start at the cultivation site Manila Be, extend northwest to the southern base of Karkulu Mountain. It goes west to half-way up Ulku mountain then extends south, to just north of the Omo Park Headquarters. The boundary then follows just north of the Mui River and crosses the river east of the park headquarters. The boundary follows the edge of the bushbelt on the Westside of the Omo River, south to the cultivation site Kahwutu. Much of this territory is shared with the Suri.

The grazing area extends west of the Omo River to the south base of Karkulu Mountain, its boundary goes south along the east base of Cordewa, Mirakoro and Burus Mountains. The boundary crosses the Mui River and extends along the west edge of the bushbelt on the western side of the Omo River until it reaches the cultivation site Kahwutu.

The cultivation sites along the east and then north bank of the Omo River as it changes direction, include, Urum, Bannakoro, Dunni-Nili, Gur, Bassi, Ali-yu, Makol, Gornai, Shangoro, Bongo, Chowgi, Elle-u, Gushi-galu, Sholbi, Nauweri, Luku, Birshanga, Gola Su, Bai-so, Bara, Turet Holi, Chini, Norjui, Ulilu, Bongur, Chirmani.

Here the cultivation sites and villages go north up the Mago River (in Mursi Mako River), some cultivation sites and villages are both on the Mago and the Omo Rivers due to the shape of the rivers. The cultivation sites and villages include both banks of the Mago. Mursi territories' southeast corner is near the confluence of the Mago and Omo

Rivers. These cultivation sites and villages include Globa Muchani, Gola Hola, Neru Tugo, Gun-Guma, Wadi Raman Anwi, Dil-dili (at the Mago bridge), Hinai, Kon ba, Si Kuli, Ra Tugo, Sigro Biley, Buginia, Be Bezery, Turet Lalong.

Starting up the Banko River going North, Mursi villages and cultivation sites include Banko, Buyi, Kelai, Bettybathi, Marey Dunka, Golo Mamer and Balamer. Here Mursi territory becomes Ari territory in the Northeast at Mandir Mountain.

The Northeast boundary follows the North bank of the Sholbu River going east, starting where it meets the Mago river. The Northeast boundary goes around the east side of Mago Mountain or Kutul Tula, and follows the ridgeline of Balamer Mountain, just west of the Ari town of Balamer.

The Northern boundary with the Bodi starts in the east at a hill called Bulkuku. Going west its Northern border intersects with Wildland Safaris or Ba Sala and follows the Dum River to Konsela village. In times of peace this northern boundary may be crossed by the Mursi and Bodi for cattle grazing in each other's territory.

Communities Involved:

These procedures were adopted by the following communities/peoples within these areas:

The Buruba, Mugjo, Biogolokare, Ariholi and Gongolbibi provinces, known as burans.

Applicable Events:

We believe that implementation of the right to make decisions regarding use of these lands and other natural resources includes the meaningful participation of the Mursi peoples in the entire decision-making process, beginning with initial decisions regarding siting, design, and impact assessment.

Therefore, the Mursi people must be contacted and fully informed about the potential project before decisions are made regarding where the project might be located and how it is designed. Project proponents must provide additional information in response to reasonable requests from the Mursi. These people must be allowed to participate meaningfully in decisions regarding location and design, as well as in assessments of potential impacts of the project.

The Mursi people have the right to provide or withhold consent for the project as part of the decision-making process. Consent from these people is necessary or the project to move forward. As noted below, such consent must be evidenced by a certificate of consent marked by the authorized representatives.

Authorized Representatives:

The following groups have a mandate from the Mursi people to participate in decision-making processes, as well as to delegate responsibilities for participating in these processes:

A group of men whose voice is listened to by the Mursi people in that buran, in an open meeting where Bari (elders), Ruri (initiatived men), or Teri (uninitiated men) are free to attend.

These men, or a replacement selected by them, need to be in attendance:

[list of names omitted]

This group can be contacted by going to Makki or Miso (Maganto) village.

How to Engage:
Engagement with the communities must occur in Mursi language. (See appendix for translators and fees.)

If a meeting or issue only affects one area, or only some of the burans, for example the northern burans of Mugjo and Buruba, only authorized representatives from those Burans need to be present. If the issue affects all of Mursi land, all burans need to have authorized representatives present.

The Mursi would like to know four days in advance for any meeting that is to be held affecting only one region or buran (example only affects Maganto area), and two weeks in advance for a meeting that affects the whole of Mursi land.

Meetings affecting the entire Mursi population should be held in Mugjo with representatives from Buruba brought from Miso and Makki. The Biogolokare, Ariholi and Gongulbibi buran representatives will come to Moizo.

For issues only affecting Buruba buran, if the meeting is to be held in Maganto the Makki representatives would like to be picked up and brought to Maganto and vice-versa.

The following traditions of the Mursi people must be respected:

The meeting should be outside in the shade under a tree where the Mursi people can sit on the ground. The Mursi people like to have space to pace while discussing. There should be plenty of time to discuss and time to ask questions.

