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DEUTSCHE ZUSAMMENARBEIT

PREVENTING AND SOLVING LAND BASED CONFLICTS THAT RESULT FROM LARGE-SCALE AGRICULTURAL INVESTMENTS



A MANUAL FOR COMMUNITIES

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Zusammenarbeit (GIZ) GmbH



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List of abbreviations

ADR	Alternative Dispute Resolution
ANRS	Amhara National Regional State
BMZ	Bundesministerium für Wirtschaftliche Zusammenarbeit und Entwicklung / German Federal Ministry for Economic Cooperation and Development
CSO	Civil Society Organization
CIGDF	Community Investor and Government Dialoge Fora
DA	Development Agent
EHAIA	Ethiopian Horticulture and Agriculture Investment Authority
EIA	Environmental Impact Assessment
ESRS	Environmental and Social Review Summary
EU	European Union
FAO	Food and Agriculture Organization
FDRE	Federal Democratic Republic of Ethiopia
FPIC	Free Prior, and Informed Consent
GIZ-RGIL	German International Cooperation, Responsible Governance of Investment In Land
GRM	Grievance Redress Mechanisms
GRS	Gambella Regional State
LAUD	Land Administration and Use Directorate
LSAIs	Large Scale Agricultural Investments
MCR	Movable Collateral Registry
LLPLUP	Local Level Participatory Land Use Planning
MoU	Memorandum of Understanding
NGO	Non-Governmental Organization
RGIL	Responsible Governance of Investment in Land
RS	Regionl State
SECoP	Social and Environmental Code of Practice
SMART	Specific, Measurable, Achievable, Realistic, and Timely
SIA	Social Impact Assessment
UNDRIP	UN Declaration on the Rights of Indigenous People
UNECE	United Nations Economic Commission for Europe
USAID	The United States Agency for International Development
HREYN	Human Rights Education Youth Network

Preface

Access to land and secure long-term tenure rights for men and women are essential conditions for sustainable rural development, food production, gender equity, security and social peace. Thus, secure access to land contributes to a number of Sustainable Development Goals. However, as land is a limited resource, its distribution is often disputed by various actors. Sometimes even agricultural investments that are supposed to have a positive impact on the local population contribute to deteriorating access to productive land.

Such investments are often intended to generate value, both for the overall economy (via land revenues and taxes) as well as for local communities (by improving livelihood and job opportunities and enabling the transfer of know-how). But if investments do not follow internationally agreed principles and guidelines as well as the national legal framework, they run a high risk of having negative consequences for communities and the environment alike. Investments may lead to land use disputes, expropriation, and displacement. They may also lead to environmental degradation, worsening the socio-economic situation of already disadvantaged groups.

Population growth, climate change, and global supply chain disruptions for agricultural inputs and staples are some of the drivers of food insecurity, poverty, and hunger. Investments in land, when carried out in a sustainable manner – considering ecological responsibility, social equity, and economic performance – can contribute to tackling these challenges.

To ensure that investments in land are beneficial not only for the investors, but also for other actors, certain aspects must be considered when designing sustainable and profitable investments in land.

This is where the Responsible Governance of Investments in Land (RGIL) project, commissioned by the European Union and German Federal Ministry for Economic Cooperation and Development (BMZ), comes in. Implemented by GIZ in Ethiopia, Uganda, and Laos, the project aims to ensure that investments in land are productive, that they contribute to sustainable land management, and that they respect the rights and needs of local populations, in particular vulnerable groups and women. RGIL works together with target communities, political partners, and investors – as well as with civil society organizations, academia, and investor associations – on the implementation of good land governance based on international principles such as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) and the Committee on World Food Security Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI).

A series of guides and manuals were developed and validated in a participatory and iterative process with stakeholders, after assessing capacity development needs and analysing existing international and national guidelines, regulations, and training materials. They combine important elements from existing products and training events, and apply them specifically to the process of land-based investments and in relation to identified problems in each country. The various guides and manuals complement each other thematically and can be used both as individual products and as a complete toolkit in the respective country-specific context.

This manual is aimed at communities in Ethiopia and provides guidance on what they can do to prevent and minimize conflicts with investors or to resolve them to their satisfaction.

Christian Mesmer
GIZ Project Manager of S2RAI and RGIL Head of Component

1. Introduction

1.1 Background, objective and target group of the manual

Significant land-based investments in agriculture are essential for the Ethiopian government to meet the growing demand for food of its growing population and to generate foreign currency. Such investments can have a number of additional beneficial impacts, such as creating employment, sharing technology, improving natural resource management and contributing to overall sustainable development. Investments that support small-scale producers, including efforts to increase their own capacity to invest, are particularly important.

However, not all land-based investments in Ethiopia are equally beneficial, and some have significant negative impacts on communities, workers and/or the environment. This repeatedly leads to conflicts.

Even though there are increasing incidences of land conflicts at the local level, land conflict management has been given little attention up to now in Ethiopia. In view of this, it has been found very important to address the issues of land conflicts between communities and investors related to (large-scale) land-based investments.

This manual provides guidance to local communities to better understand land conflicts between them and investors, to prevent and to solve them to their satisfaction. The manual is intended to be used by the communities affected by land-based conflicts and their advocates.

The purpose of this manual is to provide a practical introduction to the prevention and resolution of land-related disputes and conflicts within the Ethiopian context. The manual is furthermore designed to sensitize local communities on issues and problems arising out of (large-scale) agricultural investment activities and on the potential conflicts that can evolve due to irresponsible land based investment practices.

1.2 The legal environment for responsible large-scale land-based investments in Ethiopia

The Ethiopian Constitution (FDRE, 1995) clearly provides that the right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the state and in the people of Ethiopia and communities have user rights. However, through the quest for enhancing production and economic growth, the government encouraged investment in agriculture by allocating land and providing incentives to investors for increased investment. Still, such investments are supposed to follow certain rules to ensure that they do not cause harm to local communities. The Government has established following legal tools that address the interest of local communities and that help to minimize the negative impacts on the environment.

Community participation and consultation are, legally, a requirement in the process of any development if the development affects the livelihood of the community. In the umbrella law of the country, which is the federal constitution of 1995, article 43 (2) states that nationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community.

Environmental impact assessment requirements are legislated by the Federal and regional Governments of Ethiopia. The Federal Government enacted proclamation no. 299/2002 for purpose of making an environmental impact assessment before commencing implementation of any development project. Article 3 (1) states that without authorization from the Authority¹ or from the relevant regional environmental agency, no person shall commence implementation of any project that requires environmental impact assessment. Furthermore, article 3 (3) declares that any licensing agency shall, prior to issuing an investment permit or a trade or an operating license for any project, ensure that the Authority or the relevant regional environmental agency has authorized its implementation. It is a mandatory procedure for agricultural investors to include an environmental impact assessment report with the application.

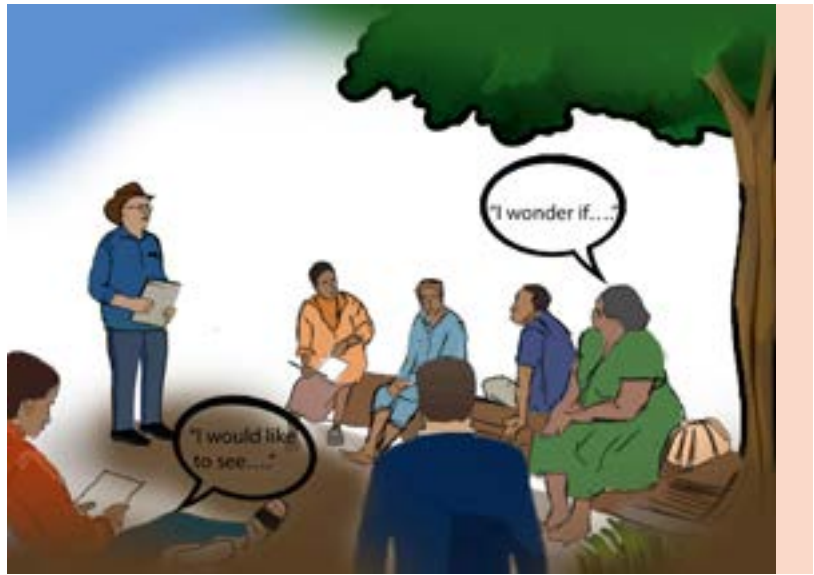


Fig. 1: Meaningful community participation and consultation



Fig. 2: Participatory environmental impact assessment

¹ "Authority" means the Environmental Protection Authority

The environment impact assessment proclamation details issues to be considered during the impact assessment. Article 4 (1) affirms that the impact of a project shall be assessed on the basis of the size, location, nature, cumulative effect with other concurrent impacts or phenomena, transregional effect, duration, reversibility or irreversibility or other related effects of the project. The environmental impact assessment proclamation provides legal cover for public and community participation. Article 15 (1) says that the Authority or the relevant regional environmental agency shall make any environmental impact study report accessible to the public and solicit comments on it, and article 15 (2) affirms that the Authority or the relevant regional environmental agency shall ensure that the comments made by the public and in particular by the communities likely to be affected by the implementation of a project are incorporated into the environmental impact study report as well as in its evaluation. However, monitoring the implementation is weak.

The proclamation issued by the Federal Government on investment, Investment Proclamation No 1180/2020, on article 5, says that the investment objective of the Federal Democratic Republic of Ethiopia is to improve the living standard of the peoples of Ethiopia by realizing a rapid, inclusive and sustainable economic and social development. It addressed specifically the issue of social and environmental matters on article 5 (8) by saying the proclamation has an objective to encourage socially and environmentally responsible investments.



Fig. 3: The objective of any investment in Ethiopia: improving the living standard of the peoples

Furthermore, the proclamation strengthened the issue of social and environmental sustainability and respect of relevant laws of the country on article 54. On article 54 (1), it says all investors shall carry out their investment activities in compliance with the Laws of the country. And on article 54 (2) it stipulates that all investors shall give due regard to social and environmental sustainability values including environmental protection standards and social inclusion objectives in carrying out their investment projects.

The Forest Development, Conservation and Utilization Proclamation, Proclamation No. 1065/2018, enacted by the Federal Government, has established the obligation of private forest developers. On article 6 (3) it says that private forest developer has to refrain from introducing and reproducing plants, animals and micro organisms and insects that might cause harm to humans, animals and the eco-system; on article 6 (4) has to observe the laws issued in respect of environmental safety, water shade and biodiversity conservation, development and utilization; and on article 6 (5) has to respect the important local culture, custom and knowledge. The proclamation specifies the right to protection of inhabitants residing in state forest areas. On article 19 (11) it affirms that the government shall facilitate conditions whereby inhabitants within state forests and state forest land shall continue living in the forest, while participating in the development and conservation of the forest, in a manner that shall not obstruct forest development; or based on a study and in consultation with the appropriate body, they shall evacuate the forest area and settle in other areas suitable for living.



Fig. 4: A private forest developer respecting the environment and inhabitants residing in a state forest area by carefully selecting the trees to be logged

The federal constitution has a provision for compensation. Article 44 (2) declares that all persons who have been displaced or whose livelihoods have been adversely affected as a result of state programs have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance.



Fig. 5: Just compensation in cash or kind

The rural land administration and use proclamation, proclamation No 456/2005, on article 5 (4a) states that private investors that engage in agricultural development activities shall have the right to use rural land in accordance with the investment policies and laws at the Federal and Regional levels. The proclamation goes on to say, on article 7 (3) that a rural landholder who is evicted for the purpose of public use shall be given compensation proportional to the development he has made on the land and property acquired or shall be given substitute land thereon.

The proclamation issued to determine expropriation of landholdings for the public purpose, payments of compensation and resettlement, proclamation 1161/2019, gives the first priority for the rural landholders to enter into commercial agricultural production if they are in the area designated for the purpose and if they have the capacity and interest. Article 7 (2) states that rural landholders for agricultural use shall have priority rights to develop their holdings according to the land use plan either individually or in a group. However, if they are not interested and if they do not have the capacity, they have to leave their holding according to the law.

