

RESPONSIBLE LAND INVESTMENT

Experiences and lessons learned

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Land Rights Research Initiative
University of Gothenburg

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Summary

- Brief background and framing – the idea of Responsible Land Investment, its origins and key features
- 8 Lessons on responsible land-based investment in agriculture
 - Updating and adapting a set of slides that draws on key findings from the LEGEND programme and a set of pilot projects in sub-Saharan Africa countries
- Conclusions: outcomes and further resources, directions for policy and research

WHAT DOES “RESPONSIBLE LAND INVESTMENT” MEAN?

No clear definition or single RLI approach, but an idea around which stakeholders can engage and organise, grounded in agreed global principles and international soft law

- Responsible business perspective: international companies and investors responding to Environmental Social and Governance (ESG) risks, with commitments to put necessary due diligence, risk assessment, operating procedures CSR / community engagement systems in place
- Idea grounded in CFS-RAI and VGGT principles - contributes to food & nutrition security and respects legitimate land rights – including natural resources, women & youth
- The place of land amongst other sustainability risks and commitments may not be clear to private companies, but to succeed, and deliver returns, they need to be mindful of the social, environmental reputational, operational and financial risks of acquiring land where tenure rights are unclear.
- Legal compliance alone is not enough to avoid doing harm: social licence is also needed, and each case differs



8 LESSONS FOR RESPONSIBLE LAND INVESTMENT IN AGRICULTURE

LESSON 1 Proper attention to land rights issues at an early stage in investment planning: companies face risks of conflict, reputational damage and additional costs.

- Two Legend partner **companies pursuing large scale land investments had to scale back and change plans** to comply with CFS RAI and VGGT principles and have **social licence to operate**.
- Use **fit for purpose risk assessment tools** drawing on comprehensive, localised data sets
- Engage local organisations and experts to assist in due diligence including **field reconnaissance of land tenure arrangements amongst affected groups** and to initiate consultation
- **Careful attention to legacy issues** as investments change hands.

Why is the EU funding Ethiopia's repression of land rights defenders?

by [William Ochieng](#) | Anywa Survival Organisation
Monday, 18 July 2016 11:30 CDT



farmlandgrab.org

the global rush for farmland and peoples' struggles against it

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EU, Ethiopia, Germany launch 3.8 million euro project to support agricultural investments in Ethiopia

OAKLAND INSTITUTE Reframing the Debate Inspiring Action

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European Union Bankrolls Deceitful Land Project in Ethiopia

