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**Is This Really Benefit Sharing? Understanding Current Practices Around Community-
Investor Agreements Tied to Land Investments**

Kaitlin Y. Cordes, Tehtena Mebratu-Tsegaye, and Sam Szoke-Burke, with Lauren Waugh

Columbia Center on Sustainable Investment

kaitlin.cordes@law.columbia.edu

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Abstract

Communities located near land investments increasingly interact with investors who seek to sign a range of agreements with them. In theory, this is a positive development: guidelines for responsible land and agricultural investments urge greater benefit-sharing with, and participation by, land users and project-affected communities, including through the use of direct agreements between the investor and affected communities or their members. Yet little analysis has been undertaken to date on actual community-investor agreements linked to land investments. This gap in analysis leaves stakeholders without a clear understanding of existing practices, and without evidence-based guidance for improving future agreements. This paper highlights the “state of play” around community-investor agreements tied to land investments for agricultural and forestry projects. It also provides concrete recommendations on how such agreements, and practices around them, can be improved. These recommendations, which are primarily geared for communities, their advocates, and investors, may also be of interest to other relevant actors, such as host and home governments seeking to ensure greater benefit sharing and more inclusivity around land investments.

Key words: Benefit sharing, contracts, land-based investments

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I. Introduction

Communities located near land investments increasingly interact with investors who seek to sign a range of agreements with them. In theory, this is a positive development: guidelines for responsible land and agricultural investments urge greater benefit-sharing with, and participation by, land users and project-affected communities, including through the negotiation of agreements between the investor and affected communities or their members. Yet little analysis has been undertaken to date on actual community-investor agreements linked to land investments. This gap in analysis leaves stakeholders without a clear understanding of existing practices, and without evidence-based guidance for improving future agreements.

This paper highlights the “state of play” around community-investor agreements tied to land investments for agricultural and forestry projects. It also provides concrete recommendations on how such agreements, and practices around them, can be improved. These recommendations, which are primarily geared towards communities, their advocates, and companies (and, to a lesser extent, host governments), may also be of interest to other relevant actors, such as home governments and development organizations seeking to ensure more equitable benefit sharing and more responsible land investments. The paper is based on an examination of 42 community-investor agreements tied to land investments in eight countries (Cameroon, Democratic Republic of the Congo, Indonesia, Liberia, Madagascar, Senegal, Sierra Leone, and South Sudan).¹ In addition, the paper draws from desktop research, including a review of multiple investor-state contracts that create requirements related to affected communities, as well as discussions with stakeholders working with communities affected by land investments. While community-investor agreements differ dramatically, a close analysis of the agreements collected for this research reveals a number of commonalities. Many of the commonalities are instructive when considering ways to improve or refine future agreements to maximize the benefits realized by project-affected communities while minimizing their risks.

Part II of the paper considers how community-investor agreements fit within the broader legal frameworks governing land investments, and how such agreements may serve as a mechanism for benefit sharing. Part III provides a survey of the community-investor agreements examined for this paper, focusing on the text of the agreements supplemented by accounts of actual practices occurring

¹ While the agreements surveyed come from 7 African and one South-East Asian country, questions around community-investor agreements—particularly benefit agreements—have arisen around the world, including in the global North. See, e.g., Barrera-Hernandez, L., Barry Barton, Lee Godden, Alastair Lucas, and Anita Ronne. (2016). *Sharing the Costs and Benefits of Energy and Resource Activity: Legal Change and Impact on Communities*.

on the ground. In light of this survey, and drawing where appropriate from best practices included in guidelines and/or used for community development agreements in the extractive industries, Part IV provides substantive and process-oriented recommendations that can be used to avoid common pitfalls and to improve future community-investor agreements.

II. Community-investor agreements in context

Land investments are governed by a complex set of legal frameworks; community-investor agreements should be considered in this context. The domestic legal framework is the primary source of relevant legal rules regulating land investments. This framework includes the host country's Constitution, property law, environmental law, tax law, investment codes, and other laws related to natural resource development and governance, among others. In addition, domestic human rights laws, as well as international human rights law, safeguard rights that may be affected by land investments, including, for example, the right to property, the right to food, and the right to water. International investment law may also apply to foreign (or sometimes even domestic) investments in land via applicable international investment treaties. Additionally, for foreign investments, the laws of the home country may also set out applicable requirements with extraterritorial reach.

In addition to national and international laws, contracts also govern land investments in many countries. Particularly in parts of Africa and Asia, investor-state contracts are often used to transfer land to investors, to reach agreement on what types of incentives will be offered to investors, and/or to otherwise delineate certain rights and obligations related to a land investment. Community-investor agreements, on the other hand, govern or guide the relationship (or aspects of it) between investors and the communities residing on or around the land to be used for an investment project.

Multiple factors influence the types of contracts or agreements entered into in the context of land investments, the objectives of such contracts, and the interaction between contracts when more than one is used. These factors include the host country's domestic laws and policies and the investor's own interests; approaches may also vary within the same country, depending for example on the type and/or location of land being transferred, the type of investor, or the size of the investment. In some countries, the national government may be the only entity with the ability to transfer land use rights (e.g., through lease or sale) to a foreign investor, or the only entity with the ability to transfer certain types of land to an investor; at the same time, the government may require or suggest that investors enter into agreements with affected communities—or an investor may decide to pursue such agreements for other reasons, such as to secure a social license to operate. In these scenarios, the investor-state contracts and community-investor agreements may or may not be explicitly linked. In other countries, the national government may instead enter into Memoranda of Understanding

(MOUs) or similar agreements with investors, laying out issues such as fiscal incentives and other guarantees of project support, while local individuals, communities, or traditional authorities directly transfer land use rights to investors. In still other countries, the government may not be involved at all in contracting for land transfers, with its role limited to permitting, licensing, and/or otherwise regulating investments via laws and regulations, while contracts transferring land use rights are undertaken directly between investors and individuals or communities. In addition to potential differences within and between countries, practices may also evolve—particularly as governments take steps to recognize the legitimate land rights of their citizens or to implement the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (“Voluntary Guidelines”) (see, e.g., efforts in Senegal to use a “lease-sub-lease” approach that navigates existing legal restrictions to provide a greater role to communities in leasing land to investors (World Bank, 2013)). This wide range of legal contexts and approaches to contracting for land investments means that community-investor agreements themselves differ widely, as described in the following Part.