There are established procedures for taking land for agricultural investment. Article 8 (a) of proclamation 1161/2019 asserts that district authorities shall consult landholders who are to be displaced at least one year before they hand over their holdings on the type, benefits and general process of the project. But, there are also conditions that affect the provision indicated above. Article 8 (b) of the same proclamation pronounces that landholders who are to be displaced may be consulted on the type, benefits and general process of the project in less than one year if the concerned Federal or Regional State decides that the land is required urgently for investment. The proclamation states about procedure of the Landholding Handover. In article 8 (g), it affirms that compensation should be paid or substitute land should be provided before the displacement of people from their landholding.

There is a proclamation enacted by the Federal government for hazardous waste management. Proclamation no. 1090/2018 is a proclamation issued to provide for hazardous waste management and disposal control. The proclamation has the following two objectives. Article 3 (1) is to create a system for the environmentally sound management and disposal of hazardous Waste and article 3 (2) is to prevent the damage to the human or animal health, the environment, biodiversity and property due to the mismanagement of hazardous waste. Implementation of the objectives of the proclamation is very poor. It was reported, during the capacity needs assessment in Gambella, that animals of the smallholders died due to hazardous wastes disposed of by a farm.



Fig. 6: Investment company conducting proper hazardous waste management

Pollution control proclamation no. 300/2002 is another legal tool established by the Federal government. The proclamation has important provisions such as article 3 - pollution control, article 4 – Management of hazardous waste, chemical and radioactive substances, article 5 – management of municipal wastes, and many articles and sub-articles. But, the implementation of the provisions is as weak as other environmental proclamations. Leave alone implementation of the proclamation within a rural context, the pollution level of the rivers passing through the capital city of the country, Addis Ababa, are examples of poor implementation of the proclamation.

In agricultural investment areas, farmers might participate in the production of crops based on the investor's interest in the form of out growers' arrangement. Council of Ministers regulation no. 396/2017, issued to provide for the establishment of the Ethiopian Horticulture and Agriculture Investment Authority (EHAIA) defines, in article 8, that "out-growers" means an agreement-based production arrangement with a farmer or group of farmers or farmers' associations who entered into an agreement with an investor or investment company where technical and follow up support are provided from field preparation to product harvest and as per the agreement the quality of crop production is maintained, timely payment is effected to farmers and the yield of which shall only be handed over to the investor. Within such an arrangement, there are some exemplary practices. The Koga-Veg is the one to be mentioned here.



Fig. 7: An outgrower's arrangement allowing local farmers to participate in the investment and benefitting from it

Benefit sharing from an agricultural investment for the local community is not legally established. However, investors provide some benefits to the local communities based on the decision of the investor as an expression of goodwill. Most of the benefits are provided through the development of infrastructures like school buildings or health service infrastructure. But it is neither mandatory nor provided by all investors.



Fig. 8: Continuous benefit sharing ensures the improvement of peoples' living standards, a good reputation of the company and a peaceful co-existence of investor and local community

The Ethiopian Horticulture and Agriculture Investment Authority (EHAIA) developed a Social and Environmental Code of Practice (SECoP) in September 2017. SECoP is prepared for the purpose of Responsible Commercial Agricultural Investment in Ethiopia. As stated, the major purpose of the SECoP is to provide a system that enables the Ethiopian horticulture & Agricultural Investment sector to adopt socially and environmentally friendly agricultural practices, minimizing negative impacts on human and natural resources while increasing the competitiveness of agricultural products in both internal and external markets. The SECoP has established standards and is expected to be used by:

- Investments of all agricultural sub-sectors (e.g. crop farming, horticulture, livestock)
- Investments in all Ethiopian regions
- Both foreign and domestic agricultural investments
- New and already existing investments
- Investments of any size in terms of spatial dimension or financial volume
- Investments that obtain(ed) land through any kind of channel (e.g. through Ethiopian Investment Agencies, regional governments or directly rented from farmers)

1.3 Current weaknesses of large-scale land-based investments on conflict matters in Ethiopia

Local communities are facing increased challenges due to improper processes and procedures of land allocation related to large-scale agricultural investments. Communities generally are not aware of their rights, e.g. to be adequately informed prior to investment and to be meaningfully consulted. Low level of community awareness on their rights as well as on possible benefits of investments, lack of adequate consultations of communities by investors and little negotiation skills of communities often result in conflicts and poor implementation. Such conflicts include disputes over the area selected for the investment project, the size of the area or the boundaries of the area. They also include conflicts on benefits or compensation for community members.

Damage and destruction to the environment and natural resources on which livelihoods of communities are built further lead to conflicts. Increased water consumption, clearing of forest areas and the typical management of large-scale agro-industrial plantations through extensive monocultures with intensive use of pesticides, herbicides and mineral fertilizers, including the use of genetically modified seeds, pose a high risk of negative impacts on the environment and the local population. If this has an impact on the agricultural, pastoral or fisheries production of the local population, on the availability of (non-timber) forest products and or on their health, conflicts arise or intensify between local communities and the investor.

Such conflicts often hinder the implementation of the projects as originally intended, which may result in additional conflicts over expected shared benefits. So far, large-scale agricultural investments in Ethiopia have largely failed to attain the intended levels of production and productivity affecting their viability as agricultural enterprises.

A study done in 2021 by RGIL in Gambella Regional State (RS), Benishangul-Gumuz Regional State (RS) and Amhara Regional State (RS) has shown that (Achamyeh Gashu 2022):

- The principle of transferring only free and unutilized land to investors is not fully respected. According to local communities, all types of land have been transferred to investors: grazing areas, hunting grounds, land used for shifting cultivation;
- 91.7 % of the representatives of local communities reported that they have never participated in the land identification process. They reflected that decisions were made only by the government officials, and the process is exclusionary non-participatory to smallholder farmers;
- Free and prior information and consent of the local community was not an issue in the process of land identification and transfer. Only 8.3% of the local community representatives received prior information about the projects implemented in their locality and the land identification process;

- According to the Ethiopian investment directive, the identification of potential land for investment needs to be supported by a map or sketch. But those have never been displayed in the communities and no views or comments from the local community has been sought.
- Equally, local community representatives claimed that environmental impact assessments (EIA) have never been presented to or shared with their local communities. EIA are often prepared after the agricultural land acquisition has already taken place and therefore has no influence on the land deal. Often EIA is not undertaken at all, or it is done without considering the realities on the ground.
- About 93.3% of the local community representatives feel that agricultural investments in their communities failed to bring expected benefits as promised in the projects' documents.

There are weaknesses in looking for alternative investment possibilities without forced eviction of the local communities. Administrative and political corruption that favors investors is another form of weakness in the large-scale land-based investments in Ethiopia. The absence of land use plans at national, regional and local levels are another form of weaknesses in the system. Disrespect of cultures and social norms are also sources of conflicts

1.4 Content plan/map of the manual

This manual shall guide the users along with the following contents that help them to know their rights and responsibilities and be able to do tasks accordingly (Table 1).

Table 1: Content plan of the manual

Main topic	Content
Understanding land conflicts that result from large-scale agricultural investments	<ul style="list-style-type: none"> • The nature of (land) conflicts • Types of land conflicts in Ethiopia that result from (large-scale) agricultural investments • Causes of such land conflicts • Consequences of such land conflicts
Preventing land conflicts that result from (large-scale) agricultural investments	<ul style="list-style-type: none"> • Knowing your rights • Being aware of the rights and duties of others <ul style="list-style-type: none"> - Rights and duties of investors - Rights and duties of government institutions - Rights and duties of CSOs • Ensuring responsible land governance at the local level <ul style="list-style-type: none"> - Relevance of responsible land governance for large-scale land-based investments - Securing tenure right - Conducting participatory land use planning - Swapping land and changing surfaces • Ensuring meaningful consultation <ul style="list-style-type: none"> - Understanding and claiming meaningful consultation - Demanding and reviewing information - Taking a decision for or against the investment

	<ul style="list-style-type: none"> • Identifying the most suited business model and desired returns <ul style="list-style-type: none"> - Plantation versus outgrower schemes (contract farming) - Possible returns from the investor • Negotiating an effective contract favourable for the community <ul style="list-style-type: none"> - Appointing a negotiation team - Improving your negotiation skills / getting support - Essential contract contents • Monitoring contract implementation • Establishing a complaint mechanism/grievance redress mechanism
<p>Solving land conflicts that result from large-scale agricultural investments</p>	<ul style="list-style-type: none"> • Understanding different dispute resolution approaches <ul style="list-style-type: none"> - Consensual approaches - Non-consensual approaches • Being familiar with land dispute resolution bodies and their roles in Ethiopia <ul style="list-style-type: none"> - Land dispute/conflict resolution mechanisms - Grievance hearing hierarchy - Conflict resolution bodies <ul style="list-style-type: none"> - customary institutions at a local level - government bodies at higher levels • Being prepared to take an active part in land dispute resolution • Ensuring that the conflict agreement is “SMART”

2. Understanding land conflicts that result from large-scale agricultural investments

Communities need to have adequate knowledge of potential conflicts that may result from large-scale agricultural investments in their communities in order to i) be aware of risks of large-scale agricultural investments, ii) defend their rights to land and natural resources towards investors, iii) prevent negative impacts of large-scale agricultural investments, iv) maximize positive impacts of large-scale agricultural investments, v) prevent conflicts with investors and vi) solve conflicts with large-scale agricultural investors in their community.

2.1 The nature of (land) conflicts

De Dreu and Gelfand (2008) define conflict as “a process that begins when an individual or group perceives differences and opposition between oneself and another individual or group about interests and resources, beliefs, values, or practices that matter to them”.

Conflicts occur under all social relationships and settings while complete lack of conflicts is indicative of the absence of meaningful social interactions (Fischer, 2000). Although we generally experience conflicts

as something destructive, they nevertheless perform positive functions. Conflicts show us that something is wrong and needs to be changed. Hence, a conflict is not a bad thing in itself. It just has to be resolved to the satisfaction of all parties to the conflict. This is how social change and development come about. Land conflicts, too, can become engines of change if they lead to positive changes. It is therefore important to deal with land conflicts in a constructive manner, instead of ignoring them or simply trying to stop them. In any event, conflicts are unavoidable for any society – we just have to solve them jointly and peacefully.

“A land conflict can be defined as a social fact in which at least two parties are involved and whose origins are differences in interests regarding a given piece of land – possibly aggravated by differences in the social position of the parties. Land conflicts imply different interests over one or several property rights to land: the right to use the land, to manage the land, to generate an income from the land, to exclude others from the land, to transfer it and the right to compensation for it. A land conflict, therefore, can be understood as a misuse, restriction or dispute over property rights to land” (GIZ 2017).

Accordingly, land conflicts related to large-scale agricultural investments can be about the use of a given land area. Who has the right to use a certain area? The local community or the investor? More specifically these can be conflicts between local farmers and an investor over land so far used for shifting cultivation by local farmers, conflicts between pastoralists and an investor over grazing areas, conflicts between women and an investor over a forest area where the women use to collect firewood as well as non-timber products, etc.

Land conflicts related to large-scale agricultural investments can also be about the right to generate an income from the land on which the investment takes place, in the way that the local population feels that it is not sufficiently benefiting from the profit generated by an investor on land they actually consider theirs.

Land conflicts related to large-scale agricultural investments can also be about compensation or about the right to control and manage the land. The latter can be the case if land is in principle available for an investor, but local communities feel ignored/overlooked/bypassed because they were not involved in the decision. The right to control or manage the land is also affected when local communities have no influence how and what for the investor is using the land. This leads to conflict if the use of the land, e.g. overuse of water resources, negatively effects the local population and their production.

