LEGEND

Land: Enhancing Governance for Economic Development

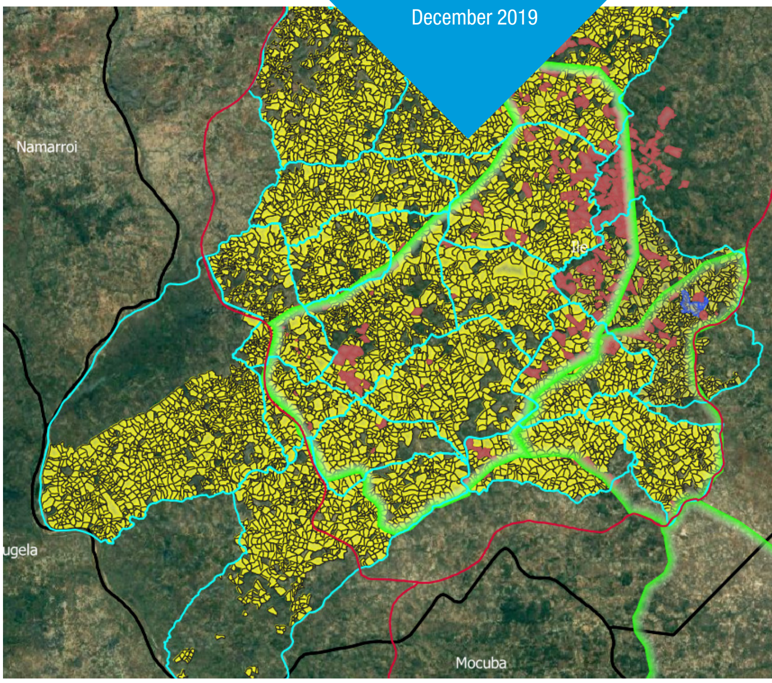
Investing Responsibly in Agricultural Land:

Lessons from responsible land investment pilots in sub-Saharan Africa

Julian Quan and Amaelle Seigneret

Report

December 2019



This publication has been funded by UK aid from the UK Government. The views presented in this paper are those of the authors, reflecting work undertaken by the DFID core land support team and LEGEND partners but they do not necessarily represent the views of DFID.

Citation:

Quan, J., and A. Seigneret (2019) Investing Responsibly in Agricultural Land: Lessons from responsible land investment pilots in sub-Saharan Africa. A LEGEND report. Natural Resources Institute, University of Greenwich, Chatham, UK.

LEGEND publications are available from: https://landportal.org/partners/legend

Drafting, editing and production coordinated by NRI

UNIVERSITY of GREENWICH

NRI | Natural Resources Institute

e: nri@gre.ac.uk | w: www.nri.org

Front cover photos:

Top left: Participatory mapping with smallholders supplying Illovo Sugar, Maragra, Mozambique. Photo kindly provided by Terra Firma

Top right: Map showing overlap of Portucel plantation forestry concessions (green outlines) with confirmed village land areas (blue outlines) in Zambezia, Mozambique; also showing individual family land parcels (yellow outlines) and parcels managed and planted by Portucel (red blocks). Image provided by Dan Mullins, Terra Firma

Below left: Planting cocoa seedlings at an agribusiness development project in Sierra Leone. Photo: Julian Quan

Below right: Datoga pastoralists celebrating confirmation of collective land their village land title, Lake Eyasi valley, Tanzania. Photo: Peter Van Der Jagt

Contents

Acronyms and abbreviations

AFDD	Analytical Framework for Due Diligence of Land based Agricultural Investments in sub-Saharan Africa
BEIS	Department for Business, Innovation and Science (UK government)
C2P	"Commitment to Practice" project
CF	Challenge Fund
CFS	World Committee for Food Security of the United Nations
CFS-RAI	Responsible Agricultural Investment principles of the CFS
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
DFI	Development Finance Institution
DFID	Department for International Development (UK government)
ESG	Environment, Social and Governance
ESIA	Environmental and Social Impact Assessment
FAO	Food and Agriculture Organization of the United Nations
ha	hectares
HCS	High carbon stock
HCV	High conservation value
IFC	International Finance Corporation
IFC – PS	International Finance Corporation Performance Standards
LEGEND	Land: Enhancing Governance for Economic Development (DFID programme)
NGO	Non-governmental Organisation
NHG	Natural Habitats Group
NHSL	Natural Habitats Sierra Leone
OECD	Organisation for Economic Co-operation and Development
ORAM	Rural Organisation for Mutual Aid (Mozambique)
P4F	Partnerships for Forests (UK government programme)
RLI	Responsible Land Investment
RSPO	Roundtable on Sustainable Palm Oil
UCRT	Ujamaa Community Resource Trust (Tanzania)
USAID	United States Agency for International Development
VGGT	Voluntary Guidelines on the Governance of Tenure of land, forests and fisheries
VSF-B	Vétérinaires sans Frontières – Belgium
WHH	Welthungerhilfe

Acknowledgements and authors

Acknowledgements

The authors would like to thank: Gillian Summers at NRI who undertook the copy edit and provided valuable editorial assistance and advice, KPMG CREATE for design and production work and the following people and organisations who provided helpful comments: Chris Penrose Buckley (DFID), Lorenzo Cotula (IIED), Kaitlin Cordes (CCSI), Dominik Wellman (GIZ), Scott Schang (Landesa), Katie McCoy (P4F), Caleb Stevens (USAID) and Katie Minderhoud (Solidaridad).

About the authors

Julian Quan is Professor of Land and Development Practice at the Natural Resources Institute (NRI), University of Greenwich. As technical team leader for LEGEND and the DFID Core Land Support Team (2015–2019), he has been responsible for support and oversight of the DFID-supported responsible land investment pilot projects.

Amaelle Seigneret is a researcher and consultant working with the Legal Tools Team of the International Institute for Environment and Development (IIED); she is currently based in Cameroon, working for a project which supports the reform of land and natural resources laws.

Executive summary

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, include 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.

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.

1. See findings of a study on quantifying 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 of land and forest investment projects to align operations with the VGGT and includes specific guidance on engagement with women and the relevance of gender.

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, including rights held by women, using low-cost digital tools. 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.

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, 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].

In most of the pilot projects, attention was paid to women's roles in food production, household management and welfare, and in various cases women were found to play important roles in influencing community attitudes and building consensus. Gender aspects, and outcomes and benefits for women are relevant to all the lessons and are covered in the main reports. An important cross-cutting lesson is that attention to gender issues and active engagement with women using appropriate tools and approaches is particularly important for responsible investment.

Conclusions and ways forward

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.

These lessons emerged primarily from pilots devised in response to experimental funding calls for partnership proposals focused on land rights issues, and secondarily from other pilots focused on forest landscape protection. 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. Institutions and mechanisms for stakeholder coordination and engagement at national and local levels also need to 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.

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

I. Introduction

Land investments involve the acquisition of land and natural resources, usually by companies, for business ventures, for agriculture and other purposes. Such investments concern the local communities where the land is located, governments at national and local levels, and civil society organisations (CSOs), as well as the companies making the investment and others who seek to benefit from it. Knowledge and recognition of relevant land rights is crucial for ensuring the success and sustainability of land investments and to avoid land-related risks including displacement, lack of access to land and 'land grabs'. Lack of consideration of land issues in investment planning can lead to significant conflicts, delays, additional costs for investors and failed investments.

Responsible land investments (RLI), in accordance with agreed international soft law principles, take into account social and environmental aspects, recognise and respect legitimate land and resource rights, do not create or exacerbate land conflicts and avoid land-related risks for communities, investors and governments. By involving communities, gaining their consent and managing investments responsibly, companies can gain social licence to operate, which is ultimately required to conduct business in addition to official approval, and a solid basis on which to avoid human rights violations, other negative impacts and achieve sustainability.

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 were supported by the UK's Department for International development (DFID) and USAID, and sought to (i) test how private companies and 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 lessons show how companies making agricultural land-based investments can take proper account of legitimate land rights and avoid land-related risks and conflicts. They complement the findings and conclusions of recent research on land and investment issues undertaken through DFID's LEGEND programme, providing context and detail from practical experience to illustrate ways in which agribusiness investors can adapt their strategies to address critical issues in land investment processes. They also indicate how governments, donors, civil society and other stakeholders can assist in making more systematic improvements in the governance environment to ensure that investments in agricultural land have positive, equitable and sustainable outcomes.

This report is relevant to policy makers and managers in donor and international agencies working on responsible business, and on land and natural resources, leaders and sustainability professionals in private agribusiness, as well as public and private investors, civil society practitioners, other professionals and service providers working with agribusiness projects and the private sector. LEGEND plans to supplement the report with a set of thematic case studies which present the practical experiences, outcomes and conclusions from specific projects in greater dept, for practitioners, interested professionals and researchers.

II. Background and context

Policy and practical concerns to promote responsible investments in agricultural land in developing countries emerged following the wave of large-scale land-based investments in agriculture that took place from the mid-2000s onwards. Without proper attention to land-related risks or adequate safeguards, many of these projects undermined the land rights and livelihoods of existing land users, even when they took place in full compliance with national law, most conspicuously in Africa.

