

Land Policy and Maximizing Finance for Development

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Respecting land rights and averting land disputes

This note provides guidance on how to ensure that agricultural investments respect existing land rights, both formal and informal, and thereby avert land disputes.

Failure to respect land rights—in particular country- or region-specific land tenure systems and history, including use by pastoralists—has negative consequences for communities and other stakeholders. It is also financially damaging for investors who shortcut due process and end up spending time and money dealing with land disputes.



For the full Notes series please go to the Notes web page: www.worldbank.org/responsibleinvestment
Alternatively use the QR code above.



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 DOES FIELD RESEARCH SHOW?

Reduced access to land by local communities is the main negative impact of investments. The most common source of conflict between an investor and local communities arises when governments grant formal rights to land to investors over local people who have been living on and/or using the land. Such conflicts arise when local people's rights to land have not been surveyed, demarcated, or formally registered. In addition, the rights of pastoralists are seldom recognized. Consequently, many investors spend significant time and resources dealing with land disputes that could and should have been identified through a proper preparatory process, including good communication and a land audit.

Undocumented rights pose challenges and risks to investors. Many land investments in developing countries occur where there may be current use of or claims on the land by resource-poor farmers, communities, or pastoralists, who rely on the land for their subsistence. Every country has its own tenure system, with different levels of formalization of land rights and their protection in law. However, traditional societies within countries often do not have formal, documented land rights that investors can easily confirm at arm's length. Land managed under customary law is usually allocated on the basis of physical features and relational conventions within the community. Such rights are often weakly protected by national law but upheld under local customary conventions. Investors who do not understand both statutory and customary tenure regimes at the local level, have not undertaken a due diligence audit of the range of use rights (instead relying on government records or unverified verbal reporting) are likely to encounter land disputes. Some of these disputes have long-term negative impacts on the investor's reputation and on community–investor relations. Investors that communicated well with local people and undertook proper land audits of use rights, although costing time and money, had fewer land disputes.

1. Land Policy

Challenges of land tenure in Africa

Customary Tenure

Recognition and protection of customary lands (90%)

Conflict

Land issues played significant role in almost all 30+ intra-state conflicts in Africa since 1990

Resettlement

Valuation and compensation

Gender

Women account for 70% of Africa's food production, but often do not have secure access to land.

Why land tenure matters for investment

- Undocumented rights and unsecured tenure pose challenges and risks to investors.
- Reduced access to land by local communities is the main negative impact of investments.
- Land issues played significant role in conflicts.
- Secure tenure provides incentives for land-attached investments and discourage unsustainable practices.

Complicated actors

Function	Government bodies in charge
Land administration	Executive agencies
Land management	Municipalities, Ministry of Land, Agriculture, Environment, Mining, Transportation...

Other stakeholders include:
local communities, local “users” of the land, traditional authorities, state government

What offers

- Land sector diagnostics
- Land law and policy advice
- Demarcation/surveying with new technologies
- Land rights information management systems
- Land valuation and taxation
- Public land management
- Monitoring & Evaluation
- Resettlement expertise

Examples of World Bank projects

Ghana Land Administration Project 2

- Strengthening Policy, Legal, and Regulatory Framework for Land Administration
- Decentralizing Business and Service Delivery Processes
- Improving Maps and Spatial Data

Uganda Competitiveness and Enterprise Development Project

- Modernizing the Geodetic network; producing digital maps
- Developing computer assisted mass appraisal for property valuation
- Registering communal and individual land
- Strengthening land administration and dispute resolution institutions

Ethiopia: Sustainable Land Management Project-II

- Rural Land Administration and Certification
- Supporting the process of awarding individual land certificates, as an incentive to increase the adoption of sustainable land and water management technologies and practices

Examples of World Bank projects (2)

Senegal: Sustainable and Inclusive Agribusiness Project

- Support to land management reforms
- Technical assistance to rural communities and local small-scale farmers to engage with private investors

Burkina Faso: Third Phase Community Based Rural Development Project

- Implementation of the Rural Land Legislation
- Enhancement of Local Dispute Resolution Mechanisms

Kenya: Informal Settlements Improvement Project

- Detailed mapping and demarcation of boundaries for existing slums
- Preparation of local physical development plans
- Establishment of GIS database for slums
- Surveying of individual plots and preparation of registry index maps

What RAI research shows


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How to ensure that agricultural investments respect existing land rights, both formal and informal, and thereby avert land disputes.