Land conflicts are very often characterised by an imbalance of power between the conflict parties. The more powerful position of the investor often results from or is reinforced by the fact that he has the support of representatives of state institutions. Therefore, it is very important for local communities to have good contacts with state institutions in order to demand and enforce their rights there. They have to demand their rights registered in the official registry system.

Land conflicts are not always (only) about the land. They can also be about who has control over the land, who determines how the land is used and by whom, when or for how long. Sometimes it is also primarily about access to water. Or it is primarily about profit opportunities or power. The profit does not have to come from agricultural production, but can also come from speculation alone. It is therefore important for the local population to understand what the land conflict is actually about. To do this, the interests of all parties to the conflict - their own as a local community, those of the investor and those of the representatives of state institutions involved (who may represent official interests as well as pursue private interests) - must be identified and understood. Sometimes it helps to identify the underlying material and emotional needs of the different actors involved.

The situation can be compared with an onion that you need to peel. What you see and experience in a conflict are the positions of the conflict parties. They are very often the same for the local community and for the investor. Their positions simply are: "The land belongs to me. I do with it what I want." In such a situation, one is inclined to want to find out who is right and who is wrong which often is difficult to decide. But if you look at the interests and needs behind these positions, it is much easier to find a solution that satisfies both parties - the local community and the investor. Hence, you need to peel the onion (conflict) layer by layer to see and understand not just the outside (position) but also what is inside – the interests and the needs (Figure-1).

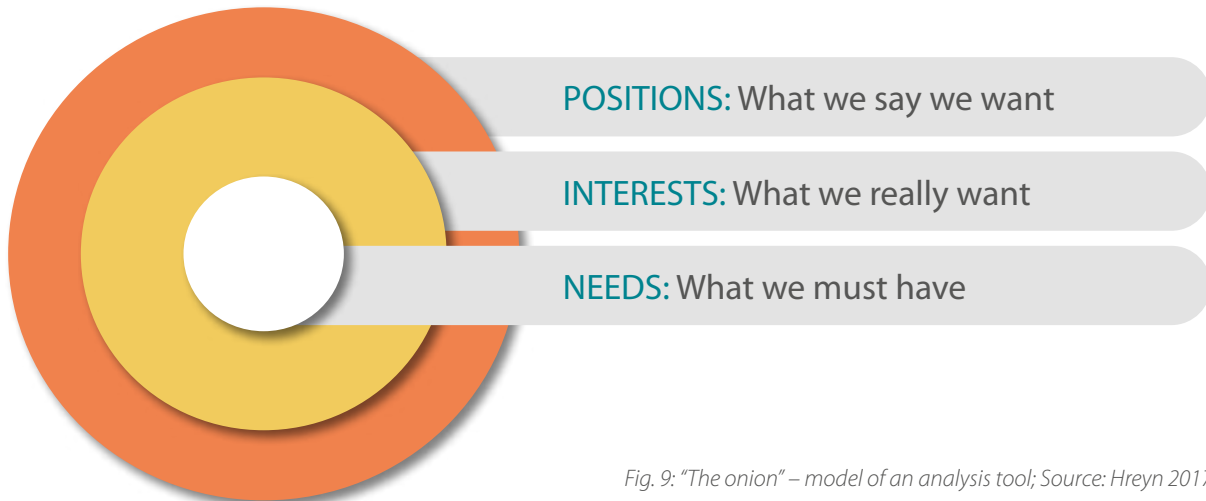


Fig. 9: "The onion" – model of an analysis tool; Source: Hreyin 2017.

2.2 Types of land conflicts in Ethiopia that result from large-scale agricultural investments

About 35% of the respondents of an analysis done by RGIL (2021) in Gambella RS and Amhara RS confirmed the presence of conflicts between investors and the local community. The following types of conflicts have been identified in these areas and elsewhere (RGIL 2021):

1. Evictions / relocations by force.
2. Taking away of farmland from local farmers and transfer of the farmland to an investor – without adequate information in advance;
3. Lack of proper compensation
4. Illegal or uncontrolled occupation of grazing and forest lands by investors;
5. Boundary conflicts between investors and neighbouring smallholders;
6. Investor's failure to stick to the promises they made to the community;
7. Blockage of road access of the community by investors;
8. Destruction of forests, wildlife, natural ponds and wetlands by investors negatively affecting local community's livelihood (e.g. deforestation negatively impacting on honey production, hunting opportunities, collection of fruit and medicinal plants and destruction/pollution of water resources reducing protein production from fishery);
9. Conflictive competition over water resources between local community members and workers moving in from elsewhere.
10. Lack of awareness on the community side on the importance of Large Scale Land Based investments to enhance local economies

Dessalegn Rahmeto, 2011, conducted a study in Gambella on matters related to large-scale agricultural investment. He reported the desperate explanation of a woman named Aryat Ujolu, interviewed during the study and she said “[...]Two years ago, for example, there was a severe shortage of maize because of the drought. We managed to survive the hunger that ensued because we were able to collect roots and other edible plants from the forest. We were able to eat because of the forest. Since the forest has been cleared, I do not know what we are going to eat if there is another food shortage. When there is food shortage it is we women and our children who suffer most because the men go to the towns to look for daily labor. In the past, we depended on the forest to get food but now that the forest has been cleared I fear that our children will die of starvation. Another thing, [...] in the future the private investors may ask us to buy the wood and grass that we used to get from the forest for free. In our tradition, it is women who collect grass for house building, but now there is a shortage of grass [because of the clearance by the project] and wood is also scarce; the men bring the wood from long distances. [...] They say the river will be diverted for the benefit of the project farm, if this is the case, we will be confronted with water shortage, and also fish will disappear. [...] Therefore we are not happy with the coming of the project. In brief the investors will not provide any benefits to us, they have come for their own interest”. Dessalegn concluded saying that “The agricultural investment program eagerly promoted by the government has far-reaching socio-economic and political implications and it is thus important that there is informed debate on the subject within civil society, and among concerned citizens and the public in this country”.

Dereje Kebede, Girmay Tesfay, and Bezabih Emana, 2021, conducted a study on Impact of land acquisition for large-scale agricultural investments on income and asset possession of displaced households in Ethiopia. The study was implemented in Oromia Regional State in districts called Adamitulu (treatment area) and Dugda (control area). A household survey covering different aspects of rural income sources and assets was collected from 255 displaced farmers and 266 non-displaced farmers. At the end, the researchers made the following concluding remarks. As stated by the researchers, impacts of LSAs on the displaced smallholders depend on a specific local context. They affirmed that factors such as the characteristic of the displaced people, the type of local resource affected by the LSAs, and the type and level of supports provided to the displaced farmers are context specific and therefore are key drivers determining the impacts of LSAs on income and asset condition of displaced people. The researchers concluded that the annual income and asset holding situation of the displaced households have significantly reduced due to the LSAs in the study area. The researchers quantified the impact and said that empirical findings of the study proved that the displaced households earn significantly less annual income as compared to the non-displaced households. Moreover, households affected by the LSAs have limited assets including livestock and other productive resources as compared to the non-displaced households. Furthermore, the researchers specified that several key factors underlie this and these include loss of fertile and irrigated land to LSAs, inadequate compensation, limited access to productive farm inputs and services, and weak capacity of relevant actors to support the displaced people. In addition, the researchers confirmed that despite taking their land and water resources, the LSAs have rarely created alternative opportunities for the displaced people.

2.3 Causes of land conflicts

Land conflicts, no matter of what kind, have **common causes**, such as:

- Population growth that results directly and indirectly in higher demands for land as people need land to live on and to produce food for the increasing population;
- Environmental changes that result in less available productive land as well as in migration so that demand for land increases in places of in-migration resulting in scarcity of land and higher prices/values of land;

- Natural disasters that have the same effects as environmental changes;
 - Wars that also have the same effects as environmental changes and natural disasters;
 - The fact that many people can only live on subsistence farming and have not learned other professions with which they could earn money and buy food.
 - The urge for wealth and power of some people, which drives them to produce on more and more land or to do business with land in other ways,
 - Rising land values, making land attractive as an investment for banks and insurance companies, etc.
 - Overlapping land claims of formal/ private and informal/communal/customary land use rights
 - Lack of integrated and participatory land use planning
 - Over expectation of the local communities from the large scale land based investment
- Etc.

These causes can be considered as root causes or structural causes that all lead to increasing scarcity of (productive) land, which is the main cause of land conflicts. If there would be endless land, there would not be any fights about it – but still over resources, which may be attached to some lands but not all.

Most of the root causes are difficult to be influenced at local level and therefore need to be addressed by higher-level actors (see 3.3). However, there are root causes such as population growth and the individual quest for power and wealth causing excessive consumption of resources that are in the hands of everyone.

In addition to the root causes leading to land scarcity and increasing competition over land, there is another reason why land disputes occur and are difficult to settle in Ethiopia. It is the widespread **lack of tenure security** and the **weaknesses in land governance**. In some areas, **land grievances** based on past land loss or displacements further complicate the situation. It is, therefore, crucial for Ethiopian communities to ensure responsible land governance in their area to adequately address (or even avoid) land grievances before they result in new conflicts, to ensure tenure security for all legitimate tenure rights holders and to be well prepared for investors who want to invest in the community, e.g. by exactly knowing how much land and where they are willing to give to an investor and for what in return (see 3.3).

In addition, there are **specific reasons** why large-scale agricultural investments often result in land conflicts in Ethiopia. Local communities and their advocates can influence the majority of these causes. These are:

- Political causes: False assumptions and false priorities by political decision-makers
 - The assumption that land transferred from communities to investors is converted from unproductive to productive land
 - The focus on foreign exchange earnings and export commodities which are given priority over local food security, infrastructure, employment and income opportunities for local communities
 - Absence of LUP
- Legal causes
 - The Federal Government issued proclamation 455/2005 for the purpose of compensation when the land is taken from farmers for public purposes. Following the proclamation, regulation 135/2007 (Payment of Compensation) had been issued by the council of ministers for implementation of proclamation 455/2005. However, level of compensation was not satisfactory.
 - After about 14 years of use, a new proclamation 1161/2019 (Expropriation of Land Holdings for Public Purposes, Payments of Compensation and Resettlement of Displaced People) issued by the federal government. For implementation of the new proclamation, regulation 472/2020

(Expropriation and Valuation, Compensation and Resettlement) is issued. The new proclamation and the new regulation have very detailed provisions. For example, there are established procedures for taking land for agricultural investment. Article 8 (a) of proclamation 1161/2019 asserts that district authorities shall consult landholders who are to be displaced at least one year before they hand over their holdings on the type, benefits and general process of the project. But, there are also conditions that affect the provision indicated above. Article 8 (b) of the same proclamation pronounces that landholders who are to be displaced may be consulted on the type, benefits and general process of the project in less than one year if the concerned Federal or Regional State decides that the land is required urgently for investment. Therefore, the issue is not the lack of the law, but the weak implementation and conflicting provisions.

- Institutional/administrative/procedural causes
 - Very weak institutional arrangement at federal and regional levels
 - Lack of transparency of large-scale agricultural investment projects;
 - Lack of adequate (meaningful) consultation of communities;
 - Disrespect of communal land rights by different government bodies from higher to kebele/local level
 - Lack of proper spatial planning at different scales
- Failure to adapt investments to local conditions
 - Systems of production using high-end technologies that are not replicable by communities to improve their production systems and livelihoods
 - Failure to explore alternatives to avoid eviction when the land is required for the purpose LSAI

2.4 Consequences of land conflicts (irresponsible investment)

Land ownership conflicts have negative effects on individual households as well as on the nation's economy. They increase costs, slow down investment, can result in the loss of property for the conflict party. As a result of the negative effects of conflicts of large scale agricultural investments in Ethiopia (especially Gambella), investors could not farm all the land they leased from the government leading to limited production. This has led to many investors engaging themselves in other activities like firewood/charcoal selling. Others left the area without implementing their farming business plans. It was reported that some investors were engaged in a charcoal production business in the area they received for agricultural production (NIRAS-IP Consult, 2021). In addition to being illegal, the investors vanished after completing the forest conversion into charcoal and failing to meet their promises.