III. State of play: what do these community-investor agreements look like?

This paper uses the term “community-investor agreement” to refer to a contract or agreement between a community (or its representatives) and an investor company (or an individual investor) seeking to carry out a land-based investment on or near land that is owned, used, or claimed by the community or its members (communally or individually).² The 42 community-investor agreements analyzed for this paper are diverse in objectives, functions, and detail,³ and can be described as occupying a spectrum. At one end are “pure lease agreements” that involve a transfer of rights to use land, with the investor compensating landowners or the community financially for use of their land. At the other end of the spectrum are agreements that offer “development benefits” to a community, essentially in exchange for cooperating with the investment, even when the community does not have the power to control allocation of the land required for the investment. (Agreements without any explicit connection to land transfer—for example, pure contract farming contracts—were excluded from review, with the exception of two farming/outgrower agreements that appeared to have a strong link to an underlying investor-state contract for a land investment.) Many of the agreements analyzed fall somewhere in the middle of this spectrum. For example, the community may have some, but not full, control over the allocation and use of land, or the investor may offer a mixture of financial and development-related inducements.

² For purposes of this paper, “investor” and “company” are used interchangeably.

³ A few caveats: one agreement reviewed was labeled as “draft” and did not contain signatures. Four other agreements also did not contain signatures, and thus may not constitute the final version of the agreement; some may never have been finalized. Some of the agreements reviewed were also described as “provisional,” although noted to be binding until superseded by a final version. The reference list at the end of this paper notes when the agreements reviewed have been labeled as draft or provisional, or when the versions reviewed are unsigned.

Where any agreement is located on this spectrum depends in part on the land governance system in place. In countries where the government leases the land directly to an investor, the community-investor agreements tend to focus on the provision of development benefits in exchange for cooperation. The most common types of benefits seen in these agreements relate to job creation in the affected communities, the development of health- or education-related facilities, and promises to improve infrastructure, including the repairing of roads and building of water wells. In countries where communities lease land directly to an investor, the community-investor agreements are closer to the “pure lease agreement” end of the spectrum, but with similar development benefits included as part of the consideration, in addition to lease rent or other monetary compensation for land use. Given the range of objectives, as well as ambiguity regarding the legal status of some of the documents reviewed, we use “agreements” rather than “contracts” throughout this paper.

The agreements analyzed for this paper are limited in the geographies that they represent. As noted above, most of the agreements relate to investments in Sub-Saharan Africa, with a small number of agreements relating to investments in Indonesia. Due to these geographical limitations, and the paper’s comparative nature, the recommendations offered in Part IV require adaptation to fit particular country contexts.

Assessing agreements is an exercise fraught with challenges. There is only so much that the words within the “four corners” of an agreement or a contract can explain. Without embedding assessments of agreements within the larger context of relevant domestic legal frameworks, the true meaning or implications of particular provisions may be lost. Moreover, reading community-investor agreements without this context, and without reference to investor-state contracts and other documents relating to the underlying investment, makes it impossible to ascertain how many new obligations or responsibilities are being placed on parties via the agreements. (A particularly useful example of this is found in the work of Global Witness in Liberia, where their research showed that community-investor agreements created almost no new responsibilities for the investor (Global Witness 2015).) Without further research beyond the documents themselves, it is impossible to know whether actions described in the document actually took place, how the document is being or will be implemented in practice, or—for any unsigned agreements—whether such agreements were ever finalized and signed. Given these challenges, any assessment of agreements or contracts that relies primarily on analyzing the documents themselves—such as the one undertaken for this paper—will be limited.

Yet despite these caveats, assessing existing agreements provides important insights into current practices around community-investor agreements tied to land investments. Such assessments allow

scrutiny of the types of agreements into which communities and investors are entering, and permit a deeper understanding of how such agreements may affect the rights and obligations of, and relationships between, those actors. To the extent that communities and investors continue to use such agreements, this type of assessment also helps to provide concrete recommendations on how those agreements, and practices around them, can be improved. The general observations gleaned from this particular exercise also sound a cautionary note for all stakeholders interested in ensuring that communities' rights are protected in the context of land investments, showing that community-investor agreements alone should not be expected to lead to improved outcomes on the ground.

This section first considers the extent to which evidence of consultative processes or legal support is found in the community-investor agreements reviewed. It then examines some of the provisions purporting to benefit communities, including related to payments, social benefits and physical infrastructure, and employment. The section concludes with a few other observations regarding the agreements reviewed.

Consultative processes and access to legal support

Just under half of the community-investor agreements reviewed include evidence of consultative processes either before or during negotiations of the agreement. This includes notes regarding participatory mapping of lands relevant to the investment, references to the involvement of some kind of committee (e.g., an elected forestry development committee), or explicit mentions of consultation (e.g., that free, prior and informed consent (FPIC) was obtained). In addition, twelve agreements reviewed reference legal support accessed by the community representative(s).

Although provisions acknowledging consultative processes or legal support provide useful information, analysis of the text of community-investor agreements alone cannot fully explain the circumstances in which an agreement was concluded. The absence of provisions suggesting participatory practices does not preclude the possibility that participatory processes were used; conversely, where participatory processes are mentioned in an agreement, it is impossible to ascertain, from reading the text, the quality of such processes and whether they served their intended purpose. For example, the involvement of land governance committees may suggest that community members were represented and involved in decision-making around a project. However, whether in fact the governance structures used were representative of the groups or community they purport to represent, with robust mechanisms to limit elite capture, is hard to determine on paper.

This section first discusses evidence of participatory mapping, and then turns to evidence of other

types of consultation at the negotiation stage. It then looks at whether and how the agreements reviewed mention legal support used by the community in negotiating the agreement.

Evidence of participatory mapping

Participatory mapping of community lands is explicitly mentioned in both of the Indonesian agreements reviewed, and eleven of the Liberian agreements reviewed (See, e.g., Memorandum of Agreement, Agronusa Investama Sajingan Kecil Hamlet Community, Indonesia, 2008; Provisional Memorandum of Understanding and Social Agreement, Golden Veroleum Liberia, Zoloken, Liberia, 2013). One participatory mapping process described in a Liberian agreement includes explanations that community representatives—including town chiefs, women’s leaders, and youth leaders—had identified the lands that could *not* be developed by the company and includes community members’ signatures evincing the participatory mapping process (Memorandum of Understanding, Equatorial Palm Oil Company, Tarlo, Blayah, Nuhn, Qlakpojelay, Liberia, 2016). The Indonesian agreements allow the parties to invite witnesses to observe the mapping of land to be used by the company (Memorandum of Agreement, Agronusa Investama Sajingan Kecil Hamlet Community, Indonesia, 2008; Memorandum of Agreement, Wilmar Sambas Plantation Co, Senujuh Village, Indonesia, 2008).

