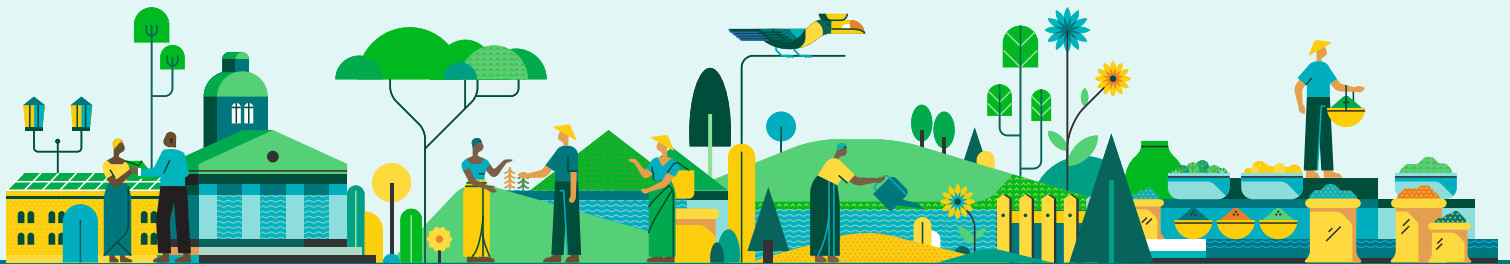


**Transformative
Land Investment**



Briefing Note

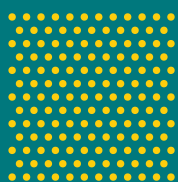
Enabling Environment for Transformative Land Investment in Ghana



Executive summary

Land based investment involves the acquisition of large tracks of land usually for the cultivation of monoculture crops. These types of acquisitions often aggravate existing vulnerabilities such as food and tenure insecurity. In response to these Land Based Investment (LBI) associated challenges, many countries, including Ghana, have taken steps to re-examine their policies, procedures, and incentives regarding land-based investment to protect individual and communal land rights, avoid involuntary displacement and strengthen local benefit. Through desk study review, this appraisal sought to find the policies, regulations and incentives that guide land-based investment in Ghana and identify the gaps and opportunities that exist for transformative land-based investment. Ghana has progressed significantly in enacting legislations that protect the environment and communal land rights. However, what is lacking is effective enforcement of these legislations and policies. Also, existing incentive mechanisms do not necessarily target LBIs that are being responsible in their approach to land investment.

The gaps identified in the appraisal provides an opportunity to improve the existing structures by building capacity of traditional authorities to manage customary lands, strengthen the Customary Land Secretariates to provide litigation free lands, integrate social and environmental considerations into project designs of LBIs, strengthen proposed structures for the buffer stock policy and ensure regular monitoring of ESIA reports.



Transformative land-based investment will help Ghana advance to a more sustainable food systems, with gender-sensitive and socially inclusive improvements in land tenure security, livelihoods, resilience and ecosystem health.

Introduction

Land based investment in agricultural and forestry usually requires large tracts of land which often displaces or increases vulnerability of smallholder farmers and exacerbates food and land tenure insecurities among rural people. Large scale land-based investment is almost always synonymous with land degradation, climate change, loss of biodiversity, deforestation, and dispossession. In Ghana, the government through regulations and policies try to streamline large scale land acquisitions to minimise impacts on the environment and society. The Lands Commission guidelines on large scale land acquisition is an example of efforts being made by state institutions to streamline land acquisition in the country. Also, due to pressure from consumers and global buyers, Investors are keen on adopting international best practices that safeguard the environment and society. Some of these best practices include the Voluntary Guidelines on the Responsible Governance of Land, Fisheries and Forests in the Context of National Food Security (VGGT), Principles of Responsible Agriculture Investment (PRAI) as well as the Agroecological (AE) Principles.

The interests of both state and private actors therefore present an opportunity to transform land acquisitions by creating a national enabling environment that encourages land-based investors to be more transformative in their approaches while encouraging regulators to adopt and integrate transformative investment guiding principles in their regulations. This brief therefore gives the constraints and opportunities that are relevant for creating an enabling environment for transformative land investment. This would ensure that investments are operating responsibly and contributing to the development of Ghana's agriculture and natural resource sectors, with Incentive mechanisms which attract and encourage LBIs to contribute to responsible and sustainable land-based investment in the country.



Enabling Environment for land-based investment

The enabling environment for transformative land investment comprises of the governance, policy and regulatory environment. Together, these create the investment environment that promotes transformative investments in Ghana.

