

Land transparency

A guide to best practice in transparency, accountability
and civic engagement across the public sector

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The collaborative aims to expand the impact, scale and coordination of funding and activity in the transparency and accountability field, as well as explore applications of this work in new areas.

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Land transparency

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Land is a public good from a human security, economic and environmental perspective. Governance of land, especially at a time of rising global demand for food, fuel, fibre and mineral resources, is becoming increasingly critical. It has been estimated that global food demand will increase by 70% by 2050, requiring net investments in agriculture 50% above current levels.¹ Global large-scale investments in farmland in particular have already begun to escalate: in 2009 investment reached 45 million hectares alone, up from an average annual expansion rate of only 4 million hectares leading up to 2008.² In terms of meeting future food needs, 80% of future arable land expansion is predicted to take place in Latin America and Sub-Saharan Africa, however the same regions expect a reduction in available arable land by the end of the 21st century due to climate change and population growth.³

This paper uses the term “land related investments” to cover all forms of public and private investments which impact on local peoples access to and control over land. Although agribusiness investments have received significant international attention, large areas of land are routinely allocated for other purposes, such as mineral concessions and economic development zones. The proposals outlined in this document attempt to cover multiple purposes, unless otherwise specified.

In 2010 the World Bank attempted a definitive documentation of trends in farmland deals. Its results were limited by a lack of verifiable data on the location, size, ownership and purpose, but it concluded that 70% of the demand is targeting Africa, especially Ethiopia, Mozambique and Sudan, followed by Latin America and East and Southeast Asia.⁴ Of the projects studied, 37% were for food, 21% for industrial or cash crops, and 21% for biofuels. Their median size was 40,000ha, with a quarter involving concessions larger than 200,000ha and only one quarter being less than 10,000ha in size. China, the Gulf States, the UK, US and Russia were listed as the main source countries, however a significant proportion of investment was domestic, and many major source countries are themselves recipients of large scale land acquisitions.

Large-scale land acquisitions by domestic, international, private and public actors are presented by investors and governments as win-win solutions: simultaneously providing local employment opportunities; transfer of technologies to developing countries; and profitable financial returns. In fact, they can lead to significant negative impacts on local access to and control over natural resources, household economies and food security; frequently involve human rights violations; as well as driving deforestation and environmental destruction. Communities affected by such land deals are often unable to hold their governments or business enterprises to account: land acquisitions are agreed in secrecy without their knowledge or consent. Such a lack of mechanisms or political will to ensure transparent, accountable and equitable decision-making and allocation of concessions undermines governance and democratic process. In addition, it fosters an environment where high level corruption between political and business elites prevails, where capture of natural assets becomes the norm, and where investment incentives are stacked against companies willing to do the right thing.

The key challenge is how to balance investments requiring the acquisition of land, with the risks such projects can pose to local livelihoods, governance frameworks, environmental sustainability and climate change related dynamics. Increased responsibility must be taken by States, parastatals and companies making investments, as well as those States and communities on the receiving end. Government-level leadership is required to develop an international norm for the management of land-related investments which ensures they are transparent, accountable, equitable and sustainable.

¹ UNEP GEAS July 2011 newsletter “The Rush for Land and Its Potential Environmental Consequence”, available for download here: <http://www.unep.org/GEAS/>

² World Bank 2010 “Rising Global Interest in Farmland: can it yield sustainable and equitable benefits?” Available for download http://siteresources.worldbank.org/INTARD/Resources/ESW_Sept7_final_final.pdf

³ UNEP GEAS July 2011 newsletter “The Rush for Land and Its Potential Environmental Consequence”, available for download here: <http://www.unep.org/GEAS/>

⁴ World Bank 2010 “Rising Global Interest in Farmland: can it yield sustainable and equitable benefits?” Available for download http://siteresources.worldbank.org/INTARD/Resources/ESW_Sept7_final_final.pdf

Initial steps

Goal

Governments (in their role as both regulators of private investment, and initiators of public investment) adopt transparency and accountability as fundamental requirements for land-related investments. This is achieved through strengthening international standards, developing national protocols for consultation, information disclosure and independent multi-stakeholder oversight, in order to ensure all stakeholders are held to account for decision-making relevant to land-related investments.

Justification

Effective governance of land and natural resources is critical to ensuring equitable and sustainable economic growth. For resource-rich developing countries, such natural assets provide a one-off opportunity to be harnessed to kick-start the economy and move beyond aid dependency. Unfortunately, while decision making around how land and natural resources should be allocated and to whom continues to be done in secret, these natural assets instead increase the risk of the *resource curse*.⁵ In the face of growing food insecurity it is essential that Government decision-making over allocating land for domestic food production versus allocating it to foreign agribusinesses is transparent and accountable.

