



**Columbia Center**  
on Sustainable Investment  
A JOINT CENTER OF COLUMBIA LAW SCHOOL  
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## **OpenLandContracts.org: A Tool for Facilitating Land Contract Disclosure**

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### **Abstract**

A critical lack of transparency permeates the contracting processes that govern large-scale land-based investments. Despite widespread consensus that greater transparency of contractual terms constitutes best practice, few governments or investors have been willing or able to proactively disclose their land contracts. In the rare contexts in which contracts are disclosed, they are often difficult to find or comprehend. As the world's first global repository of land contracts, [OpenLandContracts.org](http://OpenLandContracts.org) helps address these challenges, offering a solution that combines technology with substantive technical expertise to make investor-state land contracts easier to disclose, access, and understand. The platform also offers governments the opportunity to develop country-specific repositories for contract disclosure, thereby providing an innovative and cost-effective solution for host governments and policy-makers seeking to improve their transparency and good governance efforts.

### **Introduction**

The last decade saw a dramatic increase in the acquisition of land in low-income countries by investors seeking to carry out agricultural or forestry projects. In many of these countries, agricultural and forestry concessions are granted through investment contracts between the government and the company. These are rarely made available to the public, despite their important implications for public policy. In some cases, they can even change the way in which domestic laws apply to the investment.

OpenLandContracts.org is a new tool that makes investment contracts for agricultural and forestry projects (collectively, "land contracts") easier to access and understand. This offers a range benefits, including the encouragement of more sustainable land-use practices and opportunities for public participation in decision-making on such investments.

### **Land-based investments and development**

Governments in low-income countries often view large-scale land-based investments, including in agriculture and forestry, as a potential vehicle for accelerating national development. Such investments are often framed as offering opportunities for job creation, increased public revenues, skills and technology transfers for local actors, improved infrastructure, and even, in the case of agricultural projects, the potential for increased food security.

Interested companies seek to capitalize on the cheap rent, guaranteed access to water and other negotiated benefits that governments may offer. Where possible,

investors—including domestic companies and wealthy citizens, as well as foreign companies—may seek large tracts of land for such concessions, in order to maximize economies of scale and increase profits.

While these opportunities may be attractive to investors and governments, the potential adverse impacts, and their subsequent effects, for local residents need to be taken properly into account.

Central to this risk is the question of land, which is the basis of livelihoods and culture for many rural people in low-income countries, including subsistence farmers who grow crops on small plots of land, pastoralists who graze livestock, and nomadic and indigenous peoples who rely on lands, forests and waterways as sources of sustenance, medicine, income, and culture. While such stakeholders' land rights are often not formally recognized by the government, they may still have legitimate claims to the land that must be respected, as asserted in international documents such as the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*. Land can also be so intertwined with local residents' social, spiritual and economic networks that it may not be possible to remedy such impacts adequately through the provision of monetary compensation or replacement land.

Given how much is at stake, deals that are made to facilitate land-based investments need to be subject to public scrutiny and participation. Yet in practice, land contracts tend to be negotiated in private. They cannot usually be accessed by the general public; nor, in some cases, by some of the government bodies charged with regulating such investments.

### **What are investment contracts?**

Investment contracts are agreements made between host governments and investors regarding a proposed business project. In exchange for the government granting the right to access the land and operate the project for a given period of time, investors generally agree to pay land rents, comply with different types of obligations relating to the investment and, in some cases, provide other benefits to the government or local communities.

Unlike a residential lease that a tenant may sign with the owner of a house or apartment building in which they wish to live, these contracts have the potential to alter how national laws apply to the investment. For example, governments may decide to offer exemptions from tax laws to attract investors, or even agree to freeze regulation at the time the contract is signed, so that any laws subsequently passed—whether they concern tax, environmental protection or even human rights—will not apply to the investor's operations.

### **Transparency and the rule of law**

Investment contracts not only affect how countries pursue development, but also can undermine the integrity of the country's legal system and democratic processes. By excluding the public and the legislature from negotiations, the power of granting land concessions is effectively concentrated in the hands of small groups of, or individual, government representatives, who will not be subject to the usual checks and balances. This may not always lead to problematic land contracts for a minister committed to

international best practices for responsible land-based investments; however, for a government representative charged with attracting large investments, the political victory of securing a large investment may be won at the cost of deals that undermine rather than augment the country's development opportunities.

