

OpenLandContracts.org

A NEW GLOBAL REPOSITORY

Large-scale land, agriculture, and forestry contracts

SELF-STUDY TRAINING MODULE FOUR

Land Contract Transparency:
Benefits and Limits



Columbia Center
on Sustainable Investment

A JOINT CENTER OF COLUMBIA LAW SCHOOL
AND THE EARTH INSTITUTE, COLUMBIA UNIVERSITY



UKaid

from the Department for
International Development

Module Objectives

- 🔥 Objectives of Self-Study Module Four:
 - 🔥 Explore the benefits of land contract transparency
 - 🔥 Consider the limitations of land contract transparency



Benefits

- Increasing transparency around land contracts, and assisting key stakeholders in better understanding the provisions and implications of land contracts, can result in a **range of benefits**

1. Accountability and Good Governance

- Host state governments (including relevant agencies and departments) can use disclosed land contracts to monitor investor compliance with relevant obligations
- Affected communities, citizens, and civil society organizations (CSOs) can use disclosed information to scrutinize land-based investments, shape demands for improved governance, and seek to hold governments and investors to their obligations

Source: CCSI and OCP, Transparency in Land-Based Investment: Key Questions and Next Steps (2016) <<http://bit.ly/1QZYpSK>>



Benefits

2. Negotiation of Improved Land Deals

- By having access to the land contracts of other states, host state governments can gain a better understanding of the terms and commitments used in comparable contexts
- When coupled with a more participatory contracting process, increased transparency during negotiations can allow relevant government agencies and departments—and citizens—to weigh in on issues where their expertise can encourage more responsible investments

3. Protection and Fulfillment of Rights

- Where affected communities wish to challenge the conduct of investors and government entities, they can use disclosed information to support claims submitted to available grievance mechanisms, domestic courts, regional human rights tribunals, and UN complaints procedures

Source: CCSI and OCP, *Transparency in Land-Based Investment: Key Questions and Next Steps* (2016) <<http://bit.ly/1QZYpSK>> 4



Benefits

4. Reduced Risk of Instability and Conflict

- Land is closely connected to social, political and cultural identity for many affected individuals and communities; disclosure and engagement around land contracts can thus be vital for managing the risk of instability and conflict
- Recent studies have shown that secrecy surrounding the terms of land-based investment, coupled with lack of community engagement, can result in increased challenges to the legitimacy of such deals
- This can have negative financial implications for investors, and render the investments socially and economically unsustainable

Sources: CCSI and OCP, Transparency in Land-Based Investment: Key Questions and Next Steps (2016) <<http://bit.ly/1QZYpSK>>



Benefits

5. Accurate Assessment of Implications

- With increased transparency around land contracts, all relevant stakeholders can develop more reliable assessments of the true implications of land-based investment, both positive and negative

Source: CCSI and OCP, Transparency in Land-Based Investment: Key Questions and Next Steps (2016) <<http://bit.ly/1QZYpSK>>



Limitations

- 🔥 However, greater land contract transparency is a **means to an end**: further steps are required to both realize the benefits discussed above, and to secure more responsible, sustainable, socially-inclusive land-based investment
- 🔥 Examples of the **limitations** of land contract transparency include the following:
 - 🔥 By the time a contract is signed and disclosed, key decisions affecting individuals and communities will have already been made
 - 🔥 Merely making information available does not automatically result in an informed, participatory, and balanced negotiating process
 - 🔥 Increasing transparency does not guarantee that rights (under domestic and international law) will be complied with, or that the sustainable development priorities of host states will be met
 - 🔥 Without sufficient resources, governments may still not be able to monitor investor compliance with contractual terms



Additional Steps

- ◆ Additional steps to promote and realize responsible, sustainable, socially-inclusive land-based investment may include:
 1. Aligning **domestic laws and regulations** with international best practice standards on good governance of land tenure and natural resources
 2. Ensuring that the **entire contracting process** involved in establishing a land-based investment project is transparent and participatory, and that the requirements of *free, prior, and informed consent* (FPIC) are complied with
 3. Building **host state capacity** and ability to access **technical assistance** (legal and otherwise) during each stage of the investment process to ensure that more balanced land contracts are negotiated and concluded on an informed and equitable basis



Additional Steps

4. Establishing effective **monitoring and enforcement mechanisms** to ensure that investors comply with their obligations under land contracts, domestic law, and other relevant rules and regulations (including international best practice standards)
5. Making effective **grievance mechanisms** available to resolve disputes between affected communities and investors, if or when they arise



Means to an End

- 🔥 OpenLandContracts.org provides a **tool** for governments and other stakeholders seeking to improve transparency around land-based investment
- 🔥 By facilitating disclosure and increasing transparency around land-based investment, the repository seeks to move all stakeholders toward the **ultimate end** of responsible, sustainable, and socially-inclusive investment



Key Takeaways

- 🔥 Increased transparency around land contracts is needed owing to the **profound implications** of land-based investment, and to the **significance** of land contracts in the framework that governs land-based investment
- 🔥 Greater transparency and disclosure can lead to a range of **benefits** for stakeholders, and lays a strong **foundation** for improving the governance of land-based investment
- 🔥 However, **land contract transparency is a means to an end**: further steps are required to realize responsible, sustainable and socially-inclusive investment



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Questions?

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