Key good practices for investors:


- Research the context
- Engage with communities
- Establish Free, Prior, and Informed Consent of communities
- Conduct land audits
- Undertake mitigation measures
- Collaborate
- Compensate fairly
- Be prepared to walk away
- Set up grievance mechanisms

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Relocation and resettlement

This note provides guidance on approaches to relocation and resettlement of people.

Although resettlement is ideally avoided, the complexities of unclear, unregistered, informal, and overlapping land claims in many areas means that it is an issue that investors and governments often need to address. Field research suggests room for improvement in processes and outcomes where resettlement had been undertaken. Critical factors for success included how resettled people perceived that their living situations had changed after resettlement, which includes compensation, access to livelihood opportunities, and social services. Also important was the extent to which people were consulted, where involved in decision making, and had access to grievance mechanisms.



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WHAT DOES FIELD RESEARCH SHOW?

Resettlement was generally negatively perceived. Resettled people who were interviewed tended to perceive investments more negatively than other stakeholders. Typical grievances were that the compensation was inadequate or that replacement land was not equivalent in terms of the suitability of its soil for agriculture. Many also felt that access to social services (schools, medical centers) was reduced in their new locations. Finally, there was dissatisfaction with the process, which was often deemed insufficiently transparent or inclusive and which often lacked mechanisms for affected persons to raise grievances. Relocation can result in those affected finding themselves in another community, which may compound land scarcity and cause conflict.

Some positive perceptions did emerge. Some resettled people did perceive that their living situation had improved after relocation, for example, where new housing was constructed or the investor prepared farming plots in the new location. The extent of transparency and inclusiveness in negotiations were critical factors in determining the satisfaction of resettled people.

There is no "unused" land. Many large-scale, land-based investments have occurred in areas that outsiders considered unused or marginal, but that were in fact subject to long-standing rights of use, access, and management based on local customary use. The transfer of land to a new agriculture investment will inevitably have consequences for local farmers, herders, and foragers, who may depend on the land for their livelihoods. In many areas investors will be confronted with unresolved land legacy issues upon arrival. Any large tract of land is likely to have competing claims that need to be respected and resolved through consultation and negotiation, including through resettlement and relocation of people.

Relocation and resettlement 11

Guidance on approaches to relocation and resettlement of people affected by investments.

Key good practices for governments:

- Establish national guidance in line with international best practice
- Monitor resettlement conduct by investors
- Support programs for resettled persons
- Use of the contract

What RAI research shows (2)


Related topics include: Public transparency, Water access, and Environmental and social impact assessments

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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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Public transparency 11

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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.

RAI • KN 13

Water access and management

This note provides guidance on how to ensure that the impact of agricultural investments on water resources is effectively measured, monitored, and regulated.

Water is essential to agricultural production and processing, and has been a driving factor in private and public decisions on where to locate investments. Despite global concerns about water scarcity and pollution, the water use of agricultural investments is in many cases not rigorously measured, monitored, or regulated. Where regulations exist, enforcement is often weak. Some investors improve local water access through the use of community development programs, but such schemes require consultation and careful management.



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WHAT DOES FIELD RESEARCH SHOW?

Lack of monitoring and regulation. At half of the sites surveyed by UNCTAD, and the World Bank, water use was totally regulated, both prior to investment approval and during its operation. At the remaining sites, the assessment, monitoring, regulation, and enforcement of investors' access to and impact on water resources appeared to be inadequate and cursory. Even where there was well-established legislation with use rights, monitoring, and reporting systems, the capacity of authorities to implement and enforce requirements was seldom sufficient. Where investors did have to apply for water rights or adhere to extraction limits, these were often set only at the project approval stage with no subsequent monitoring of adherence to agreements made.

Inadequate identification and monitoring of impact. At the local, regional, or national level, the impact of investments on groundwater and surface water resources were usually not adequately assessed or monitored as part of the environmental and social impact assessment (ESIA) process. There was generally little monitoring of water pollution, except for reactive assessments after community complaints arose. Some investors had been implicated in the pollution of water sources that local communities rely on for drinking, fishing, or other purposes.

