LEGEND

Land: Enhancing Governance for Economic Development

Briefing note

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Investing Responsibly in Agricultural Land

Lessons from responsible land investment pilots in sub-Saharan Africa

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This briefing note presents the Executive Summary of a LEGEND paper that synthesises the key lessons from recent partnership projects in sub-Saharan Africa that explored how private business can partner with civil society stakeholders to demonstrate how agricultural investments can operate responsibly by respecting the legitimate land rights of local communities.

Key lessons

1. Companies need to pay proper attention to land tenure and legacy issues at the investment planning stage, implying a need for improved risk assessment and due diligence.
2. Legitimate tenure rights, both in and around project sites, need to be recognised, documented and as far as possible, secured at the start of an investment process.
3. Respecting legitimate land rights means that rights holders' free and prior community consent (FPIC) is required for a company to access their land, and that fair and open consultation and negotiation processes need to be held with the rights holders affected.
4. Communities need legal support to protect legitimate tenure rights, participate effectively in negotiation with companies, and achieve redress for harm done.
5. Companies need to mainstream land as a key ESG issue in their operations. Though practical barriers still exist to make this a reality, companies are beginning to improve their practice as the business case for RLI becomes clearer.
6. Proper consideration of land means that companies need to be ready to reduce concession sizes, adjust pre-conceived business plans and consider opportunities to develop more inclusive business models that do not require land acquisition.
7. Landscape-wide approaches are needed through which investors and companies can engage with relevant government and community authorities and other stakeholders to strengthen land governance at scale and create greater shared value.
8. To address land rights and associated ESG issues successfully, companies' need access to skills and services of specialised and locally informed providers, to address land rights and associated ESG issues successfully, and mechanisms are needed to mobilise independent support to communities are also needed.

An important cross cutting lesson is that active attention to gender issues and engagement with women using appropriate tools and approaches is particularly important for responsible investment in view of women's roles in food production, household management and welfare, and in influencing community attitudes and building consensus.

Introduction

Land investments involve the acquisition of land and natural resources, usually by companies, for business ventures, for agriculture and other purposes. **Responsible land investments (RLI)**, in accordance with agreed international soft law principles, human rights and environmental principles and relevant standards, including recognition and respect for legitimate land and resource rights, so as not to create or exacerbate land conflicts and avoid land-related risks for communities, investors and governments.

Sub-Saharan Africa is an important destination for agricultural investment which governments seek to support a transformation of smallholder agriculture, and companies are actively operationalising land concessions obtained in recent years.

Lack of consideration of land issues in investment planning can lead to significant delays and additional costs to investors, as well as negative impacts on the land rights and livelihoods of local people, leading to conflicts, reputational damage for companies and, ultimately in some cases, to failed investments. These risks are particularly acute in developing countries, notably in sub-Saharan Africa where existing land rights are not captured by official land information systems.

This paper presents eight practical lessons on cross-cutting issues in land investment derived from a series of pilot projects that took place from 2016–2019 in five countries in sub-Saharan Africa: Ghana, Malawi, Mozambique, Sierra Leone and Tanzania. These pilots, supported by the UK's Department for International development (DFID) and USAID, sought to (i) test how private companies and civil society organisation (CSOs) could collaborate in the implementation of agribusiness investments, and (ii) develop innovative tools and approaches that could be adopted and implemented at greater scale.

The pilots reviewed here have had numerous positive outcomes, including significant increases in tenure security for community members, reduction of land-related conflicts, improved relations between project-affected people and companies, and in various cases, rapid creation of new economic opportunities and community organisational capacity, and significant benefits for women. In setting out the key lessons, the paper makes suggestions for how these benefits might be realised at greater scale, without reliance on providing recurrent donor funding for specific company and civil society partnerships

Background, context and overview of RLI

Policy and practical concerns to promote responsible land investment (RLI) emerged following the wave of large-scale land-based investments in agriculture that took place from the mid-2000s onwards. Soft law instruments agreed by UN member states, private sector, civil society and other stakeholders through the Committee on World Food Security (CFS), provide guiding principles on the governance of tenure rights to land and natural resources (Voluntary Guidelines on the responsible Governance of Tenure or VGGT – CFS & FAO 2012) and on responsible investment in agriculture, reflecting human rights, labour rights and environmental sustainability concerns (CFS-RAI 2015). A key dimension is the recognition and protection of legitimate land rights – understood as rights that are established and recognised socially although they may not be recognised and protected in national law.

In efforts to operationalise these principles, a wide range of technical and practical guidance has been developed and donors, international and civil society organisations have come to collaborate more closely with private investors and companies in design and delivery of responsible agricultural investments on the ground.