A good investment environment is, a blend of legal frameworks, incentive mechanisms and social norms intertwined with the capacity of state institutions to carry out their regulatory mandate using the available resources in a transparent manner and in a participatory approach. Doing this will contribute to more sustainable food systems, with gender sensitive and socially inclusive improvement in land tenure security, livelihoods, resilience, and ecosystem health among populations in Ghana. There is, therefore, the need to appraise the policy context and ecosystem in Ghana to know the current state within which land-based investors operate and make recommendations, regarding how the challenges could be addressed.

This would enable state and customary institutions responsible for land allocations and investment permitting to introduce appropriate conditionalities. Fig. 1 displays the nexus of these contexts and factors as well as the procedural elements that provide the framework of the enablement.

In the broader context of land-based investment, the application of global guidelines to protect land rights and address Gender Equality and Social Inclusion issues. The institutional factors needed for these changes to happen include critically reviewing the legal frameworks and incentive mechanisms that exist, the social and informal norms that surround land-based investment, provide more resources to institutions that work with land-based investors as well as strengthening their capacities to effectively engage in this space. The procedural elements such as advocacy and awareness creation, incentivizing businesses that are being responsible would go a long way to create a better enabling environment for land-based investments in Ghana.

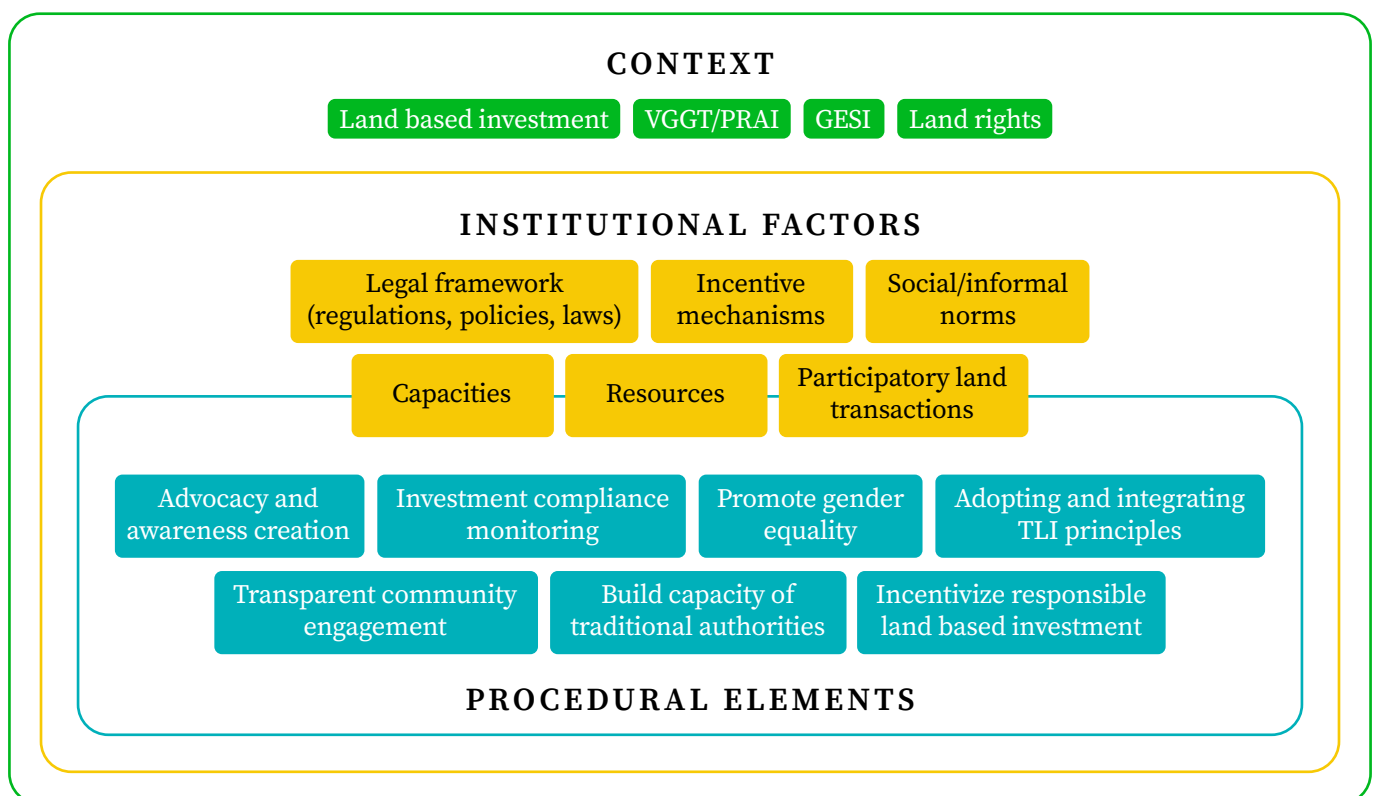


Fig. 1: A Conceptual Framework of the Enabling Environment for land-based investment in Ghana
Source: Adapted from Alejandro Jiménez et al., 2019.