Forest resources, wildlife, natural ponds, and wetlands were all devastated in Gambella because of irresponsible agricultural investment. Typical environmental consequences of irresponsible large-scale agricultural investments are:

- Loss of valuable natural resources and assets such as wood lots, water resources and grazing areas, negatively impacting on the livelihoods of local communities
- Destroyed bee colonies and bees' forage and affecting local honey production and ecosystem services, e.g. pollination
- Declining fish resources in rivers and other water bodies due to increased use of fertilizers and crop protection chemicals and dried ponds and wetlands

- Decline in biodiversity of birds and wildlife
- Generally an adverse effects on ecosystems

Many hectares of land remained uncultivated after forest removal and population displacement, according to reports. The communities in Amhara Region complained about investors in the area using unimproved traditional ways and left most of the leased land unharnessed, which has created frustration, particularly among the youth who were expecting positive economic dividends and employment from the large-scale investments. Youth who are evicted but not adequately compensated due to investment, as well as youth who migrate from their homelands to other regions as a result of natural disasters or war, all want a place to live and work but lack the financial resources to legally acquire land and start a small business outside farming.

3. Preventing land conflicts that result from large-scale agricultural investments

Considering the kind of land conflicts that are triggered by large-scale agricultural investments in Ethiopia (see 2.2), preventing them is essentially about avoiding investors using land that the local community (all or some) needs and about avoiding causing environmental damage, while at the same time ensuring that when land is given to investors, the boundaries are jointly defined and the community benefits adequately from the investment project. This requires sound land use planning (and land consolidation) for knowing who has which rights to use what land within the community. This also includes temporary/seasonal and informal/communal use rights - including those of non-resident pastoralists. Land characteristics and site quality aspects also play a prominent role. Furthermore, one should have a clear idea which very concrete support to a community by an investor has a real added value. Is it a well that then only silts up again? Or is it professional skills that enable the residents to earn more income and thus be able to finance a well themselves at any time? Therefore, instead of prescribing contribution of the investment to the local community, the investor has to find out or request the interest of the community what they want to have as a support from the investment in their locality. All this requires a certain amount of preparation and cannot be done only after an investor has already expressed his interest in a piece of land within the community area to the state. Planning as a form of prevention must therefore take place at an early stage; it is best to start immediately.

On the one hand, prevention means eliminating as many causes of conflict or triggers as possible such as insecurity of tenure, lack of transparency, lack of adequate consultation, disrespect of local land rights, failure to adapt investments to local conditions (see 2.3). On the other hand, it means developing clear goals for the community, determining what land is needed for this and what support may be desired/needed from companies.

The more responsible an investment is, the lower the risk of conflicts arising between investor and community. But what constitutes a responsible investment? What do communities need to pay attention to? What should they demand? Essentially, responsible investment is characterised by:

	Respect of human rights of all community members;
	Respect of all legitimate tenure rights of all individuals and groups currently legitimately using land in the community. This includes respecting customary land rights as well as land rights of women and vulnerable groups;
	Compliance with the rule of law;
	Transparency, openness and honesty of the investor;
	Consultation of the community and their participation in decision-making – in particular prior to the investment but also partly throughout its implementation;
	Establishing a legal framework for benefit sharing;
	Sharing of benefits of the investment between investor and community.

For an investment to be realised accordingly, communities must know their rights and be able to claim and use them to their advantage. For example, the right to early participation is of no use if a community is divided, does not have a clear idea of what it wants to demand from an investor, or is unable to articulate its interests and assert them in negotiations or if individual community members act for their personal benefit.

3.1 Knowing your rights and duties

Communities with the support of their local organizations and development supporters as well as exploiting all legal avenues need to assert their holding and use rights of land individually or collectively as specified in the relevant federal and regional proclamations. In an event of land transfer to investors, communities need to defend their rights to Free, Prior and Informed Consent (FPIC) and ensure proposed investments will not undermine the basis of their livelihoods and access to natural resources. Communities need also pursue their rights for adequate compensation from land right transfers to investors following amicable negotiations.

The Federal land administration and land use proclamations provide unlimited period of use right to farmers, pastoralists and semi-pastoralists (FDRE 456/2005). Regions also issued land administration and




use proclamation under the federal land law. Landholders can inherit and rent their land as stated in these laws. The proclamations give rights to all rightful rural landholders to inherit, donate, and rent their landholdings. In most of the regional states, landholders need to comply with a number of user rules and management obligations to secure their usufruct and access rights.

In recent days, there is a significant move by the Federal and some regional Governments in expanding the bundle of rights for the rural land holders. Proclamation 1147/2019, issued by the Federal Government for movable property security rights, defined land use right among movable properties definitions, article 2.27 of the proclamation. The National Bank of Ethiopia enacted a directive, for the implementation of proclamation 1147/2019, for codification, valuation and registration of movable properties as collateral for credit, directive no. MCR/2/2020. According to these legal instruments, rural land holders with Second Level Land Certificates have the right to access credit from financial institutions defined in article 2.6 of the directive mentioned above. The Amhara and Benishangul Gumuz Regional States made a bold and advanced decision to amend their rural land laws. In the amended laws, proclamation 252/2017 of the Amhara region and proclamation 152/2018 of the Benishangul Gumuz region, gave the right to farmers to access credit by logging their land use certificates.

The Federal Rural Land Administration and Use Proclamation 456/2005 defines communal holdings as land to be allocated to local residents for the common grazing, forestry and social services. However, it further subjects such holdings to be transferred to individual holdings when the governments deem it necessary. This latter provision, therefore, weakens the legal protection and tenure security of communal holdings since it leaves it to the discretion of the government to transform such rights to private/individual holdings.

There are established procedures for taking land for agricultural investment. Article 8 (a) of proclamation 1161/2019 (Expropriation of Land Holdings for Public Purposes, Payments of Compensation and Resettlement) asserts that district authorities shall consult landholders who are to be displaced at least one year before they hand over their holdings on the type, benefits and general process of the project. But, some conditions affect the provision indicated above. Article 8 (b) of the same proclamation pronounces that landholders who are to be displaced may be consulted on the type, benefits and general process of the project in less than one year if the concerned Federal or Regional State decides that the land is required urgently for investment.

In conclusion, a community, rural landholder, has the rights and duties:

	<p>To use all its land for an unlimited period;</p>
	<p>To be consulted prior to any decision about an investment in their community;</p>
	<p>To be consulted meaningfully;</p>

	To receive all relevant information in time;
	To demand and be involved in an environmental impact assessment;
	To consent or withhold consent;
	To receive adequate and timely compensation;
	To be involved in the monitoring of the nearby investment project;
	To be prepared for negotiations to defend their rights and interests through elected negotiating team
	To establish good relation with NGOs/CSO to get legal and technical support
	To be prepared for welcoming investments that enhance local economies, improve food security, respect local norms and cultures;
	Once negotiated agreement is established, communities have to respect the agreement
	To seek transparent processes in investment land identification
	To participate in land use planning processes
	etc

3.2 Being aware of the rights and duties of others

3.2.1 Rights and duties of investors

Rights and duties exist side by side in any business/intervention. Investors have the right to be involved in any investment as they are interested. But, they have to be aware of existing policies and legal frameworks issued by the federal and regional governments. It is the investors' duty to respect and to be compliant to the country's policies and legal frameworks. They have to be aware of international investment principles related to responsible agricultural investments. Investors need to be aware of the rights of communities residing in the area of their investment. Investors have to exercise a due diligence process before making any agricultural investment decision. Concerns about natural resources and the environment need to be considered, as well as social aspects.



Fig. 10: An investor having his duties in mind: the country's policies and legal frameworks, international principles and the rights of the community members

The following legal tools are enacted by the federal government to manage investment-related matters. In addition, there are many legal frameworks at regional levels that have to be considered.

- The umbrella law of the country, which is the federal constitution of 1995
- Proclamation no. 299/2002, issued by the federal government on environmental impact assessment
- Proclamation no. 300/2002 enacted by the federal government on Pollution control
- Rural Land administration & use proclamation no. 456/2005
- The social and Environmental Code of Practice (SECoP), developed in September 2017 by The Ethiopian Horticulture and Agricultural Investment Authority

- Proclamation no. 1090/2018, enacted by the federal government for hazardous management waste management and disposal control
- Compensation and rehabilitation Proclamation 1161/2019
- Proclamation no. 1180/2020, issued by the federal government to manage and administer investments
- **Forest Development, Conservation and Utilization Proclamation No. 1065/2018, enacted by the federal Government**

3.2.2 Rights and duties of government institutions

Relevant government institutions have defined rights and duties presented in proclamations issued for their establishment. They have to exercise their mandates in accordance to the law. Making investors and communities aware on their rights and duties is the responsibility of government institutions. Awareness creation is a fundamental activity of government institutions. Following up and monitoring the implementation of the laws is another fundamental responsibility of the government institutions. Furthermore, if existing laws and policies get obsolete, government institutions have the responsibility to request law-makers for new ones.



Fig. 11: A government official standing at the investment site, holding the impact assessment report in his hands and comparing it with reality

3.2.3 Rights and duties of CSO

Civil Society Organizations are an important engine to facilitate investments to move in the right and intended directions without conflicting with local communities. The federal government of Ethiopia enacted Proclamation No. 1113/2019 to create an enabling environment for Civil Society organizations to enhance their participation in the development of the country. The proclamation broadly defines CSO as “**Organizations of Civil Societies** means a Non-Governmental, Non-partisan, not for profit entity established at least by two or more persons on voluntarily and registered to carry out any lawful purpose, and includes Non-Government Organizations, Professional Associations, Mass-based Societies and Consortiums” One of the fundamental responsibilities of the CSO is to create awareness among communities and investors on existing laws and regulations. They can also play a significant role in conflict prevention and conflict management. Through awareness creation, they play a significant role to empower the communities and disadvantaged sects of the community residing in the area of the agricultural



Fig. 12: CSO representative supporting a village community by explaining them their rights and empowering them for negotiations

3.3 Ensuring responsible land governance at the local level

3.3.1 Relevance of responsible land governance for large-scale land-based investments

Land scarcity, high competition over land, insecurity of tenure and weak land governance have been identified as causes or triggers of land conflicts. Hence, it is crucial to address these issues.

Competition over land can be regulated by a combination of markets and regulatory frameworks that provide rules and procedures. Conflicts are less likely where these mechanisms work well and offer adequate options for all to access land, including women and vulnerable groups.

Land scarcity can be addressed where it only is artificial, i.e. that the scarcity only results from the fact that certain land reserves are withheld by the state. In that case, governments can increase the availability of land through reforms such as opening up state lands while taking into account customary claims, removing regulatory and administrative barriers to liberalize land and rental markets, or more directly through legislating land reforms.

Insecurity of tenure can be addressed by measures that strengthen and/or extend property systems. Measures could include legal reforms that create more robust property rights such as recognizing previously unrecognized customary land rights or programs that regularize informal settlements and community land demarcation and registration. There are new models for community-based, participatory formalization of land rights and land use planning to reconcile competing land uses that can be implemented much more rapidly than the classic systematic registration models.

To avoid that land is “grabbed”, two things are essential: first, all local land use rights must be known, documented and formally secured. Secondly, the community needs land use planning in which it defines use zones and then translates these into reality, which is expressed above all in the fact that boundaries are clearly marked. In this way, if sufficient land is available in a community area, areas can be identified that are suitable for commercial agriculture. This is not to say that all this land should be given to an investor. A community can also decide to give only a small part to the investor and cultivate the rest of the land for the investor and conclude a contract farming contract with the investor.