Evidence of consultation at the negotiation stage

Apart from participatory mapping, some agreements refer to the participation of land or forestry governance committees or of particular groups, such as women or youth, in the negotiation of the agreements. Others refer to consultations related to the agreement’s conclusion.

For example, many of the Liberian agreements reviewed contain provisions that suggest that consultative processes were used. These agreements all take the form of either “social agreements” (which are required by Liberian law in the context of timber production, and which are meant to document, among other things, the financial benefits that communities are to receive) or provisional MOUs (mostly focused on benefits to communities tied to underlying investor-state deals). In the Liberian agreements that note consultative processes, specific provisions describe direct negotiation of the agreements between the affected communities and the company. The social agreements, for example, typically include the criteria used to elect a community forest development committee to represent the community in such dealings: for instance, at least five of the members of the committee are required to be residents of affected communities, and the committees must devise processes for all residents to participate in related decision-making, including often marginalized groups such as women and youth (See, e.g., Social Agreement, Liberia, Undated). Eleven out of the sixteen Liberian agreements reviewed clearly state that the free, prior, and informed consent of relevant communities was sought and given in relation to the transfer of land referenced in the agreement (See, e.g.,

Memorandum of Understanding and Social Agreement, Golden Veroleum Liberia, Tartweh-Drapoh, Liberia, 2014). One MOU also includes a provision that community members were satisfied that the land that remained in their control was sufficient for their needs, which perhaps was included to counter any potential claims that the communities were left without adequate fertile lands to safeguard their livelihood (Memorandum of Understanding and Social Agreement, Golden Veroleum Liberia, Jarbo, Liberia, 2014). In addition, in fourteen of the sixteen Liberian agreements reviewed, members of the community, members of committees representing the community, or individuals representing different groups in the community (including women’s leaders, youth leaders, and elders) are signatories to the agreements (See, e.g., Provisional Memorandum of Understanding and Social Agreement, Golden Veroleum Liberia, Numopoh, Liberia, 2014, which features over 750 signatures).

Another example of an agreement that includes details of consultative processes is the *clause sociale* of a *cahier des charges* from the Democratic Republic of the Congo (Cahier des Charges, Democratic Republic of Congo, 2011). This agreement details who was involved in the negotiation process, with each negotiator’s signature included at the bottom of each page of the document. The document also mentions that the agreement entered into was a result of three days of negotiation between the parties, which included: alignment of project budgets with the needs of communities; the presentation, identification, and validation of the mandates of the representatives in the negotiations; and the formation of management committees and monitoring committees.

In contrast, multiple agreements reviewed either include no indications that participatory or consultative processes were used in their negotiation, or remain unclear as to whether participatory processes were used. For example, twelve of the fourteen Sierra Leonean lease agreements analyzed were signed by the chiefdom council and, in some cases, other “men of note,” without explicit inclusion of representatives of landowning families as signatories (See, e.g., Lease Agreement, West Africa Agriculture Limited, Maforki, Sierra Leone, 2011). As mentioned above, these characteristics do not necessarily mean that participatory processes were not used in the conclusion of the leases. Moreover, under Sierra Leonean domestic law, the chiefdom council is empowered, as custodian or trustee of the land (Provinces Land Act Cap 122, Local Government Act), to assent to such agreements on behalf of landowning families. However, discussions with community stakeholders in dozens of communities that host land investments in Sierra Leone reveal that it is common for land to be leased without landowning families’ knowledge, participation, or consent—meaning that the participation of a chiefdom council does not, on its own, indicate a participatory process.

Legal support and legal costs during or after the negotiation process

It is unclear from the text of most agreements reviewed whether the individual or committee entering into an agreement on behalf of the wider community had received any legal support in the negotiation and conclusion of the agreement. The Sierra Leonean agreements reviewed were unique in this regard: twelve out of the fourteen Sierra Leonean agreements reviewed included warranties given by the traditional leaders who entered into the lease agreement that they had taken expert legal advice on the terms entered into (See, e.g., Lease Agreement, Aristeus Palm Oil Ltd, Sorogbema, Sierra Leone, 2011 and Lease Agreement, Redbunch Ventures (SL) Ltd, Barri, Sierra Leone 2011). Including a warranty of this kind does not necessarily indicate equality between negotiating parties in terms of quality and impartiality of legal advice received, but does imply an awareness of generally existing power imbalances at the negotiating table, and of the potential lack of access to legal support by community representatives undertaking agreements.

Almost none of the agreements reviewed mention responsibility for legal costs related to the agreement once it has been concluded. Two agreements from Senegal, however, do address the issue in divergent ways. One agreement states that both parties to the agreement are required to pay for arbitration fees equally; interestingly, however, it also notes that in the case of “resistance, contestation or abusive opposition” compelling the rural community to engage a “substantive procedure” in which the admissibility and the merits of the case are judicially and permanently recognized, the entirety of the reasonable costs, including lawyers’ fees, will be born by the company. (Protocol d’accord, Senethanol SA, Fanaye, Senegal, 2011). Another agreement includes a provision noting that if legal action is required to clarify or enforce the terms of the agreement, the party requesting such clarification or enforcement shall bear the legal fees and all accompanying costs arising from the claim. This is problematic, as it could create a strong disincentive for community members to attempt to clarify or enforce their rights and obligations under the agreement using legal processes. (Contrat d’exclusivité pour l’utilisation de terre, Agroafrika, Kounkane, Senegal, 2008).

Rent and social-benefit provisions

All of the community-investor agreements reviewed include at least one provision purporting to benefit the community—such as a commitment to pay rent or compensation, or to provide other benefits like jobs or infrastructure. The lease agreements reviewed, for example, include provisions on lease rent, and many also list other benefits. Benefits in the non-lease agreements reviewed focus primarily on social infrastructure or services, physical infrastructure, and/or employment.

Many of these “social benefit” provisions have been drafted in a concerning manner. As discussed below, these provisions are often vague, caveated, or lack the detail to be truly enforceable or

operationalized. By contrast, provisions designed to protect the rights of an investor are often stated with clarity. This general imbalance raises questions about whether the social-benefit clauses were deliberately drafted to avoid creating concrete rights and obligations to which liability can meaningfully attach. While there may be legitimate reasons for an investor to seek to include caveated or imprecise language, the resulting disparity in how provisions are drafted could affect whose rights detailed in the document are protected and whose are ignored.