Conditions to prevent and address irresponsible land-based investment

Regulations and policies in Ghana that are likely to impact on responsible land-based investment were classified under 2 broad themes: regulatory frameworks and incentives mechanisms. Each theme had seven (7) categories under as shown in the diagram below.

Land governance and administration

The Land Act, 2020, Act 1036, recognises six interests in land: allodial title, customary law freehold, common law freehold, usufructuary interest, leasehold and customary tenancies. Each of these interests comes with its associated bundle of rights. While public lands are managed by the state, stool/skin lands owned by customary

The complexities of the tenure systems in Ghana coupled with indeterminate boundaries of customary lands, makes it susceptible to disputes. Large scale land-based investors and smallholder farmers are all impacted by this complexity; however, most smallholder

farmers lack formal land documentations and therefore risk losing their lands to large scale land investors. The statutory recognition of customary land rights in Ghana is exceptional, but it is not without problems. Legal pluralism presents significant challenges for institutional alignment, policy coherence and legal efficiency and consistency in the application of laws governing statutory and customary land administration. The 2020 Land Act aims to resolve outstanding issues regarding land registration, land tenure, and land-related disputes and codify legal decisions into a single document (Ministry of Lands and Natural Resources, 2020).

Indeterminate boundaries of customary lands means that land disputes are common within and between collective interests. This poses a major challenge for agricultural investors in acquiring land in Ghana as there is always lack of clear title to land. This can make it difficult for investors to secure financing for their operations and can increase the risk of disputes over land ownership. The Ghana LAP reports that only 10-15% of land holders in Ghana have formal documentation to support their tenure claims, leaving them vulnerable to both localized evictions and protection against outside land interests.

