



Why land governance and responsible land investment remains a key priority

Rachel Turner, Director for Economic Development, DFID

Throughout my DFID career – from working on land privatisation in the former Soviet Union to promoting land reform in Mozambique – I have held a longstanding interest in land. As the articles in this and previous LEGEND Bulletins highlight, the UK government has made a tangible contribution to land governance globally through LEGEND and other programmes, not least in promoting responsible land investment (RLI) and governance. Promoting increased investment in agriculture and other sectors is a key priority of DFID's economic development strategy. With this in mind, UK government investment through LEGEND reflects our understanding that good land governance underpins good

investment. This means delivering development impact for poor people and investment returns for businesses.

Through LEGEND – which has helped develop the guidance, services and arguments businesses need to implement best practice –, we have learned a great deal about how to facilitate RLI. LEGEND has also supported critical work empowering poor communities to understand their rights and negotiate effectively with investors. While there is much still to do in terms of equipping businesses and empowering communities, we also need to turn our attention to the role governments should play in creating an enabling environment for RLI. Otherwise, as a result of

weak land-administration systems or opaque land-investment approval processes, investors will simply avoid countries in desperate need of new investment.

The **UK-Africa Investment Summit** on 20 January 2020 will provide an important opportunity to attract new investment to Africa, promote responsible investment, and encourage governments to create a level playing field for companies and communities. Over the coming months, we will be sharing details on the next phase of DFID programming on land, building on LEGEND to ensure the UK continues to lead global efforts promoting RLI.

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LEGEND: what have we learned from the past five years?

Chris Penrose Buckley, Land Policy Lead, DFID

With the LEGEND programme ending in March 2021, this final bulletin provides an opportunity to reflect on what has been achieved to date, the key lessons learned, and what challenges may be faced as we consider future priorities.

Regarding RLI, we have come a long way over the past five years. While it is too soon to speak of a 'tipping point', it does appear that work supported through LEGEND and other initiatives has impacted many investors' and businesses' awareness of land rights issues, as well as their commitment to doing something about it. This is confirmed by the continued engagement of LEGEND partners with global investors and agribusinesses, feedback from various platforms such as the **Interlaken Group**, and surveys such as the **USAID investor survey**. We now have an unprecedented array of tools (see page 6) – for businesses as well as other stakeholders – on how to conduct land investment in accordance with international guidelines, in particular the **Voluntary Guidelines on the Responsible Governance of Tenure (VGGT)**. As noted below, there is a growing body of guidance that can help steer negotiations, as well as good practice examples demonstrating what responsible investment looks like in practice.

However, despite the **falling rate of new land deals** over the past five years, few would argue that global principles, such as the VGGT, are now widely applied across the private sector, or that a new surge in commodity prices would not, in turn, lead to a new wave of 'land grabs'. In this regard, I see three particular challenges:

- Firstly, the change in awareness and commitment appears to be limited to a relatively small set of global investors and businesses, which are connected to global sustainability initiatives and/or have a reputation to protect on the stock market.
- Secondly, even businesses that have committed to investing



more responsibly are struggling to translate this into practice. While written guidance and tools are essential, most businesses also need actual guides or intermediaries – people – with local knowledge, and there simply aren't enough of them (or businesses don't know how to find them). Additionally, land issues are still seen as just one of many competing sustainability issues, meaning it is difficult for companies to prioritise or justify upfront investment.

- Thirdly, the various guidance and tools on RLI can sometimes obfuscate the crux of the matter. Any land transaction, aside from cases of lawful expropriation (with a robust process and identification of public purpose), should require the informed consent of the communities concerned. That is arguably the single most important implication of the VGGT but is also a pragmatic approach for businesses to avoid problems down the line. To put it another way: investors and businesses

need to recognise communities as legitimate counterparties to any land transaction, over and above government, chiefs or politicians.

These challenges point to some important priorities regarding future work on responsible land investment for DFID and other partners:

- The focus needs to be adjusted away from just company and/or community engagement and towards national governments, specifically strengthening land-investment approval processes in order to make them simpler, fairer and more transparent. This appears to be the only way to reach all (or at least most) land investors, and create a level playing field for communities. In parallel, it may be time to consider more robust international measures – not dependent on voluntary risk-management – to ensure businesses act responsibly.
- More time and effort need to be invested in making the business case for a change in practice. The **Quantifying Tenure Risk study** has been an important

step forward, but the evidence needs to be developed further and communicated more effectively. This means making greater inroads with upstream investors, as well as building hard evidence on the costs of getting it wrong compared to getting it right.