While the pace of large-scale land deals has slowed in recent years, global increases in food prices and renewed price rises for other agricultural commodities [5] are associated with sustained commercial interest in land investment, particularly in countries where government policies and export rules promote investor access to land, and where land is relatively cheap to acquire. As such, countries in Africa, South East Asia and Latin America are set to remain important destinations for agribusiness investment (Cotula & Berger 2017).[4]

What is responsible land and agricultural investment?

The idea of responsible investment in relation to land is underpinned by international soft law instruments, which set out guiding principles on how to realise responsible land investment (RLI) (see box 1).

Box 1: The international consensus on responsible investment and land

There are two key pieces of international soft law, developed in negotiation with UN member states and a wide range of public, private and civil society stakeholders, and formally agreed by UN bodies:

The **Principles for Responsible Investment in Agriculture and Food Systems of the Committee on World Food Security (CFS RAI, 2014)** include the need for investments to contribute to food security and nutrition, and to sustainable and inclusive economic development, foster gender equality and women' s empowerment, engage and empower young people, conserve and sustainably manage natural resources, respect cultural heritage, promote safe and healthy farming and food, as well as respecting existing land and natural resource rights, as a foundation for securing these wider benefits. Finally, they should include transparent governance structures, as well as impact assessment and accountability mechanisms.

The **Voluntary Guidelines on the responsible Governance of Tenure (VGGT, 2012)** call for recognition and respect for all existing legitimate tenure rights, including customarily established and other informal rights that are recognised socially but may not be recognised in law and are generally not officially documented , and that specific attention is required to land and natural resource tenure rights of women and other vulnerable groups. The VGGT call for businesses to act with due diligence to avoid infringing tenure rights and to remedy adverse impacts they may have caused. **Responsible investments "should do no harm, safeguard against the dispossession of legitimate tenure right holders and environmental damage, and should respect human rights (VGGT 12.4)." Accordingly, states should provide transparent rules on allowable transactions affecting tenure rights and "safeguards to protect legitimate tenure rights, human rights, livelihoods, food security and the environment from risks that could arise from large-scale transactions (VGGT 12.5 – 12.6)."**

5. For further discussion of agricultural investment trends see: World Bank (2019) Commodity Markets Outlook ; ILO (2019) The future of work in African agriculture: Trends and drivers of change; and OECD – FAO (2019) Agricultural Outlook 2019–2028

UN principles define 'responsible investment' as the integration of environmental, social and governance (ESG) elements into investment decisions and company operations for effective risk management and sustainable viability[6]. Performance Standards by the International Finance Corporation (IFC) of the World Bank (IFC 2012) require measures to guard against harm to local communities and natural environments, including avoidance of forcible displacement, fair compensation if displacement cannot be avoided, and community access to sufficient land for food production. However, these safeguards do not ensure that legitimate rights holders are identified and protected, and in practice may not be applied until after an investment has gone ahead and problems have already been registered. The VGGT, by contrast, emphasize the responsibilities of states, and promote the proactive engagement by companies and investors with other stakeholders to make systemic improvements in land governance environment (Cotula 2019) to address problems such as absent land rights documentation, corruption amongst national elites, and inadequate legal frameworks, which some companies may be willing to accept or exploit to realise investment plans.

A meaningful way of defining Responsible Land Investment (RLI) from a business point of view is: investment projects that are negotiated with local communities, recognising and respecting their legitimate land rights, even if these are not recognised by government, and avoids doing social and environmental harm and promotes positive development outcomes.

The business case for RLI, and current trends

The business case to manage land investments responsibly and to recognise and respect existing land rights is becoming increasingly clear for investors. Lack of attention to land tenure issues is a frequent source of tension and conflict, with local residents causing significant operational and financial risks and reputational harm for agribusiness companies, industry brands and investors. A review of 90 land-based investments across Africa found that failure to take into consideration land tenure risk in companies' operations can entail financial losses of between US$10 million and US$101 million (ODI & TMP Systems 2019). These figures reflect costs arising from delays and disruption to investment activities and assets resulting from conflicts with local communities, stemming from poor due diligence and risk assessment, and weak community engagement procedures. Many companies and investors recognise the negative impacts that land acquisitions can have on existing land users, which may include displacement, loss of access to farmland and natural resources, lost livelihoods, food insecurity, and the reputational damage that these negative impacts can inflict on consumers and others.

Continuing acquisitions of excessively large areas of land are leading some investments to scale down, and others to be abandoned, highlighting the significant challenges in ensuring that land tenure issues are properly addressed by effective ESG risk management and community engagement processes. Institutional investors, such as pension funds, tend to seek reliable assurances of regular returns, and increasingly avoid investments in land in developing countries where land ownership is unclear. **An investor's responsibilities should therefore involve rigorous due diligence to ensure that land and resource rights are respected, and to prevent the acquisition of land when its ownership and tenure status is unclear.**[7] Recent surveys of company policies and practice on land tenure present a much more mixed picture. Although some companies find land tenure risk increasingly important to address, they face persistent challenges in doing so.[8] A majority still have no policies on land, although companies involved directly in production are more likely to do so.[9] Despite policy commitments to address the issue, land tenure has relatively low priority compared to other human rights and environmental issues, labour conditions and animal welfare, and company ESG procedures frequently lack practical measures to address questions of land tenure and food security (OECD & FAO 2019).

There is sustained interest from governments, development finance institutions (DFIs) and agribusiness to invest in the commercial transformation of Africa's predominantly smallholder agriculture. While this includes out-grower and contract farming schemes (which now predominate for some commodities such as cotton), companies are challenged to address land and other ESG risks across extended supply chains, and farmers also need to be linked to central estates and to processing and marketing infrastructure. There is strong interest amongst public and private investors in agricultural growth poles, corridors and Special Economic Zones benefiting from new technologies and direct access to global markets remains a challenge [10]. These types of special projects all involve land acquisitions, development of new infrastructure and reorganisation of existing land uses and tenure rights which may involve relocation; this may not prove straightforward in practice and may lead to land rights violations, as these projects tend to be highly prioritised politically. According to the Land Matrix, 41 million hectares in the developing world have been acquired for investment projects, but less than 25% is under production. While some large-scale projects have failed, only 10% of land areas acquired have been

6. See PRI (2019) Principles for Responsible Investment. PRI is an investor initiative in partnership with the UNEP Finance Initiative and UN Global Compact.

7. See for example Nuveen (2018): How we invest in farmland: an introduction to Nuveen's agricultural sustainability approach

8. Stated by a self-selected sample of 43 companies responding to USAID's (2018) Investor Survey on Land Rights. Perceptions and Practices of the Private Sector on Land and Resource Tenure Risks.

9. A survey carried out in 2016 by WRI, documented by Caleb Stevens et al. in Do Companies Care About Sustainable Land Governance? An Empirical Assessment of Company Land Policies. Manuscript submitted to *International Journal of Sustainable Development and World Ecology*

10. For further information on agricultural growth poles and Special Economic Zones: IISD (2017) Policy brief: Investment in Agriculture. The Rise of Agricultural Growth Poles in Africa; and UNCTAD (2019) World Investment Report. Special Economic Zones. New York, USA.

abandoned; in many cases concessions have simply changed hands, and investors are working actively to operationalise land holdings already acquired [11].

Thus, in a changing African agricultural landscape, there are considerable needs for practical lesson learning on how companies investing in agricultural land and associated natural resources can best address land rights issues and risks. **In this context, the experiences of the recent RLI pilots provide a valuable series of lessons and practical pointers on what private companies can do to ensure that agricultural investments are socially and environmentally responsible, and do not create or exacerbate land conflicts, and offer the sort of support and assistance needed from governments, donors and civil society practitioners to address land issues.**

Pilot initiatives and projects covered

The lessons discussed in this paper are drawn primarily from a challenge fund (2016–2019) of DFID's **Land: Enhancing Governance for Economic Development (LEGEND)** programme, that supported seven pilot projects in which CSOs partnered with private-sector companies making investments in agriculture and natural resource utilisation in six countries: Malawi, Mozambique, Sierra Leone, Tanzania, and Zambia. These projects aimed to develop and test innovative tools and approaches to align business partner practice with the principles of the VGGT (see box 1) including application of the Analytical Framework for Land-Based Investments in African Agriculture (Grow Africa 2015) (henceforth AFDD, – Analytical Framework for Due Diligence), a tool to help investors understand the risks of land investment so they can manage them more responsibly. The framework includes a series of 'red lines' – concerns that are serious enough that investors should consider terminating an investment (see Annex 1).

To enlarge the evidence base beyond the seven LEGEND projects, the team also looked at two other pilot initiatives which adopted a slightly different approach, working directly with companies to devise new responsible investment approaches:

- **USAID's** Responsible Land-Based Investment Pilots (2016–18): two projects in Ghana and Mozambique which also sought to test practical applications of the AFDD and USAID's own Operational Guidelines for Responsible Land-Based Investment, by demonstrating ways of securing smallholder farmers' tenure rights by working through private-sector companies as part of broader partnerships seeking to improve their integration into commercial value chains.
- **The** Partnership for Forests (P4F) **programme,** supported by DFID and BEIS, which assisted companies in developing partnership-based projects involving local communities on the ground to develop a portfolio of almost 40 bankable, scalable investments in commercial forest crops combined with protection of forest environments and safeguarding the interests of communities, although it did not set out to address land tenure governance explicitly.