Inadequate consultation. Local communities did not feel adequately consulted about the potential of investors to affect local water sources. Water can influence how the investment site is developed, with significant consequences for local communities that need to be managed through consultation and community engagement; however, in most cases water access and use did not form a substantive part of the community consultation even when detailed information was available (box 1).


Disruptions in access. Reduced access to water was the second most common negative issue (after reduced access to land) experienced by local communities through the development of an agricultural investment.

RAI • KN 14

Environmental and social impact assessments

This note provides guidance on the conduct of environmental and social impact assessments (ESIAs) and the implementation of associated environmental and social management plans (ESMPs).

Crop and livestock production, forestry, fisheries, and aquaculture all depend on the use of land, water, and other natural resources that are inextricably linked to rural livelihoods, social systems, values, and culture. ESIAs and ESMPs are key tools for identifying and assessing social and environmental risks and benefits at the planning stage of an investment, and for building risk mitigation measures into project design and implementation. Although usually legislative requirements, too often they have been treated as box-ticking exercises. There remains significant room for improvement in the conduct of assessment and the rigor with which findings are incorporated into management plans.



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Project risks. Many projects fail due to risks that should have been identified (and in some cases, were identified but ignored) and managed through the proper conduct of ESIAs and ESMPs. For example, a rice farm had its crop repeatedly eaten by birds and had to hurriedly employ 500 bird chasers. The presence of a large endemic bird population was identified in the impact assessment, but it was conducted by a consultant and stored on a shelf at the corporate head office, without the farm managers ever having seen or read it.

Legislation and enforcement. Most countries have sufficient regulatory requirements to ensure the proper conduct of ESIAs and ESMPs, and there has been much improvement to legislation in this area with respect to agriculture. However, enforcement continues to be lacking in many cases, thereby limiting monitoring of whether investors are meeting legislative requirements.

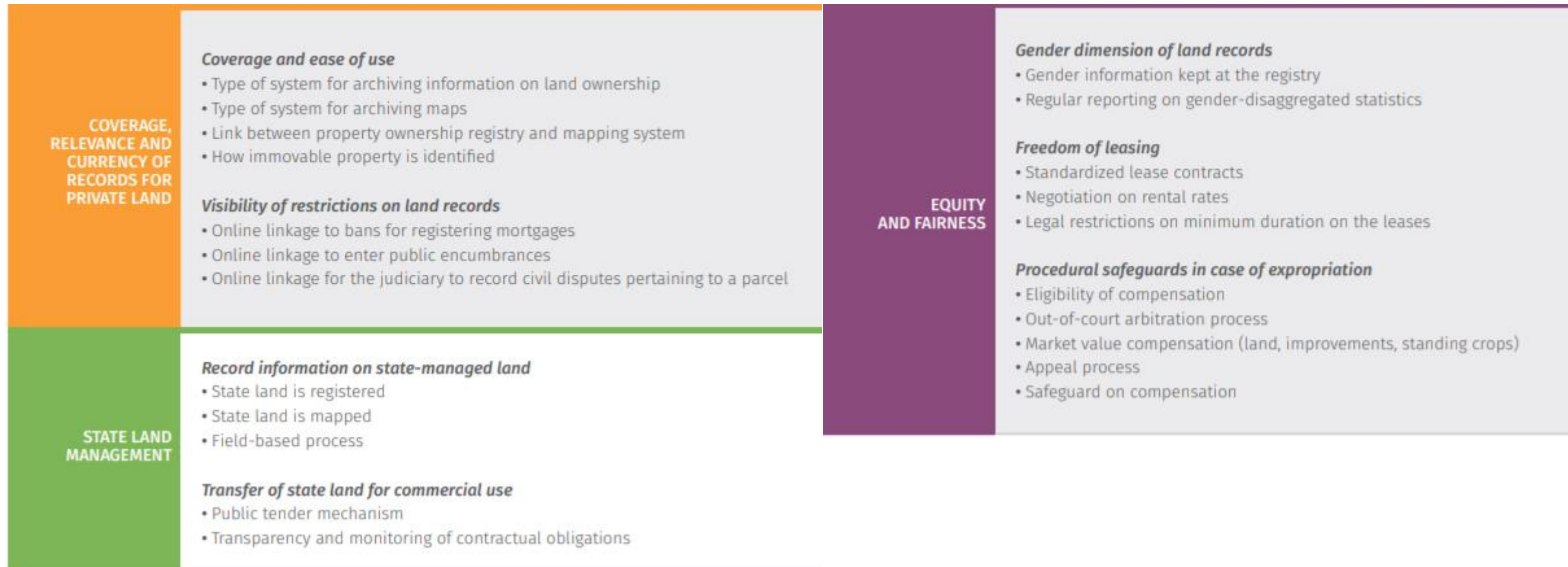
Implementation. Seventy percent of investors surveyed conducted an ESIA, and almost 50 percent developed an ESMP. But in most cases they were treated as box-ticking exercises, meaning they were largely symbolic or investors sought to do the bare minimum. The quality of ESMPs was weak, and for the most part they did not inform business plans or operations.