- As **RRI** say, there needs to be a credible pathway for action, which means ensuring companies and investors can access the required local expertise. The nascent **Social License Platform** and the **Earthworm Centre for Social Excellence** are leading the way in this regard, and such efforts need to be scaled up and out with more collaboration.
- Lastly, it may be time to revisit how the safeguards and performance standards used by development banks – in particular the

International Finance Corporation performance standards – approach land, and in doing so move the focus and entry-point away from ‘avoiding involuntary resettlement’ towards ‘negotiating lawful consent’.

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Progress on RLI over recent years also needs to be considered in the context of wider efforts to promote

improved land governance at national levels. Not only are political incentives/disincentives for reforming land investment similar to those for wider land-administration reform, long-term advances in RLI also depend on reforming national land-administration systems. Promoting and resourcing land reform at scale must therefore remain an important priority if significant progress is to be made by 2030 towards the Sustainable Development Goals (SDGs) land targets. Building on LEGEND, as well as the large land-tenure regularisation programmes in Rwanda and Ethiopia, we intend to announce new UK government programme initiatives taking forward this work in the coming months.

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Responsible land-based investments: key lessons from the LEGEND Core Land Support Team’s work

Anna Locke and Lorenzo Cotula, LEGEND Core Land Support Team

Securing legitimate tenure rights in the context of land-based investments, as well as promoting more responsible business conduct, has been an important focus for LEGEND. One challenge is that, when referring to ‘responsible land-based investments’, people often mean different things. Everyone, however, agrees that when it comes to land rights, simply complying with national laws is not enough. This is because many national legal systems do not adequately protect local claims to land and resources, meaning that even investment projects adhering to the law can result in people being dispossessed, thereby provoking difficult land disputes. It is also clear that such challenges cannot be viewed simply in technocratic terms: **complex power imbalances** often work against positive outcomes for affected people.

A key lesson of our work is that addressing responsible land-based investments cannot rely on engaging with businesses alone. While there

is much that companies can do differently, promoting systemic change also requires working with national governments and civil society to reform policies, institutions and processes. Effective reform

would address the shortcomings of national governance frameworks, mandate respect for legitimate tenure rights, and create a level playing field for all businesses. Equally, there is much work to do in ensuring that people living in areas



subject to significant pressures on land can exercise their rights, make informed choices and advance their development priorities. There is growing experience regarding how this can be done, including approaches developed by LEGEND partners such as **Namati** and **CCSI**, as well as of course **IIED**.

Within this broader context, businesses can play an important role in doing things right. As detailed in the following article by Julian Quan highlighting learnings from the LEGEND Challenge Fund, this requires investing time and resources early on, as problems or disputes further down the line will simply be harder to resolve. It also involves rethinking due diligence, taking into consideration a **broader range of issues** than even those covered by best-practice standards such as those of the International Finance Corporation, as well as the often complex **social and historical dimensions of land relations**. Identifying all legitimate tenure rights (for example, by using **Cadasta's land mapping** tools), including those not protected by law, is a key step in this.

Where businesses finance support

for communities, they should ensure that such support is truly independent, and accountable to the client rather than the funder – for example, by creating **trust funds or basket funds** over which the business has no control. It is also important to recognise power relations **within a community or between different communities** in a project area, which are often among the most difficult issues to address.

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Comprehensive guidance is now available to businesses on how to tackle these issues, including resources developed by **LEGEND partner Landesa** and by the **Interlaken Group**. However, there is no one-size-fits-all solution,

meaning businesses need to source specialist advice in order to ensure approaches are tailored to context. **Online platforms** are available to help link demand with relevant service providers. While taking such steps requires money, **LEGEND research** shows that land disputes can cost companies substantially more – up to USD 100 million (around GBP 76 million) – mainly through delays incurred at different stages of the investment. The cost of avoiding such problems is potentially a fraction of that.