Vague or caveated drafting related to social benefits also creates the possibility of a divergence of expectations between the company, whose lawyers will likely identify when a vague clause does not create an enforceable obligation for the investor to do or refrain from doing something, and the community, which may expect to receive certain benefits or protections mentioned—albeit in vague terms—in the agreement. If the company’s behavior does not meet community expectations (even where the company fully complies with the contract), such perceived and/or actual failure by a company could cause a breakdown in trust between a company and a community, and lead to community grievances and opposition.

This section first discusses how the agreements reviewed address (when applicable) lease rent, royalties, and method of payment. It then examines provisions related to social benefits, including social and physical infrastructure as well as employment provisions.

Lease rent, royalties, and method of payment

The price to lease agricultural land in the agreements reviewed is incredibly low. The Sierra Leonean agreements reviewed hover around the US\$2-3 per hectare mark—with one particularly poor deal that set the lease rent much lower (Lease Agreement, Redbunch Ventures (SL) Ltd, Barri, Sierra Leone 2011). The rents set in the Sierra Leonean agreements stand in stark contrast to the government’s recommended floor of US\$12 per hectare—a recommendation set in a policy that pre-dates the conclusion of all of the Sierra Leonean agreements reviewed (and which itself is already considered too low by many communities). The Liberian agreements reflect a similar pricing, with lease rent reaching US\$5 per hectare for developed land in some cases (Memorandum of Understanding, Liberia, 2013). The Indonesian community-investor agreements have the most generous lease rent of all agreements reviewed, at US\$22.80 per hectare (See, e.g., Memorandum of Agreement, Agronusa Investama Sajingan Kecil Hamlet Community, Indonesia, 2008); the context in which these Indonesian agreements were negotiated—as part of an International Finance Corporation Compliance Advisor/Ombudsman-facilitated mediation—may have had some effect on the price of lease rents in these examples.

In addition to rent, multiple agreements mention royalties or other types of monetary compensation. For example, ten agreements from Sierra Leone include a royalty provision under which a percentage of net profits is to be paid into a community development fund controlled and managed by the paramount chief, members of parliament, councilors, and company representatives (as well as, in one agreement, representatives of landowners) (see, e.g., Lease agreement, Makpele Chiefdom, West Africa Agriculture Number 2 Limited, 31 December 2012, Art. 2.6). Some profit-sharing clauses include caveats that make payment of a community's share in the profits conditional on that share being greater than the amount of lease rent paid.

In addition, some of the agreements reviewed stipulate how the lease rent or royalty will be spent or distributed. For example, money can be spent for the purpose of funding development projects (Memorandum of Understanding and Social Agreement and Social Agreement, Golden Veroleum Liberia, Tarjuowon, Liberia, 2014), or is to be split multiple ways between landowners and traditional and other authorities (Draft Lease Agreement, Addax, Sierra Leone; Memorandum of Understanding and Social Agreement and Social Agreement, Golden Veroleum Liberia, Tarjuowon, Liberia, 2014).

Many agreements reviewed either do not include details of rent payment mechanisms, or provide details of mechanisms that have the potential to create challenges in practice. A problematic payment mechanism found in half of the Sierra Leonean agreements reviewed requires rent that is owed to a large number of landowners to be paid to a local authority, or into one communal account with three signatories (a tribal authority along with two landowner representatives) (See, e.g., Lease Agreement, West Africa Agriculture Limited, Sorogbema, Sierra Leone, 2011). With this sort of payment mechanism, there is a risk that the payments will not reach all intended beneficiaries, even where any number of the signatories to the account have been appointed directly by the community. While the landowning beneficiaries are not protected from the risk of funds not being appropriately spent or redistributed, the company in some of the agreements did manage to protect itself against this risk (perhaps with experience of the practical deficiencies of pooling the funds of multiple beneficiaries and concentrating power to manage the funds in a few community representatives); in seven agreements reviewed, the company requires the community to indemnify the company with respect to claims that arise relating to distribution of rent once the company has paid the rent into the relevant communal account (See, e.g., Lease Agreement, West Africa Agriculture Number 2 Limited, Makpele, Sierra Leone, Dec. 31, 2012). In contrast, in an Indonesian agreement reviewed, land use compensation is to be "paid in cash directly to community members," with only payments toward the development fund, which is communal in nature, to be made by bank transfer (Memorandum of Agreement, Agronusa Investama Sajingan Kecil Hamlet Community, Indonesia, 2008). An agreement from Cameroon stipulates that all payments from the company to smallholders must be made by

electronic transfer or check, and should never be paid in cash (Outgrower Scheme Contract, Cameroon, 2015). While desirable to have a paper trail, such an arrangement would require each smallholder to have a bank account or a means of cashing a check.

Social benefits and infrastructure development

As noted above, most of the provisions around social benefits are usually vague and often qualified. In a Madagascan agreement reviewed, for example, the company agrees to set up a health center, schools, and training facilities, amongst other things (Farming Contract, Varun Agriculture Sarl, Sofia region, Madagascar, 2009). Apart from the vague nature of the commitments (which fail to specify, for example, who would be responsible for financing and administering the institutions' ongoing operation), the clause contains a major caveat that such activities would be undertaken "where it is necessary for implementation of the project." This is significant, because it is unclear who should determine when such activities would be necessary for the implementation of a project, and likely that the company would have complete discretion in this regard. Similarly, in twelve Sierra Leonean lease agreements reviewed, the company agrees to reasonably assist in providing and supporting education initiatives (or similar language) (See, e.g. Lease Agreement, West Africa Agriculture Limited, Maforki, Sierra Leone, 2011; Lease Agreement, Sierra Leone Agriculture, Bureh, Kasseh, Maconteh, Sierra Leone, 2010). This language leaves the determination of the extent of support constituting reasonable assistance at the company's discretion. Without a commitment to confer certain benefits in a non-discretionary manner, or clear and appropriate guiding principles for the exercise of such discretion, it is unlikely that such provisions could be successfully enforced by community members who believed in good faith that the company would establish social infrastructure, such as a new health center or school, or provide social services, such as provision of health care or education, in their locality.

A similar form of qualification or weak language that can make commitments less enforceable involves the company agreeing to use its reasonable endeavors to carry out certain activities. In a Cameroonian agreement reviewed, for example, a company agrees to provide certain social benefits "where practicable," or to "contribute" to schools, without detail on which schools the company commits to contribute to, what the nature of the contribution will be, or the time frame for delivering on this commitment (Memorandum of Understanding, SG Sustainable Oils Cameroon Ltd, Nguti, Cameroon, 2010).

