

Instruments and tools available to guide, monitor and facilitate inclusive investments

Lorenzo Cotula, PhD

Principal Researcher & Team Leader – Legal Tools Team,
Natural Resources Group

International Institute for Environment and Development (IIED)

How do responsible investment issues differ between domestic and foreign investors, if at all? What commonalities, what specific challenges? What are the most effective ways to engage with domestic investors?

How do existing instruments/initiatives respond to the challenges and opportunities specific to domestic investments, what gaps – if any – exist when tackling domestic investment issues?

How best to address the gaps – can current initiatives be adjusted, do we need new instruments (or new ways of using or linking existing instruments), what would this involve?

Not new; long-term processes. But involves a significant shift in perspective

Single large investment vs cumulative dimensions

Agricultural commercialisation, not just land-based investments

Indirect land use change

Calling for more integrated, systemic approaches

Diffuse actors and relations embedded in wider social transformation

Extreme diversity of actors, eg

- Social differentiation in rural areas

- Corporate investments, including some very large

- Urban middle classes

- Diaspora

Political economy issues

Land speculation, strategic positioning

Mapping legal instruments

Contracts vs national law

In large/single investment approach, contract can temporarily fill gaps in national law

Unworkable for large numbers of medium-scale projects

National legislation

Land, investment, water, environment, labour, tax...

But also land use planning, geographically targeted regulation

International treaties

Investment treaties only cover foreign investment

Several relevant treaties – eg human rights, labour

Voluntary international instruments

“Soft law”: does not create legal obligations

A different “theory of change”: political consensus around best practice standards, support programmes, international sharing

Global and regional instruments

VGGT, CFS-RAI

AU Framework & Guidelines, Guiding Principles LSLBI

Voluntary Guidelines on the Responsible Governance of Tenure (VGGT)

Significant perceived legitimacy linked to inclusive development process

Governance of tenure as the entry, holistic approach, link legitimate tenure rights to human rights and food security

While timing coincided with the global land rush, initiative driven by more encompassing concerns

Comprehensive guidance on land governance, relevant to both foreign and domestic investment

A highly relevant instrument

Responsible investments can be a force for good, but safeguards are needed

- Respect for legitimate tenure rights, consultation/FPIC, transparency, impact assessments...
- Smallholder-sensitive investments, partnership-based models, contribution to rural development

Many relevant provisions beyond “investment”

- Eg legitimate tenure rights incl customary rights, land records & administration, gender & vulnerable groups, spatial planning...

“Inclusive business”, agricultural commercialisation?

AU Guiding Principles on LSLBI

Response to the recent wave of land deals, investment as the entry

Broadly comparable approach to VGGT: investment can be good, safeguards are needed. But somewhat different emphasis in the specific safeguards

Eg respect for human rights and (customary) land rights, responsible governance, role of small-scale farmers, consultation, impact assessments....

Both domestic and foreign investment – but what qualifies as “large scale”?

Implementation initiatives

Numerous initiatives, diverse entry points and approaches

International: eg operational guides, due diligence tools, multi-stakeholder dialogues, advocacy campaigns

Mostly both foreign and domestic investment, but often responding to public concerns about FDI. More difficult to reach domestic players

Issues of scale, reputation risks (partly linked to markets). Who are the domestic players, what are their drivers?

Uneven awareness and commitment, but “big brand” supply chain commitments may trickle down to domestic suppliers

Implementation initiatives (cont'd)

Firm-level vs systemic entry

National policy, legal, institutional frameworks key. In areas such as

- Tenure security

- Land markets (incl informal)

- Land use planning

- Land institutions, administration, records, DS

Opportunities in country-level interventions – including

- EU Land Governance programme

- National dialogues, platforms, observatories

- CSO policy work

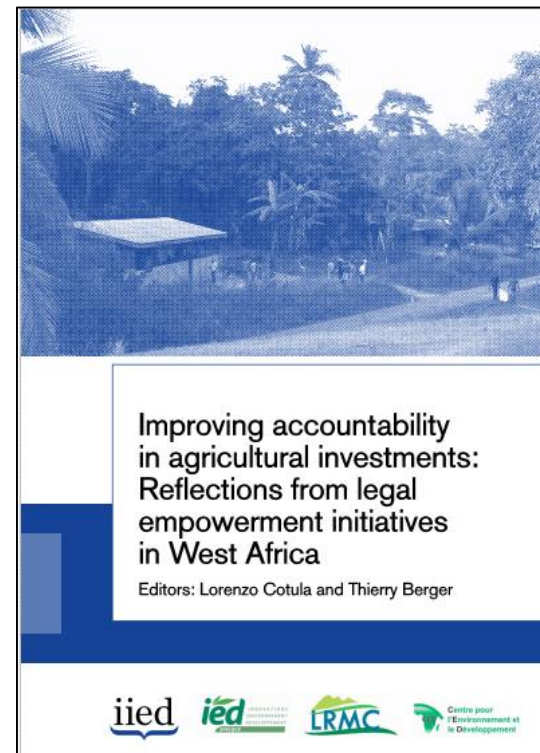
Legal empowerment approaches

Help rural people to harness the law so they can achieve what they value

Recently completed IDRC-funded programme in Cameroon, Ghana, Senegal

Strengthening accountability in local land governance: “land charters”, grassroots committees, “junior lawyers”

Systemic approach to address both foreign and domestic investment, political economy considerations may require tailored approaches



<http://pubs.iied.org/12604IIED/>

How do responsible investment issues differ between domestic and foreign investors, if at all? What commonalities, what specific challenges? What are the most effective ways to engage with domestic investors?

How do existing instruments/initiatives respond to the challenges and opportunities specific to domestic investments, what gaps – if any – exist when tackling domestic investment issues?

How best to address the gaps – can current initiatives be adjusted, do we need new instruments (or new ways of using or linking existing instruments), what would this involve?