Addressing these issues requires a long-term perspective that goes beyond the relatively short duration of development projects. Hopefully, the approaches LEGEND partners have developed and disseminated over recent years – as well as the collaborations that have coalesced around this work – can provide a lasting resource for governments, businesses, social actors and donors working to advance rural development strategies premised on a respect for legitimate tenure rights.

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Investing responsibly in sub-Saharan Africa's agricultural land: lessons from the LEGEND Challenge Fund projects

Julian Quan, Professor of Land and Development Practice, Natural Resources Institute, University of Greenwich, and technical lead, LEGEND Core Land Support Team

Through its Challenge Fund, LEGEND supported seven civil society-business partnerships in sub-Saharan Africa, with the goal of encouraging responsible agricultural investments. The projects sought to demonstrate how agricultural investments can operate responsibly by respecting the legitimate land rights of local communities, and to develop effective and scalable tools/approaches for use by business and civil society.

A **LEGEND paper** published in December 2019 brought together key lessons from recent RLI pilot projects

in sub-Saharan Africa. Some practical insights can be drawn from the outcomes of two of these projects.

Both the **Solidaridad and Natural Habitat Ltd** project in Sierra Leone and the **ORAM/Portucel project** in Mozambique represent good examples of why companies need to pay due attention to land tenure and legacy issues at the investment planning stage, as well as improving land-related risk assessment and due diligence generally.

In both cases, investors' earlier failures, prior to the LEGEND projects, to give timely consideration to land

tenure issues led to significant delays, community grievances, internal disputes, and misunderstandings between people hoping to gain from the project and those who felt they were losing out, thereby creating a climate of mistrust. As well as restricting land access for local rights holders, this risked significant additional costs and reputational damage for the companies involved. As a result, investors had to cut back on new planting and suspend new land acquisitions until such time as proper settlements are reached with local communities.

Acknowledging the value of technical support provided by LEGEND through civil society partners – Solidaridad in Sierra Leone and ORAM in Mozambique – the companies resolved to obtain the free, prior and informed consent (FPIC) of the landowners or use right holders when acquiring further land parcels for planting oil palm or eucalyptus, thereby ensuring legitimacy in the eyes of the relevant communities. These two cases highlight the need for investors to move beyond a desk-based, legalistic due-diligence approach to establishing the right to use land under national law. Instead, new approaches are needed to clarify whether the process and circumstances of land acquisition on the ground enables or impedes a company's **social licence to operate**.

These two cases highlight the need for investors to move beyond a desk-based, legalistic due-diligence approach to establishing the right to use land under national law.

In cases where customary land rights have not been understood or recognised by an investment project, retrospective action needs to be taken to rectify damage to local livelihoods and company–community relations. Participatory mapping and documentation of existing community, family and individual land rights was an essential measure applied in the Sierra Leone and Mozambique projects in order to address earlier mistakes.

ORAM's project in central Mozambique – working in plantation forestry concessions granted to Portucel – used an online spatial data platform and associated mapping tools to map the landholdings of 20 communities. The platform was then used to generate land rights certificates, which were issued in the

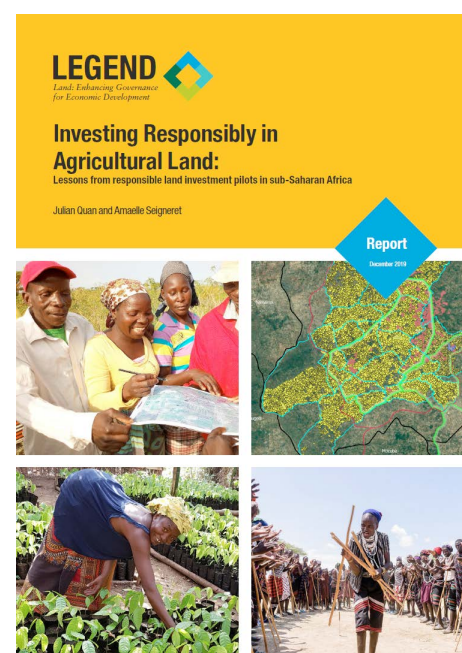
name of legally established village land associations and provided to the rightful occupants and users of 10,201 household land parcels, proving rights of occupation and agreed parcel boundaries. Compared with cumbersome and unreliable manual survey and registration systems, the platform – known as **CaVaTeCo** and developed by local partner Terra Firma – uses freely available spatial data and software tools to enable swift official recognition of customary rights at low cost.