A final way in which company commitments may have limited benefits for the community is when the commitments involve physical infrastructure that will primarily benefit the company's operations. For example, all of the Liberian agreements negotiated by Golden Veroleum that were reviewed for

this paper include commitments to build and improve road and bridge infrastructure “as part of” — and presumably only when needed for — the company’s operations under the concession. Many of the agreements also note that “this will provide repairs to roads to the direct benefit of communities,” but provide no other information regarding whether communities have any say in which roads are repaired. This may mean that the company could repair a road or bridge needed for its operations, and then claim that the repairs constitute part of its offering of social benefits. More concretely, several agreements do identify the specific roads that (or areas whose roads) will be repaired (Provisional Memorandum of Understanding and Social Agreement, Golden Veroleum Liberia, Nitrian, Liberia, 2014; Provisional Memorandum of Understanding and Social Agreement, Golden Veroleum Liberia, Numopoh, Liberia, 2014; Provisional Memorandum of Understanding and Social Agreement, Golden Veroleum Liberia, Tartweh-Drapoh, Liberia, 2014). To the extent that the communities were involved in identifying those roads or areas, such specification might help ensure a closer match between community and company expectations, and could make it easier for the community to monitor whether the company is following through with its commitments. (Specifically identifying roads in the contract also, however, limits the community’s ability to obtain repairs to other infrastructure as needed.)

In contrast to the often vague or unenforceable social commitments discussed above, an agreement from the Democratic Republic of the Congo (in the form of a *clause sociale* of a *cahier des charges*) includes more detail than most of the agreements reviewed: the company agrees to finance the development of one school and one medical center in a specific stated location, and commits to provide local transportation to every person in circumstances specified in the agreement (Cahier des Charges, Democratic Republic of Congo, 2011). While this provision could benefit from a higher degree of specificity to aid enforceability—in particular, time frames for development of the facilities, and greater detail on what the company commits to finance (and whether this includes financing staff on an ongoing basis)—it represents an improvement on the heavily discretionary provisions seen in the vast majority of agreements reviewed.

Job creation

Individuals and communities that own, use, or claim land on which a company’s operations are to take place often consider meaningful employment as a key reason to welcome an investment onto their lands. It is therefore no surprise that over half of the investor-community agreements analyzed mention employment of local workers.

The type and quality of employment commitments, however, vary in the agreements reviewed. An agreement from Cameroon, for example, gives priority to employment of indigenes of a particular

area in the country in which it is operating (Memorandum of Understanding, SG Sustainable Oils Cameroon Ltd, Nguti, Cameroon, 2010). Similar provisions are seen in twelve of the Liberian agreements reviewed, with slightly broader wording that prioritizes employment of communities affected by the company’s operations (See, e.g., Social Agreement, Euro Liberia Logging Company, River Gee, Liberia, 2011). In twelve of the Sierra Leonean agreements reviewed, companies’ commitments are even broader, and include efforts to employ local people with requisite qualifications and skills over expatriates (See, e.g., Lease Agreement, Redbunch Ventures (SL) Ltd, Barri, Sierra Leone 2011). Because “local person” in the context of the agreement is not defined, the companies could (and in practice, do) employ workers from communities unrelated to the land on which their business operates; this has been a common source of discontent.

A shared feature of the majority of agreements reviewed is an absence of detail regarding the type of jobs that will be provided beyond describing jobs as either “skilled” or “unskilled.” Many of the unskilled jobs offered by an agribusiness are seasonal; failure to communicate this to community members (with such understanding reflected in the agreement) may lead to the disappointment of key stakeholders who eagerly await steady employment and income. Similarly, none of agreements reviewed contain indications of the scale of employment opportunities available—with the exception of one agreement stating that the company’s operations will employ “several thousand full time permanent employees.” (Memorandum of Understanding, SG Sustainable Oils Cameroon Ltd, Nguti, Cameroon, 2010.) (Incidentally, it has been reported that this provision has not been honored, and that the numbers of locally employed people fell far below several thousand (Greenpeace 2016).)

Other Issues

Several other aspects of the agreements reviewed raise particular concerns, but do not fall into the broader categories listed above. They are described briefly below.

Water access and impacts

Water access is referenced in around half of the agreements reviewed. Inclusion of the issue is not surprising: ensuring sufficient access to water can be a challenge for some communities and, at the same time, company operations can restrict water access or negatively affect nearby water sources, causing significant negative impacts on communities’ rights, livelihoods, and wellbeing.

Where water access is included in the agreements reviewed, however, important details are often left out. For example, the water-related provisions in nine of the Sierra Leonean agreements reviewed are variations on the same theme: the company either agrees to provide water to benefit all those living in the area of the land under development or to use best or reasonable endeavors to provide water for company employees and their direct dependents as the company sees fit (See, e.g., Lease Agreement,

Aristeus Palm Oil Ltd, Sorogbema, Sierra Leone, 2011; Lease Agreement, Sierra Leone Agriculture, Bureh, Kasseh, Maconteh, Sierra Leone, 2009). None of these agreements detail the source of the water, or quantify the volume of water to be provided or the frequency of access to water. Nor do they detail how the company proposes to protect nearby water sources from pollution or other impacts related to its operations, which could affect not only its employees or people living in the area of the project, but those downstream of the project as well. A Liberian agreement reviewed includes a provision for the company to build wells for communities “where needed” to mitigate the impacts of the company’s operations on water supply; this leaves uncertainty as to when the company would be required to build wells (Memorandum of Understanding and Social Agreement and Social Agreement, Golden Veroleum Liberia, Tarjuowon, Liberia, 2014). In addition to allowing a company exclusive possession over rivers in the area of leased land, a provision from a draft Sierra Leonean lease agreement entitles the company to “stop up or divert any water course” (Draft Lease Agreement, Addax, Sierra Leone). Such a provision, without a commitment to mitigation or compensatory measures, is particularly troubling, because diverting a watercourse could deprive those living near and downstream of the project of a regular, sustainable water source. (Incidentally, community members living in the area of this particular project raised grievances regarding the pollution of water sources; after some negotiation with the assistance of paralegals, the company began delivering water to the community (Sierra Leone Network on the Right to Food et. al, 2016).)

Breach of agreement and dispute resolution

Twelve of the agreements reviewed contain provisions that allow for land to revert back to the rights-holders when rent payments are in arrears for a certain number of days, as long as notice has been given to the company and/or a reasonable amount of time has passed to rectify the breach (See, e.g., Lease Agreement, Sierra Leone Agriculture, Bureh, Kasseh, Maconteh, Sierra Leone, 2009). Such a reversion is not automatic; rather, the chiefdom council as lessors can trigger the reversion by re-entering the land. This further incentivizes the company’s timely payment of rent, and provides the community with a point of leverage to ensure compliance by the company with the agreement. (In practice, the benefit of such leverage may be undermined where it is possessed by traditional leaders who may be prone to self-serving and potentially corrupt behavior at the expense of the interests of the broader community.) In most of the twelve agreements, 21 days is the standard amount of time, although some agreements contain longer periods or include additional conditions, such as requiring that the amount of lease rent in arrears total at least US\$15,000 to trigger the community’s right to re-enter the land (Draft Lease Agreement, Addax, Sierra Leone). The agreements that contain provisions for reverting the land all come from Sierra Leone, and fall at the lease agreement end of the spectrum of reviewed agreements.