Further details of the pilot projects covered by this learning assessment and the principal outcomes they have achieved are included in Table 1.

11. See a June 2019 blog piece by Scott Schang of Landesa: Land fumbles: the hangover effects of the great land grab; also Grain (2018): Failed farmland deals: A growing legacy of disaster and pain

TABLE 1: PILOT PROJECTS ASSESSED

	PARTNERS, COUNTRIES & SECTOR	PROJECT FOCUS AND KEY OUTCOMES
LEGEND CHALLENGE FUND	**Landesa & Illovo Sugar Africa** *Sugar in Malawi, Mozambique & Tanzania*	Strengthened Illovo strategy, staff capacity and procedures to address land-related issues at the different production sites; built partnerships with local CSOs and developed a company-specific 'LandAssess' tool for management and monitoring across Illovo operations and for due diligence of a potential expansion of out-grower production in Tanzania.
LEGEND CHALLENGE FUND	**Solidaridad & Natural Habitats Sierra Leone (NHSL)** *Palm oil in Sierra Leone*	Facilitated reduction of a 40,000-ha concession acquired from a previous operator to below 5,000 ha, improved lease with land-holding families, resolved intra-community conflicts, established a new approach to partnership by the company, negotiated through a multi-stakeholder platform.
LEGEND CHALLENGE FUND	**TMP Systems & Bonsucro** *Sugar in Ethiopia, Mozambique, Tanzania & Zambia*	Developed and applied land risk tools to the sugar sector and developed a modular set of data-collection and field-monitoring tools for integrated management of land rights, improved, sustainable land use and production by sugar growers' associations and cooperatives.
LEGEND CHALLENGE FUND	**ORAM and Terra Firma with Portucel**. *Plantation Forestry in Mozambique*	Developed and applied a digital platform for mapping and registration of community and individual land rights in 20 communities in Portucel's Zambezia concession. Established community land-management associations and built capacity to negotiate fairer land access and partnership arrangements with the company, as part of a revised, less ambitious business plan.
LEGEND CHALLENGE FUND	**VSF-Belgium (VSF-B), UCRT & Dorobo Safaris Ltd.** *Cultural and eco-tourism in Tanzania*	Secured collective land and natural resource rights for pastoralist and hunter-gatherer groups in the Lake Eyasi valley, northern Tanzania, and land use planning at village and landscape scales as a basis for a sustainable tourism plan, revenue sharing and code of conduct agreed by all stakeholders including guides, tour operators, community organisations and local government.
LEGEND CHALLENGE FUND	**Welthungerhilfe & Balmed Ltd** *Cocoa in Sierra Leone*	Laid the groundwork for an inclusive, VGGT-compliant 'cocoa production clusters' model to strengthen small-scale producers' integration into the value chain. Following withdrawal of the original partner, a new social enterprise company was established as a land manager, prior to eventual handover of the business into community ownership.
LEGEND CHALLENGE FUND	**MICAIA Foundation & Baobab Products Mozambique (BPM)** *Baobab Value Chain Development in Mozambique*	Registered the land rights of 20 communities and as a basis for sustainable baobab and natural products use, trained and empowered women's harvester groups, developed an inclusive baobab value chain and marketing products by BPM, leading to significant community income gains. Established a harvesters' association and village- and landscape-wide land and natural resource use plans in two districts.
USAID	**ECOM Trading & Hershey's** *Cocoa in Ghana*	Provided increased incentives for improved cocoa production, through clarification of land rights amongst landowners and producers, land rights registration for land-owning and tenant/sharecropper farmers, rehabilitation of cocoa farms and provision of credit and other support services.
USAID	**Maragra Açúcar Ltd (part of Illovo sugar) with Terra Firma** *Sugar in Mozambique*	Clarified land use rights and resolved boundary disputes for out-grower farmers on public land surrounding Illovo's sugar estate; mapped and certified land rights using an open data platform (as applied in the Legend–ORAM project) assisting in mitigation of operational, financial and reputational risks.
P4F	**Touton: Partnership for Productivity Protection and Resilience in Cocoa Landscapes** *Cocoa in Ghana*	Provided stronger incentives for improved small-scale cocoa production and reduced deforestation, including improved access to services, finance and clearer tenure rights regarding land and trees. With other P4F projects in Ghana, pioneered introduction of landscape management boards for sustainable environmental management, better productivity and more resilient livelihoods.
P4F	**Miro Forestry: Sustainable Timber and Charcoal Development** *In Ghana*	Developed sustainable models for timber and charcoal production with reduced environmental impact from plantations held on long lease from local communities and on communities' own land, with farmer training in sustainable charcoal production and support for food production.

III. Lessons from RLI pilots

The overarching lesson of practical experience from the projects assessed here shows the need for proper recognition of legitimate land rights by all stakeholders in advance of implementing an investment project, in line with broad policy consensus on the issue. This has implications for a set of critical issues, listed below, on which the team has drawn specific practical lessons from the pilots' experience on what business can do to address land tenure as a key ESG issue and gain social licence to operate, and also on how governments and civil society can assist in making responsible land investment a reality:

1. Paying proper attention to land tenure in investment planning and due diligence
2. Recognising and documenting legitimate tenure rights
3. Establishing fair and open consultation and negotiation processes with local communities
4. Legal support for communities to level the playing field with investors
5. Mainstreaming land as a key ESG issue in company operations
6. Reducing concession sizes, adjusting business plans and developing more inclusive models
7. Strengthening land governance at scale through landscape and jurisdictional approaches
8. Improving company access to skills and services to address land rights

The LEGEND-funded pilots also sought to strengthen land rights and create new economic opportunities for women and girls, as gender aspects are often overlooked or misunderstood in investment planning. The approaches that proved most effective in addressing them are incorporated into the various thematic lessons discussed below.

1. Paying proper attention to land tenure issues in investment planning and due diligence

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.

Pilot experience shows that timely identification of land rights issues is better than having to address land rights problems later, after they escalate, leading to conflicts that damage community relations, increase costs and undermine sustainability of the investment. This confirms study findings and guidelines on best practice. In cases where land rights were overlooked in earlier investment approvals, companies later found they had to put in place context-specific approaches to address land tenure issues to develop and manage operations, and to mitigate problems that had arisen.

This implies a need to **change common approaches to due diligence** used by companies and investors, moving beyond desk-based, legalistic, chain-of-title approaches to those that help to enable and identify the conditions required for a company to have a social licence to operate (Cotula et al. 2016). Assessment of human rights impacts and of social and governance risks related to land rights needs to be strengthened both **at the financing stage, and throughout the investment cycle.**

At the financing stage, investors need to ensure that information on land availability, land ownership and tenure arrangements are fully taken into account. The AFDD (see Annex 1) is a useful starting point, providing the land-related due diligence questions investors should be asking and can be refined and adapted for application by companies in the planning stage and throughout the investment cycle to assess compliance with VGGT-based principles and good practice, and actions needed to address deficiencies in different contexts.

Some of the RLI pilots sought to test the practical application of the AFDD in different investment contexts. The projects show that due diligence can be approached in two ways, which in practice need to be combined to ensure a company can navigate land issues responsibly, according to its position in an investment process or supply chain:

i. through the use of desk-based diligence and risk tools now available and under continuing development, such as the **TMP Systems** Landscope **tools**, that draw on the full range of data sources on land availability and occupation, including population density, land cover and land use, existing tenure systems, land-related and associated civil and/or violent conflicts, etc.

ii. field reconnaissance and ground truthing to fill gaps in available information, to undertake a land tenure assessment and initiate consultation with affected stakeholders. This is especially important in cases where suitable datasets are not available for desk-based risk and diligence tools to deliver clear results.

The consequences of not adopting in-depth due diligence approaches in advance are illustrated by the **Portucel plantation forestry investment in Mozambique.** The company went ahead with their investment in populated areas, following government approval of concessions totalling 356,000 ha in two populated central provinces, without making a practical assessment of the constraints in land access imposed by existing land rights and patterns of occupation. Land issues received closer attention when IFC committed additional finance to the project, insisting on the introduction of a range of safeguards to address risks identified by an environmental and social impact assessment (ESIA). Owing to growing difficulties in land acquisition and increasing community dissatisfaction, Portucel suspended further land acquisition for over two years until community and household land rights could be defined and introduced new land access protocols requiring direct participation in negotiations and consent of those holding rights to identified land parcels. As a result of delays to an ambitious plan to develop at least 250,000 ha of eucalyptus to feed a proposed pulp mill, compounded by delays in funding for the necessary transport infrastructure including new port facilities, the company had to adjust its business plans and target markets, underwriting the costs of delays, and commit additional funds to a community development support scheme.

