

Public transparency

This note provides guidance on the type of information about agricultural investments that investors and governments could make publicly available.

Transparency about certain aspects of investments can improve relations between investors and communities, enable external stakeholders to hold investors to commitments, and improve investors' public image. Although some information should be kept private to protect commercial interests, in general the amount of publicly available information is insufficient for transparent, accountable conduct of agricultural investments. This has often led to fear, mistrust, and resentment, and created operational and financial difficulties for investors. Some investors and governments have recently shifted toward a more transparent approach, but the risk of misuse of information needs to be managed.



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RESPONSIBLE AGRICULTURAL INVESTMENT (RAI)

KNOWLEDGE INTO ACTION NOTES

The **UNCTAD–World Bank Knowledge Into Action Note Series** is a compendium of practical, thematic guidance documents for use by governments, investors, and other stakeholders in the implementation of responsible agricultural investment principles. Background and a complete list of notes are in *Note 1: Introduction*.



WHAT RESEARCH AND EXPERIENCE TELLS US

The focus of this note is information that should be put in the broader public domain for all stakeholders to access. However, the issue of transparency cuts across many dimensions of an investment. For example, there should be transparency toward communities affected by the investment, and existing users of the land, in particular those subject to relocation (see *Note 15: Community engagement strategies*, *Note 11: Respecting land rights and averting land disputes*, *Note 12: Relocation and resettlement*). Sufficient information needs to be provided to outgrowers, employees, and suppliers regarding contractual terms (see *Note 4: Outgrower schemes* and *Note 24: Economic linkages*).

Insufficient public information. Transparency and disclosure of information about investments was generally lacking. Although some positive examples existed, much better practices are needed to ensure agricultural investments are responsible. In many cases, almost no information at all was available to the public at large, other than a name listed on a website for a government land registry.

Land acquisition process especially opaque. Information was particularly lacking regarding the terms and process of land acquisition, and the extent and nature of incentives provided to foreign investors. There was typically insufficient information on who holds rights to use land and other natural resources for agricultural production, how those rights were obtained, and what the contractual rights and obligations of different parties are. At the national level, some governments have sought to rectify this lack of transparency through the publication of information on concession or land registry websites. But the information contained in such sites is often incomplete and inaccurate. Two positive examples are Liberia, which publishes all payments, contracts, and licenses with investors on an official website, and Ethiopia, where the Ministry of Agriculture publishes many agricultural contracts on its online Ethiopian Agriculture Portal.

Results of assessment usually not public. Other key gaps in public information were the results of environmental and social impact assessments and subsequent environmental management plans. Similarly, the conduct and outcome of consultations with communities were rarely made public.

Lack of transparency souring investor–community relations. Uncertainty about investor actions and intentions created a sense of fear and resentment within communities nearby, with adverse consequences for the investment. For example, some members of a local community asked researchers whether the investor nearby planned to take their land. This situation could in part have been avoided through greater transparency about the investor’s operation.

Investor reluctance due to fear of information misuse. Some investors were reluctant to disclose information for fear that the information, even if positive, could be used against them, particularly by civil society groups with ideological disagreements with any kind of investment in agriculture. Investors noted that their ability to be transparent was complicated by controversy surrounding “land grabs” and the perceived tendency of some of the media and civil society to manipulate information, focusing only on the negatives (box 1). Other investors, however, used greater transparency to counter inaccurate reporting about the investment. A lack of transparency can allow unfounded criticism to gain traction. A rubber producer in Liberia chose to make an extensive public disclosure about its operations in response to a critical third-party report that had alleged serious human rights violations at the investment.

Transparency key to monitoring commitments. Transparency is a key part of the process of implementing and monitoring the obligations of the parties to a contract. Transparency also enables local communities and civil society organizations to keep an eye on how the investment is playing out on the ground and whether promises made in the contract are being kept (*Note 9: Monitoring investments* covers this issue in more depth).

Civil society initiatives help. Open data platforms on land deals (such as Land Matrix and Open Land Contracts) have helped to improve transparency. Although, as with information provided directly by governments and investors, it is important that such information is accurate and up-to-date—which can be challenging.

Enlightened investors taking a proactive approach. Several investors interviewed have adopted a more transparent approach to publicizing information about their plans and outcomes. Such approaches, if managed correctly, can create positive outcomes, but communication with stakeholders requires careful management as there is a risk of misuse of the information.

Some investors forced to disclose reactively. Investors who began without a strong community relationship or communication strategy later found themselves required to disclose information in order to reduce tensions that resulted primarily from a lack of transparency (box 1).