None of the agreements reviewed contain similar reversion clauses based on the company's failure to deliver other social benefits or comply with any other obligations under the contract. This represents a missed opportunity for increasing the tools available to the community to hold the investor to the terms of the contract, although any reversion clause will need to be based on clear company obligations to be enforceable by the community. Separately, host states could also seek to incentivize company compliance with the delivery of social benefits contained in a community-investor contract by reserving their right to terminate the investor-state contract governing a specific investment in the event of the company's failure to deliver the social benefits outlined in the community-investor agreement (Land Title Agreement between Central Equatoria State and Tree Farms Sudan Ltd., 2008, which annexes Lease Agreement, Tree Farms Sudan Ltd, Central Equatoria State, Sudan, 2008). Of course, such a provision in an investor-state contract would only benefit the community where political will would exist to invoke such a right in practice.

To the extent that the community-investor agreements reviewed contain provisions on dispute resolution, they envisage local options for the final mode of dispute resolution—including resort to local courts or local arbitration in accordance with local law—with the exception of two agreements. One agreement from Senegal (that is governed by French law) requires any dispute arising out of the agreement that cannot be settled amicably to be heard by the International Chamber of Commerce in Paris, France and to be conducted in English (Contrat d'exclusivité pour l'utilisation de terre, Agroafrika, Koukane, Senegal, 2008). Similarly, a draft lease agreement from Sierra Leone requires any dispute arising out of the lease to be resolved by final and binding arbitration in London (Draft Lease Agreement, Addax, Sierra Leone). These outlier provisions raise obvious concerns about the accessibility and feasibility for communities and their representatives of engaging with the designated dispute procedures.

Confidentiality clauses

Four of the agreements reviewed contained confidentiality clauses. While there may be instances where community members themselves wish to keep details regarding promised benefits confidential (for instance, to minimize tensions with or resentment from neighboring communities), confidentiality clauses may limit communities' options in receiving informed support from civil society allies or the media in the event that the company does not comply with the agreement. One confidentiality clause was limited to prohibiting disclosure of the agreement, unless required by law (Convention Strategique, West Africa Farms, Ngnith, Senegal, 2011). This type of explicit prohibition could narrow the strategies available to the community if seeking to protect its interests. Such confidentiality clauses also mean that communities are unable to share their agreements with other communities that would benefit from learning about the content and operation of other agreements.

Three other agreements contain wider confidentiality clauses. One agreement prohibits disclosure by each party of any information relating to the business of the other party, except insofar as disclosure is necessary for the work of each party in the investment project (Contrat d'exclusivité pour l'utilisation de terre, Agroafrica, Kounkane, Senegal, 2008). The agreement also sets out that wrongful disclosure can be remedied by injunctive relief requiring the party not to disclose specific information or to return to the other party all documents and information. Another agreement is even broader, restricting disclosure of "all the information end [sic.] details." This clause applies to landowners and a landowners association, but not to the company itself (Farming Contract, Varun Agriculture Sarl, Sofia region, Madagascar, 2009). An additional agreement focuses on non-disclosure of the agreement and information contained within the agreement (providing exceptions for parties' advisors, for disclosure required by law or by order of court, and for disclosure may be agreed by the parties) (Memorandum of Understanding, Liberia, 2013). This agreement also potentially broadens the disclosure prohibition to "any information of any nature whatsoever which is not in the public domain," as well as restricting parties from making public announcement regarding the transactions referred to in the agreement. These confidentiality clauses are extremely broad and could be interpreted expansively to prohibit disclosure of the agreement itself, as well as information regarding the company's performance under, and any breaches of, the agreement. While the community parties would presumably be free to disclose the agreement in arbitration pursuant to each agreement's dispute resolution provisions, the confidentiality clause could hamper each community's ability to publicize, and conduct advocacy regarding, a failure by the company to comply with the agreement. The abovementioned exception to the confidentiality obligation in the Agroafrica agreement—when necessary for the work of each party in the investment project—is also skewed in favor of the company, given that the community may not have any "work" to do under the project.

Characterizing obligations as "corporate social responsibility"

In at least one lease agreement reviewed, key benefits promised to the community as consideration for the lease of land (which include access to jobs and social infrastructure development) are set out in a section regarding company commitments to "corporate social responsibility activities and programs." (Lease Agreement, Tropical Farms Plantation (SL) Ltd, Guara, Sierra Leone, 2012). This raises questions regarding how the company and community view such benefits, including whether or not they are binding commitments, given that corporate social responsibility is often associated with voluntary commitments by companies. Strangely, and perhaps worryingly, this same agreement also places adherence to national environmental laws under the rubric of "commitments to corporate social responsibility activities and programs."

IV. Recommendations

This section draws from the community-investor agreements reviewed to provide recommendations that primarily focus on the two broader set of topics discussed: first, documentation regarding the process and quality of consultations, and, second, the substance and clarity of obligations established by the agreements. Where relevant, these recommendations refer to international best practice related to land-based investments and to community development agreements. These recommendations are primarily aimed at communities and companies, but may also be of interest for host governments, development partners, and other stakeholders.

Consultations, capacity building, legal and other support, and documentation thereof

Individuals and communities should be consulted regarding, and should participate in decision-making around, potential land investments that stand to affect their tenure rights or other rights. This is clearly stated in soft law instruments such as the Voluntary Guidelines and the CFS Principles for Responsible Investment in Agriculture and Food Systems, is generally required under international human rights law, and is standard practice for responsible business conduct. It is often required under domestic laws as well, at least when such individuals or communities have formally documented rights to the land.

Consultation requires more than simply conferring with a community's leaders. Consultation should be broad-based, and should provide accessible opportunities for all individuals affected by a particular investment to participate. Particular attention should be given to creating opportunities for groups whose interests are typically underrepresented, including women and youth, to shape and participate in the process. While there are many recommendations that could be made regarding consultation processes, those are beyond the scope of this paper. Rather, the recommendations below focus on the more narrow nexus of consultation processes and the negotiation of community-investor agreements: specifically, the legal support that may be needed to strengthen consultations and negotiations, and the usefulness of documenting consultative processes in the agreement.