In cases where the information required to assess potential land-related challenges cannot be obtained in advance, and where these challenges might frustrate social licence to operate, due diligence at the approval stage must clearly establish what needs to be done during development and operational phases to avoid red lines across the whole investment cycle, and to put in place effective monitoring to ensure that land and other human rights are not violated. **Companies therefore need to have tools for due diligence that enable them to monitor and assess land rights-related issues as the project proceeds, to take stock of tenure conditions in established investment sites and across supply chains.**

In brownfield sites and cases where investment sites have changed hands, a high priority for new investors is to assess legacy land problems inherited from failure to resolve tenure conflicts, grievances or longstanding historical land disputes not resolved by previous investment projects. Legacy land issues are caused by the actions of the previous owners or operators directly, or stem back to how the land was originally acquired. To understand how legacy land problems feed into stakeholder relations on the ground, and affect project operations, **legacy land issues require companies to adopt distinctive, context-specific approaches to due diligence to unpack the multitude of factors that underpin the situation.**

The international land NGO, **Landesa, working with Illovo sugar on the LEGEND C2P project**, found that a general guidance tool such as the AFDD was not enough and that company-specific tools were needed to address land issues in company operations across Southern Africa. Landesa developed and tested a **purpose designed** LandAssess tool based on the AFDD framework that Illovo could use to address land tenure issues affecting its established estates, including legacy problems of disputed boundaries, and in its supply chains. The tool was used effectively as part of a feasibility assessment for a potential expansion of Illovo's out-grower operation in the Kirombero valley in south-western Tanzania. The tool was designed to meet ongoing company monitoring needs and can potentially be adapted to meet the needs of companies working in other sectors.

In Sierra Leone, during the establishment phase of a green field development of a large oil palm concession, acquired by NHSL from a previous operator, **the company worked with CSO Solidaridad to develop an** ongoing practical approach to due diligence, which enabled the company to identify and address stakeholder conflicts and unresolved problems stemming from the failure to take full account of legacy problems at the time of acquisition, and the lack of any effective ground-based due diligence process to assess acceptability of the original huge investment proposal to community landholders and the related risks. In fact, conflicts between proponents and opponents of the plantation had become entrenched for over a decade; addressing the problems required an intensive process of community consultations, participatory land rights mapping, legal intermediation, iterative stakeholder negotiation through a multi-stakeholder platform and introduction of livelihood and food security support projects facilitated by Solidaridad.

2. Recognising and documenting legitimate tenure rights

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.

Where land rights are undocumented and managed customarily, and/or where there exists little to no information about landholders and land-use patterns, or the specific rights holders whose prior consent is needed for an investment project cannot be identified, companies frequently believe mistakenly that this means the land is unoccupied and available. This problem lies at the root of many conflicts and human rights abuses in land investments, and measures need to be taken at the start of new projects to address it.

Investors frequently undertake mapping, primarily to identify land parcels they seek to acquire and develop, to assess whether they face legal challenges by other claimants, assess compliance with environmental standards, and to formally secure rights for themselves or for their suppliers. On the other hand, land-holding communities need to undertake wider participatory mapping to understand the full range of rights, claims and land uses to be identified, so as to enable community land owners and users to agree on land that can be released for investment, and ensure that the community retains enough land to meet food production and other essential needs. To ensure that people's land rights are respected by investment projects, they need to be documented and, if possible, formally registered. Thus, while companies can help to resource and collaborate with land rights mapping, they should not control the process or be exclusive providers, and fuller, independently managed, participatory mapping processes are needed.

The pilot projects provide instructive lessons on how land rights can be mapped, documented and secured in different types of investment context:

a. **In the absence of systems for documenting, registering and managing customary land rights, inclusive land tenure and land use planning assessments need to be undertaken to understand claims to land and identify the impacts that a land acquisition would entail.** A starting point is to identify how land-holding arrangements are organised in and around the investment area. This involves documenting the land claims of extended families and specific groups, and the customary rules that govern land access and use by community or family members and others, including those affecting women's rights to access and use land and natural resources, as shown by two LEGEND pilots in Sierra Leone:

- Solidaridad and NHSL undertook a joint participatory mapping process, following initial consultations in villages that fell under the NHSL oil palm concession. This aimed to meet the company's primary concern to confirm and validate the land parcels earlier pledged to the company by elders of land-holding families. However, Solidaridad broadened the scope of the exercise to understand the full range of land claims and uses, and identify land that needed to be retained by the community for food production and other essential uses. This required direct participation of female and male community members and local civil society representatives and later led to joint production of revised and agreed maps of land to be leased for oil palm development validated by land-holding families and community members.

- Welthungerhilfe (WHH) sought to develop a community-based cocoa development project and developed a methodology for a land tenure and participatory land use planning assessment. The project undertook participatory sketch mapping of multiple land claims and uses on land held by several different land-holding families and subsequently made digital maps of village municipal land, areas held by land-owning families, various forms of land use, and of specific areas used by men and women, areas to be reserved for expansion of settlement and food production, areas of high conservation value and those available for commercial crop development. The process served to adjust and confirm availability of land areas initially identified for release to the business partner, taking account of communities' ongoing land use needs.

b. **Opportunities to document and formalise rights to customary land should be taken before an investment project begins, to protect land users' rights and provide a basis for meaningful negotiation to obtain their consent.** Where government capacity is weak, virtual open data platforms can be used to map and certify land rights, supplementing official land registration capacity and providing local land users with proof of occupation or ownership. Where capacity is available, this approach goes beyond a general land tenure and planning assessment to identify land that a company can use by mapping and defining all pre-existing customary rights before an investment project begins and the company starts to access land.

  - ORAM's pilot project with Portucel in Mozambique, followed this approach to map the landholdings of 20 communities, and to issue certificates to the owners of 10,201 household land parcels, 67% of which proved to be held and managed by women. This enabled company and government recognition of customarily established rights at scale, and by using open data tools and freely available spatial data, could be done quickly and at much lower cost than comparison to cumbersome manual land survey and registration systems used by the provincial survey department. This mapping process provides an essential basis for the communities, households and individuals to identify land that could be released for investment and to negotiate securely with the company. Constructing an interface between the data platform used locally by ORAM and the national cadastral system so that the land-holding data can be imported would then provide a stepping-stone to official registration and delivery of land titles, supporting the national policy objectives of tenure security at scale.

c. **The demarcation and registration of community rights can provide a basis for the development of new natural resource-based value chains and promote community-run enterprises.** Two LEGEND projects in Tanzania (VSF-B, UCRT and Dorobo) and Mozambique (MICAIA and Baobab Products Mozambique) involved the registration of group rights as provided by national laws, and participatory land use planning at village community and landscape levels. This created solid foundations for development of sustainable small-scale cultural and ecological tourism enterprises involving both women and men in Tanzania, and for sustainable harvesting and marketing of baobab products by women's groups in Mozambique.

d. **If companies have no interest in accessing the land themselves, they can also assist in registering the rights of out-growers and contract farmers.** There is a clear rationale for this in cases of smallholder-based production systems, for example the cocoa sector in Ghana, where tenure insecurity amongst sharecroppers and tenant farmers is a main constraint to the rehabilitation of unproductive cocoa farms, sustainable cocoa supplies and farmer livelihoods. In USAID's Responsible Land-Based Investment Project in Ghana, end-user Hershey's and agri-trader ECOM provided technical and financial support for the rehabilitation of cocoa farms, and partnered with a private survey firm to map and register farmers' land rights. Similarly, in Sierra Leone, NHSL mapped land parcels held by a group of oil palm out-growers and facilitated written agreements with land-holding families and chiefs to demonstrate they had the rights to use the land.

Although private companies also need to map land for their own purposes, and can work with civil society partners to document land rights, it is not possible to formalise farmer and community rights if there is no functional government cadastral system in which they can be formally registered, or if data captured independently cannot be imported into government systems for legal and technical reasons. There are also risks in entrusting land administration, essentially a public good, to private companies who may have vested interests in land development, as competing land claims at community level or between communities and companies require independent adjudication. Thus there are potential roles for development finance institutions and donors to support independent land rights mapping services in investment areas and projects they fund, and the technical work required to enable incorporation of land rights data captured locally within national land information systems, to expand documentation of legitimate land rights.

3. Establishing fair and open consultations and negotiations with local communities

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.

International law has established a principle of free, prior and informed consent (FPIC) applicable to indigenous groups with ancestral territorial rights (UNDRIP 2007). FPIC refers to a community's right 'to give or withhold consent to a project that may affect them or their territory' in order to avoid tensions and conflicts, as well as any impact that would undermine their rights (which may not be recognised by governments) and local livelihoods.[12] Although it might be argued that, formally, FPIC applies only to indigenous groups, industry bodies such as the Roundtable on Sustainable Palm Oil (RSPO) and increasing numbers of companies and national jurisdictions now treat FPIC as applicable to all communities affected by land development. The recognition of land tenure as an important human rights issue means there is a strong business case for securing consent from all communities holding legitimate land rights. As recognised by the VGGT, these include rights established and recognised socially over time, but not necessarily by law. The implication is that full and open consultation processes should be pursued in all cases, whether or not the community concerned is to be considered as indigenous under international law, ultimately leading to informed consent and consensual agreements that the whole community can support [13].