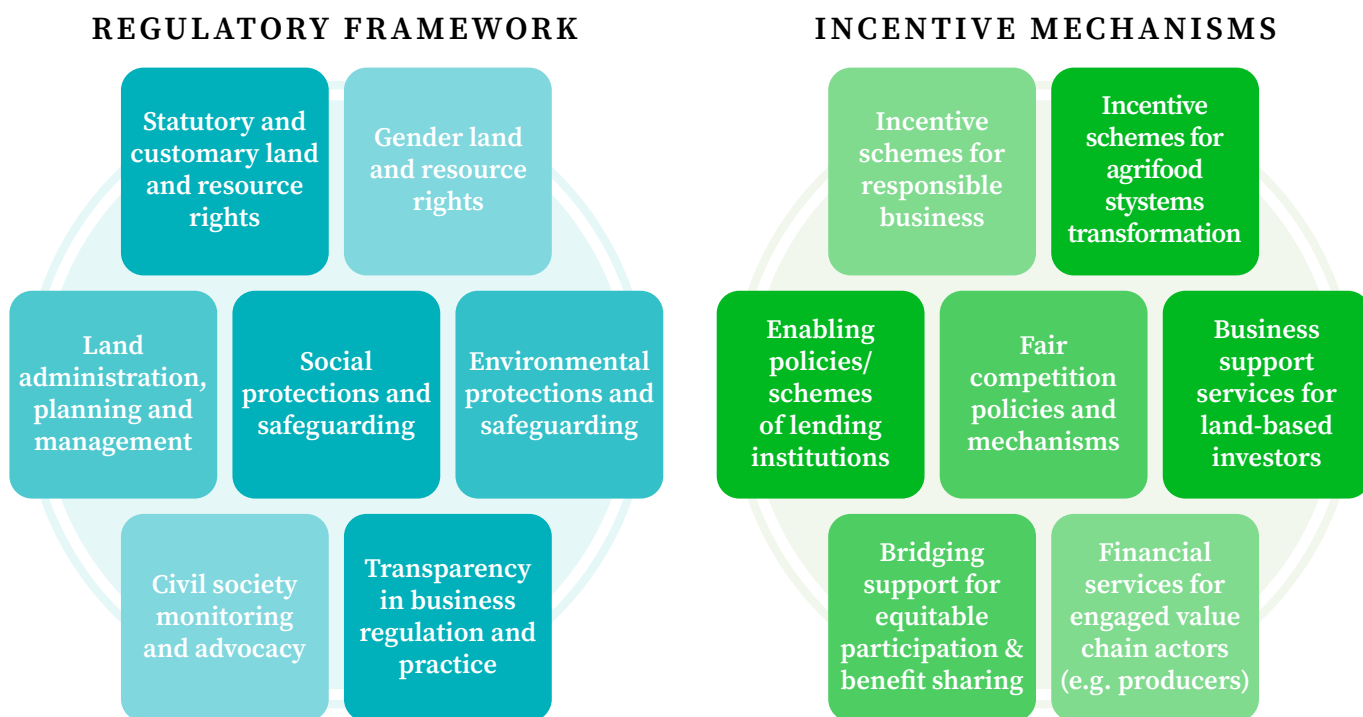


Fig. 2: Categories under each theme with textual summaries



The 1992 constitution, the National Land Policy (1999), Land Use and Spatial Planning Act (2019), and the Lands Act 2020 (Act 1036) recognizes the rights of women to own, inherit, and use land, as well as providing avenues for women and vulnerable groups to register land and resolve land disputes. However, customary laws and practices are usually shaped by prevailing patriarchal system. These norms and practices to a large extent, limit women's access and rights to land, inclusion in decision making process and especially in the rural areas where most large-scale transactions take place.

The Land Use and Spatial Planning Act (2016) replaces the Physical Planning Act (1963) and the Town and Country Planning Act (1965) as the primary legislation governing land use and spatial planning. The Act requires that environmental impact assessments be conducted for major development projects. It also provides for the establishment of buffer zones around environmentally sensitive areas. The land use plans must consider a wider range of factors than previous zoning requirements, including environmental and social considerations, and

provide for the sustainable use of land. This has however not translated in good infrastructure development thus hampering transportation of agricultural produce to markets.

Opportunities for improved land governance and administration

- Ensure investors conduct due diligence before purchasing land in order not to disadvantage anyone; and making sure everyone adversely affected is duly compensated. Investors should provide fair compensation for the land they acquire and offer support to women who may be affected by the acquisition. This may involve providing alternative land, financial assistance, or training opportunities to help women maintain their livelihoods and access to resources.
- Explore how CLSs could be capacitated to assist land-based investors and smallholders to access litigation-free land that does not infringe on the rights of investors as well as the vulnerable in host communities. A collaboration between CLSs and state Institutions such as the Office of the Administration of Stool Lands and Lands Commission would to a large extent enhance state presence in land matters at the local level.
- Investors should establish mechanisms to monitor the impact of their land acquisitions on women's rights and regularly report on their progress and any challenges they face. This process should involve engaging with local communities, women's groups, and other stakeholders to ensure that women's rights are protected throughout the land acquisition process.
- Building capacities of traditional authorities in playing active and efficient roles in negotiating beneficial land deals, as good custodians of land.
- Improve the enforcement of land use zoning regulations, especially in regards to commercial agriculture and forestry activities taking place in areas where they are not allowed. This could be achieved through stronger penalties for non-compliance, improved monitoring and enforcement mechanisms, and better coordination between the relevant government agencies.
- Increase transparency, inclusiveness, and equity in the process of designating

areas for specific land uses. This could be achieved through greater involvement of local communities and stakeholders in the decision-making process and ensuring that the designations are based on a thorough understanding of the local context

Social and Environmental protection and safeguarding

While there are legal protections to ensure social safeguarding, key factors hindering the implementation of these protections include weak institutions, inadequate monitoring, and lack of political will.

Rural communities often face challenges in accessing legal remedies when their lands and resources are impacted by large-scale investments, including commercial agriculture. Common challenges include a lack of awareness of their rights, insufficient resources to engage in legal proceedings, and weak enforcement mechanisms.

Per the legal framework, companies are required to conduct Environmental and Social Impact Assessment (ESIA) for commercial agricultural and forestry investments at specific thresholds, in Ghana. According to the Environmental Protection Agency Act 1994, Act (490), companies engaged in commercial agriculture are to conduct EIA before extracting water, including a detailed analysis of its impact on water resources. Further, the Environmental Assessment regulation (1999) requires all land-based investment covering 40 hectares and above to conduct ESIA prior to the grant of environmental permit.

Project affected persons are entitled to compensation for damages that occur due to the investment. However, weak state institutions, inadequate monitoring and lack of political will are key factors that hinder the effective implementation of these protection. Additionally, rural communities often face challenges in accessing legal remedies when their lands and resources are impacted by large scale investments. This is largely due to lack of awareness of their land rights, insufficient resources to engage in legal proceedings, lack of community involvement in the monitoring strategies designed by state institutions as well as non-availability of ESIA reports to communities to make informed decisions.