Scope of the ESIA. Different agricultural investments have different environmental and social impacts (box 1). The scope of an ESIA needs to be sufficiently broad to cover major impacts but also be practical, relevant, and efficient by focusing on key potential areas of concern. The scoping stage of the assessment is critical in determining the quality of the entire process and investors should be intimately involved. ESIAs have strengthened investors' focus on the social components, especially when the local communities affected are dependent on the same natural resources as the investor.

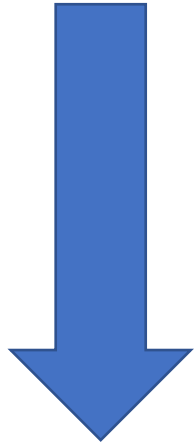
What EBA land indicators measures

<http://eba.worldbank.org/>

- Enabling the Business of Agriculture (EBA) examines and monitors regulations that impact how markets function in the agriculture and agribusiness sectors.
- EBA land indicators measure laws and regulations that impact access to land markets for producers and agribusinesses.



Where we are



- Broader recognition that land tenure is crucial
- Introduction of land policy at national level
- Implementation of land policy
 - Pilot
 - Scaling up: real up-take

We are here!

African governments requesting WB support for scaling programs to national scale

Challenges:

- Numerous pilots: small, dispersed and lacking integration
- Risk of failure or money poorly spent if conditions for scaling go unmet

Key Questions:

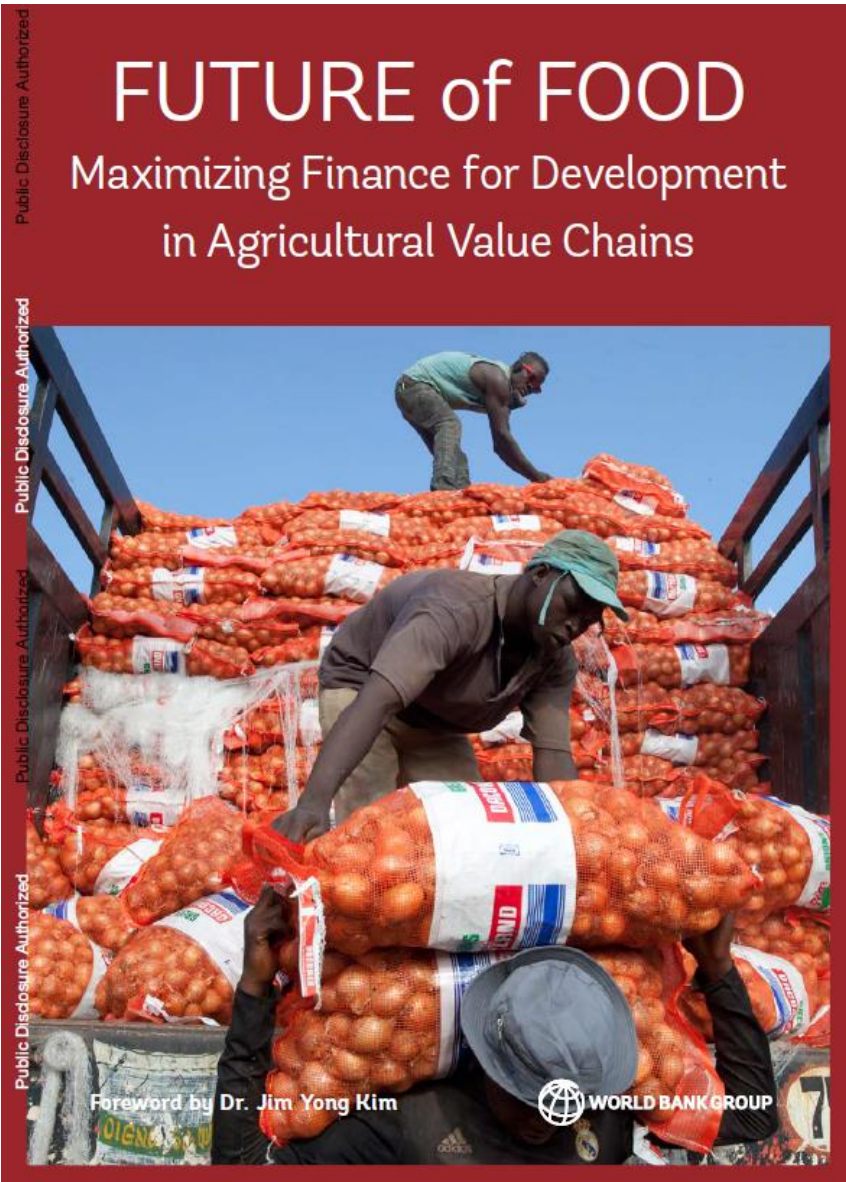
- How to transition from pilots to national coverage
- How to confront challenges, constraints & risks in scaling
- What are conditions & prerequisites for successful scaling and mass registration