Tension between disclosure and the protection of commercially sensitive information. The protection of intellectual capital and/or commercially sensitive information is a key concern for investors. One approach to deciding on what to disclose is to identify the information that should *not* be disclosed by the company (in essence, proprietary or particularly sensitive material such as details on financial performance), with the presumption that all else is permissible to be made public. Table 1 provides a checklist for a range of issues and documents considered as private or public in agricultural investments.

Box 1. Examples of investor actions related to public transparency

Deficiencies in the investment approval process, initial naivety of an investor, and impact on communities and investor. A government identified land and made it available to an investor. The investor naively accepted the process as credible but later discovered that the local community felt deprived of land rights, without compensation. This harmed the investor’s global corporate image. To redress this grievance, the investor undertook an entirely new consultation process with full public disclosure on the return of land to those who had lost rights and compensation for loss of access during the intervening period. This case demonstrated to the investor the need to develop a comprehensive policy on public consultation and disclosure before investment, which has since been applied across its projects.

Concerns about potential criticisms associated with public disclosure with an inadequate communication strategy. An investor in Zambia had undertaken an environmental and social impact assessment (ESIA). The independent and rigorous assessment, undertaken in accordance with good practice, highlighted both negative and positive impacts of the investment on the local community. It remained a private document because the investor feared the risk that one minor negative impact mentioned would be used by opportunists to criticize the investor. This was despite the wealth of realized positive impacts of the operation on local incomes, food security, and the strong relationship the investor had with the local community.

Source: UNCTAD–World Bank Responsible Agricultural Investment Database.

Table 1. Reporting issue and documents (not exhaustive) relating to land transactions		Categorized as	
		Private	Public
Investment screening and approval	• Details of investment opportunities and requirements		✓
	• Screening processes and requirements		✓
	• Key parameters of pre-investment negotiation between government and investor		✓
	• Details of prospective investor after successful pre-screening phase		✓
	• Finalized approval announcement		✓
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Land rights	• Record of community consultation and outcome of agreements		✓
	• Notification of lease approval by government		✓
	• Location		✓
	• Cadastral maps		✓
	• Area (size of land parcel)		✓
	• Time period of lease		✓
	• Rental value		✓
	• Deed of transfer		✓
	• Value of transfer deed		✓
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Financial	• Parties to the investment contract		✓
	• Terms of the contract relating to land		✓
	• Tax and duty concessions		✓
	• Annual tax payments and liabilities (shared between tax authorities but not public)	✓	
	• Details contained in financial agreements should be private information	✓	
	• Company financial results of private company are not public	✓	
	• Annual financial statements for public company		✓
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Environmental and social impact assessment	• Community consultation		✓
	• Environmental and social impact assessment report	✓	
	• Environmental and social impact assessment certificate with terms and/or environmental permit	✓	
	• Environmental and social impact assessment mitigation and monitoring plan		✓
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Community engagements and agreements	• Record of community meetings		✓
	• Generic outgrower contract terms (except confidential elements with each party)		✓
	• Company grievance procedures		✓
	• Community-investor agreements including funding arrangement for community development		<i>To be determined in consultation with affected communities</i>
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Development plans affecting communities (such as forest development plans)			✓
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Intellectual property	• Production technology	✓	
	• Marketing agreements	✓	

Source: UNCTAD and World Bank.

✓ ELEMENTS OF GOOD PRACTICE FOR INVESTORS

Be transparent from the outset. Transparency and disclosure are particularly important in the initial phases of an investment. This includes public information on prospective investors, the bidding and screening process, incentives provided, and the negotiated terms of agreements between investors and governments, or investors and communities.

Consider what information to make public. There is a tension between transparency and the protection of information that is critical to a firm's competitive position. Investors should reflect on what is genuinely commercially sensitive and seek to disclose all other information. Table 1 lists some considerations.

Adopt "FPIC" when dealing with transparency to local communities. Responsible investors adopt the principle of free, prior, and informed consent (FPIC), which becomes the guide for which information may be made public when investment decisions are made. In general, this means that *all* relevant information relating to the investment that affects stakeholders (local communities) should be made available in a form that is accurate, objective, and understandable.

Establish governance structures. Governance structures, such as a board subcommittee, are essential to provide oversight and to consider the investor's information disclosure policy. Such a policy would include elements addressing how to handle situations in which a government resists disclosure but where the company fears that nondisclosure creates reputational risks.

Disclose information voluntarily. Investors should not only follow host-government laws, regulations, and agreements on public reporting and transparency, they should also proactively disclose information about their investment in line with international good practice. This includes disclosing contracts with host governments, as well as other documents related to the investment, such as ESIA, environmental and social management plans, and forest development or management plans.