Unless legal support, capacity building, and other resources are available, communities should strongly consider not entering into negotiations with a company seeking to enter into a community-investor agreement, especially where the proposed agreement would transfer interests in land or create obligations for the community. Legal and other types of support for communities considering such agreements is necessary to ensure that any agreements entered into represent the interests of the community and align with their expectations. The availability of capacity building and other support can also help communities to ensure that any such agreements are negotiated in accordance with robust and inclusive community decision-making processes. Such support can also help communities to access and understand information relating to a project

(including the outcome of any impact assessments, the risks identified, and other important factors) in advance of deciding whether to enter into an agreement.

Host governments and companies should implement programs and strategies to make legal and other support available to communities, in ways that guarantee the independence of such support. Interesting efforts have been undertaken in some places to strengthen communities’ access to legal support in the context of land investments. For example, in Liberia, the Sustainable Development Institute and Namati have partnered to set up an early warning hotline for community members, who can call for legal and other technical advice if approached by investors interested in land-related dealings. Namati operates a similar legal helpline in Sierra Leone, through which members of the public can seek advice on matters related to large-scale investment in land. Host governments and other stakeholders could consider establishing similar programs to support the legal needs of communities in this context; this would be in compliance with guidance documents such as the Voluntary Guidelines, for example, which suggest that governments capacitate rights-holders to know their rights and exercise them effectively in consultations, including through providing professional assistance where required.

Communities and companies should ensure that any consultative and participatory processes that were carried out before the negotiation of any agreement are documented in the agreement, and agreements can include community members as signatories or witnesses.

Including documentation of consultative and participatory processes in the final agreement, as well as the outcomes of the consultation processes, can help illustrate that the agreement was entered into with the support of the wider community. Indeed, lessons learned from community development agreements suggest that the success of the agreement will turn not only on its substance, but largely on “the methods and techniques” used to develop the agreement (Sarkar, S et. al 2010). Moreover, including community members as signatories or witnesses to agreements that affect their rights can help to indicate whether agreements were entered into in accordance with the will of rights-holders (although their inclusion does not guarantee that the signatories understood the agreements, nor does it automatically safeguard against exploitative agreements).

As seen in some of the Liberian agreements reviewed, the details of consultative processes that could be incorporated into an agreement include explicit provisions that set out: the identity and authority of the negotiators and signatories to the agreement (ensuring that all relevant rights-holders are signatories), as well as the nature of the involvement of project-affected communities in consultations and negotiations. Given that consultation should be meaningful, and not a box-checking exercise, the full description of such information may need to be contained in a detailed annex.

In addition to including provisions detailing the types and quality of consultation processes used in the negotiation of the community-investor agreement, agreements could also document any participatory mapping processes undertaken in relation to the land affected by the investment. This may be important to evidence the process by which land has been allocated to an investor.

Participatory mapping is crucial to ensure that communities know the exact location of land that will be used for company operations, and to ensure all relevant affected parties agree to such land being used. When communities are not involved in the mapping process, it is more likely that they will not know the size or boundaries of land to be used for company operations. Gaps in such knowledge can lead to distrust and strained relationships between companies and communities, leading to conflict.

Creating clear, detailed, time-bound obligations

Communities and companies should ensure that agreements are drafted in clear language, with detailed and time-bound obligations. Many of the social-benefit provisions within the agreements reviewed are poorly drafted and do not clearly define the rights and duties of the parties to the agreement, but rather set broad parameters that would benefit from a higher degree of specificity. Such provisions should not leave discretion to the company to decide the nature and extent of the benefits it will provide to the community. Rather, benefits should be clearly negotiated before the agreement is entered into, and clearly articulated in the agreement. Communities can work to make company’s obligations regarding provision of benefits clearer and more enforceable by ensuring that agreements: set time frames in which a company commits to carry out relevant activities; specify minimum amounts of spending on benefits or of revenue that will be shared with the community and the basis on which those amounts will be calculated; and include detail on the parameters of what the company is required to provide for the committed benefits—for example, if committing to build a school, the agreement should include details on the whether the company commits to financing the salaries of teachers and other employees to staff the school, as well as the learning materials, and for how long. Provisions relating to job creation could be improved by specifying the types of job available, whether they are permanent or seasonal, how many jobs will be made available and when, and greater detail regarding where the company proposes to recruit from—for example, whether such jobs must be filled by members of the community or not.

Companies should not pass off as “benefits” what they are already required to deliver. Even if articulated clearly, the “benefits” offered by the company as consideration may not entail much more than what the company is already required to do under domestic law or pursuant to an investor-state contract. For instance, Global Witness’s analysis of MOUs that Golden Veroleum entered into with

different communities revealed that while employees of the company stood to access certain employee benefits, the company stood to provide “very little – slightly more than six toilets – over that which the company was already obligated to provide under its concession agreement with the Government.” (Global Witness, 2015). This illustrates the importance of ensuring that benefits are negotiated in light of the company’s pre-existing obligations under investor-state contracts and domestic law, as well as the importance of legal support for communities, as noted above.

Compensation and monetary benefit sharing

Communities and companies should work towards agreements that include adequate payments and compensation, and can consider including profit-sharing arrangements. In most of the agreements reviewed, the compensation paid by companies for use of land is woefully low.

Governments, development organizations, and companies should ensure that the communities or individuals with legitimate tenure rights to land that is the subject of lease negotiations are adequately supported in negotiating adequate payments and compensation. This includes: technical support in valuing land, in assessing the true costs to the community or individuals in leasing the land, and in ascertaining the value and limitations of benefits being offered; legal support in the negotiation process; and the opportunity to actually negotiate the rent and compensation numbers, as opposed to having a company simply present a figure to the tenure-rights holders as a *fait accompli*. In no cases should lease rent or land use compensation fall below amounts suggested by government policy (as seen in the Sierra Leonean agreements); at the same time, so long as such policies are not binding, any amounts recommended by government should also be considered as a floor below which rents cannot go, and should never be considered as an upper bound on the price for the lease of land.

In addition to lease rent and other social benefits offered, profit-sharing mechanisms could also be included. While such mechanisms offer potential benefits for communities, they also can be used exploitatively and as a mechanism to shift greater risk onto tenure-rights-holders. Communities considering such mechanisms should thus be supported in assessing the benefits and costs of such mechanisms, in negotiating favorable terms and equitable risk-sharing, and in creating safeguards to ensure that they will still receive a baseline amount of compensation, rent, or other benefits that are not tied to profits.

