

BRIEFING NOTES

to improve our understanding and ability to ask the right questions and take effective action on land matters in West Africa

The international community has developed various standards to be used as a framework for agricultural investment projects that affect land and property rights. These include the voluntary guidelines on responsible governance of land tenure, fisheries and forests in the context of national food security (the Voluntary Guidelines) approved by the Committee on World Food Security (CFS) in 2012, and the Principles for responsible investment in agriculture and food systems (PRAI) adopted in 2014.

These principles are intended to tackle the problems caused by land appropriation and dispossession and mitigate their impact on local populations. While progress has been made in terms of acknowledging the need to recognise and protect legitimate land rights (both formal and informal) and consult and obtain the consent of affected communities, the real issue now is ensuring that these principles are put into practice. This briefing note summarises the work done by the French Cooperation to address this challenge.

“Land Tenure & Development” Technical Committee

Analysing Agricultural Investment Projects that Affect Land and Property Rights: From International Principles to Operational Tools

by Amel Benkahla¹, May 2015

National legislation in many countries does not reflect the diversity of rights that local people exercise over the land and natural resources in their territories. As a result, many have fallen victim to the increasing phenomenon of land grabbing, and find themselves dispossessed of their land because there is no legal protection for their customary land rights. The international community has responded to the situation by adopting common principles promoted by the Voluntary Guidelines (VGGT) in order to address this problem.

A Common Framework: The Voluntary Guidelines

● Broad Political Backing for the Voluntary Guidelines from International Institutions

The Voluntary Guidelines were approved by the Committee on World Food Security (CFS) in 2012. Although they are in no way binding, these Guidelines quickly became a key framework for international institutions, governments and civil societies in discussions about agricultural investment projects that affect land and property rights. France made a political commitment to apply the Voluntary

Guidelines, and soon put in place analytical tools and internal procedures to ensure that all activities undertaken by its public operators, especially the French Development Agency group (AFD), respect the principles promoted by the Voluntary Guidelines.

● The Challenge of Putting Them into Practice

The challenging task of deciding how to put these principles into practice was given to the “Land Tenure and Development” Technical Committee – a group of experts in various fields co-chaired by the Ministry of Foreign Affairs and AFD that has advised the French Cooperation on its thinking and actions over the last 15 years. A consortium formed by Gret, the International Institute for Environment and Development (IIED) and Agter was appointed to lead a two-year process of collective reflection by AFD project directors and members of the “Land Tenure and Development” Technical Committee. They reviewed voluntary frameworks relating to land tenure, produced 10 case studies on agribusiness projects in Africa and Asia, and published an analytical framework and *Guide to Ex-ante Analysis of Agricultural Investment Projects that*

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Affect Land and Property Rights, which the AFD group now uses to assess its projects.

Contracts as the Main Focus of Analysis

● **Why Focus on Contracts? Because They Determine the Terms of Investment**

Financial partners often intervene at a stage where negotiations are already fairly advanced – sometimes when contracts between various parties (the company and the State, or the company and the local government or customary authorities) have already been concluded or are about to be agreed. As it is these contracts that determine the terms of the investment, it is absolutely essential to have a detailed critical analysis of them to ensure that they are legal, legitimate and equitable, and to provide key information that will enable potential donors to assess the project's possible benefits and likely impact on local communities and settings.

● **A Multi-disciplinary and Contextualised Project Approach**

Agricultural investment projects can have a wide range of possible impacts. Therefore, the French Cooperation decided that rather than focusing solely on land issues, a holistic approach is needed to consider their social, economic, fiscal and environmental dimensions. This kind of project analysis calls for multiple disciplines and methodological tools: socio-land studies to identify formal and customary rights holders in the project zone, and economic evaluations to determine the extent to which the project will contribute to the common interest, envis-

age how the added value will be distributed among different actors, and so forth.

The aim is to produce a contextual analysis that looks at the overall framework for land governance and the dynamics of change in agrarian systems. The possible consequences of new investments should be very closely scrutinised when agricultural structures in a particular country or region are going through very rapid or major changes. It is also worth noting that many points in the contracts for these projects are not covered by national legislation or international agreements: the weaker the legislation on investments and protection for local land rights, the more detailed the contract needs to be on these issues. This approach represents a significant development in terms of the current standards for large-scale investment projects, such as the International Finance Corporation (IFC) standards.

The Importance of Transparency throughout the Project Cycle

● **Universally Accessible Mechanisms for Information, Monitoring and Control**

The French Cooperation decided that mechanisms for information, consultation, monitoring and control should be put in place at every stage of the project – from the feasibility study, through the negotiated agreements and monitoring of commitments, right up to end of the contract – and that governments, local authorities and civil society should be involved in the process, with additional support and expertise mobilized as and when required. The different groups of actors involved can only reach an equitable

agreement if there is transparency at every stage of the process.

● **Rebalancing Asymmetrical Relations between Actors**

However, transparent negotiations do not necessarily guarantee an equitable final agreement. Asymmetries of information, competences and power relations are often so pronounced that specific support is required to redress the balance. This calls for flexible processes and specialist support that can be adapted to the issues and cyclical nature of consultations and negotiations (law firms to support the government, NGOs to support local populations, etc.). Collective action and support from international cooperation agencies could help rebalance the power relations in negotiations.

Structure of the French Cooperation Operational Guidelines

The operational guidelines developed by the French Cooperation are divided into five main sections, as described below.

● **Analysis of the Framework for National Governance**

The first step is to identify the strengths and weaknesses of the legislative framework, the extent to which it is enforced, and its effectiveness. Analysis of the governance framework will be incomplete if it is limited to the law of the State and does not take account of the diversity of customary rights and norms that currently regulate land relationships in the areas concerned. Therefore, it is important to identify all the actors who will be affected by the project, regardless of whether they hold customary or formal rights.