Improving governance of land is dependent on ensuring ordinary citizens having the tools to, and an interest in, holding their governments and business enterprises to account. Given timely and accurate information, communities can better understand, get involved in decision-making, and monitor the outcomes of activities which affect their livelihoods. Governments have an interest in greater participation to improve sustainability outcomes: citizens who feel included in policy processes are less likely to resist the rules. Business enterprise actors are incentivised to strive towards best practice safeguards for corporate responsibility when compliance with regulatory frameworks are monitored and sanctions in place. In recognising the critical role which private and public sector investments play in the land and natural resource sectors, international institutions began

developing best-practice guidelines for tenure governance of land and natural resources, and principles for how agricultural investments could be done responsibly. Both standards are now being completed under the mandate of the Committee for Food Security⁶ (CFS).

Recommendations

1. Codify a consultation protocol at the national level which ensures full respect for the rights to free, prior and informed consent for indigenous peoples, as well as ensuring that this principle is extended to all affected communities whose livelihoods depend on land and natural resources. Ensure that through this, interest groups and affected communities are informed, know when and how consultation processes will take place in the course of policy formulation and decision-making, and know how their contributions will be incorporated;
2. Strengthen environmental and social impact assessment frameworks for land related projects, such that they are based on the precautionary principle,⁷ include social and environmental safeguards, calculations of broader and cumulative ecosystem impacts (such as carbon balances), and that meaningful risk mitigation strategies are developed and implemented;
3. Develop multi-stakeholder oversight mechanisms that incentivise membership, monitor governments and business enterprises in terms of national legislation as well as international standards, and support the piloting of such a mechanism in least developed countries that are economically dependent on agriculture;
4. Commit to standards for transparency which require business enterprises to publicly disclose investment contracts and other relevant documents (including details of beneficial ownership of companies, impact assessments, evidence of consultation and consent agreed upon with affected communities, management plans and reports from independent third party monitoring of implementation), in a locally accessible and timely format;

⁵ The phenomenon by which natural resource wealth often results in poor standards of human development, bad governance, increased corruption and sometimes conflict.

⁶ The Committee on World Food Security was established in 1974 as an intergovernmental body to serve as a forum in the United Nations System for review and follow-up of policies concerning world food security including production and physical and economic access to food. During 2009 the CFS underwent reform to make it more effective by including a wider group of stakeholders and increasing its ability to promote policies that reduce food insecurity. The vision of the reformed CFS is to be the most inclusive international and intergovernmental platform for all stakeholders to work together to ensure food security and nutrition for all. It will work in a coordinated manner in support of country led processes that lead to food security. Further information can be found here: <http://www.fao.org/cfs/cfs-home/en/>

⁷ Defined by Article 15 of the 1992 Rio Declaration as "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation". For further details refer to: <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163>

1. Nominate independent grievance mechanisms, such as courts, human rights commissions or ombudsman, to which land tenure holders, business enterprises or other key stakeholders may refer complaints and bring actions concerning the non-observance of the conditions of any land-related investments;
2. Ensure that the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests (VGs) and the principles for responsible agricultural investments (the “principles”), being developed under the mandate of the CFS include safeguards and mechanisms to guide governments and business enterprises in how to improve transparency and accountability in the decision-making and management of land and natural resource tenure, in relation to investments. Specifically ensure they:
 - reflect the work of the Special Rapporteur on the Right to Food and the Special Rapporteur on Business and Human Rights, and existing international standards for the operations of business enterprises, such as the revised IFC Performance Standards and the ISO 26000 guidance on social responsibility;
 - recognise, respect and prioritise the investments in land made by small holder food producers;
3. Implement both the VGs and the principles by ensuring that development partner assistance strategies are consistent with these standards and allocate additional financial assistance towards building the capacity of governments and other stakeholders to support their implementation.

Country examples

A number of tools exist to further transparency, participation and impact assessment methodologies which can help guide national level implementation. Freedom of Information legislation, international human rights frameworks, the convention on biological diversity and others are key starting points. The work of the Special Rapporteur on Business and Human Rights has clarified the responsibilities of the State and Business Enterprises with regard to transparency, participation and accountability, especially within grievance mechanisms. Global Witness is undertaking research to better define what type of information disclosure is needed, when in the decision-making process it should be made available, and who is responsible for disclosing it, as a means to strengthen tools available to local communities to protect their rights affected by large-scale land acquisitions. The VGs and “principles” have the potential to be the first international standard which will provide government consensus on the interpretation of the international human rights frameworks in relation to governance of land and natural resources. However, the extent to which they will be able to fulfil this depends on member state support of such provisions being included during the drafting processes currently underway.

More substantial steps

Goal

Governments harmonise regulatory frameworks for land related investments to ensure they place safeguards for transparency, accountability, equity and environmental sustainability upon business enterprises, government authorities and other stakeholders. Governments commit to addressing incentives which fuel secrecy, enable corruption and undermine governance through a range of national and international policy instruments.