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Saturday, July 30, 2016

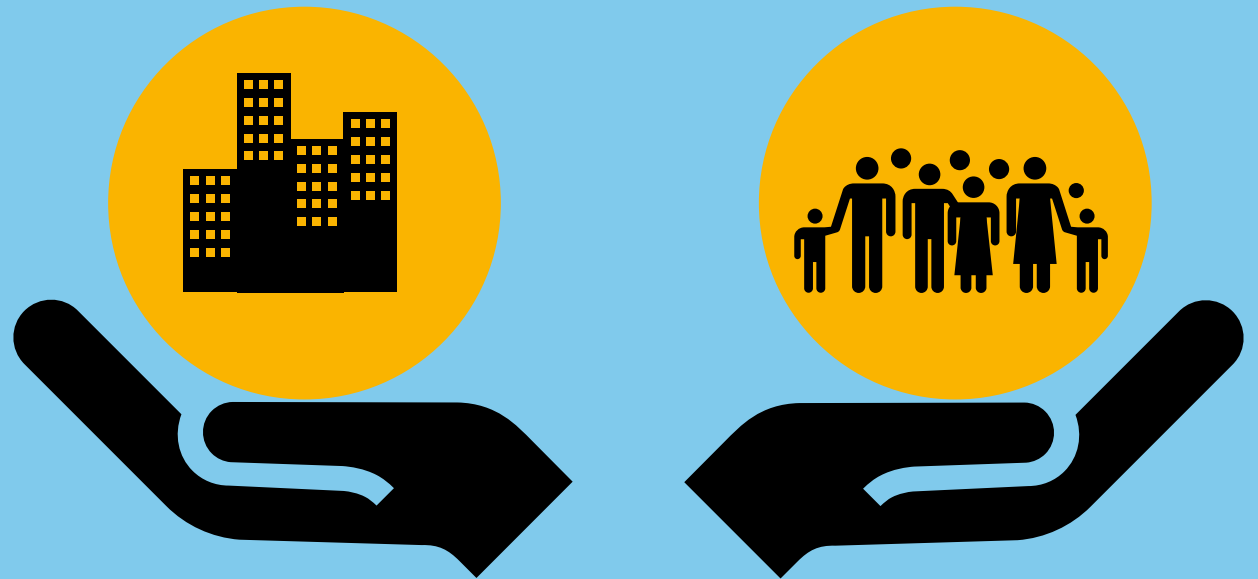
By: Alice Martin-Prével

The European Union and Germany's Federal Ministry for Economic Cooperation and Development are funding a €3.8 million (\$4.2 million) agricultural initiative in Ethiopia. "Support to Responsible Agricultural Investment" (S2RAI), launched in March 2016, is a three-year long project focused on two western regions of Ethiopia: Gambella and Benishangul-Gumuz. According to documents made public at the project-launching workshop in Bishoftu on July 15-16, 2016, S2RAI's main purpose is to contribute to "improved food and nutrition security by promoting secure land tenure and responsible agricultural investments." Yet, the project overlooks key facts with regard to food security, land, and the political situation in Ethiopia, which discredit this official objective.



LESSON 2 Legitimate tenure rights in and around investment sites **need to be recognised, documented** and, as far as possible, **secured** before companies negotiate land access

- Negotiations on land access not fair and meaningful unless the rights of people directly affected are identified and they are directly involved as counterparties.
- Invisible rights holders: Legitimate customary and informal rights not captured in official land information systems or desk-based due diligence.
- Key message to planners, policy makers and investors, closely related to the question of Free Prior & Informed Consent – FPIC – and its role in good governance and business practice



LESSON 2

FINDINGS FROM LEGEND

- Undertake **Land Tenure Assessment** on the ground:
 - Identify how land holding and land use are organised at community and household levels, and among vulnerable groups, including women.
 - Use tools and methods for **rapid, participatory land rights mapping**, open data tools and sources and **digital platforms for parcel mapping and certification of community and household rights**, to supplement the coverage of official systems.
- Companies can assist in securing rights of smallholder suppliers and provide funding but **independent, professional support is needed to establish land information systems**, as a public good
- **Put appropriate land information systems in place to document legitimate land rights**, targeting investment “hotspots” and linking up with ongoing programmes for more systematic land tenure regularisation.