Although the pace of large-scale land deals has slowed in recent years, these lessons are of continuing relevance to Africa's ongoing drive to attract private investment to help transform the farming sector, and for companies to implement investment projects on land already acquired, while the business case for RLI that addresses land tenure risk proactively is increasingly clear, to mitigate considerable risks, reduce long term costs and provide greater security to investors and producers [1].

Lessons from RLI pilots

The eight key lessons from pilot experience focus primarily on what companies themselves can do, but also identify how governments, donors and CSOs can assist in strengthening the regulatory and enabling environment for responsible land investment. The lessons are aligned with broader analysis of RLI issues, serving to amplify and deepen understanding of good practice[2].

1. Companies need to pay proper attention to land tenure and legacy issues at the investment planning stage, implying a need for improved risk assessment and due diligence. Companies need to combine use of available land risk tools with field assessments of land tenure issues before deciding on investment sites. They need dedicated tools for due diligence to meet needs of their operations and supply chains across the project cycle for which the VGGT-based Analytical framework for land-based investments in Africa (GrowAfrica 2015) and other available guidance provides a basis[3]. Where project sites change hands, companies need to take measures to identify and address land legacy issues involving grievances and problem arising from previous investors' land acquisitions.

2. Legitimate tenure rights, both in and around project sites, need to be recognised, documented and as far as possible, secured at the start of an investment process. If rights are not documented, then companies will not know whose land rights are likely to be affected or whom to consult. Pilots demonstrated practical tools and approaches to understand customary tenure arrangements and map and certify communities' and individual households' land rights, using low-cost digital tools, including rights held by women. While companies can also assist in registering land rights of smallholder suppliers, there are risks in entrusting land rights mapping to private companies interested in securing land for their own use, as competing land claims require independent adjudication. Donors and governments have particular responsibilities in ensuring coverage of investment areas by national land registration programmes and enabling civil society to fill gaps where they do not.

1. See findings of a study on to quantify tenure related risks faced by companies. Introducing the Quantifying Tenure Risk initiative: Assessing tenure risk and providing support to investors and businesses
2. A series of analytical papers produced by LEGEND on responsible land investment topics
3. The 2nd edition of Respecting Land and Forest Rights: a Guide for companies sets out action that can be taken by different types land and forest investment projects to align operations with the VGGT and includes specific guidance on engagement with women and the relevance of gender.

3. Respecting legitimate land rights means that rights holders' free and prior community consent (FPIC) is required for a company to access their land, and that fair and open consultation and negotiation processes need to be held with the rights holders affected. The pilots included cases where large scale concessions were agreed by governments and traditional leaders without consulting the actual land users or establishing proper contractual arrangements for land access or benefit sharing, leading to grievances, conflict and resentment as projects were established on community lands. The companies concerned came to recognise that in practice the free prior informed consent (FPIC) of specific landowning families and land users, including both women and men, is an essential condition for both legal and social licence to operate, and they suspended new acquisitions pending identification of and negotiation with the relevant landholders. Civil society grantees devoted large proportions of pilot project budgets to in-depth consultation and stakeholder negotiation, combined with land rights mapping.

4. Communities need legal support to protect legitimate tenure rights, participate effectively in negotiation with companies, and achieve redress for harm done. Due to power imbalances, communities need capacity-building support to level the playing field in negotiations with companies. The pilot projects contracted independent legal expertise to raise community legal awareness, advocate for redress for harm done, draw up new lease agreements reflecting community interests, and build capacity to assist in managing negotiations. Mechanisms are needed to fund and enable community access to legal, technical and business support at scale, independent of the services that the companies themselves provide, although they can contribute finance.

5. Companies need to mainstream land as a key ESG issue in their operations. Though practical barriers still exist to make this a reality, companies are beginning to improve their practice as the business case for RLI becomes clearer. Although companies recognise land tenure as part of wider environmental, social and governance (ESG) risks, operational priorities, including land acquisitions, are driven by production and profitability targets. One pilot project showed how a major company (Illovo Sugar) can integrate efforts to manage land issues across their operations by training dedicated teams that include operational departments, building trust and collaboration with local civil society partners and careful use of purpose-designed due diligence tools to monitor and manage land risks.