Negotiating contracts behind closed doors may also exclude valuable perspectives from other government agencies and departments, which could offer expertise on important issues such as resource management and environmental protection. These concerns have led to calls for increased transparency around land deals, which governments are starting to heed. Notable efforts include the extensive disclosure of land contracts by governments in Liberia, the Democratic Republic of the Congo and Ethiopia. Sierra Leone has also committed, through the Open Government Partnership, to disclose 70% of its agricultural investment contracts. Further efforts are needed to ensure the disclosure of contracts from a broader range of countries.

### **Making contracts more accessible**

The Columbia Center on Sustainable Investment has sought to build on government transparency commitments by creating [OpenLandContracts.org](http://OpenLandContracts.org), the world's first repository of publicly disclosed investment contracts in agriculture and forestry. The site assembles publicly available contracts in a searchable database. This means that users in low-income countries can search by country, company or commodity type—for instance, oil palm or rubber—to see what deals their governments, or governments in other countries, have made.

The repository also seeks to make the contracts accessible to a wide range of users by providing plain language summaries of key environmental, social, operational and fiscal terms. These annotations often draw from different parts of the contract, making it easier for a user to acquaint themselves quickly with a contract and grasp complex issues without getting bogged down in confusing cross-references or having to flip between different pages. [OpenLandContracts.org](http://OpenLandContracts.org)'s sister site, [ResourceContracts.org](http://ResourceContracts.org), offers a similar repository for contracts regulating extractive industry projects.

### **Who benefits?**

[OpenLandContracts.org](http://OpenLandContracts.org) is designed for many different users. For public bodies such as tax offices or environmental protection agencies, the task of monitoring an investment—already made difficult in some places by a lack of resources and/or low capacity—can be further complicated if the investor's obligations under the contract are not known. [OpenLandContracts.org](http://OpenLandContracts.org) can bridge this knowledge gap.

Host governments can also use the resource to survey the practices of other countries and generate ideas for improving their contracts, for example by strengthening environmental protections or requiring more robust reporting from the investor. [OpenLandContracts.org](http://OpenLandContracts.org) offers governments the opportunity to use the site's infrastructure to establish their own contract repositories. This would have the dual benefit of encouraging governments to disclose more contracts and providing them with a platform they can use for information provision and communication with constituents.

Increased transparency and accessibility can also help reduce community grievances. Enabling access and understanding of investment contracts can help manage people's

expectations and create opportunities for communities to provide constructive comment on government practices. Communities may also seek to monitor a company's activities, which can complement government monitoring efforts while also strengthening community capacity.

Journalists are also using the site to report on land deals, which leads to further scrutiny of land-based investments. Members of the press, alongside researchers and civil society representatives, can use the site's annotation, search, and clips functions to identify trends across contracts, gaining a deeper understanding of how such investments are being negotiated around the world and what opportunities exist to improve them.

Finally, investors can use OpenLandContracts.org to ensure responsible investments by identifying how other companies deal with issues such as environmental protection or preserving the traditional forest usage rights of indigenous peoples. In addition, the site can potentially act as a due diligence tool for companies planning to enter a new market for the first time.

### **Country-specific sites**

The platform also offers governments the opportunity to develop country-specific repositories for contract disclosure, thereby providing an innovative and cost-effective solution for host governments and policy-makers seeking to improve their transparency and good governance efforts. In October 2016, the government of the Democratic Republic of Congo announced that it will make available to the public all of its large-scale agricultural contracts through a country-specific site, though the contracts will also be featured on the main OpenLandContracts.org site to enable users to compare contracts with other countries.

### **Conclusion**

Transparency in itself will not solve the myriad challenges of land-based investments. But it is a vital means of ensuring that all stakeholders are better informed, which can encourage more robust public dialogue and participation in investment planning. OpenLandContracts.org creates opportunities to alleviate some of the negative impacts that communities, citizens, and even governments stand to experience after large tracts of land have been signed away.