Pilot projects showed that initial consultation processes for large-scale investments in Sierra Leone and Mozambique were poorly organised, confined to small, unrepresentative groups of traditional leaders and elders, who may have vested interests in the investment going ahead. Such approaches excluded the voices of large segments of people affected by the investment, including women, youth and other vulnerable groups.

Given these earlier failures to engage with communities as a whole and those whose land rights were directly affected, the companies consistently underestimated the level of resources required for consultation and engagement. Moreover, the companies' continuing community outreach was undertaken by the same staff responsible for assembling land for plantation development and focused on persuasion of community members to release additional land by making promises of employment and development assistance in kind, rather than negotiations leading to clear agreements. In the absence of effective channels for negotiation and engagement with the actual land users, including channels to engage directly with women, who were not represented in earlier consultations, the companies failed to gain a social licence to operate. In both cases, the principal complaints of community members who had given up land were of unmet expectations and unfulfilled promises of employment with the company.

In the LEGEND projects, NGO partners had to invest time in intensive, village-by-village, group-by-group consultation, in some cases establishing standing fora for ongoing negotiation and joint planning. Both NGO and business partners consistently underestimated the level of resources required for consultation. Consultation, including associated community engagement and participatory activities, made the greatest overall demand on project budgets, costing between 40 and 60%, typically up to GBP £300,000 [14].

Effective and meaningful consultation requires full and transparent information about investment plans and their likely effects, engaging specialised outreach staff, and using a variety of means of communication, including theatre pieces, radio programmes and visual mapping tools in addition to community meetings, especially in contexts where levels of literacy are low. In addition, the projects invested in standing community communications mechanisms and in capacity building and legal support for community organisations to level the playing field for effective negotiations.

- In Sierra Leone, for an oil palm development, Solidaridad established rules for in-depth consultation processes, combining meetings at village level, with meetings with the elders of land-holding families, with extended family members, and specifically with women and youth. In collaboration with business partner NHSL, Solidaridad also established a multi-stakeholder platform (MSP) to bring together all affected communities, chieftaincy authorities, landowners organisations – for and against the project, women's, youth and religious organisations, local government and other stakeholders (see pages 6–8). The MSP proved to be effective as a mechanism for consultation, enabling negotiation of a new lease agreement with the company for an area considerably smaller than the original huge Chieftaincy-wide concessions that the Chieftaincy Council had previously agreed to. The platform also made women's rights and interests in land publicly visible, and enabled women to pay an

12. For further information on FPIC, see FAO (2014) Respecting Free, Prior and Informed consent: Practical guidance for governments, companies, NGOs, indigenous peoples and local communities in relation to land acquisition; and Landesa (2018) Free, Prior and Informed Consent Primer

13. The UNIDROIT-FAO-IFAD Legal Guide on Agricultural Land Investment Contracts (ALIC) consultation draft states, inter alia: "in many jurisdictions the use of FPIC is becoming customary not just with indigenous peoples but with any local community members". "Consistent with best practice, even if members of the local community are not indigenous, the investor should consider following the FPIC principle".

14. This 40-60% estimates reflect costs of consultation and field activities incurred by the NGO partner, but not the business partner, in conducting village and stakeholder meetings, participatory mapping and field documentation of land rights, training and capacity development activities with local community members, salaries and subsistence of field workers, field communications local transport and logistics, not including international and management staff, flights, capital costs of project vehicles, data processing, or any costs incurred by the business partner. Depending on the number and geographical spread of communities affected, companies could expect a similar level of costs to undertake proper consultation in advance of an investment taking place, although this would be a much lower proportion of total investment costs.

active role in brokering agreements within and between land-holding families about how to proceed.

- In Mozambique, following NGO-led consultations at community level, forest investor Portucel suspended planting pending negotiations with households and community organisations on terms of participation and provision of land. The company also adjusted business plans to incorporate out-grower and contract farming arrangements providing access to designated areas of land or operating as out-growers. To increase the likelihood that eventual negotiations would be fair and open, local LEGEND partners ORAM and Terra Firma provided legal, business and negotiation training to support 16 community associations to engage with the company.

As these and other projects have found, companies need to invest in properly trained, established community outreach teams that are independent from project operations, to identify and resolve emerging problems and to access grievance mechanisms as investments progress.

Increasingly, practical experience shows that for all types of communities, full and open consultation processes to resolve problems and determine consent by the whole community, are invariably good for business and a good basis to avoid subsequent human rights violations. Community consultation and engagement is a critical dimension of ESG risk assessment and management, and with adequate levels of resource dedicated to it, companies can gain a social licence to operate, whilst developing good and peaceful relations with all stakeholders.
Governments and donor partners also need to strengthen national regulations and systems for consultation where these are weak, unclear or open to abuse by both companies and community leaders. In addition, due to inherent power imbalances, communities are likely to need legal and organisational support to participate effectively in consultation and negotiation with companies (see lesson 4).

4. Legal support for communities to level the playing field with investors

Communities need legal support to protect legitimate tenure rights, participate effectively in negotiation with companies, and achieve redress for harm done.

As land-based investments typically involve imbalances in information, capacity and power relations between project developers and local people, consultation and negotiation with local communities will be meaningless, unless they can access legal and professional support (Cotula 2019 b). Legal empowerment consists of enabling groups and individuals to pursue their livelihoods and other activities they value through harnessing the law (Cotula & Berger 2017), and typically starts by raising legal awareness at community level. Investment-affected people also need to have effective community organisation and leadership in place and to be fully aware of the implications of an investment project, their rights to redress and compensation, and the terms of any agreement with the company. Independent support without ties to company interests is required if people are to make informed decisions and participate effectively in negotiation.

In the LEGEND pilots, provision of legal support to communities affected by large-scale investment projects provided instructive experience that bears out broader lessons on legal empowerment:

In Sierra Leone, LEGEND grantees contracted legal support organisation Namati to work on behalf of local communities and land-owning families. Their work included raising legal awareness, targeting groups at risk of exclusion such as women and youth, supporting stakeholder negotiations through a multi-stakeholder platform, drawing up a new lease contract for a much-reduced oil palm concession and new leasehold contracts with land-holding families on improved terms which reflect community rights and interests, providing legal opinion to stakeholders, and identifying points on which national legislation and regulations require amendment.

In Mozambique, in the pilot with ORAM and Portucel, professional legal support assisted villagers in establishing community land management associations responsible for local land rights management and negotiations with outside investors, clarifying options for legal instruments to govern release of land and distribution of benefits and terms of out-grower contracts, linked to basic business management training and the identification of necessary legal and regulatory reforms to enable equitable management of company–community relations.

Alongside broader analysis and experience of legal empowerment work, pilot experience implies that legal support should have the following characteristics:

- Not be confined to legal issues alone, but linked to assistance in land rights mapping and registration, community organisation and business development, and conduct of negotiations, as in the approach taken by ORAM in Mozambique.
- Be politically informed and aware of relevant national policy processes, linked to legal assistance at higher levels, including advocacy for policy and legal reforms, improved due diligence, public scrutiny of investor state contracts, and access to international redress (Cotula & Berger 2017).
- Be genuinely independent to ensure that legal advisers can act on communities' behalf as trusted intermediaries. In this context a key lesson is that **new institutional and financing arrangements are needed to ensure that legal support is independent of the investor and accountable to the community,** so that the outcomes are not driven by pre-existing business objectives, or not reliant on recurrent donor project support – for example, by establishing independently managed trust funds to which donors, IFIs, companies and industry bodies can contribute (CCSI 2018, Cotula 2019 a and b). In Sierra Leone LEGEND partners CCSI and Namati have proposed to develop such an independent 'black box' or 'blind' funding mechanism, hosted and managed by

the UN Commission for Human Rights, to mobilise CSO and independent specialists to undertake both legal empowerment and land rights mapping work in creating the conditions for responsible agricultural investments. Companies need to collaborate with CSOs working on behalf of communities to strengthen their capacity, whose presence may be essential for a business to gain social licence.

5. Mainstreaming land as a key ESG issue in company operations

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.

The pilots have shown how modest investments in better due diligence, community engagement and land tenure assessment can help companies to address land as a key ESG issue, avoid land conflicts and gain a social licence to operate. This reflects findings from a small sample of companies known to have resourced for these activities at the start of the investment cycle, showing that the additional costs did not exceed 2% of the total investment costs (ODI & TMP Systems 2019).

This contrasts with potential losses of between US$10m and US$100m identified by the same study if such measures are not taken. Despite goodwill and greater recognition of the importance of land-related risks, planning for responsible land investment was not embedded in company practice and in incentive systems across different departments and levels, reflecting limited understanding of the links between land and wider ESG outcomes and risks. As found by the pilots that worked with large-scale investments, operational performance is still managed according to predefined production targets and business plans, which do not account for community relations and conflicts on the ground. As a result, companies needed to develop procedures and apply them systematically to address land and related ESG issues.