6. Proper consideration of land means that companies need to be ready to reduce concession sizes, adjust pre-conceived business plans and consider opportunities to develop more inclusive business models that do not require land acquisition. Two major participating companies reduced planned scale of production and size of plantations to accommodate community land rights, opening the way to more inclusive approaches with greater participation by out-growers and community livelihood and food security projects that company social development schemes can support. Other pilots showed that business partners can develop new community-based value chains for natural products and cultural tourism services based on secure collective rights to land, without acquiring land. Others revealed progress and challenges in developing alternative investment and landholding models in which private-sector partners provide land and business management, and offtake and supply services to organised small-scale growers.

7. Landscape-wide approaches are needed through which large scale investors and companies can engage with relevant government and community authorities and other stakeholders to strengthen land governance at scale and create greater shared value. The various LEGEND pilots involved practical action with multiple stakeholders across extensive landscapes comprising agricultural land and natural resources that continue to provide important goods and environmental services. Several projects took steps to establish ongoing institutional arrangements to bring stakeholders together in landscape-wide associations and platforms, in which engagement of jurisdictional authorities, including both local government and customary leaders, proved key. Pilots in the P4F programme adopted a landscape approach, bringing stakeholders together from the start and illustrate opportunities for responsible land investment projects to access landscape and climate finance to generate additional community income from sustainable forest industries, forest protection, landscape restoration and carbon storage payments. Nevertheless, the clarification and strengthening of tenure rights and governance arrangements over forest land and resources, is an element often missing from landscape programmes.

8. To address land rights and associated ESG issues successfully, companies' need access to skills and services of specialised and locally informed providers, to address land rights and associated ESG issues successfully, and mechanisms to mobilise independent support to communities are also needed. Through the pilots, companies were able to benefit from access to expertise in community engagement and communications, relevant areas of law, risk assessment, gender analysis, participatory land rights mapping, land use planning and land registration, and the use of low-cost open data tools. Knowledge of local cultural and political-economy and ecological contexts provided guidance on how to operate in the local governance and business environment. This illustrates the need to develop expanded standing mechanisms through which companies can access relevant skills and local knowledge from civil society, and academic and professional sources, without relying on donor funding that is unlikely to prove sustainable or to deliver services to companies at significant scale [4].

4. See for example the Social Licence Platform under development by LEGEND partners Landesa and TMP Systems

Conclusions and ways forward

The lessons reported here emerged primarily from pilot projects operating from 2016 to 2019, devised in response to funding calls from DFID and USAID for business partnership proposals to address land rights issues in agricultural investments projects. Lessons related to land governance from other pilots focused on forest production and protection were also considered.

The lessons demonstrate how companies can partner with the right sources of independent skills, land-based investments in agriculture and related natural resource sectors can make responsible contributions to economic development by delivering sustainable development outcomes for local communities and becoming more accountable. An important cross cutting lesson is that active engagement with women using appropriate tools and approaches is particularly important for responsible investment in view of women's roles in food production, household management and welfare, and in influencing community attitudes and building consensus.

Replicating success and taking the notion of 'responsible land-based investment' from theory to practice at scale by extending these lessons and useful tools to other companies, countries and commodity sectors, calls for more systemic improvements of governance structures, requiring broader action, involving civil society, governments, international organisations, and donors.

To ensure that hasty and over-ambitious planning does not drive irresponsible and unsustainable investment projects that impact negatively on communities and business, direct links are needed between longer term programmes for strengthening tenure rights, efforts to deliver responsible agricultural investment and more inclusive value chains and programmes focused on sustainable land and forest use, so that institutions and mechanisms for stakeholder coordination engagement at national and local levels can be put in place.

To achieve impact also requires re-doubling efforts to leverage and operationalise public private partnership funding to deliver the necessary land rights mapping, tenure security, community legal and business support, land use planning, and robust arrangements for stakeholder participation. While this requires local action involving lower levels of government with private business and civil society, the national level is critical to strengthen the regulatory and enabling environment for responsible land and agricultural investment, by engaging with national investment agencies, and resourcing stakeholder partnerships for action at sub-national and local project levels.

Land: Enhancing Governance for Economic Development (LEGEND) is a DFID programme running from 2015 to 2021 that aims to improve land rights protection, knowledge and information, and the quality of private sector investment in DFID priority countries. LEGEND includes: knowledge management activities on land governance, tenure security, and responsible land investment; advisory and technical support services for DFID country programmes; grant support to a set of DFID global land partners; and a Challenge Fund that has supported innovation in land governance and responsible land investment.

LEGEND publications aim to initiate and stimulate debate, research, analysis and action on current issues in global land governance, by drawing together and assessing evidence and understanding on questions of emerging relevance and making recommendations for policy, development programming and stakeholder practice.

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The full report and other LEGEND publications are available from:
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