What is needed?

- Global and bilateral dialogue
- Global guidelines such as VGGT(*) and CFS-RAI(**)
- Numerous researches

=> But still, relatively limited uptake in regional level.

We need to think/approach differently to tackle with this issue.



2. Maximizing Finance for Development in Agricultural Value Chains

Maximization of Finance for Development (MFD)

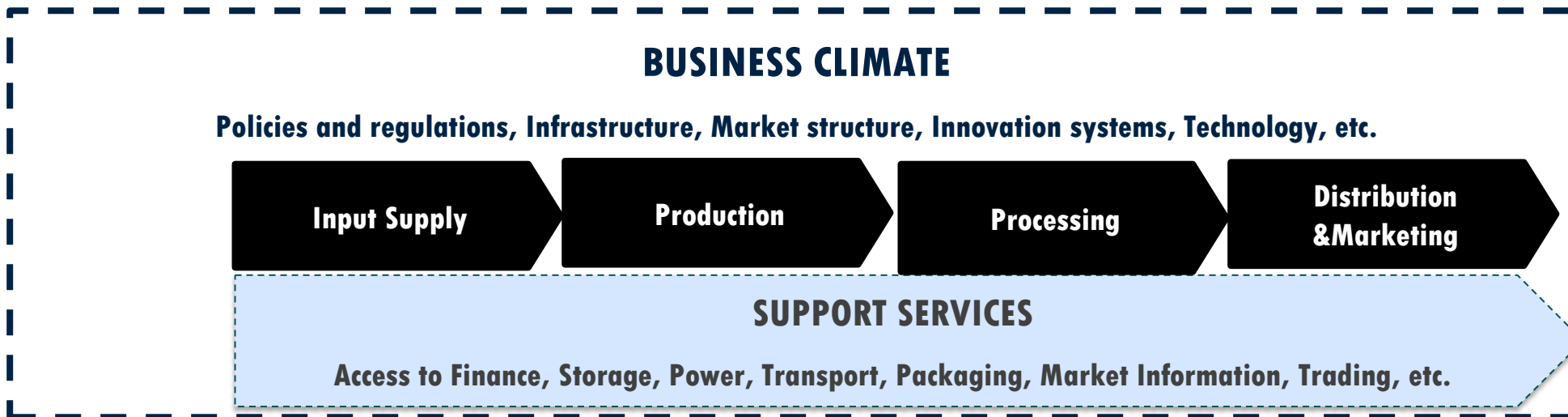
- Commercial agriculture is not a standalone sector it is dependent on water, energy, infrastructure and ICT.
- Furthermore, private finance for the sector is limited primarily due to these factors (among others):
 - Risk Profile – including climactic and market risks, especially with perishable products.
 - Political interference – importance to economies and food security.
 - Scale – commercial investments are small in relation to other sectors (on-farm are even smaller).
 - Fragmentation – supply chains are disjointed and rely on multiple intermediaries.
- MFD is not just about finance