Landesa's 'Commitment to Practice' (C2P) project initiated a shift in Illovo Sugar's broader business strategy by better incorporation of good practice on land and human rights to guarantee sustainable supply and operations, while complying with the VGGT across the value chain. C2P helped Illovo to develop a systematic approach to land and associated ESG issues that Illovo will implement across their operations, including company estates and out-grower schemes in Malawi, Mozambique and Tanzania, as well as in South Africa and Eswatini. The approach includes the following key elements:

- building trust and forging strong partnerships with national CSOs capable of acting as trusted intermediaries between the company and local communities
- identifying 'land champions' and forming land committees for each company site and operation
- developing company-wide and site-specific strategies to address land-related issues and associated conflicts and grievances in each location
- developing a LandAssess tool for due diligence to identify land risks and issues in new operations, and for ongoing monitoring of management practice, company responses, outcomes and changes on the ground (see lesson 1)
- systematic staff training and regular exchange of experience and learning between sites.

Another pilot implemented by Bonsucro and TMP Systems developed a modular set of tools to help sugar growers' organisations and their members monitor and manage a range of technical, business issues, such as land and water use, management of crop pests and diseases, and land rights mapping at farm level. The tools were configured to help ensure all-round sustainability, integrating proper attention to land rights and land use issues into mainstream business practice. Other pilots have shown how companies can develop and go beyond mere corporate social responsibility (CSR) schemes to invest in effective community engagement, service provision and support for food production, livelihoods and community-based businesses that are complementary to the main investment project.

6. Reducing concession sizes, adjusting business plans and developing more inclusive models

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.

Pilot experience shows that **companies have had to make major changes to large-scale investments to address land conflicts inherent in the original plans.** This has involved reducing the scale of concessions and size of land areas acquired in response to community demands to accommodate their land rights. Indeed, taking the idea of responsible land investment from theory to practice involved adjustments to companies' business plans and operating procedures to enable creation of a genuine sense of shared value around the investment project. In two LEGEND pilots, the civil society partners helped to broker new deals between companies and host communities, when it transpired that land occupation by the communities was much higher than expected by the companies.

- In Mozambique, Portucel's US$2.5 billion investment proposal and plans to develop an initial 120,000 ha of eucalyptus plantations to feed a pulp mill, with further expansion in a second phase, required changes in approach to avoid causing much harm to investment-affected people. Due to a hasty and exclusive consultation process that failed to respect the FPIC principles, the company did not gain a social licence to operate, encountering difficulties in securing land and subsequently had to suspend land acquisition and development. The resulting delays forced the company to adopt a radical shift in company strategy to focus on production of woodchips for exports and construction poles for local markets, sourced from small-scale company and community woodlots, while maintaining its longer-term ambition to produce pulp for export. Portucel reframed its investment as a sustainable agro-forestry landscape mosaic and plans to develop an out-grower scheme for production of both eucalyptus and indigenous trees by small-scale farmers, and to use its CSR programme to invest in food and additional cash crops and community income generating projects [15].

- In Sierra Leone, NHSL took over a 30,700 ha operational oil palm concession from a previous operator, and had planned to create a large nucleus estate and associated out-grower schemes on land held by long-term lease from land-holding families. The initial acquisition was the source of significant disputes over the land areas claimed by the company, as well as disagreements on rent levels, crop compensation and unpaid back rents pending land development. This threatened social stability in the area and relationships among stakeholders. With assistance from Solidaridad, NHSL reappraised its strategy, and after extensive consultation in which they listened to investment-affected people's views and concerns, the company agreed to revisit the terms of the lease. A new lease was signed in November 2018 by local government, chiefdom authorities and land-holding families. NHSL reduced the concession size to below 3,000 ha (the upper limit under the National Land Policy is 5,000 ha) restoring nearly 28,000 ha to community control and agreed to pay outstanding land rents, and higher land rent levels in future. The company is now switching emphasis to expand out-grower production. It introduced a profit-sharing scheme and expanded investment in additional community food security and livelihood projects on adjacent land.

By re-designing investments to accommodate local land rights, these and other companies have been able to introduce more inclusive business models that secure increased production on farmers' own land, on transparently negotiated terms, with a fairer distribution of benefits. To follow through on the commitments made, there are a variety of actions that companies can do to increase social and economic inclusion in agribusiness, working within the constraints of existing value chain structures, which may require prompt processing of fresh produce in bulk, depending on crop characteristics and perishability (German et al. 2018) [16] These include **strengthening voice and representation of small-scale producers, ensuring equitable contracts, terms of engagement and increased employment opportunities, improving respect for labour rights, supporting local food security, and ensuring community tenure rights and fair, transparent negotiations for land access.**

In addition to showing how companies can adjust large-scale investment plans to adapt them to existing tenure arrangements and make them more inclusive, the RLI pilot initiatives in the LEGEND programme demonstrated **significant potential for development of community-based enterprises in agriculture and natural resource utilisation founded on secure community land rights.** The promising experiences of several pilot projects indicate the real scope for business partners to foster the emergence of profitable businesses by providing training and management services.

Under LEGEND, this enabled development of new value chains for baobab products in the Zambezi valley, Mozambique, and a sustainable tourism development plan for the Lake Eyasi valley in northern Tanzania, involving indigenous groups small-scale tourism operators, and other stakeholders in unique. The organisation of these projects requires establishment of landscape-wide associations of community operators, land use and resource utilisation plans based on clearly defined rules of access, and stakeholder platforms for coordination including local government and commercial natural resource users (see lesson 7). Social enterprise models are appropriate and effective when combined with extensive natural resource management plans to both protect legitimate land rights and guarantee a sustainable supply. In all cases, careful consultation and collaboration by CSO and business partners with local communities, explicitly including women in contexts of predominantly male community leadership were essential to develop business models that worked for everyone and enabled local communities to actively participate in business development and natural resource management.

Development of successful community-owned enterprises in agriculture, as shown by WHH's pilot seeking to develop cocoa production clusters in Sierra Leone, relies on partnership with private sector agents capable of organising improved cocoa production, farmer training, land use improvements and business management. The WHH 'SPIRAL' project sought to go beyond existing 'block farming' approaches to cocoa production managed by cocoa traders providing inputs and offtake services at sufficient scale to supply export markets, in a longer term effort to develop a community-owned enterprise, incubated by a cocoa trader acting as manager across a cluster of target sites offered by land holding families. Without sufficient incentives or guarantees of returns the business partner dropped out and WHH opted to establish a new social enterprise company to develop the project and raise the necessary capital to finance it.

Cases like these offer new opportunities for investors and agri-entrepreneurs, but also call for **longer-term social impact investments underpinned by sources of 'patient' capital** that include DFIs. This is particularly important given the time required to establish secure social and economic foundations for community enterprise, for crops to mature and for the delivery of sustainable returns to investors and benefits to the land-holding community. In the sugar sector, the **Phata cooperative scheme in Malawi,** which now supplies the Illovo mill, illustrates how a

15. A recent (2019) publication by the Interlaken Group (2019) *Emerging Corporate and Investor Practice to Support Community Land Rights provides a detailed account of changing practice in the case of three companies, including Portucel Mozambique and Illovo Sugar.*

16. See LEGEND (2018) State of the debate report: Land governance and inclusive business in agriculture: advancing the debate.

smallholder-based investment scheme can be structured to provide secure rights for individual producers on irrigated sugar plots derived from family land-holdings pooled to support the project and the opportunities available for appropriately skilled management companies.

7. Strengthening land governance at scale through landscape approaches

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 pilot projects demonstrate that companies need to collaborate not only with host communities but also with other stakeholders including government agencies and other companies in order to protect land rights, and to follow through on other sustainability commitments, for instance to prevent deforestation, and strengthen the local governance environment, which all require action that goes beyond companies' own farms and supply chains.

Landscape-wide, jurisdictional approaches offer opportunities for companies to address social, climate and environmental concerns surrounding their operations in collaboration with the relevant jurisdictional authorities, both formal and customary, and other stakeholders, complementing actions that companies can do within their own supply chains. Landscape approaches involve frameworks for joint engagement in development planning, making trade-offs and promoting synergies amongst stakeholder interests and productive, environmental and social issues usually involving the establishment of multi-stakeholder platforms and frameworks for concerted action. These actions aim to achieve sustainable land and natural resource use, resolve conflicts, and leverage investments that protect both the climate and local people's social and economic interests through inclusive and participatory governance.