Opportunities for improved environmental and social safeguarding

- Building capacity of land-based investors to engage with communities in a transparent and participatory manner to ensure their consent is sought under free prior informed consent (FPIC) and to address their concerns.
- Integrating environmental and social considerations into the project designs and implementation by land-based investors, to minimize harm and maximize benefits.
- Building partnerships with local organisations and institutions such as NGOs, community-based organisations and government agencies to enhance the effectiveness and sustainability of their projects.
- Ensuring regular monitoring of ESIA mitigation measures in reports and inclusion of recommendations in EPAs monitoring report which should be made available to communities through community leaders.

Fiscal and financial incentives

Legislations in Ghana does not privilege smallholder-inclusive over plantation production models. Businesses benefiting from fiscal incentives are neither incentivised to adopt improved environmental practices nor responsible business standards. For instance, business that register at the free zones enclave benefit from full tax holidays for 10 years. Any corporate body can apply for this irrespective of whether they are being responsible or not. This is true for the Ghana Investment Promotions Act 2013 (Act 865), Customs Act 2015 (Act 891). These Acts exempts most agribusinesses from import and exercise duties on equipment, spare parts and machinery.

It is assumed that the benefits from incentivizing export and corporate farming necessarily trickles down to rural communities. Eligibility for fiscal incentives should, therefore, become conditional on sustainability performances by, for example, a demonstration of compliance with good agricultural practices, agroecological principles and responsible agricultural investment principles.



Again, in Ghana, agribusinesses (Micro Small and Medium Enterprises included) benefit from many financial initiatives. Various impact investment and concessionary credit facilities and matching grants funds target agribusiness in the country. Many supports smallholder inclusion, sustainable product and process upgrading and climate resilience. Some of the matching grant's funds explicitly target investors in sectors critical to food security and self-sufficiency. Such initiatives contribute to mainstreaming more inclusive business models and more sustainable and productive agricultural practices.

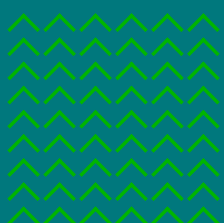
As to whether some of these investments can be sustained in long-term is debatable; given the reliance on project-oriented development funding increasingly targeting low-income countries.

Cost of capital from borrowing is high in Ghana, with many MSMEs and farmers unable/unwilling to pay the necessary interest rates. Large-scale agribusinesses with better access to international sources of debt and impact investment opportunities have a comparative advantage over smaller/domestic businesses in this regard. This could pose a competitive disadvantage for

smallholders and MSMEs, but at the same time also serve as an opportunity to them. Larger businesses that explicitly integrate MSMEs and smallholders into their business plans/models and maintain adequate liquidity, can leverage access to cheap capital to forward finance MSME and smallholder working capital requirements. This would allow capital-constrained actors to indirectly benefit from (concessional) finance opportunities. To benefit from these opportunities, additional efforts are needed to deepen linkages between large agribusiness, MSMEs and smallholders. This could be achieved through introduction of domestic sourcing requirements (as is done in India for FDI), by changing fiscal incentive structures, promoting investment by diaspora and domestic market-oriented investment, and enhancing the capacity of GIPC to better support new investors forge local partnerships.

Opportunities for Fiscal and financial incentives

- The Bank of Ghana (BOG) regulation mandates all financial institutions to implement sustainable banking principles, which include mainstreaming environmental and social risk management systems within their lending operations. This should be effectively enforced.
- Encouraging smallholder farmers to form cooperatives to access funds from lending institutions, boosts their credit worthiness and debt repayment rates.
- Strengthening the proposed structures for the buffer stock policy, which has not been able to achieve its intended goal over the years.
- Establishing a database of all industry players for traceability, emphasis on value.
- Devise green public procurement mechanisms to help increase demand for products from greener investors



“The Bank of Ghana (BOG) regulations mandate all financial institutions to implement sustainable banking principles, which include mainstreaming environmental and social risk management systems within their lending operations”
– *A stakeholder on the MSP.*

Conclusion

Ghana has several legislations to control and incentivise land-based investment. These legislations have been borne out of the country's commitments to international treaties, guidelines and protocols. This also reflects the country's vision for socio-economic and political development.

The implementation gaps identified in the legislations provide ample opportunity for state and non-state actors to participate in the finding and fashioning out solutions that work and can contribute towards transformative land investment.

Acknowledgements

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Land Equity
International