Communities and companies should agree on payment mechanisms that ensure that rent and other compensation or revenues will be allocated equitably and spent in ways that directly benefit community members and contribute to community-driven development. Lessons learned from community development agreements for extractive industry projects show that the capacity of stakeholders to administer funds, and adapting mechanisms to local political dynamics and

community ambitions for development, is crucial to ensuring that fiscal and social benefits generated from projects actually meet the needs and priorities of the community (Sarkar, S et. al 2010; Nest, M 2017). The agreements reviewed lack strong payment mechanisms that empower communities—rather than a small number of community representatives—to decide how compensation and revenues will be spent. In practice, payment mechanisms that concentrate access to funds, particularly regarding land lease rent or land use compensation, in the hands of a small number of community representatives do little to mitigate the risk of the potential illicit diversion of funds.

When faced with a very large number of community member beneficiaries, the community and the company should work together to design the most appropriate mechanism for receiving payments. In some cases—especially where land is not communally held, and individual community members or families have formally or customarily recognized title, and when the community-investor agreement takes the form of a pure lease agreement—this may be for each beneficiary to receive their share of payment. In other cases, where land is communally held, a community development committee could be formed, with representatives from traditional leadership, as well as women, youth and other subgroups, to determine how funds can be most effectively put towards the community’s development.

Companies’ attempts, seen in some of the agreements reviewed, to avoid liability by including indemnity provisions against any claims that arise after payment is made by the company into a communal account are particularly onerous and should be avoided, as they apportion the risk that such funds will be diverted or misspent entirely onto the community beneficiaries. Such provisions do not address the underlying causes that create or exacerbate the risk, and do not address the fact that key stakeholders, whose cooperation with the relevant project is crucial, may not receive the promised benefits.

The particular context, including the availability of banking facilities and mobile money, will dictate the appropriate method for delivering payment directly to each intended beneficiary. The payment process, the recipients, and, where relevant, the decision-making structures that will be engaged to spend payments or revenue should be detailed in the text of the agreement.

Other issues

Based on the observations described in Part III, other recommendations include:

- **Communities and companies should ensure that provisions regarding water use and impacts are drafted after a close review of existing domestic law requirements, and**

ensure that company water use and impacts will not infringe on the right to water of local community members. Contractual provisions will also be most effective when based on up-to-date knowledge regarding water availability and use in the local area, which can be measured and/or predicted (and shared with both parties) in advance of negotiations. Where legislation does not adequately cover water use and impacts, or where communities are particularly concerned that a company's operations might adversely affect their or other communities' access to water, communities should consider negotiating with the company to include detailed commitments related to water use, access, and impacts. This can include, for example, restrictions on the company's water use and ability to divert water sources, efforts that will be taken to avoid or mitigate overuse or toxic run-off, and the measures that will be taken to protect the community's access to safe water necessary for their wellbeing and their livelihood activities. These commitments should be easy to measure and assess, and language that qualifies the company's commitments in this regard should be avoided.

- **Communities and companies should avoid any provisions requiring disputes arising in relation to a community-investor agreement to be resolved by international arbitration or in unfamiliar languages.** In almost all cases, dispute resolution procedures that take place overseas or in unfamiliar languages would preclude communities from being adequately represented during the dispute resolution process. Dispute provisions should also not involve processes for which the location would be overly burdensome for the community, and should instead focus on more localized dispute resolution processes in which communities could fully participate. This may include local mediation or other dispute procedures in accordance with domestic law or traditions, or recourse to local courts (although they may be of limited use where not impartial).
- **Communities should seek to include in the agreement incentives for company compliance and mechanisms to enhance enforcement if the company breaches a provision.** Provisions that allow timely relief from material breaches by the company, such as requiring that land reverts back to the community when relevant payments or benefits become overdue by a specified amount of time, can help incentivize company compliance while also providing relief for communities harmed by non-compliance. Indeed, allowing communities to recover possession of land when payments remain outstanding is crucial to ensuring that those with legitimate tenure rights do not suffer the double loss of losing out of compensation owed while also being unable to access their productive resources. Mechanisms, like reversion, that would see the company losing control of the land may be more effective than financial penalties, which invite the company to calculate trade-offs between timely compliance with the agreement and paying penalties. Similar mechanisms could be explored for other breaches of company commitments aside from non-payment.

- **Communities and companies should avoid agreeing to confidentiality provisions that prohibit important information from being disclosed to affected community members or the general public.** There should be a presumption that community-investor agreements, and the terms within them, will be made available to all affected people. Broad confidentiality provisions that apply to a larger set of information should also be avoided. Communities should reflect carefully on the value of being able to share information regarding the agreement to media or civil society allies in the event of a breach by the company. When a community has legitimate reasons for not sharing specific information included in an agreement, the information deemed confidential should be as limited as possible, and either could be included in a separate confidential annex or could be redacted as needed, with the rest of the agreement remaining publicly available. Similar arrangements could be contemplated for specific information for which the company has provided a legitimate basis for requesting confidentiality.

V. Conclusion

Community-investor agreements have potential. Potential to assist in better aligning land investments with respect for the rights of landowners and land users. Potential to encourage meaningful communication between the community and the investor, allowing project-affected people to articulate their priorities while supporting investors in managing expectations through concrete time-bound commitments. Potential to translate a community's prioritized needs, and an investor's promises, into legally binding obligations.

Yet analysis of the agreements reviewed for this paper reveals that community-investor agreements, as they have been drafted, are failing to realize this potential. In order to do so, the agreements must: (a) establish, with clarity and certainty, the enforceable rights and obligations of each party with respect to the use of land; (b) be negotiated on a level playing field with adequate consideration; and (c) provide each party with a means to access remedy should one party breach the terms of the agreement in a material way.

Of course, even the most clear and certain agreement—drafted after an equal, thorough, and participatory negotiation, and including enforceable rights, obligations, and mechanisms to incentivize compliance—will not always translate into better practices on the ground. Agreements do not guarantee increased respect for the rights of project-affected communities or increased access to benefits from land-based projects. Moreover, the efficacy of a well-drafted community-investor agreement will also depend on the integrity and accessibility of the legal system in which it operates.

The findings of this paper sound a cautionary note: as currently used, community-investor agreements

are unlikely to lead to more equitable sharing of benefits with communities affected by land investments. This does not mean that they cannot be improved, however. And despite their limitations, in some contexts, a well-drafted agreement has the potential to improve understandings between the community and the investor, to sharpen investor's obligations and strengthen communities' rights, and to serve as a tool for communities to enforce promises made to them by investors at the outset of a project.

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