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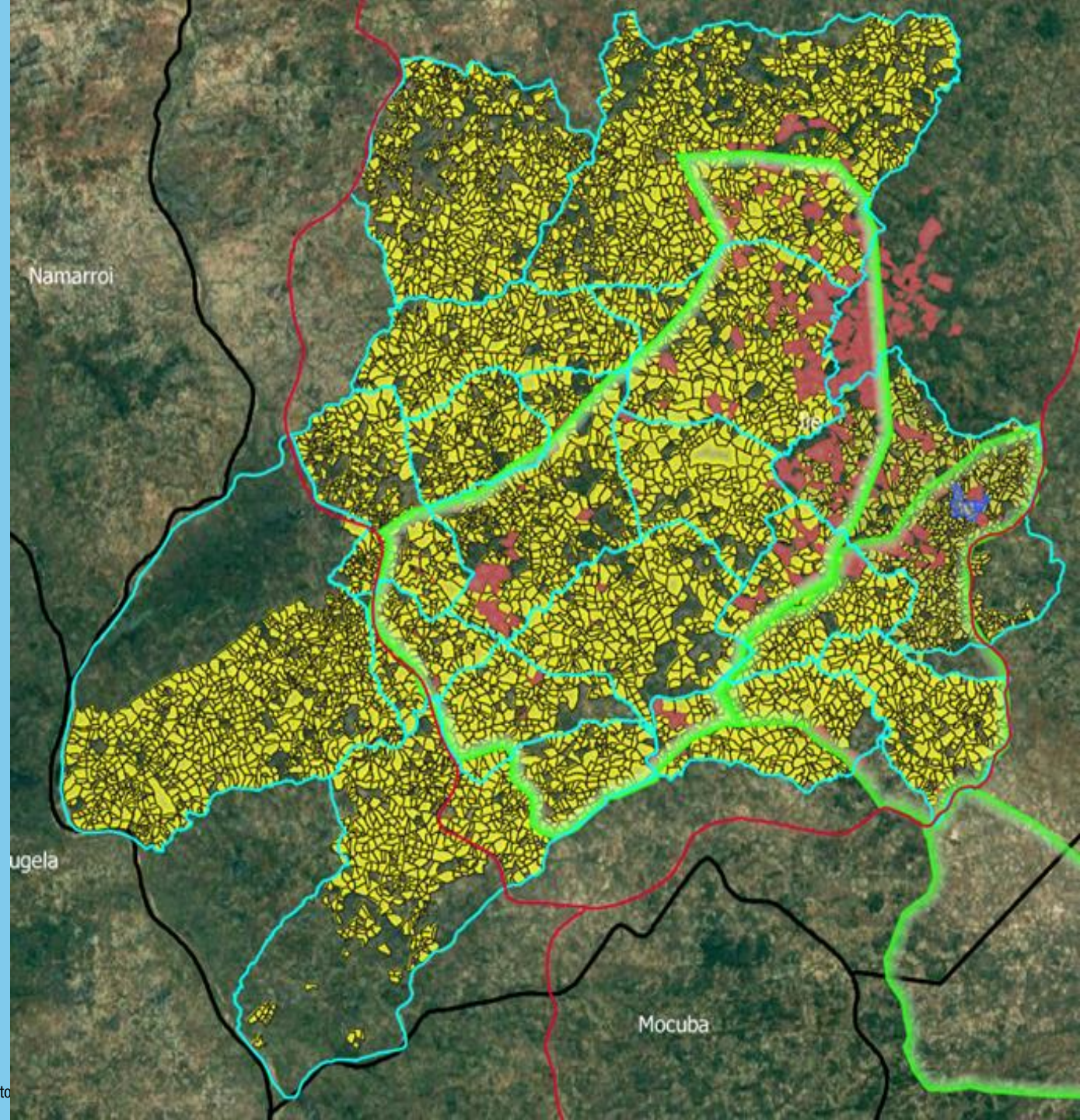
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Forestry investment in central Mozambique:

Right: overlap of concessions (outlined green) and land parcels planted by the company (red) with village community land areas (outlined blue) and family land parcels (yellow) mapped by ORAM and with certificates issued by Village Land Associations

Below: Parcels released to the company may or may not overlap with individual family parcels. In one case a company parcel is surrounded by family parcels, with no apparent conflicts. In another a company parcel overlaps with a group of family land parcels subsequently delimited by ORAM. In such cases the company acknowledges the land claims of local families .



LEGEND

Land: Enhancing Governance
for Economic Development



Photo

LESSON 3: Companies and governments need to establish fair and open negotiation processes to achieve community consent for investment plans

i.e. Treat local communities as the key counterparties in agricultural investment projects

Initiate consultation at the planning stage; negotiate directly with rights owners and land users to secure access to specific land parcels.

- **Free prior informed consent (FPIC)** makes good business sense for ALL land holding communities, not only for Indigenous Peoples, to ensure a company's social licence to operate.
- Intensive, village by village consultation, often best combined with participatory mapping, reaching down to all land users.
- Full transparency on investment plans, taking into account levels of literacy, using appropriate communication tools and media
- **Budget enough time and resources** (40-70% of costs in LEGEND projects). Use specialist outreach staff and the services of locally knowledgeable practitioners.
- **Promote internal consultation within communities and extended land holding families.** Hold separate discussions with women and other specific groups, such as youth and tenant farmers and make provisions to meet their needs.



LESSON 4 Communities need **effective, independent, politically informed support** to protect legitimate rights and negotiate effectively

- Negotiation is meaningless if communities cannot access independent professional support.
- Governments are often unwilling or unable to level the playing field between companies and communities:
 - Often the ultimate rights holders, with legal contracts, firm economic and political objectives, and may have vested interests
- Scale up **support for legal advisory and empowerment organisations**, local capacity building and advocacy along investment chains, reform of legal frameworks, investment contracts and treaties.
- New finance mechanisms needed to finance independent community advice and inter-mediation



LESSON 5

The business case for responsible land-based investments is becoming clearer in economic terms, but companies still need to mainstream land rights in core business decisions.