Land administration and land management is therefore crucially important to be well prepared for any large-scale investment. It is important that this is also done responsibly, i.e. inclusively and transparently, with the participation of the individuals and groups concerned, without high costs or preconditions that many cannot meet, and without corruption.



Fig. 13: Responsible land governance is crucially important to be well prepared for any large-scale land-based investment

3.3.2 Securing tenure rights

There are established procedures for the registration of rural landholdings and the holders. The procedures are as follows;

- i. The government authorities at the district level provide awareness creation on the importance of land registration/regularization
- ii. The rural landholders elect a Kebele² Land Administration and Use Committee (KLAUC). Out of the seven committee members, by the directive, 2 have to be female
- iii. The KLAUC members get training on their rights and duties as presented in the rural land administration and use proclamation

² Kebele is the lowest level of the political administration, below district/woreda

- iv. During the registration, at the field level, four parties have to work together; which means a) the landholders, b) KLAUC representative, c) neighbouring farmers to the parcel registered and d) registrar and surveyor experts representing the government authority.
- v. The textual and spatial data collected from the field get processed at the office level. Index map prepared and posted at the Kebele for public display.
- vi. The landholders visit the index map and get an explanation about their parcel/s from assigned experts.
- vii. The landholder accepts or rejects the registered data and signs on the registration form. If accepted, then the data is entered in the rights registry book. If rejected the data has to be corrected.
- viii. Once the data is in the right registry book, the landholder receives a land holding certificate.
- ix. Once the landholding certificate is issued to the landholder, any claimant has to follow the following procedure
 - a. Apply to the KLAUC and request a verdict
 - b. If the claimant or the certificate holder is not satisfied with the verdict, then appeal to the land administration and use office at the district level.
 - c. Again if one of the disputants is unsatisfied with the verdict given by the district office of land administration and use, can appeal to the district court
 - d. The verdict passed by the district court will be the final in some cases.

If it seems too costly or too long to secure all land rights in a community, it is possible to start by identifying and documenting the existing land rights informally. The result can be presented on a map with an attached table showing who has which land rights where. The map and table should be publicly displayed for some time so that all community members can check whether their rights are correctly represented and also see whether other information is correct, as far as they can judge. If someone notices errors, there should be a way to point them out. In Ethiopia, this is done by the district and kebele officers or Para surveyors. Formalization/first registration is a public cost. The government has to cover all costs of the formalization process. Later transaction costs have to be covered by the landholder requesting the transaction.

3.3.3 Conducting participatory land use planning

Proclamation 456/2005, issued on Rural Land Administration and Use, defines land use planning as “a practice whereby the options that give greater economic benefits without causing land degradation and environmental pollution are determined and implemented from among the different use options a rural land can give on the basis of physical, economic and social information”. In this definition, the importance of local community participation seems less emphasized. But, it is very critical to care for the genuine participation of the local communities in the process of land use planning. The guideline developed by the Ministry of Agriculture on Local Level Participatory Land Use Planning (LLPLUP) has the following seven major steps with many sub-steps

1. Preparatory work – including community consultation
2. Land capability classification and physical resources evaluation
3. Environmental impact evaluation
4. Choosing the best option and preparing the plan

5. Approval of the plan – including comments from the local community
6. Implementing the plan
7. Participatory monitoring and evaluation of the effectiveness of the plan

As the guideline prepared by the MoA is targeting small-scale planning, in the case of large-scale agricultural investment planning the following zoning approach is proposed.

- i. Determine competing development interests in the envisaged investment area – competing interests could be biodiversity protection, commercial forestry, wildlife protection, large-scale crop production, livestock ranch, smallholders farming etc
- ii. Determine the biophysical environment/resources that fit the different competing development interests with genuine participation of the local community and use the local knowledge. The community knowledge of the area will help which area fits which development interest.
- iii. Establish different zones for the different development interests and produce a land use zonal map.
- iv. Put the zonal land use map for public display and collect all comments from the local community that help to include their interest and improve the map
- v. During zoning, recognize existing uses of the local community such as sites allocated for ritual purposes, cemetery sites, access to water points etc
- vi. Once the map is accepted, respect the zone allocated for smallholder farming

3.3.4 Swapping land and changing surfaces

In order to realise a future use, such as the introduction or expansion of commercial agriculture and/or the transfer of an area to an investor, a (preferably) contiguous area must often first be created. For this purpose, it is often necessary that people who currently cultivate (part of) the land receive another piece of land (land swap) or that land is merged (land pooling) or divided differently (land readjustment). These are all ways of avoiding expropriation or eviction by finding other lands for the current land users in time so that they do not lose crops or suffer other disadvantages.

The best example of a win-win experience that avoided forced eviction is the Koga irrigation project. The Koga dam and irrigation project was developed in Amhara National Regional State, in Mecha district to irrigate 7,000 ha. The reservoir of the project inundated 1,859 ha of farmland. The farmland, which was inundated was farmed for many generations and current users of the land are certified. The farmers lost their farmland for the irrigation water storage. The regional bureau of land administration and use bureau and the regional bureau of agriculture, the owner of the project, made a readjustment plan for the irrigable area and gave a proportional size of holding in the irrigable area for the farmers that lost their land for the water storage. Farmers in the irrigable area also lost part of their farms to accommodate those farmers who lost their farms for the purpose of water storage. In this way forced eviction is avoided. But, it was not an easy exercise. Repeated meetings were conducted till the agreement reached

3.4 Ensuring meaningful consultation



Fig. 14: Community members are consulted, receive all relevant documents and decide about the investment

3.4.1 Understanding and claiming meaningful consultation

Once an investor arrives seeking land, it is crucial as a community not to be pressured into agreeing to the project immediately. Instead, the community should politely defer the decision, claim meaningful consultation and immediately seek legal and technical advice. Lawyers, NGO advocates and paralegals can provide legal advice. CSO can provide technical advice on how to conduct meaningful consultation and provide support to the community during consultation.

It also needs to be avoided that investors and government officials meet alone with a community leader or a group of leaders or male elders, as these can be easier persuaded, intimidated or bribed than a whole community. Hence, communities should not let their leaders approve deals without having consulted the community extensively.

Communities should demand meaningful consultations in line with best practices. Such **meaningful consultations** (Columbia Center/NAMATI 2016a, p. 37):

- Occur before the government authorities the project development to proceed;
- Take place at the earliest possible stage in the design and conception of the project;
- Allow a community to provide or withhold its free, prior and informed consent (FPIC);
- Offer opportunities for the community to learn about the project and influence decisions about the project;
- Be held in the community's native language;
- Be conducted according to the community's rules and customs;
- Provide opportunities for all community members, including women, youth, and members of marginalized groups to participate; and
- Be properly funded (ideally independently) to enable the community to access legal and other technical assistance and to otherwise build their capacity to address likely power imbalances between the community and the company.

Box: What means free, prior and informed consent (FPIC)?

"Free, prior and informed consent" of indigenous people affected by a proposed project or investment is a principle in international law that is increasingly applied to local communities in general. The four elements can be summarized as follows (FAO 2014):

Free: Those deciding whether to consent to a project should do so without coercion, intimidation or manipulation.

Prior: Consent must be sought well before any authorization or the beginning of project activities. The timetable must allow sufficient time for culturally appropriate consultation and for completion of local decision-making processes.

Informed: People receive all relevant information about the project. The information provided must be objective, accurate and presented in a manner or form that is understandable to those receiving it.

Consent: The people have agreed to the activity that will take place on their land. The right to consent includes the right to say no the project or to offer to consent only under certain conditions.

For communities it can be useful to request, through their elected representatives, a **Memorandum of Understanding** (MoU) with the investor in which the government can also be involved to determine the details of the consultation and negotiation process. Such MoU could contain the following content:

- Good faith declaration of all signing parties;
- Agreement that the negotiations are open, that neither party is obliged to agree to the investment project, and that the details of the project are still negotiable;
- Commitment to share all relevant information as early as possible in local language;
- List of impact assessments to be done in a participatory manner, e.g. environmental impact assessment, social impact assessment, human rights impact assessment, tenure rights impact assessment;
- List of key stakeholders and stakeholder groups that will be included in the consultations and negotiations, along with their roles, rights and duties;

- Detailed description of consultation process with timeline. This must clearly show which analyses, discussions and decisions etc. the community will be involved in and how;
- Declaration of acceptance of the costs by the investor of legal and technical advice to the community, whereby the community has the right to choose its own independent technical and legal advisors;
- Clearly defined process for dispute resolution, which most likely will require a third party that can provide legal and technical support.

3.4.2 Demanding and reviewing information

In order to be in a position to decide whether a proposed investment makes sense and is good for the community as it is or in an adapted way, the community must obtain or request all necessary documentation. The documents that a responsible investor must prepare and share with the community include the following (Columbia Center/NAMATI 2016a, p. 39f):

- Feasibility study
- The investor's business plan
- Permits and licenses
- The investor-state contract regarding the proposed project
- Impact assessments: Environmental impact assessment, social impact assessment, human rights impact assessment and land tenure impact assessment
- Documents showing the investor's reputation, track record, or performance on other projects
- Documents stating who is funding the potential investment and information on this financial investor.

In order to understand the documents and assess the impact of the proposed agricultural investment on the community, recognised legal and technical advisors from independent institutions should be engaged to evaluate these documents and discuss them and their implications with community members.

A very important aspect of the preparation of any large-scale agricultural investment project is **impact assessments**. The environmental impact assessment (EIA) is a legal requirement in Ethiopia. Other countries also request a social impact assessment. Responsible land governance also requires a human rights impact assessment and a land tenure impact assessment. Communities can only insist on what is required by law in Ethiopia. But in addition, they can propose additional impact assessments. It would be beneficial for the community and the investor to conduct not just an environmental but also a human rights impact assessment. The investor may find it beneficial in particular if he may need to monitor the impacts of his investment anyway to have access to certain markets, such as the market of the European Union. A land tenure impact assessment is necessary to analyse if any land rights of people currently using land in the community will be affected and how. In particular, communities who have not yet mapped land rights and uses of their community members and where community members do not dispose formal(ized) land use rights, should insist on a land tenure impact assessment. Such a land tenure impact assessment should identify at a minimum the existing land users, their rights and the type of use on the land foreseen to be used for the investment project. The assessment should contain the same information on alternative land surfaces. This allows to identify the most suited option. Of course, it is much better if the community has already drawn up a land rights map and prepared a land use plan and can use these as a basis for proposing areas that are suitable for a major agricultural investment project (see 3.3).

3.4.3 Taking a decision for or against the investment

After the community has received and evaluated all the information, it must make a decision for or against the investment project. For this purpose, representatives of all groups (including especially vulnerable groups, like women, marginalized ethnic groups etc.) in the community should meet and also representatives of pastoral groups that use the area temporarily should be brought together. All the advantages and disadvantages of such a project should be discussed, written down and be weighed up together. Once the community reached a decision, it can call a final consultation meeting with the investor and inform the investor about its decision, in other words, to agree on negotiations to further specify the contractual arrangement or to withhold its consent to the project. The consent to enter into negotiations (not yet to the project itself) or the rejection of the project need to be carefully documented on paper, with photographs and with videos. Communities need to ensure that they directly receive copies of all the documentation.

If the community decides to share its land with a potential investor, it will not directly accept the project, but first, prepare for negotiations and then enter into negotiations with the investor.

If the community has withheld consent to the agricultural investment project, but the investor ignores this rejection, Ethiopian law offers the following options:

The community withhold consent. But a decision will be made by the government institutions mandated to transfer land to investors. If the proposed investment has the potential to contribute to job creation, food security, foreign currency earning, and supply of raw materials for local industries, the request of the investor will be approved. The only option that the community has is to negotiate on the level of compensation. The type of compensation proclaimed in proclamation 1161/2019 are;

- Property Compensation, article 12, with sub-articles on the type of property compensations
- Displacement Compensation and Land Substitution, article 13, with many sub-articles
- Displacement Compensation for Communal Landholding 13 (3)
- Displacement compensation and substitute land for Urban Landholders Permanently Displaced, 13 (4)
- Displacement Assistance to Temporarily Displaced Urban Landholders 13 (5)
- Compensation paid for Economic Loss of Income, article 14
- If the proposed compensation is not satisfactory, the community can go to court.