In Sierra Leone, where there is no system for documenting customary land rights, Solidaridad and Natural Habitat Sierra Leone Limited undertook a joint participatory mapping process in order to identify how land-holding arrangements were organised in and around the investment area. This involved documenting the land claims of extended families and specific groups, as well as the customary rules governing land access and use by community or family members.

More broadly, land rights mapping and documentation processes proved central to the success of most LEGEND Challenge Fund projects, identifying what land might be available for commercial development, the specific groups that businesses needed to negotiate with regarding access to community land and natural resource products, and practical lessons on how to go about this in different investment contexts.

Building on the learnings identified in the previous article by Anna Locke and Lorenzo Cotula, key lessons identified through the LEGEND Challenge Fund projects include:

- Legitimate tenure rights in and around investment sites must be recognised, documented and secured at the start of an investment process. In most sub-Saharan African countries, land rights are for the most part managed customarily and are often undocumented, meaning there is little to no information about existing landholders and land-uses. As a result, companies



may mistakenly presume that land they wish to develop is unoccupied and therefore available. This problem lies at the root of many land-related conflicts between local communities and investors.

- Given the multiple roles women play in food production, household management and welfare, as well as influencing community attitudes and building consensus, it is essential that they are actively engaged with using appropriate tools and approaches.
- The state has a critical role to play – a conclusion supported by wider analysis by LEGEND. In the absence of stronger regulation by governments, ensuring international and domestic agri-investments fully respect legitimate land rights will not be possible.

Learning products, documentation and practical lessons for responsible land-based investment in Africa produced by the project grantees and business partners will shortly be available at <https://landportal.org/partners/legend/challenge-fund/projects> and on relevant Land Portal pages related to Land and Investment.

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Supporting responsible land investment: tools and resources available from LEGEND

Below we highlight some of the successful tools and resources funded by the LEGEND programme that provide businesses with guidance on how to address land-investment issues.

The Cadasta Platform

The Cadasta Platform offers an accessible and flexible suite of mobile and web-based tools designed to help users collect, manage, store and analyse land and resource rights data. The platform and tools are built on the principles of open standards and access, and are powered by Esri ArcGIS technology – the world’s leading, cloud-based mapping and analytic platform. Utilising Cadasta’s platform and training means that farmers, cooperatives and agribusinesses can improve their responsible land-investment practices and supply chain traceability.

Cadasta Foundation – Cadasta.org



Responsible Investment in Property and Land Resource Platform

The RIPL Resource Platform offers practical, step-by-step guidance for companies, governments and communities looking to achieve socially responsible investments in agricultural land. The platform builds on existing guidance by synthesising best practices, providing concrete examples to address existing gaps, and developing guidance tailored to multiple investment stakeholders. The platform hosts a suite of guidebooks, topical primers and supplemental resources.

Landesa – ripl.landesa.org



The Responsible Land-Based Investment Navigator

The Responsible Land-Based Investment Navigator assists private sector stakeholders – including operating companies, lenders, investors, buyers, service providers and legal advisors – identify and access the practical tools and guides most relevant to their work. It offers a broad selection of resources on a variety of topics related to responsible land investment. It also includes general guidelines, such as UN agreements and principles related to responsible land investment; reports and case studies that provide insights into previous experiences addressing land rights issues; and links to external platforms offering complementary services.

The Land Portal and LEGEND Core Land Support Team – navigator.landportal.org



Open Land Contracts

Open Land Contracts is a repository of publicly available investment contracts for land, agriculture, and forestry projects. The repository aims to support a variety of stakeholders, including host governments, communities, civil society organisations, journalists and private sector actors. For companies, the repository can support due diligence efforts regarding potential concessions. Furthermore, by providing companies and other stakeholders with a centralised platform for contract disclosure, it can facilitate alignment with international best practices that urge contract transparency. The repository provides plain language summaries of key provisions, as well as tools for searching and comparing contracts.

Columbia Center on Sustainable Investment (CCSI) – OpenLandContracts.org



The LandAssess Tool

The LandAssess Tool is a risk assessment and management spreadsheet that helps companies conduct land rights due diligence and monitoring. Though its focus is specifically on agricultural issues, it can also provide important guidance to other sectors. Using clear and simple checklists, the tool guides companies through a series of questions designed to measure compliance with best practices for responsible land-based investment. In order to help categorise which areas of non-compliance should be prioritised in the short, medium and long-term, users answer each question by indicating the level of progress made, as well as assigning the level of risk.