Action to clarify land rights, undertake land use planning, resolve land conflict and put appropriately decentralised and responsive land management institutions are the bases for more effective governance at a wider geographical scale, which landscape initiatives have often struggled to address. The RLI pilots underscore their importance and illustrate the opportunities to manage the trade-offs between productive development and environmental integrity, and improve incentives for sustainable land use by channelling resources into greater stakeholder collaboration at a landscape scale to secure tenure rights, resolving conflicts and clarifying land access and governance rules and promoting diverse and sustainable land use mosaics. This is an opportunity to develop integrated approaches:

- The Multi-Stakeholder Platform (see pages 6–8) established by Solidaridad and NHSL in Sierra Leone to engage government authorities holds the potential to develop into a district- and chieftaincy-wide development planning forum. It can also be a focus for devising and developing a district-wide land administration system that meets the needs of land-owning families, the company, other enterprises in the district, and land users.
- After securing collective land rights for pastoralists and hunter-gatherer groups and developing 15 village land use plans in the Lake Eyasi basin in northern Tanzania, the VSF-B pilot developed a landscape-wide tourism development plan and code of conduct. The project also established a tourism revenue-sharing arrangement with district government and community-based organisations (CBOs) for each indigenous social group in order to safeguard their interests. Project partners and local actors are to establish a multi-stakeholder platform that will involve tourism operators, local government and conservation authorities to manage implementation in an inclusive way.

In the DFID- and BEIS-supported P4F programme, companies aimed to secure long-term supplies of various forest crops and commodities to address climate risks and generate employment, and to support community businesses based on sustainable forest and land utilisation, complementing the principle business investment and contributing to local economic development at a landscape scale. In doing so, companies identified reduced farmer and company incentives due to insecure tenure and weak land governance. A key lesson is that the multi-stakeholder, sustainable landscapes approach adopted by P4F offers opportunities to address conflicting stakeholder and community interests in land through landscape wide efforts to clarify land rights.

- In Ghana, the Partnership for Productivity Protection and Resilience in Cocoa Landscapes (PPPRCL) works in partnership with agri-trading company Touton and the National Cocoa Board to promote increased, sustainable and long-term cocoa supply from small-scale farmers, while also addressing climate change and operational risks by increasing incentives for farmers to reduce deforestation across the 243,500 ha Juaboso-Bia forest farm landscape. A key innovation, common to other P4F projects in Ghana, is the establishment of landscape management boards bringing together traditional authorities, farmer and community representatives including both landowner and tenant farmers, local government, national agencies and other stakeholders.[17] Amongst others, this institutional innovation provides a platform for clarifying and strengthening farmers' tenure rights over both land and trees to reduce incentives to remove forest cover, undertake joint land use planning and potential mechanisms for benefit distribution and registering land rights at scale. Touton has also introduced rural service centres providing access to finance and

17. Other P4F projects that have established landscape management boards in Western Ghana include a cocoa partnership with Olam and the BOPP oil palm project which adopts an FPIC approach to a community owned enterprise and promotes additional farmer income opportunities in conservation and carbon capture.

technical advice and farm inputs across the farm forest landscape.

8. Improving company access to skills and services to address land rights

To address land rights and associated ESG issues successfully, companies need access to skills and services of specialised and locally informed providers.

The pilots demonstrate that companies need to collaborate with other stakeholders to access relevant knowledge and a variety of specialist skillsets they do not have to ensure that land investments are responsible by planning and adapting company operations to the realities of existing land rights and developing stronger partnerships with local communities. Through the pilot programmes supported by LEGEND, USAID, and the P4F programme, companies were able to benefit from expertise in community engagement and communications, land law and other legal frameworks, risk assessment, gender analysis, participatory land rights mapping, land registration and land use planning, and use of open data platforms, and to access knowledge of local cultural practices, national policy and political economy and how to operate in local governance and business environment.

Illovo Sugar and Portucel in Mozambique and NHSL in Sierra Leone all benefited from the LEGEND partnerships which proved essential in enabling them to understand what respecting legitimate land rights involves in practice, to adjust their plans, operations and procedures to accommodate tenure issues, to address problems and grievances, and to build better relationships with local communities. These and other pilot experiences illustrate the importance of developing ongoing mechanisms through which companies can access necessary independent skills and local knowledge from civil society and the research community, avoiding reliance on recurrent donor funding which is unlikely to prove efficient and sustainable or to deliver services to companies at sufficient scale.

- Separately from the challenge fund pilots, LEGEND also worked with Landesa and TMP Systems in supporting the development of a Social Licence Platform, a virtual hub that aims to link companies with independent sources of expertise, currently being piloted in Tanzania, but in principle of global scope. This platform seeks to match needs of companies at different points in the investment chain with independent sources of advice and skills, to supplement what is available through existing commercial providers assisting with risk assessment, due diligence, impact assessment and auditing. It includes technical and land governance experts, third party service providers, paralegals, and international and local civil society and research organisations able to provide guidance on how to operate in a specific legislative and governance environment, conduct tenure assessments, engage with local communities, and identify land risks and how to address them, including the gender dimensions. It is open to companies at any position in the value chain seeking to improve their operations form an ESG perspective, including investors agribusiness operators and buyers such as retail brands and traders.

- A key dimension is the building of trust between companies and CSOs, which is likely to involve changes in attitude and behaviour on both sides. This proved essential to the success of the Illovo C2P project, in which Landesa, an international NGO with experience of corporate engagement, brokered collaboration with selected local CSOs.

- Importantly, as noted under Lesson 4, in many circumstances, independent civil society skills are also needed to advocate on behalf of local communities, help them to map and identify their land rights, and build legal awareness and capacity to negotiate effectively with companies. This requires mechanisms to support CSOs to work independently as community service providers and not for companies, or on occasion to act as intermediaries trusted by both sides.

IV. Conclusions and ways forward

An overarching conclusion for DFID and partners in the LEGEND programme is that, **for agricultural investments to be responsible and generate positive impacts and genuine shared value for local people through increased incomes, jobs or other benefits, requires more systemic changes in the governance and regulatory environment are required, in addition to positive steps companies themselves can take.** This entails strengthening investment approval and management processes through measures to identify rights holders, understand how they may be affected, and negotiate with them as genuine counterparties, and building local capacity for implementation and monitoring. To achieve this, as the pilots show, broader action is required, involving civil society, governments and donors.

The lessons from the RLI pilots demonstrate how, with access to the right sets of independent skills from civil society, land-based investments in agriculture and related natural resource sectors can deliver sustainable development outcomes for local communities and make responsible contributions to economic development. This is especially illustrated in two broad types of situations:

- Where success and sustainability of large-scale agri-investments are at risk due to inadequate planning, poor consultation, lack of understanding of existing land tenure arrangements, and ensuing conflicts. In the cases of three major international companies, significant improvements were made through combined processes of trust building with local CSOs, systematic land rights mapping and documentation, in-depth community engagement with groups and individuals directly affected, changes in company practice and procedures, and capacity building for local communities to act as genuine counter-parties in negotiations, leading to adjustments and changes to take existing land rights into account in strategies, business plans and operations.

- Where land is held collectively and the policy environment enables community land and resource rights to be mapped and defined, this creates opportunities for companies and other stakeholders to design projects together, to develop value chains for smallholder crop production and community-managed natural resource-based products and services that, unlike conventional agricultural investment, do not require land acquisition.

The prospects for positive social and economic impacts are already clear in successful pilot projects of both types, which have already achieved significant reductions in conflict, better relationships, improvements in awareness and capacity at community level, and in some cases, quite rapid improvements in household incomes and livelihood opportunities. Several projects have seen demonstrable improvements in outcomes for women in terms of secure land rights, new economic opportunities, and strengthened voice and capacity to engage in development and influence outcomes. 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 food security, and in influencing community attitudes and building consensus.

A variety of tools and practical approaches and methodologies have been developed for improved due diligence, risk assessment, community engagement and land rights mapping and documentation and better land use management, which CSO and business partners can continue to develop and apply more widely. This briefing has sought to cover the main practical lessons with reference to key examples, which are to be further illustrated by a set of thematic case studies, with links to project documentation and learning products (see for example MICAIA and Baobab Products Mozambique's account of changing household and gender dynamics resulting from baobab business development).

A key challenge is to extend these lessons and tools to other companies and contexts, to avoid situations in which over-ambitious planning, and a rush by governments to attract investments, and by companies to acquire land creates and drives irresponsible and unsustainable investment projects. Although there is much that companies can do to adopt and incorporate these lessons, the improvements and innovations discussed here come at significant cost, and there are limits to what investors and agribusiness companies can achieve by acting alone. Successful pilots have relied on experimental donor funding programmes that in themselves are not sustainable.

Below is a summary of the opportunities to further apply and develop responsible land investment lessons and tools at greater scale.

For private investors, companies working with commercial service providers and civil society partners:

- Refining and developing the risk and due diligence tools piloted by partner companies and service providers, integrating land more fully into feasibility and ESG risk assessment.

- Agricultural businesses have opportunities to invest in smallholder and community-based production and enterprise as an alternative to making land acquisitions. Civil society and specialised service providers can assist in researching and designing specific projects and provide farm and project management, offtake and supply arrangements, social enterprise incubation and locally informed, on-the-ground services to companies and investors involved to help them manage responsible supply chains and to achieve and demonstrate compliance with VGGT and CFS-RAI principles.

- Building trust and establishing safe spaces for dialogue between private companies and civil society at county and local levels, linked to Multi Stakeholder Platforms for better land governance and development planning to meet the SDGs.

- Linking efforts to improve human rights and sustainability performance in company supply chains, farm operations and commodity sectors with opportunities for companies to contribute to stronger local and regional governance through landscape and jurisdictional approaches.