3.5 Identifying the most suited business model and desired returns

Before entering into negotiations with the investor, the community needs to agree on the type of investment it would like to see realized and the return it expects in exchange for using its lands and natural resources.

3.5.1 Plantation versus out grower schemes (contract farming)

Investors are generally interested in plantations, large-scale agricultural estates meant for farming that specializes in cash crop production, mainly planted with a single crop. For this purpose, they require a large track of land. What they generally offer is employment on the farm. Increasingly, plantation production becomes highly technical and only highly qualified and specialized employees receive jobs. Hence, there are little job opportunities for locals. Therefore, communities need to negotiate other returns.

A viable alternative to acquiring large areas of land is an out grower scheme, sometimes referred to as contract farming, where a contractual partnership is established between a company and local growers or landholders to produce a commodity. This approach allows for vertical integration of the production process and enhanced quality control. It reduces the need to acquire rights over large tracts of land. The arrangement usually consists of a small “nucleus” farm owned by the company surrounded by a network of land parcels owned by local smallholders. The smallholders contract to sell their yields to the company, often at discounted prices, in exchange for training, equipment, input supplements, business development services, and assistance with credit and/or financing (USAID 2015).

Box: Contract farming near Bahir Dar – the example of Koga Veg

Koga Veg is an initiative of Durabilis NV, a Belgian impact investing company with activities in Africa and in Latin America. The company was established near Bahir Dar, Ethiopia to boost rural economic development in Mecha district by supplying a wide range of exotic vegetables for the European market. It operates its own 50-hectare nucleus farm and engages in contract farming with farmer groups in the area with a production potential of 7,000 hectares of arable and irrigated land. The company introduced the farmers to peas and other export crops and provides seeds/seedlings, technical and ongoing farm management training as a means of increasing farmer income and ultimately improving livelihoods. It has added sugar snap, snow pea, avocado and other vegetables to its capabilities. The farm has created jobs for male and female workers (the majority of employees appear to be women) on different farm activities.

Avocado producers have established a cooperative, enabling the company to communicate efficiently with the farmers via executive body of the cooperative. Koga Veg helped farmers to employ intercropping farming practices with cereal or vegetable crops with young avocado trees that lack a fully closed canopy. Once the tree canopy closes the intercropping activity will cease and the farms will fully transform to perennial Avocado fruit production.

Source: Interview with farm and outgrower scheme managers and NIRAS-IP national team field observation, February 2022.

3.5.2 Possible returns from the investor

A community has the right to receive something from the investor in exchange for using its lands and natural resources. The community can demand the following types of returns from the investor (Columbia Center/NAMATI 2016b, p. 27f):

- Regular monthly or yearly rental payments or fees for using the community’s lands and natural resources;
- Royalties or other payments based on profits or gross revenue;
- Infrastructure developed for the community;
- Jobs, skills training, and scholarships; and
- Support for the local economy by buying goods and services from local people
- New and adaptable technologies that enhance production and productivity



Fig. 15: Possible returns from the investor

3.5.3 Compensation by investor

In cases where individuals or groups need to be relocated, the following requirements have to be fulfilled:

- Compensation needs to be based on fair valuation and to be paid promptly.
- Compensation needs to include alternative land whenever a person/family/group wishes it. In case of agricultural land, such land has to have the same quality as the previous land or if quality is lower, the surface needs to be bigger to allow for the same amount of production as before.
- Compensation needs to include resettlement cost allowing for living conditions not to deteriorate but rather to improve.



Fig. 16: Compensation permitting improved living conditions

The proclamation issued to determine expropriation of landholdings for the public purpose, payments of compensation and resettlement, proclamation 1161/2019, gives the first priority for the rural landholders to enter into commercial agricultural production if they are in the area designated for the purpose and if they have the capacity and interest. Article 7 (2) of the proclamation states that rural landholders for agricultural use shall have priority rights to develop their holdings according to the land use plan either individually or in a group. However, if they are not interested and if they do not have the capacity, they have to leave their holding according to the law. The proclamation, article 8 (g) states that “pay compensation or provide substitute land before the displacement of people from their land holding”.

Five points about benefits and compensation may be useful to communities and investors as they negotiate in the final agreement:

- Compensation can be addressed in terms of jobs or out-grower possibilities from the investment
- Consideration should be given that the investment land is the main source of agricultural production for the community
- The community could thus recommend cash income from an investor that goes into a community fund for income-generating activities.
- Infrastructure supports like schools or clinics and tractor service for the community
- Providing in-kind goods to the community rather than paying into a community development fund

The desired business model and returns should then be negotiated with the investor and finally included in the investment contract between community and investor.

3.6 Negotiating an effective contract favourable for the community

3.6.1 Appointing a negotiation team

The communities need to determine who will represent the community in the initial negotiations and designate its official point person(s) for initial communication with the investor. The community can be represented by Kebele administration or Kebele land administration committee, and religious leaders.

To ensure that the negotiating team does remain accountable to the community, the community should also clearly define how the negotiating team and the broader community work together to allow for regular reporting and consultation with the broader community. In assigning the negotiating team, the framework of (re)negotiation, the limits of responsibilities, modalities of reporting progress and achievements should all be specified.

3.6.2 Improving your negotiation skills / getting support

Investors usually have staff who are well-trained and experienced negotiators. It would be naïve to believe that you can stand up to them as a community representative. Therefore, it is very important to get qualified support for negotiations. The support should consist of training some well-suited, self-confident community representatives in negotiation techniques and in accompanying the negotiations to help community representatives understand all the details, notice possible pitfalls and push through their interests.

3.6.3 Essential contract contents

Everything that has been negotiated must be recorded in a contract. The following checklist should help not to forget any important aspect in the negotiations.

Checklist: What should go in a contract?

- ✓ Parties to the contract
- ✓ Intention to be legally bound by the promises in the contract
- ✓ Description of the project
- ✓ Duration for the contract and potential for renewal
- ✓ Description and demarcation of the land area required
- ✓ Parties' rights in and near the project area
- ✓ Description of planned project infrastructure
- ✓ What the company will give the community in exchange for using its lands and natural resources
- ✓ Impact assessments and compensation for known or expected damages
- ✓ Protections against environmental damage and harm to human health (during the investment project)
- ✓ Protections against social damage by the company; rules for the conduct of company employees
- ✓ Providing information, including company records, during the course of investment
- ✓ Assignment of rights
- ✓ Review, renegotiation, and amendment of the contract
- ✓ Monitoring for compliance (monitoring plan)
- ✓ Governing law
- ✓ Notice
- ✓ Remedies: What happens if the company breaches the contract?
- ✓ Ending the contract (termination)
- ✓ Dispute resolution processes and grievance mechanisms
- ✓ Unexpected event (force majeure)
- ✓ What happens to the land and improvements after the contract ends (disposition of assets)
- ✓ Confidentiality, entire agreement clause, and signatures

Source: Columbia Center/NAMATI 2016b



Fig. 17: Community representatives supported by a CSO-expert negotiating with the investor, drafting a contract that includes conditions for the investment defined by the local community.

3.7 Monitoring contract implementation

A contract is a good basis for further cooperation. To ensure that all its contents are realised and this also at the agreed time, the implementation of the contract or rather the entire agricultural investment project must be monitored continuously. More precisely, the following aspects must be monitored:

- Is the investor complying with all his obligations resulting from the various contracts?
- What are the negative and positive impacts on the affected community, individuals and the environment?

Of course, monitoring is not an end in itself. It serves to correct any weaknesses. If monitoring reveals that an obligation has not been fulfilled or has only been partially fulfilled, or that negative impacts on people or the environment have arisen or are about to arise, the investor must adjust its activities and ensure that the relevant obligations are fulfilled in the further course of the work and that the negative impacts are avoided. If damage has already been caused, it must be compensated. The details of how to deal with weaknesses identified during monitoring should already be included in the contract between investor and community.

A detailed monitoring plan should be attached to this contract. In this plan, the investor and the community jointly determine what is to be monitored and how this is to be done. The how, i.e. the method, refers on the one hand to which indicators are to be used for measurement/observation and on the other hand to when and how the community members are to be involved in the monitoring.

Impact monitoring can be based on impact assessments. Usually, the same indicators are used, so that the first impact assessment can also serve as a baseline study for later monitoring.

The monitoring plan may also specify a monitoring committee to check that monitoring is taking place regularly at the agreed times and that the procedures and reports meet the agreed standards. The monitoring itself is the responsibility of the investor. However, the supervision of the monitoring should be carried out by a jointly appointed monitoring committee. This also checks whether the population is adequately involved in the monitoring. In the preparation for monitoring detailed criteria have to be developed and agreed upon. The criteria have to be relevant to the type of land-based investment.

The population can be involved in monitoring through surveys and workshops, for example. In addition, a complaints office should be set up at the level of the investor and organised in such a way that justified complaints are also taken into account in the monitoring process.

3.8 Establishing a complaint mechanism/grievance redress mechanism

A grievance redress mechanism (GRM) is a set of arrangements that enable local communities, employees, out-growers, and other affected stakeholders to raise grievances with the investor and seek redress when they perceive a negative impact arising from the investor's activities. GRM is key to mitigate, manage, and resolve potential or actual negative impacts. It also ensures the fulfilment of obligations under international human rights law and contributes to positive relations with communities and employees. For example, grievance redressing mechanism is established for compensation and resettlement when landholding is taken for public purpose. According proclamation no. 1161/2019, Complaint Hearing Body and Appeal Council is established by article 18 in all regions and the two city administrations. The proclamation in article 19 (1) states that any person who received an order of expropriation of his landholding; or who has an interest or claim on the property to be expropriated my file an application within 30 days of service of order to the Complaint Hearing Body which is established as per sub article of article 1 of article 18 of the proclamation. There is an appeal possibility provided in the proclamation. Article 20 (1) of the proclamation declares that a party who is aggrieved with the decision given under article 19 (1) shall file an appeal to the Appeal Hearing Council within 30 days of the receipt of written notice of the decision thereof.

4. Solving land conflicts that result from large-scale agricultural investments

There are many governmental and non-governmental bodies in Ethiopia whose task is to resolve conflicts. It is important for communities not only to know the different bodies but also to know which bodies are responsible for their specific land conflict. Communities also need to be aware of how the conflict resolution procedures work, how they can best prepare themselves for such a procedure and what they need to pay attention to in order to ensure that a solution found is also implemented to their satisfaction.

4.1 Different dispute resolution approaches

Dispute resolution approaches can be distinguished into two types: consensual approaches and non-consensual approaches. Consensual approaches are those in which the parties to the conflict jointly agree on a solution. Non-consensual approaches are those where a third person takes a decision. Experience has shown that solutions that are worked out jointly by the conflict parties are better accepted by them and implemented more successfully. These approaches are not about who is right. It is solely about finding a solution for the future that is acceptable to all.

Consensual approaches are (GIZ 2017):

Unaccompanied negotiations: This is the simplest, quickest and cheapest way to resolve a conflict. It only requires the parties to the conflict to meet and negotiate a solution without the intervention of a third party. Such an approach is possible when the conflict is just emerging or is still at an early stage, no fronts have formed yet and the conflict parties are willing to negotiate with each other. Given that investors are much more experienced in negotiations than local communities are, the latter should seek professional support, e.g. from CSOs or grassroots advocates, in order not to be taken advantage of.

Moderated/facilitated negotiations: These are negotiations conducted by a person who is trusted by both parties to the conflict, i.e. the local community and the investor. The task of this person is to moderate/facilitate the negotiations. He or she has no influence on the content of the negotiations. The moderator/facilitator merely ensure that the conflicting parties take turns to speak, can summarise important points and ensure that the parties set out their outcome in writing in a contract. There is no formal format and no prescribed procedure for such moderation or facilitation.