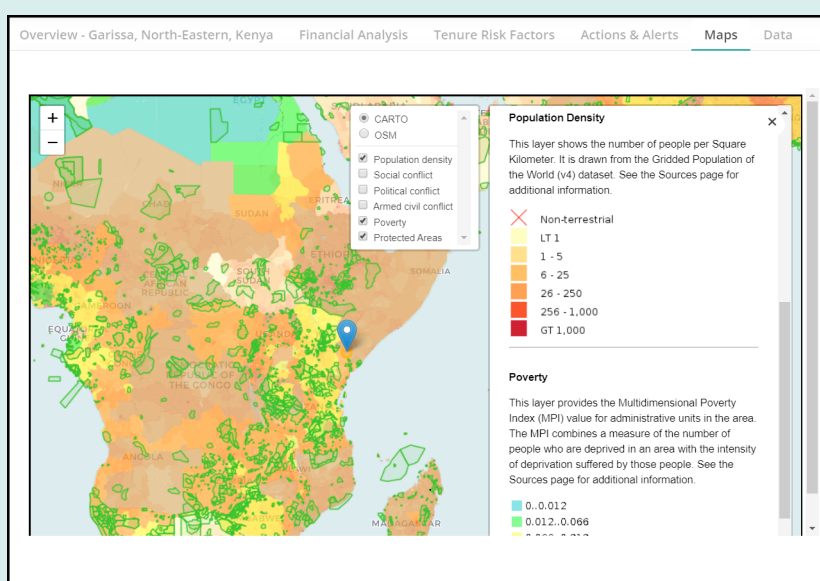
Landesa and TMP systems – landesa.org/what-we-do/landassess-tool



Landscape and Tenure Risk Tool

Landscape is a tool for measuring tenure risk. It utilises large quantities of geospatial data on social, environmental and political conditions to deliver an automated analysis of tenure risk at a highly localised, subnational level of granularity. In doing so, it helps companies: identify the best locations for new assets; reduce the burden of environmental, social and governance risk identification in project and supplier screening; plan due diligence and impact monitoring; and improve the quality of valuations and cash flow modelling.

Following Landscape analysis, companies can use the Tenure Risk Tool (developed with ODI), which – drawing on research on tenure-induced delay – generates a distribution of possible delays faced by a project should it become embroiled in a dispute. It then applies user-provided assumptions to determine the impact of delays on net present value under best, median and worst-case scenarios.



TMP Systems and ODI – landscape.info



The Social License Platform

The Social License Platform is a web-based service helping companies and investors find the expertise required to perform due diligence; meet applicable land-related environmental and social standards; and achieve more successful land-based projects and investments, while at the same time promoting better outcomes for local communities. The platform connects companies and investors with qualified service providers, who can implement trust-dependent processes across the project and investment lifecycle and in a manner aligned with national and international best practices. Services include consultation with local people, gender-related support, land and natural resource rights mapping, due diligence and risk analysis, impact assessments, impact mitigation, agricultural training, and supply chain mapping.

Landesa – sociallicenseplatform.com



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Page 1: Lalibela Farmers, Ethiopia. Credit: Rod Waddington, Creative Commons via Flickr

Page 2: Scenic landscape. Potato Park, Pisco, Peru. Credit: Khanh Tran-Tanh/IIED

Page 3: Youth and staff in Bamessing, Cameroon using a Garmin GPS unit to create a digital map of their community. Credit: Judith Nkie/IIED

Page 7: The Landscape and Tenure Risk Tool website. Screenshot, <https://landscape.info/> Credit: TMP Public

About us

Land: Enhancing Governance for Economic Development (LEGEND) is a DFID programme that aims to improve land rights protection, knowledge and information, and the quality of private sector investment in DFID priority countries. It includes the development and start-up of new DFID country land programmes, alongside knowledge management activities, a challenge fund to support land governance innovations, and management of complementary DFID grants, MoUs and contracts, and supported by a Core Land Support Team.

Contributions reflect their authors' views, not those of DFID or members of the LEGEND Core Land Support Team.

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