Documents describing the project must be in Mursi (see appendix for a list of translators and fees) and explained to the communities. Copies are to be left with the communities. The number, location, and timing of meetings must be agreed upon by the authorized representatives.

Timeframe:
After meeting with project proponents, the authorized representatives will seek to reach agreement with project proponents on the following timeframe within which decisions will be made is one month, if they decide sooner, they can send word. It is essential that the Mursi have adequate time to consider and discuss the proposal.

Relationships:
Project proponents must reveal relationships with anyone or any institution related to the project.

Evidence of Consent:
The only valid evidence of consent is a certificate of consent that is marked by authorized representatives of the Mursi people. No other form or evidence of consent is valid.

[list of names omitted]

See certificate, attached.

Appendix I. List of Translators and Fees:

English or Amharic can be translated into Mursi language by:

[list of names omitted]

Translation fee is 250 Birr per day.

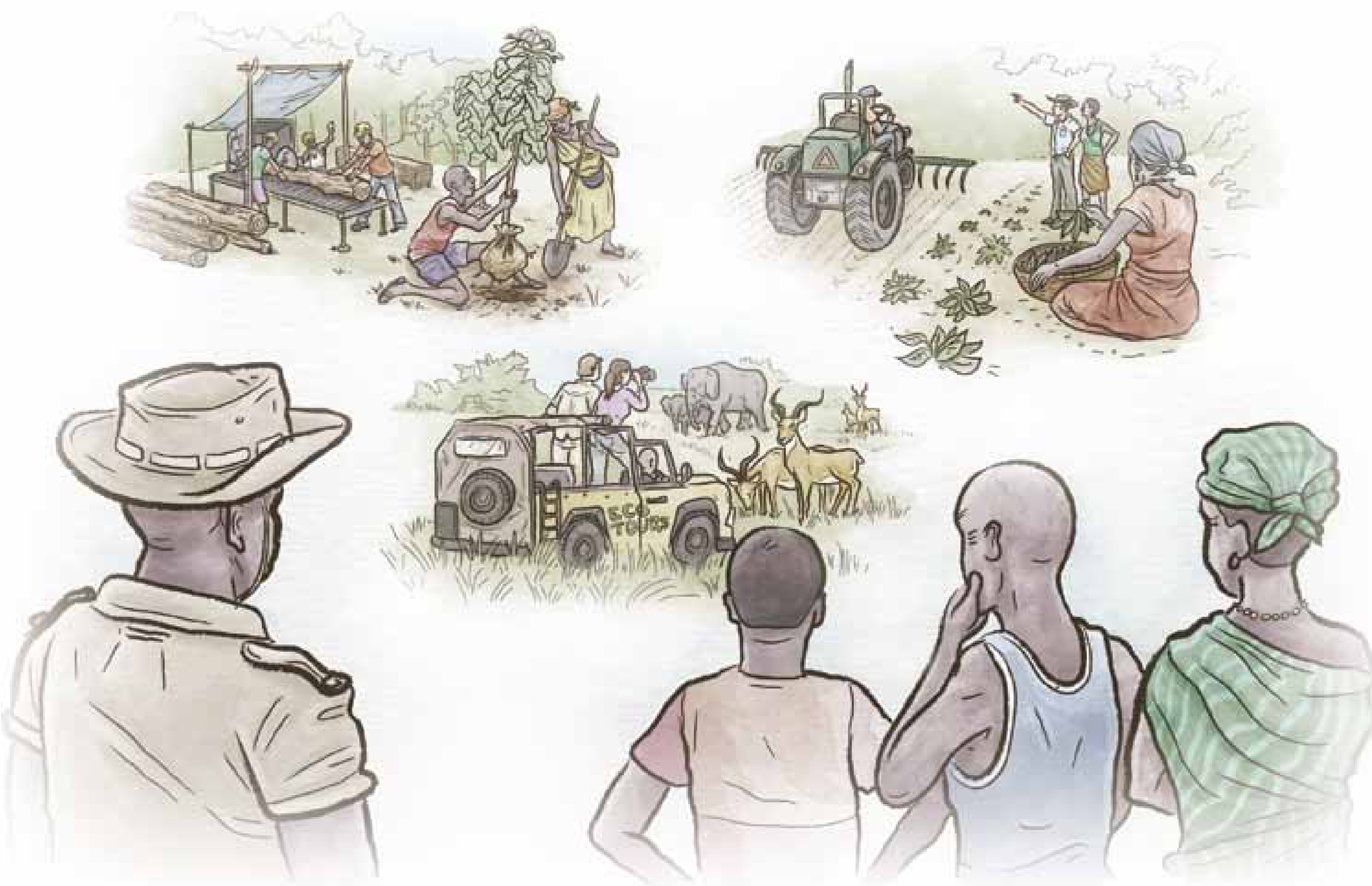
Documents can be translated into English by [names omitted].

Translation fee for documents is 40 Birr per hour.

Authorized representatives listed above are to be paid 150 Birr per day for a meeting.

Signatures of Mursi Authorized Representatives:

[signatures/thumbprints omitted]



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