Conciliation is a confidential and interest based conflict resolution approach, in which the parties seek to reach an amicable dispute settlement with the assistance of the conciliator, who acts as a neutral third party. Conciliation is a mixture of moderated negotiation and mediation. The conciliator helps the parties to negotiate while – whenever necessary – addressing internalised perceptions, attitudes, intentions and behaviours with the objective of reducing prejudices and hostility. Unlike mediation, conciliation does not have a set procedure. In a way, conciliation is more intuitive than mediation. Nevertheless, a conciliator is expected to be more professional and experienced than a moderator or facilitator.

Mediation is also a confidential and interest based conflict resolution approach, in which the parties seek to reach an amicable dispute settlement, in this case with the assistance of the mediator, who also acts as a neutral third party. As with all consensual approaches, it is the parties to the conflict who have to work out a solution. The mediator only steers the process. He or she does not take a decision. However, unlike the other approaches, the process is precisely defined. The mediator follows a strict procedure, giving each party the opportunity to explain its perceptions and to express its feelings, forcing the other party to listen, then asking questions to the conflict parties to help them identify and name their interests and needs, and finally moderating a discussion aimed at finding a solution with which both parties can live. At the end, a written contract is signed by all parties and the mediator seals the agreement.

All consensual approaches are voluntary.

Non-consensual approaches are (GIZ 2017):

Litigation is the formal process, generally referred to as court proceedings. The decision-maker is a judge

at a regular court, a specialized land court or a tribunal. The process follows formal procedures and rules. Both parties – often represented by a lawyer – present evidence to the judge whose binding decision makes one party win and the other lose the case, which can only be appealed through a higher court. Litigation will therefore not re-establish the relationships between the parties. The current land conflict might be solved, but the hostility may continue or even be sharpened. Litigation should therefore always be considered the method of last resort. Litigation procedures can become costly.

Arbitration is another procedure in which a third party decides the dispute. However, this instance is not a court but an arbitrator. This is why arbitration is counted as “alternative dispute resolution” (ADR) approach alongside non-consensual conflict resolution approaches. They are all alternatives to court proceedings; hence their name: *alternative* dispute resolution mechanisms. Arbitration is more flexible than litigation, supposedly quicker and less expensive, especially in smaller cases in which no lawyers are involved. It also allows for better conciliation, as the arbitrator can also act as a mediator; the only difference being that the arbitrator has the last say in the matter. Compared to litigation, there is more flexibility in the selection of an arbitrator than there is in case of a judge. Hence, the chances are higher of finding a qualified person who is suitably trained in legal matters, accepted by both parties and who will decide fairly. Whether or not the decision is binding depends on the legal frame, as well as on the agreements between the parties. Generally, an arbitrator’s decision should not be open to appeal through the courts.

In summary, it can be said that from unaccompanied negotiation to litigation the conflict resolution procedures take more time and resources while the influence of the conflict parties on the outcome of conflict resolutions diminishes.

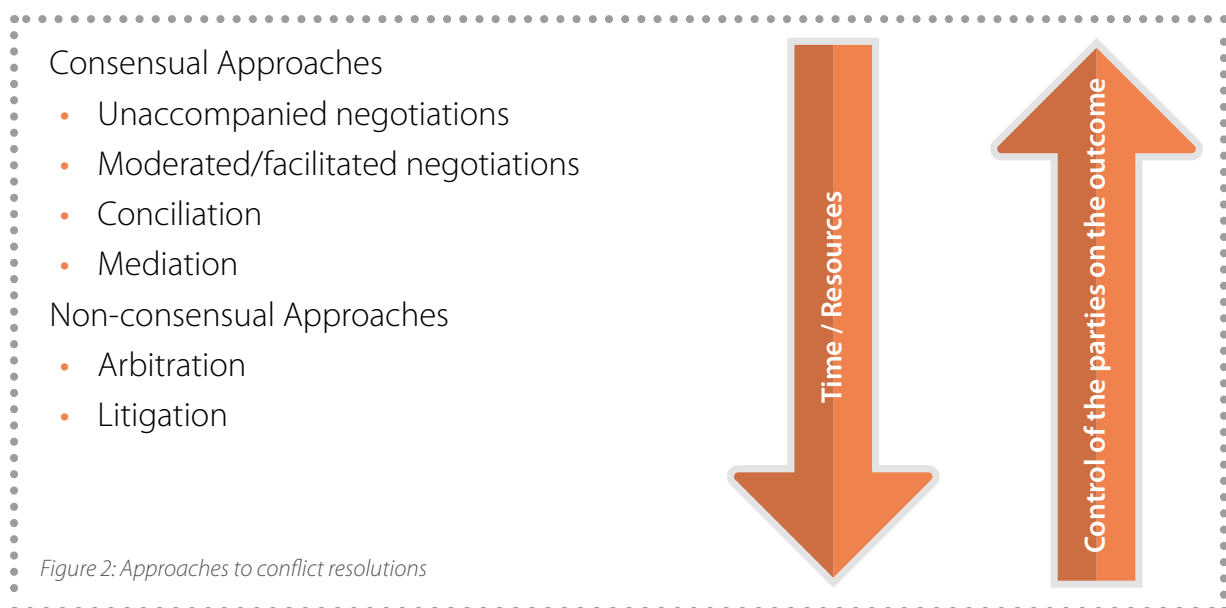


Figure 2: Approaches to conflict resolutions

Traditional conflict resolution procedures are often a mixture of conciliation, mediation and arbitration. While the third party does indeed take the decision, interests and needs and the fate of the local society are taken into account to a much greater extent than in litigation or arbitration proceedings. These procedures are usually the most familiar and accessible to the local population. Occasionally, however, the decisions of traditional arbitrators do not comply with state law, namely when they are based on traditional values that contradict the constitution, e.g. unequal treatment of men and women, old and young, locals and foreigners.

4.2 Land Based dispute resolution legal tools in Ethiopia

Conflict resolution in rural areas of Ethiopia is governed by the “Federal Proclamation on Land Administration and Land Use, proclamation no. 456/2005”. According to this proclamation, the resolution of rural land disputes is part of rural land administration. “Where a dispute arises over rural landholding rights, effort shall be made to resolve disputes through discussion and agreement of the concerned parties. Where the dispute could not be resolved through agreement, it shall be decided by an arbitral body to be elected by the parties or be decided in accordance with the rural land administration laws of the region, article 12). The law promotes the resolution of land disputes at a local level with the assistance of the land administration institutions before it resorts to judicial ones. In all regions of Ethiopia, agreements reached through negotiation, compromise, or arbitration is encouraged. A right of appeal is recognized in case of expropriation where an appeal is allowed in relation to compensation grievances. There are also regular property laws to solve disputes. In addition, dispute resolution can be managed through the formal judiciary system.

4.3 Land dispute/conflict resolution mechanisms/pathways

Land dispute is one of the major types of disputes in Ethiopia which arises from different sources. In rural Ethiopia, the root cause of the dispute is a shortage of agricultural land in the face of high population pressure and a lack of alternative means of livelihood. This can be manifested in the form of boundary conflict, encroachment, land grab and in different forms of land transactions. One of the objectives of the land administration proclamation of the federal and regional ones is to create a conducive legal environment to resolve land disputes amicably and efficiently. The laws also aim to reduce disputes through systematic land registration and certification with Geo-referenced parcel maps. Despite all the impressive gains of the land registration and certification activities in Ethiopia, land conflicts between farmers, families and investors are occurring.

Depending on the nature of disputes, the tenure system, the legal or institutional framework, there are various mechanisms for land dispute resolutions.

The basic legal framework of land dispute resolution in Ethiopia is embedded under Article 12 of the Federal Rural Land Administration and Use Proclamation No 456/2005. It envisages that “where the dispute arises over rural landholding right, effort shall be made to resolve the dispute through discussion and agreement of the concerned parties. Where the dispute could not be resolved by agreement, it shall be decided by an arbitral body to be elected by the parties or decided in accordance with the rural land administration laws of the region.” The law prefers the resolution of disputes at a local level with the assistance of the land administration institutional apparatus before it resorts to a judicial one.

As illustrated in Figure 3, there are three dispute resolution mechanisms/pathways, community-level conflict resolution pathway, administrative conflict resolution pathways and judiciary conflict resolution pathway. Individuals who felt that their rightful holding is intruded on by someone have the right to raise the issue at the sub-kebele land administration committee level. The affected disputant, not satisfied by the verdict at the sub-kebele level, can take the matter to the kebele land administration committee level. If one of the disputants is not satisfied with the verdict given by the kebele land administration committee, he/she has two alternative pathways. He/she can go to the judiciary pathway/

system or to follow the administrative pathway but not in both ways. Once the litigation pathway is selected, such as the judiciary, then it can go to the Supreme Court level. The one who selected the administrative pathway can take the matter to the kebele land administration office. Unsatisfied disputant at the kebele land administration office level has the right to select one of the pathways, the administrative or the judiciary. If the administrative pathway is selected, the matter goes to the regional land administration bureau level. Here again, if the party that is not satisfied by the administrative decision of the regional bureau, can go to the judiciary system and start at the woreda court level. Some disputes can be resolved at the village elders' level. Disputants may bring the case to village conciliators, selected by both sides. If both sides agree, the case dies out. Otherwise, it goes to the formal administrative pathway.

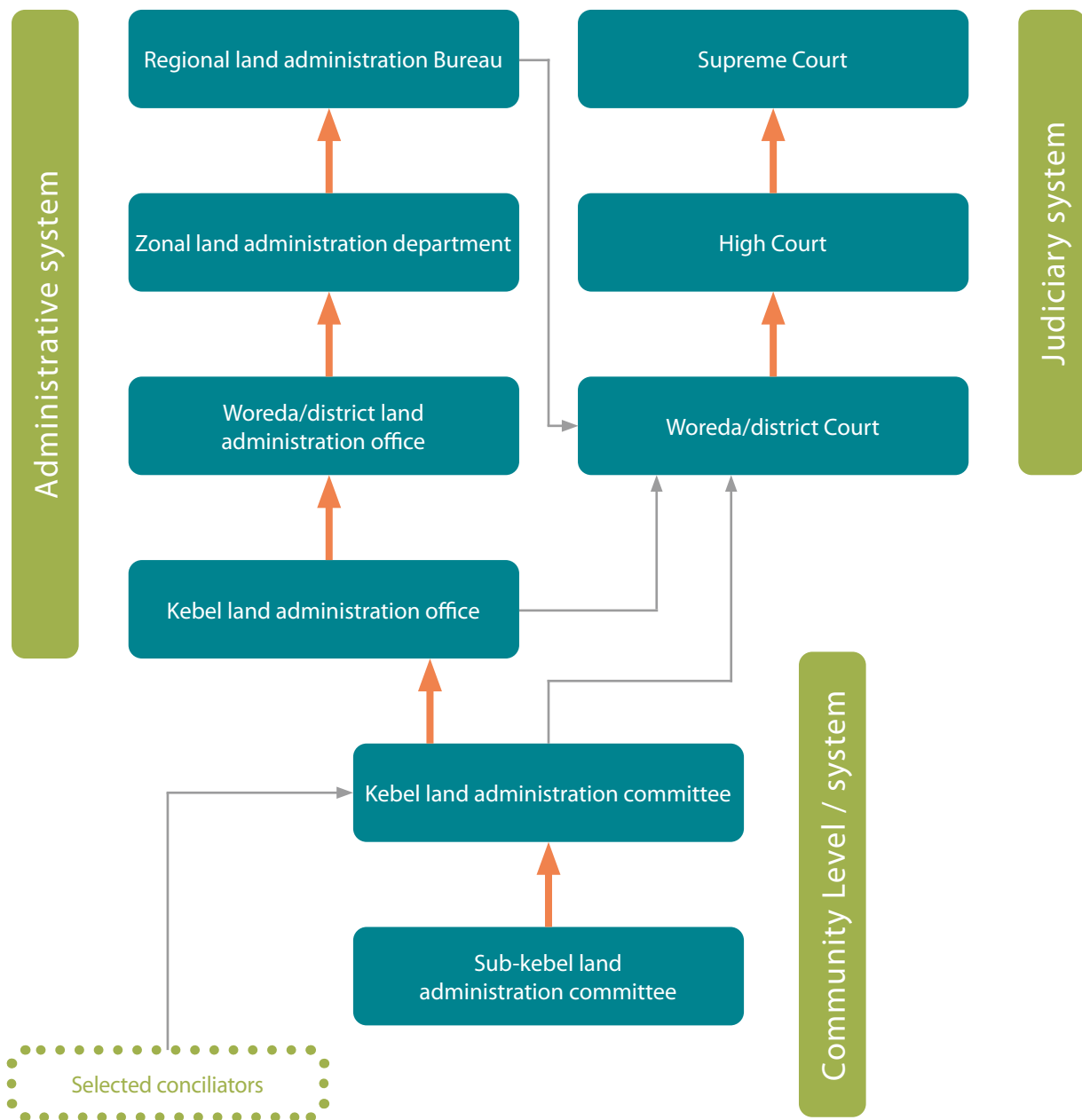


Figure 3: Dispute resolution mechanisms/pathways

4.4 Grievance hearing hierarchy in public institutions:

Regional governments have established grievance hearing mechanisms that move from the lower kebele administrator/manager to the regional president's office (see Figure 4).