Resolve stakeholder disclosure policies. Investors should consider undertaking a project-specific needs and risk assessment in line with free, prior, and informed consent for disclosure of required information. Based on this assessment, determine

- What information will be disclosed, by whom, and to whom (including various stakeholders).
- How and where disclosure will occur (including on an ongoing basis, for instance on a website).
- What channel of communication will be used: public meetings, reports, press releases, billboards, personal transmission by community facilitators, webpages, radio, newspaper advertisements, and so on. Different types of information and target audiences require different channels and support. This includes addressing ad hoc questions or requests from the government, the press, and other actors.

Engage with affected stakeholders. Due recognition of existing users' rights and engagement with relevant stakeholders is necessary in consultations on land rights, ESIA processes, and community relations matters. Disclosing the results of these consultations and any agreements that flow from them is important. (See also the related concept of free, prior, and informed consent in *Note 11: Respecting land rights and averting land disputes* and *Note 15: Community engagement strategies*.)

Raise awareness. Before negotiations with government enter the final stages and in alignment with screening processes (see *Note 5: Creating an enabling environment*), investors should conduct an open negotiation with communities and other relevant stakeholders on the expected activities, and make sure that these stakeholders have a clear understanding of the investment and its impacts. The foundation for these consultations and negotiations should be easy-to-understand documents and reports in the local language made available during consultations and negotiations. Outcomes of these consultations and negotiations should be produced in similarly understandable documentation and carefully written to limit the risk of misinformation, which could lead to future tensions (refer to *Note 18: Community development agreements*).

✓ ELEMENTS OF GOOD PRACTICE FOR GOVERNMENTS

Specify disclosure requirements. Governments can level the playing field between investors and affected communities, mitigate potential conflicts, and facilitate monitoring by developing clear mandatory requirements for disclosure of information and integrating them into the national legal framework (for example, Liberia's LEITI Act provides for all contracts to be made public). In particular, international good practice entails governments disclosing information regarding

- Details of prospective investors that have embarked on any public consultation processes, such as name and registered office, with contact details
- Key non-proprietary information contained in the terms of agreements between investors and governments

Include a disclosure provision in contracts. Governments should request a disclosure provision in contracts with investors, to make them, as well as any related document (such as environmental and social impact assessments and management plans), public and open to inspection, at government offices and on a website. Doing so includes requiring investor–community agreements to be made public, subject to the redaction of truly confidential business information.

Disclose early and maintain up-to-date information. Information about a potential investment could be disclosed publicly from the outset, in terms of screening procedures or prospective incentives on offer, even before negotiations begin. The disclosed information can be updated regularly to reflect the latest progress.

Publish online. Investment contracts, including land leases and concession agreements, can be disclosed on relevant ministry websites or through open data platforms (for example, Open Land Contracts). It is important to make sure information is correct and up-to-date.

Open access to information. In principle, disclosed information should be accessible to all stakeholders, taking into consideration their diversity and levels of understanding. Developing simple transcriptions, converted to local indigenous languages, and summaries of complex documents (contracts, assessments, agreements, and the like) would facilitate this process. (Such efforts can be costly and time consuming, so in a transparent system other stakeholders such as civil society organizations and universities can play this role.)

Ensure protection of rights of affected communities. Monitoring to ensure that investors engage and negotiate meaningfully with affected communities should be a priority, as should ensuring that such monitoring is confirmed in screening processes before final approval of contracts.

REFERENCES AND RESOURCES

This Note is complementary to the literature and guidance documents to which many organizations have contributed, a selection of which is provided below. Further resources are provided in *Note 2: Additional resources*.

COLUMBIA CENTER ON SUSTAINABLE INVESTMENT. (2016). [Transparency in Land-Based Investment: Key Questions and Next Steps](#). (Columbia University: New York).

COLUMBIA CENTER ON SUSTAINABLE INVESTMENT. (2016). [Recommending Transparency in Land-Based Investment: A Summary of Relevant Guidelines and Principles](#). (Columbia University: New York).

NEGOTIATION SUPPORT. [Negotiation Support Portal for Host Governments](#) (accessed December 10, 2017).

OPEN LAND CONTRACTS. [An Online Repository of Open Land Contracts](#) (accessed December 10, 2017).

OPEN CONTRACTING PARTNERSHIP. [Open Contracting Partnership](#) (accessed December 10, 2017).

OPEN GOVERNMENT PARTNERSHIP, NATURAL RESOURCE GOVERNANCE INSTITUTE & WORLD RESOURCES INSTITUTE. (2016). [Disclosing Contracts in the Natural Resource Sector](#). (Open Government Partnership: Washington).

Example of government transparency initiative:

INSTITUTE OF DIRECTORS: SOUTH AFRICA. (2016). [King IV Report on Corporate Governance for South Africa, 2016](#). (The Institute of Directors in Southern Africa NPC: Johannesburg).



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