● **Contract Negotiation Processes and Transparency**

At this stage of the process it is important to analyse the different stakeholders, their level of involvement, the methodology used and the extent to which each stage of the process is publicised.

Various case studies have shown that many projects pay insufficient attention to important processes and issues such as the transparency of the negotiations and legitimacy of the parties involved in the negotiations; whether the preliminary stages were conducted in the proper order (feasibility study, environmental and social impact assessment) and whether local people gave their free, prior and informed consent to the contract; or the monitoring and control mechanisms and procedures for renegotiating contracts.

● **Economic Evaluation**

Where possible, any project that involves displacing people should be avoided. All projects should be subject to an economic evaluation to determine the extent to which they will benefit the general community, and how the added value will be distributed among the actors concerned. This is particularly important in countries where food security and poverty reduction are major concerns.

However, many projects only carry out financial evaluations that focus on the project's profitability rather than its economic impacts. There is also often a considerable discrepancy between the project's stated economic objectives (contribution to food security, job creation and local development) and the contractual clauses stipulated in the contract, which are often too vague to constitute a genuine com-

mitment. Therefore, it is important to conduct a rigorous assessment of the project's costs and benefits to the host country, and to ensure that the promised benefits are duly reflected in the contracts.

● **Social Component**

Social impact assessments should carefully consider issues such as recognition of local land rights, ensuring that local people give their free, prior and informed consent, and compensation for expropriated land. These can be particularly problematic areas, as there is often insufficient consultation and people are rarely compensated for the loss of informal or secondary rights. If and when compensation is paid (by the State), it is often too little to enable people to re-establish their livelihoods. Therefore, project preparations should always include a socio-land study to identify and recognise local land rights and consider other issues, such as the right to work and workers' safety and security.

● **Environmental Considerations**

Large-scale investment projects can have a huge impact on the environment. For example, the use of plant protection products can have very harmful effects on people's health and local water quality. Another issue that is often overlooked is the fact that the changes in access to resources (such as water) associated with a land concession can have greater consequences than the land concession itself, as the investor may be granted virtually unlimited access or priority use rights to particular resources. Environmental impact assessments should accordingly look at the problems associated with water resources, environmental dam-

age and the project's likely impact on other users.

● **Monitoring and Control Mechanisms**

Contracts should include specific, legally enforceable clauses regarding the investors' commitments to the host country and local population, the socio-economic investments to be made by the company, conditions for making land available, promised job creation, etc. Contracts should also make provisions for robust and effective mechanisms for monitoring, control and sanctions.

Putting the Voluntary Guidelines into Practice

● **The Need to Strengthen Civil Society**

Civil society actors (farmer organisations, NGOs, research organisations, multi-actor platforms) can play an important role in ensuring that private investment projects abide by the principles of the Voluntary Guidelines. Their independence can be a major advantage for both the company and the government, in terms of ensuring that balanced agreements are reached and mechanisms put in place to enable citizens to monitor the extent to which commitments to local people are honoured. In order to do this, civil society actors will need capacity building to strengthen their ability to deal with contracts and other legal issues.

● **Actors Need to Appropriate Tools for Themselves**

Actors in every country need to appropriate the principles that are being promoted at the international level so that they can be put into practice and

translated into operational tools (such as the French Cooperation's *Guide to Ex-ante Analysis of Agricultural Investment Projects that Affect Land and Property Rights*). Each country should initiate a multi-actor process to produce similar analytical tools so that the general principles validated by their governments can be put into effect.

● **Promoting a Forward-Looking Vision for Agricultural and Territorial Development**

The debate about practical implementation of the Voluntary Guidelines has largely focused on agricultural investment projects by large private companies, as this type of investment has attracted the fiercest criticism. Given that land concession agreements often last for many decades and will therefore affect several generations, such projects should be systematically analysed with a forward-looking approach that considers the future of the territories concerned.

There are huge challenges to overcome, from demographic growth and youth unemployment to the environ-

mental degradation caused by different pressures on land and natural resources and climate change. Promoting private investment as a way of redressing the lack of public investment in agriculture, and thinking about how it should be regulated is not enough. We need to look beyond the criticism of investments by large private companies and think about how this type of investment, which is often subsidised, articulates with individual and collective private investments by small

producers and farmers, and with public investment. As it becomes increasingly clear that the main issue is how to enable family farming to change so that it can respond to the different challenges associated with food security, employment and protecting and revitalising rural areas, we need to consider the respective relevance of different development and investment options in terms of the objectives that have been set for the community as a whole. ●

FOR FURTHER INFORMATION SEE:

>> "Land Tenure and Development" Technical Committee, *Guide to Ex-ante Analysis of Agricultural Investment Projects that Affect Land and Property Rights*, 2014, 70 pages.

<http://www.foncier-developpement.fr/publication/guide-danalyse-ex-ante-projets-dinvestissements-agricoles-emprise-fonciere/>

>> "Land Tenure and Development" Technical Committee, *Etat des lieux des cadres normatifs et directives volontaires concernant le foncier*, 2014, 22 pages. <http://www.foncier-developpement.fr/publication/etat-lieux-cadres-normatifs-directives-volontaires-concernant-foncier/>

These pedagogic factsheets were produced with the support of the Technical Committee on "Land Tenure & Development" and the "Land Tenure Policy Elaboration Support" mobilizing project financed by the Agence Française de Développement. These factsheets can be downloaded in their entirety from the www.foncier-developpement.org web portal.

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