Justification

Unless governments have adequate legislation and rule of law, increasing global demand for food, fuel, fibre and mineral resources, could further undermine governance frameworks. National and local government authorities in many developing countries lack the capacity and resources to safeguard against these risks. Consequently, instability arising from severe food crises, landlessness and land and resource conflicts have focused the attention of policy makers towards land governance. Securing the tenure of land and natural resource ownerships is increasingly viewed as a key national security priority by many G20 governments. Whilst international best practice standards can provide guidance, ultimately national and international regulatory frameworks are required to determine how land is allocated and managed, and to ensure protection of the rights of all stakeholders involved.

Recommendations

1. Develop freely accessible and locally available registries of land which make public the titles, leases and transaction details of large-scale transfers of land and land-related investments at the country level (ideally using internet-based, open source resources);
2. Commit to revising national level regulatory frameworks for the land and natural resources sectors, to ensure alignment and harmonisation with existing international obligations, voluntary commitments and standards, as well as the VGs and the principles;
3. Put in place frameworks for home States to regulate the overseas operations of businesses registered in their jurisdictions and the host State of the country, to ensure relevant obligations and voluntary commitments are respected. Regulation protection against human and legitimate tenure rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and service from State agencies, as well as actors financing or facilitating such land-related investments. Legislate for provisions which terminate concessions or land leases for non-observance of contract conditions;

4. Expand company listing reporting requirements to include details of the environmental and social impact assessments undertaken by business enterprises for potential land-related investments, including evidence through which free, prior and informed consent for the project was granted by affected communities, as well as progress towards implementing mitigation management plans for any identified social or environmental risks;
5. Promote and implement the recommendations made by the Special Rapporteur on the Right to Food to the UN Human Rights Council that locally focused “agro-ecology” food production systems are the model which will most effectively achieve increased productivity, sustainability and contribute to the progressive realization of the human right to adequate food.⁸

Country examples

The World Bank has included the funding of national land registries as a core area of land reform initiatives in countries such as Cambodia. Countries which have taken legislative steps to improve land tenure security and safeguard local rights against irresponsible large scale land acquisitions include Indonesia (in 2009), the Philippines (in 1997) and Botswana. However, local rights are most under threat in countries which often lack the political will to either strengthen or enforce the rule of law. For this reason, recent developments (eg. the work of the Special Rapporteur on Business and Human Rights) to further understanding of extra-territorial obligations of States and Business Enterprises in relation to their overseas investment interests can play a critical role in mitigating risks for local people and the environment. Meanwhile, we can see the potential for international norms eventually becoming law from the progression of the Extractive Industry Transparency Initiative to revenue-transparency reporting requirements being adopted by the U.S. Securities and Exchange Commission (in July 2009).

⁸ For further details, please see the Special Rapporteur’s March 2011 report to the UN Human Rights Council, available

for download; http://www.srfood.org/images/stories/pdf/officialreports/20110308_a-hrc-16-49_agroecology_en.pdf

Most ambitious steps

Goal

Governments undertake reforms to planning, implementation and regulation of land and associated natural resource management to enable decision-making which is long-term, strategic, systematic, holistic and equitable. Governments prioritise capacity building, resource commitments and legislative changes to deliver such reforms.

Justification

Government decision making is frequently short-term, un-strategic, ill-informed, secretive and silo-based. This prevents government agencies fully considering the trade-offs between alternative uses, the cumulative impacts, or the negative externalities of proposed land use changes. It risks undermining progressive initiatives to reform land and natural resource governance implemented at the sectoral-level, as well as having potentially significant negative environmental, socio-economic and governance impacts. The expected outcome of the initial and substantial steps outlined in sections 1 and 2 above is to put in place the regulations and implementation frameworks to enable governments to make land-related investments transparent, accountable, equitable and sustainable. Nevertheless, government leadership through political will, financial and technical resources is still required to ensure that such regulatory changes lead to improved information disclosure and accountability mechanisms on the ground.

Recommendations

A paradigm shift away from short-term and un-strategic decision making on land use changes towards a long-term and optimal use scenario with accountability at its centre. Long-term land and natural resource use plans need to be developed with full participation and engagement of all relevant stakeholders, be fully transparent and the result enshrined in law. External financial assistance (such as that provided through development assistance or REDD strategies) should be dependent on progression towards such reforms.

Country examples

Although many developing countries have long histories of undertaking participatory land and / or natural resource use planning, such processes tend to be localised and lack the legitimacy or mandate to secure tenure effectively. Long term, transparent and comprehensive mineral resource mapping and management has been a key recommendation made by Global Witness for how States can improve the governance of extractive resources. As pressure for investments in land increases, governments need to place the same importance in how they strategically manage this demand on land.

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