MFD – WHY, WHAT and HOW

- Current levels of investment in agriculture value chains are insufficient to achieve the potential contribution of agriculture to key development goals.
 - Need to increase from billions to trillions in investments, spanning public and private, local and global.
- Crowding-in private investment requires:
 - Increasing space for private sector activities by, including by better focusing scarce public finance on public goods/services
 - Improving policy and regulatory environment which contribute to market failures and limited private sector participation
 - Improving incentives and reducing transaction costs and risks for private investment
- Requires diagnostics that are more oriented to private sector, and include a structured, inclusive public-private dialogue to inform a robust reform and investment program.

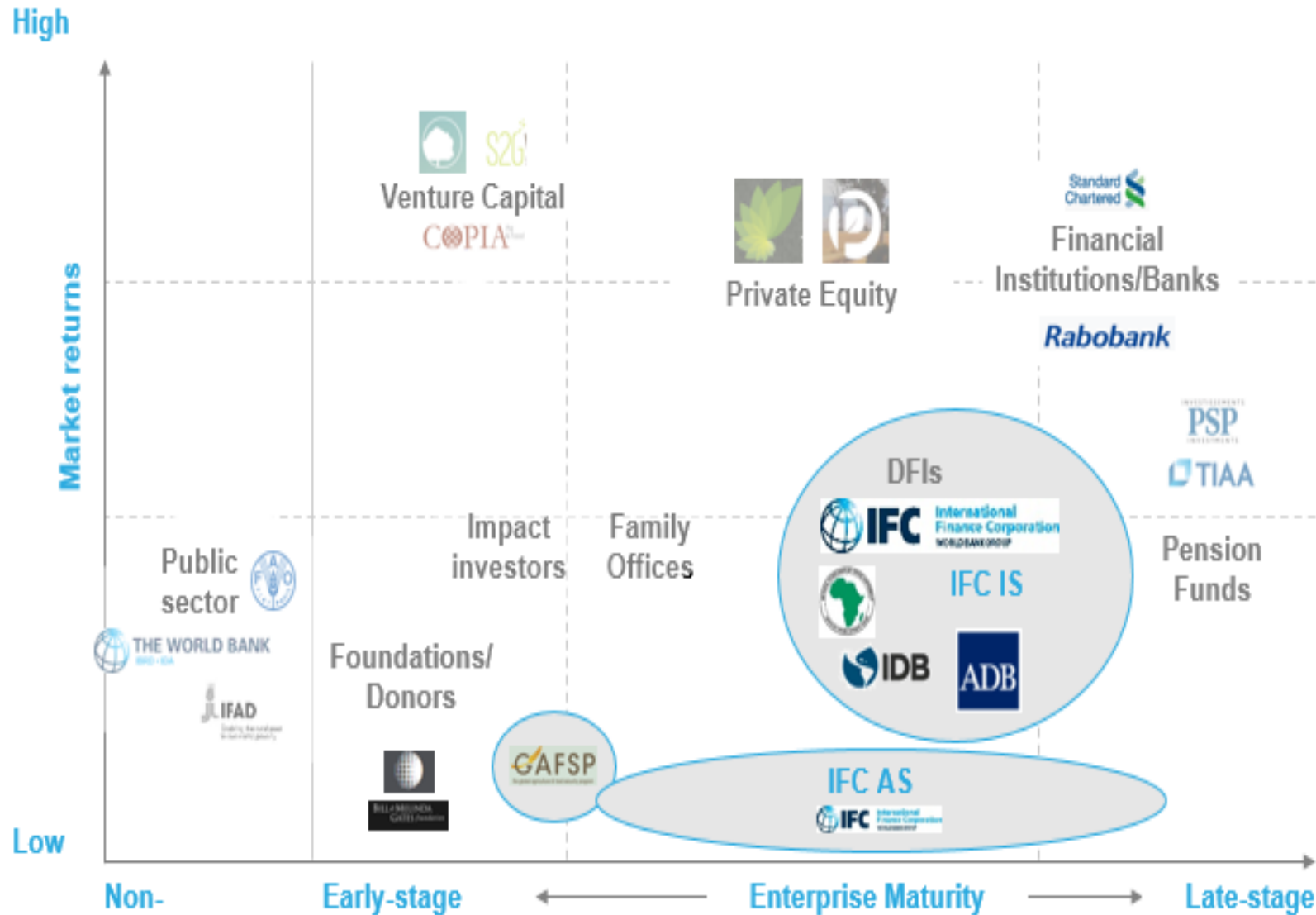
Agricultural Value Chain “Ecosystem”