Building trust between companies, civil society and communities is critical , and can unlock wider partnerships.

Findings from LEGEND

- Financial impacts of land disputes have been less clear than reputational risks but can cost investors between **US\$10 and US\$100 million**. (*LEGEND survey, TMP Systems*)
- **Businesses have to justify attention to land rights against other risks and demands, but with internal constraints:**
 - Financial institutions & TNCs have focused on higher profile ESG issues such as deforestation and child labour in supply chains, with little attention to land.
 - Agribusiness operators and company incentives are focused on production and output, CSR treated as means to achieve this that end, or a side- issue.
 - Required human skills and technical assistance often not available
 - Incentive structures in different sectors, markets and types of companies may prevent the business case for responsible investment becoming embedded in core business decisions.
- But **growing understanding that benefits of investing responsibly in land far outweigh the costs by:**
 - Reducing the operational risks of delays and conflicts
 - Improving operational efficiency and so the returns of an investment.
 - Helping to cultivate a positive reputation in local and international markets.

LESSON 6 Responsible investment practice on land rights is an important entry point for more inclusive agribusiness

Companies have had to make business plans and practices more inclusive to accommodate legitimate land rights > smaller concessions, more out-growers, more effective CSR schemes

- Different commodity sectors vary in scope for more responsible, inclusive investment practices, according to how markets and value chains are organised
- In addition to land rights, specific contexts and conditions matter:
 - Effective arrangements for voice and representation.
 - New employment and market opportunities; labour rights
 - Fair and transparent terms & conditions for market sales, revenue and benefit sharing
 - Contribution to food security and diversified livelihoods
- Opportunities for private sector in farm management, offtake and supply, and incubation of social and community- based enterprise



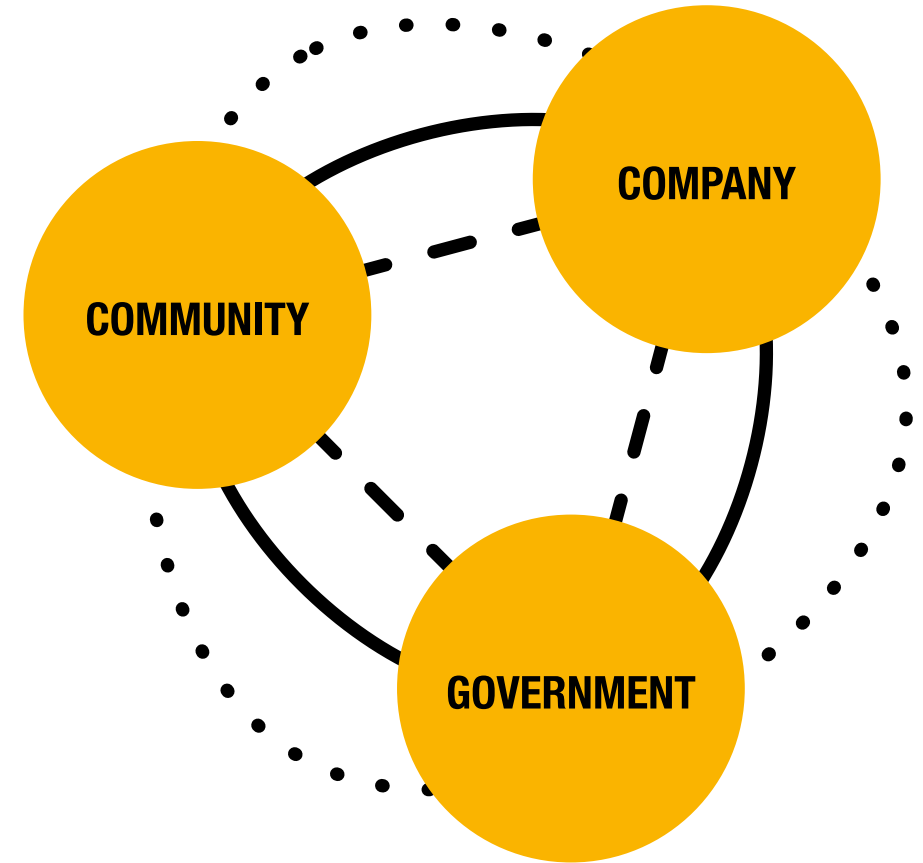
LESSONS 7 & 8

Positive regulation and a **systemic approach** to governance of land investment processes are **essential** to create an **enabling environment** for responsible investment.