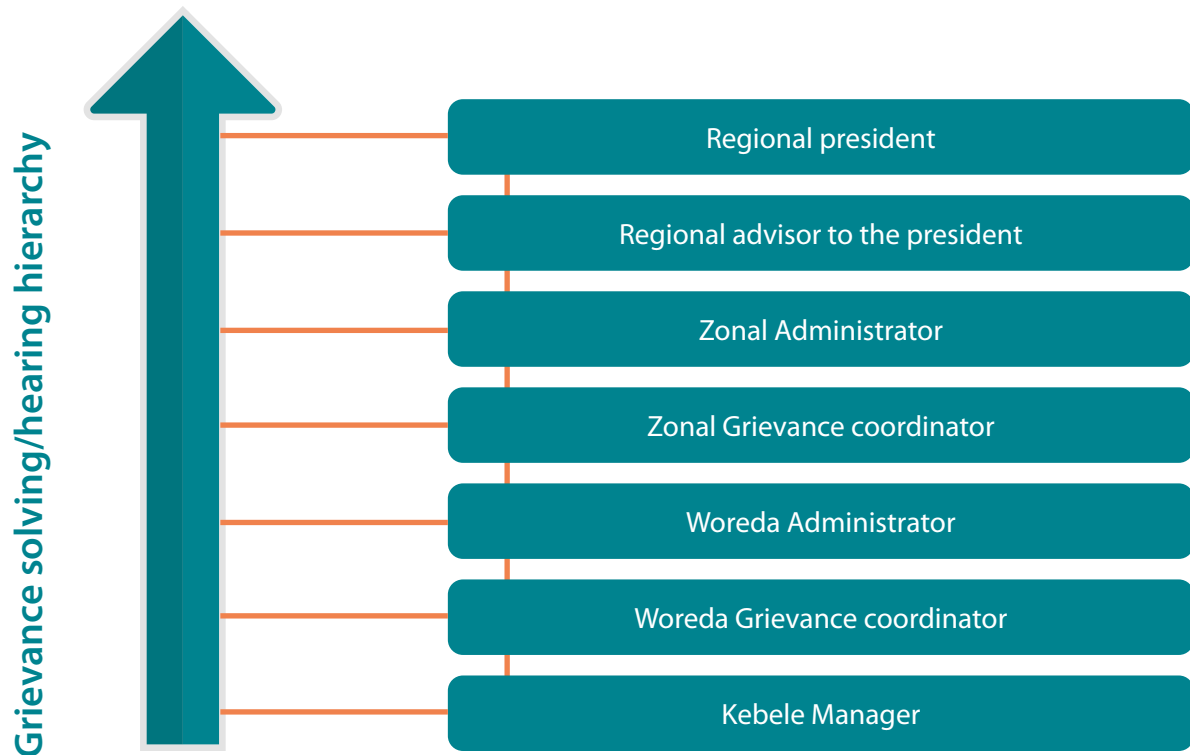


Figure 4: Grievance hearing hierarchy

4.5 Conflict resolving institution

Conflict resolution bodies can be distinguished into customary institutions at a local level and government bodies at higher levels.

4.5.1 Customary institutions

The main weaknesses of customary institutions are:

- Lack of skill and knowledge of mediation/arbitration/ mechanisms
- No clear procedure, on how land conflict can be resolved
- Many stakeholders involved on conflict issue
- Biased/corrupted/ to support one of the conflicting party
- Conflict resolution take long time, to be finalized

Communities across the Ethiopian regions have customary institutions and mechanisms for conflict resolution and peacemaking. These institutions are parts of customary systems of governance. They benefit the community in terms of:

- High involvement of elders at different stages of conflict resolution and peacemaking process.
- Preference and respect for elders known for their qualities including experience in dispute resolution;
- Knowledge of customary laws, procedures, norms and values of the society;
- Impartiality, respect for rules and people; the ability of listening and speaking politely; honesty and tolerance.

Local mechanisms intervene to resolve community disputes before they escalate to large-scale violence or to prevent a resumption of violence after a period of calm.

a) Elderly's mediation committee/Group/

The Federal proclamation No.456/2005 provides a framework to use the elderly's mediation. The regions include it in their legislation as an alternative resolution mechanism. The elderly are organized in every kebele. They are elected directly by the public. The role of the elderly's mediation committee is to facilitate the resolution of the conflict. In line with the above-mentioned rules for mediation, the elderly's mediation committee leads and channels the discussion of the problem. They facilitate the negotiations but they do not take the decision. The decision has to be identified and agreed upon by the conflicting parties who are representing on their behalf. When the mediation fails to bring about a solution, the parties have the right to go to the local court. Elder's mediation is effective mainly because it is cost-effective and nearby, the elderly generally know the cause(s) of the conflict and it normally leads to a win-win situation. However, sometimes it is biased to one party and does not follow the legal system. In most cases, elder's conflict mediation committee constitutes males.

b) Kebele land administration committee

Kebele land administration committees are organized in every kebele. They are the lowest administrative unit of the land sector. They have legally recognized entities and have a big responsibility on rural land administration. They keep land registration documents. Their main responsibility is to facilitate the registration of land, but they also resolve minor land disputes such as boundary conflicts. They are used as a witness when there is a conflict on the registration.

c) Kebele social court

Kebele social courts are organized in each kebele to resolve minor cases with limited financial size. The social court has the responsibility to litigate and decide. In some regions such as Amhara, they don't intervene in land-related cases

d) Religious institutions

Religious leaders can become involved in conflict resolution, by their initiative or when there is a request from the conflicting parties. They have the power to influence the conflicting parties.

E) Community, Investor and Government Fora (CIGF)

Community, Investor and Government For a (CIGF) is a forum established in Benishangul-Gumuz Regional Administration. It is a new initiative by the Support to Responsible Agricultural Investment project. It is found that the forum is very important to prevent and manage conflicts between the community and investors.

2. Government institutions

a) Administrative organs at different levels:

Administrative organs exist at the level of woreda, zone and region. They give instruction, recommendations or suggestions, on how the conflict has to be resolved often to land institutions. The suggestion can be in written or verbally.

b) Land administration institutions at kebele, woreda, zone and regional level

These offices resolve conflicts, often on administrative issues. If a party is not satisfied with the decision made, it has the right to apply to the local court, or to the administrative organ.

- Responsible to give registration documents to the court

c) Grievances hearing offices

There are grievances hearing offices at the level of woreda, zone and region. These offices are not directly involved in conflict resolution, instead, the institution is mainly focused to give guidance, suggestion or recommendation on how the conflict can be resolved, often to land institutions. The grievance hearing hierarchy is presented in Figure 4.

d) Ombudsmen institute

Ombudsmen institutes can also provide suggestions how the conflict can to be resolved. All government institutions have no right to interfere on the issue handled by the court.

e) Judiciary

The judiciary is the last decision-making institution. Courts exist at different levels:

- Instant court (woreda level): can make decision at the first time
- Higher court: by Appeal (who is not satisfied on the decision made by the instant court decision)
- Superior court: by cassations
- Religious courts (Sharia courts)

Table 2: Conflict resolution bodies in Ethiopia

	Kebele	Woreda	Zone	Region	National level
Judiciary		Woreda Courts	High Courts	Supreme Courts	
Administration	Kebele land administration committees	Woreda land administration Grievances Hearing offices	Zonal land administration Grievances Hearing offices	Regional land administration Grievances Hearing offices Ombudsman institute	Ombudsman institute

Customary institution	Elders' mediation committee Abba Herrega** Abba Dheedha*** Rera elders****				
Religious institution	Religious leaders				
Civil society	Kebele social courts				

Legend:
 Black: conflict resolution bodies open for any dispute;
 Green: conflict resolution bodies focussing on land disputes
 ** Abba Herrega: Responsible for management of water resources
 *** Abba Dheedha: Responsibly- responsible for rangeland management
 **** Rera elders: Those who are responsible for overall management and resolution of disputes on land and natural resources

Source: Wehrmann 2021

Conflicts in Ethiopia could easily be handled at the grass-root levels by the societies themselves without the direct intervention of the government. Ethiopia is home to more than 80 ethnic groups that have their own distinct languages and cultures. These diverse ethnic and cultural groups have developed their own unique political or administrative, economic, social and judicial systems including mechanisms for conflict resolution and management. Therefore, this huge potential of conflict management possibilities have to be exploited in a contextual manner ...

4.6 Being prepared to take an active part in land dispute resolution

The more you know about a conflict, the easier it is to resolve it. It is very important that the subject of the conflict is clear. What exactly is this conflict with the investor about? What are the investor's interests and needs? What are the interests and needs of the local community or the local actors involved in the conflict? Are there other actors? If so, which ones and what interests are they pursuing?

All this information should be collected and clearly documented, preferably visually. Conflicts could for instance be mapped. The mapping exercise could involve a stakeholder assessment, physical mapping of the location of the conflict (or the boundaries if it is about overlapping land rights); and an attempt to build a complete picture of the physical, social and psychological layout of the conflict. Then these results can be used by the relevant bodies in conflict resolution. The better the analysis, the more likely it is that the conflict resolution body (in particular a mediator) will be able to help people uncover a productive pathway to sustainable dispute resolution and to develop a long-term conflict management plan. The produced documents/maps can also be reviewed and supplemented together with the investor. Especially in consensual procedures, such preliminary work can be very helpful.

Furthermore, the local community should agree on what they want and present a united front. This may require some well-moderated discussions and negotiations among themselves. The community representatives should only enter into a conflict resolution process when the community has a clear formulated goal and good convincing arguments.

If there are (old) documents that document rights to the land that is the subject of the dispute or show boundaries that are being challenged by the conflict, these documents should be presented to the conflict resolution body.

4.7 Ensuring that the conflict agreement is “SMART”

Agreements reached in resolving the conflicts need to be anchored in legally binding community-investor contracts. Such a conflict agreement between the investor and the local community should be «smart»:

- Specific: The agreement must include objectives and consequences of non-fulfilment, it needs to be clear and detailed.
- Measurable: Intended results should be measurable.
- Agreement: Parties need to be in agreement
- Realistic: Parties need to believe that the planned changes are possible.
- Time-specific: Milestones and timelines for achieving the intended results should be set.

5. References

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