For Governments, donors and international organisations

- Linking agricultural development and investment programmes with programmes for tenure regularisation and strengthening land governance, and focusing these on geographies where investment and economic development are taking place, so that land rights can be documented and land users engaged proactively.

- Make more systematic use of open data tools and spatial data platforms to capture land rights information locally, and support more decentralised basic land administration services with effective links and functional interfaces with official cadastral systems to improve tenure security at scale and at low cost, prioritising investment areas where land rights data is missing.

- Improving procedures and institutional frameworks for land allocation and investment approval and management at national level, by bringing together relevant authorities from local and regional government, investment promotion and other sector agencies with customary leaders and civil society representatives to clarify local and national rules and regulatory environment for investments.

- Adopting a stronger focus on support for smallholder and community-based production and enterprise and assisting business to take up related opportunities in project management, offtake and supply arrangements, social enterprise incubation as alternative approaches to agricultural land investments that require large-scale land acquisitions.

- Bringing together support for climate-friendly investment in forest production, protection and landscape restoration with efforts to promote responsible land investment and strengthen land governance on the ground, by promoting landscape approaches that engage directly with relevant jurisdictional authorities at district and regional levels as well as customary leaders, business and civil society. Delivery mechanisms are needed to support land governance, tenure security and participatory land use planning components at appropriate geographic scales as part of broader economic development, sustainability and climate change mitigation endeavours.

- Developing independently managed 'black box' funding mechanisms to mobilise and deliver specialist legal and land rights documentation services to meet community needs and to assist companies in responsible investment planning.

- Devise new public-private finance mechanisms and with pre-competitive contributions from the private sector, to channel funding into decentralised delivery partnerships in priority investment areas for stronger land information and governance systems, platforms for stakeholder engagement, knowledge-based planning, and to enable design of more inclusive and community responsive investment projects.

References

CCSI 2019 Innovative Financing Solutions for community support in the context of land investments. Summary report, CCSI, March 2019. Full report available at https://bit.ly/2RYbQO8

CFS / FAO 2012 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. Rome. http://www.fao.org/3/i2801e/i2801e.pdf

CFS/FAO (2014) Responsible Investment in Agriculture and Food Systems. Rome. http://www.fao.org/3/a-au866e.pdf

Cotula, L, Berger, T and Sutz P (2016) Addressing 'legacy' land issues in agribusiness investments. LEGEND Analytical Paper No.2, May 2016. https://landportal.org/library/resources/legend-analytical-paper-2/addressing-legacy-land-issues-agribusiness-investments

Cotula L and Berger T (2017 a) Trends in global land use investment: implications for legal empowerment. IIED, London https://pubs.iied.org/pdfs/12606IIED.pdf

Cotula L and Berger T (2017 b) Legal Empowerment in Agribusiness Investments: Harnessing Political Economy Analysis, London, LEGEND, http://bit.ly/2pu75Ny

Cotula L 2019 a Are development finance institutions equipped to address land. LEGEND https://landportal.org/library/resources/legend-dfi-report-2019/are-development-finance-institutions-equipped-address-land

Cotula L 2019 b Land rights and investments: why the IFC performance standards are not enough: a comparison with the Voluntary Guidelines on the Governance of Tenure. LEGEND Policy brief, October 2019 https://landportal.org/library/resources/land-rights-and-investments-why-ifc-performance-standards-are-not-enough

Feyertag J (2019 – forthcoming) Responsible Land Investment in Sub-Saharan Palm Oil: Lessons from the Private Sector. LEGEND.

German L, Cotula L., Gibson, K., Locke A., Bonanyo, A., and Quan, J. (2018) Land governance and inclusive business in agriculture: advancing the debate. LEGEND, 2018 https://landportal.org/library/resources/land-governance-and-inclusive-business-agriculture-advancing-debate

GrowAfrica (2015) Analytical framework for land-based investments in African agriculture: due diligence and risk management for land-based investments in agriculture. New Alliance for Food Security and Nutrition and GrowAfrica https://www.growafrica.com/sites/default/files/Analytical-framework-for-land-based-investments-in-African-agriculture_0.pdf

IFC (2012) Performance Standards. World Bank Group. https://www.ifc.org/performancestandards

Interlaken Group (2019 a) Emerging Corporate and Investor Practice to Support Community Land Rights: Case Studies from Malawi, Mozambique, and Malaysia. Rights and Resources Initiative, Washington DC, March 2019 https://www.interlakengroup.org/downloads/EmergingCorporateInvestorPractice-home-4aca0f49991efcc5ebcec4ac4eca302c.pdf?vsn=d

Interlaken Group (2019 b) Respecting Land and Forest Rights A Guide for Companies: Support for aligning your operations with the Voluntary Guidelines on the Responsible Governance of Tenure. 2nd Edition, August 2019 https://rightsandresources.org/wp-content/uploads/2019/10/InterlakenGroup_VGGT_Guidance_Revised_2019.pdf

Locke, A., Munden, L., Feyertag, J., and Bowie, B. (2019) Assessing the costs of tenure risks to agribusinesses. Summary report and appendices. ODI and TMP Systems Available from: https://landportal.org/partners/quantifying-tenure-risk/about-qtr

New Alliance for Food Security and Nutrition (2015) Analytical Framework for Land-Based Investments in African Agriculture. Due diligence and risk assessment for land-based investments in agriculture. https://www.growafrica.com/sites/default/files/Analytical-framework-for-land-based-investments-in-African-agriculture_0.pdf

ODI & TMP Systems (2019) Quantifying Tenure Risk (QTR) initiative. Land Portal. https://landportal.org/partners/quantifying-tenure-risk-initiative

OECD & FAO (2019) Pilot project on the implementation of the OECD-FAO Guidance for Responsible Agricultural Supply Chains: Final Report

OECD &FAO (2018) Pilot project on the implementation of the OECD-FAO Guidance for Responsible Agricultural Supply Chains: Draft baseline survey report.

UNDRIP (2007) United Nations Declaration on the Rights of Indigenous Peoples. March 2008 https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

UNIDROIT 2019 Legal Guide on Agricultural Land Investment Contracts. Zero draft, 1 June 2019. UNIDROIT, FAO and IFAD. International Institute for the Unification of Private Law. http://www.fao.org/fsnforum/sites/default/files/files/160_ALIC/190601-alic-zero-draft%20%28English%29.pdf

USAID (2017) Factsheet: USAID's Responsible Land-Based Investment Pilots. Accessed at https://www.land-links.org/document/factsheet-usaids-responsible-land-based-investment-pilots/

USAID (2015) Operational Guidelines for Responsible Land-Based Investment. March 2015 https://land-links.org/wp-content/uploads/2016/09/USAID_Operational_Guidelines_updated-1.pdf

USAID (2018) Investor Survey on Land Rights. Perceptions and Practices of the Private Sector on Land and Resource Tenure Risks. USA https://www.land-links.org/wp-content/uploads/2018/05/Investor-Survey-on-Land-Rights_Report-2018.pdf

ANNEX 1: Land rights – related red lines for due diligence on agricultural land investments

The VGGT-based Analytical Framework for Land-Based Investments in African Agriculture includes a series of red lines intended to be applied in investors' due diligence processes on agricultural investments in Africa. These try to indicate in which situations investment projects should be cancelled if no benign alternatives can be found:

- If resolving existing conflicts is not possible
- Lack of reliable mapping of all legitimate land rights, impact assessments and ESIA
- If the impacts on legitimate local land rights cannot be mitigated
- If involuntary displacement through expropriation cannot be avoided
- If existing land tenure conflicts or violence in the area worsens as a result of the project
- If stakeholders have not been and cannot be consulted properly
- If those who signed the contract are not the legal or legitimate representatives of the local land rights holders
- If FPIC has not been obtained from indigenous peoples
- If the affected persons, and the community at large do not support the project as reflected in the final contract. Where national law or regional agreements require FPIC from all affected groups, this needs to be respected
- If no monitoring mechanism is in place and/or no remedies clause is included in the contract
- If no complaint mechanism has been agreed upon and/or is not functioning effectively
- If corruption risks cannot be excluded or corruption is already observed in project context
- If the project will create or exacerbate local or national food insecurity
- If infringements of human rights cannot be avoided
- If there are serious risks of irreversible environmental damage (pollution of ground or surface water, soil erosion, destruction of wetland areas of ecological interest, proliferation of invasive species, etc.)

Source: Grow Africa (2015) Analytical framework for investors under the new alliance: Due diligence and risk management for land-based investments in agriculture. New Alliance for Food Security and Nutrition.

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.

This publication has been funded by UK aid from the UK Government. The views presented in this paper are those of the authors, reflecting work undertaken by the DFID core land support team and LEGEND partners but they do not necessarily represent the views of DFID.

The full report and other LEGEND publications are available from:
landportal.org/partners/legend

UKaid from the British people

This material has been funded by UK aid from the UK Government, however the views expressed do not necessarily reflect the UK Government's official policies.

KPMG

UNIVERSITY of GREENWICH

NRI | Natural Resources Institute

iied

ODI