- ❖ RAI is not only about what the private sector does and what civil society demands – **role of government regulation**, and stakeholder governance at different levels are critical
- ❖ Pilot projects highlight two key elements :

Lesson 7: Promote stakeholder collaboration / multi-actor processes at landscape and jurisdictional scales for greater impact, especially in the climate change context.

Lesson 8: Improve companies' access to specialist skills and services to address land rights issues



1

Proper attention to Land Tenure in Investment Planning & Due Diligence

Fit for purpose tools in due diligence & risk assessments in planning stages to avoid negative impacts.

2

Recognize & Document Legitimate Tenure Rights

Tools & approaches to map & secure informal rights in the absence of comprehensive government systems.

3

Establish Fair & Open Community Consultation and Negotiations

Reaching agreement with people directly affected to avoid & resolve land conflicts & gain social licence to operate.

4

Support Communities to Ensure a Level Playing Field

Legal & other support to address power imbalances with communities and companies.

5

Mainstream Land in Company Sustainability Practices

Ensuring a focus on land tenure in company operations through clear internal incentives and procedures.

6

Develop Adaptive & Inclusive Business Models and Plans

Adjust plans to reduce scale of land acquisitions & invest in community-based enterprise and smallholder partnerships as alternatives.

7

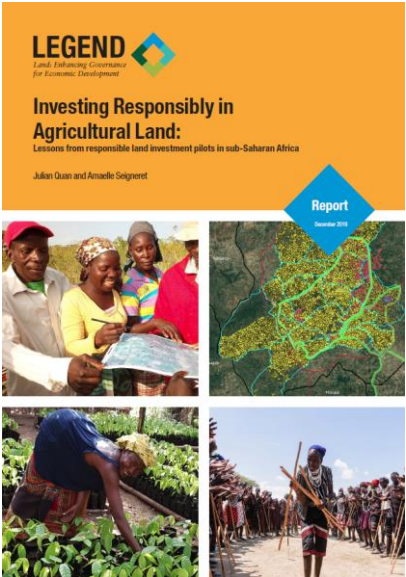
Strengthen Land Governance At Scale through Stakeholder Collaboration

Multi-stakeholder approaches to include all groups, safeguard the environment & access climate & landscape finance for new opportunities.

8

Improve Company Access to Skills & Services to Address Land Rights

The need for funding mechanisms to enable collaboration to understand & address land issues and engage with local communities.



<https://landportal.org/land-and-investments/responsible-investments>

ALIGN: Advancing Land-based Investment Governance

with CCSI & Namati

International Institute for Environment and Development



System for companies to measure tenure risk in “frontier “ markets



Social License Platform.
Finding and Facilitating Partnerships for Better Land Investments

RLBI

RESPONSIBLE LAND-BASED INVESTMENT NAVIGATOR

Private sector tool to guide through manuals and best practices on responsible land-based investments

Conclusions and discussion points

- Pilot projects: Point directions towards new approaches, but no systematic test or guidance
- Large-scale investments continue, notably in non-agrarian sectors, often without expected benefits and despite significant failures: policy makers and investors face major trade-offs of potential benefits and risks to people, natural landscapes, and economies
- Policy and legal environment: better regulation critical to enabling responsible land-based investment: alternative ways of doing agricultural investment, and role of the public sector has a major role to play
- Transparency: continuing constraint and key issue
- Shifts towards alternative business models which do not involve land acquisition and small farmer integration into value chains, but power imbalances and related risks e.g. for women and vulnerable groups
- Links between debates on land-based investment from the governance of land and property rights and how to secure them in practice: balancing individual and collective / social and rights and responsibilities within groups, economies and within and across nations..

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Some possible directions for research

Geographical: empirical understanding land investment dynamics, contexts and impacts nationally and at different scales (sector/ country / jurisdiction / natural region / landscape)

Legal: investigation along investment chains, on links between international and national law, investment contracts and treaties

Evolving political / agrarian economies in historical context: evolution of land and property rights; elements of business / management studies on change in the private sector

Interdisciplinarity and practice / policy orientation:

Bringing land rights, land use, prosperity, poverty, climate and environment into the same local to global frame.