- Agriculture value chains comprised largely of small-scale and some large-scale participants
 - 450 million private smallholder farmers—subsistence and commercial
 - SMEs dominate input suppliers, traders, processors, distributors and marketers
- Value chain is an interdependent “ecosystem”
- Potential “disruptive” changes to agriculture value chains:
 - Urbanization and changing dietary preferences
 - Technology – digital, physical, scientific



Agriculture Sector Financiers – current position

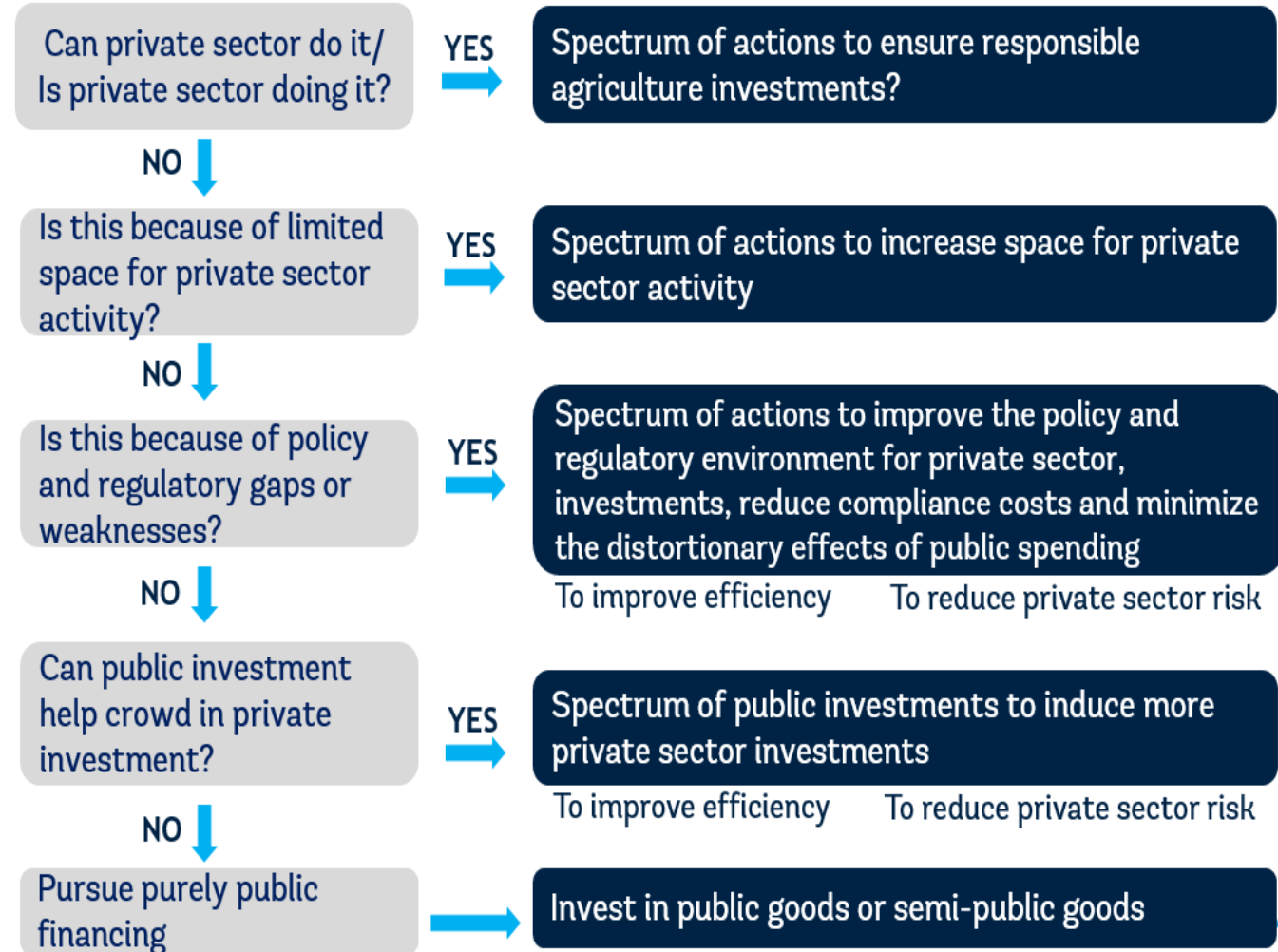
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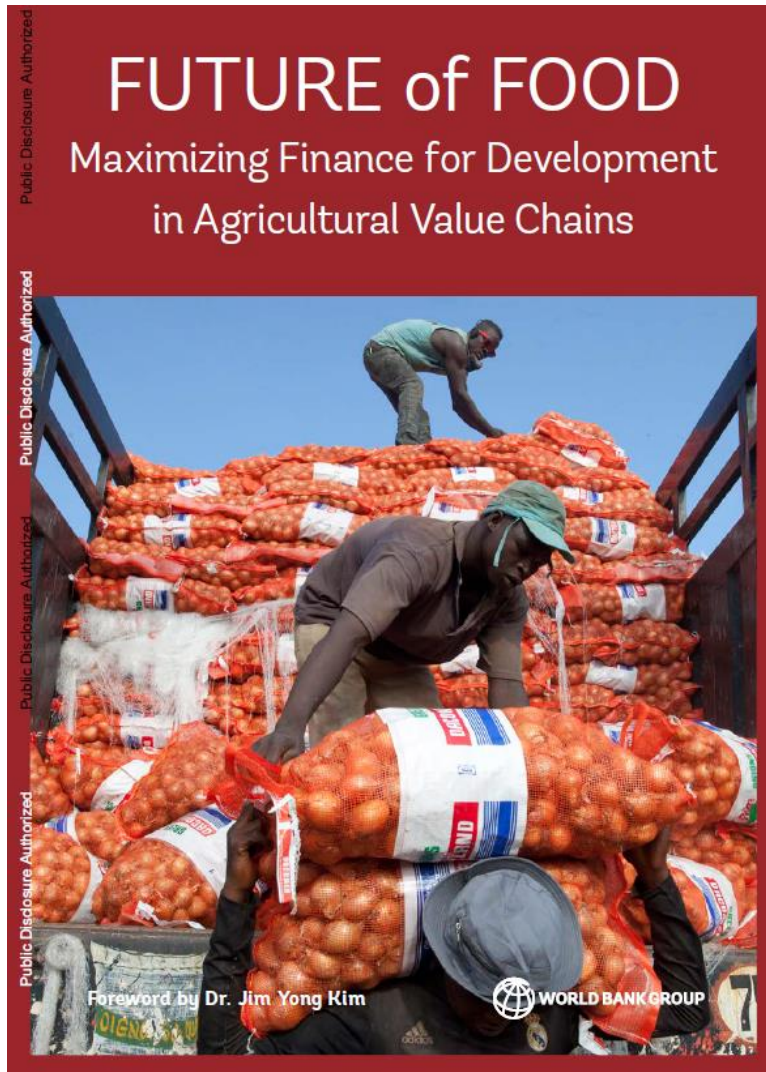
Assessing underlying causes of market failure

- Environmental and social concerns
- Concentrated market power, and reduced competition due to direct public participation
- Public policies and regulations that exacerbate market failures
- High transactions costs and risks
- Limited public goods and service

The “Cascade” in Agriculture Value Chains



Future of Food: MFD in Agricultural Value Chains



Townsend, Robert; Ronchi, Loraine; Brett, Chris; Moses, Gene. 2018.

Future of Food : Maximizing Finance for Development in Agricultural Value Chains.

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<https://openknowledge.worldbank.org/handle/10986/29686>

Thank you

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