



Produced by LEGEND's Core Land Support Team

Issue 8: August 2017

Bulletin editor: **Philippine Sutz**, Senior Researcher, Legal Tools, IIED

Agribusiness and land rights: turning good intentions into tangible change

By **Philippine Sutz**, LEGEND Core Land Support Team, IIED

Agribusiness projects across Africa and Asia have often been associated with land disputes, high failure rates and risks of lose-lose outcomes. In response, international actors have developed guidelines and standards such as the **Voluntary Guidelines on the Responsible Governance of Tenure (VGGT)** and the **Principles for Responsible Investment in Agriculture and Food Systems** to improve the quality of investments.

It is now time for a real shift in private sector practice in order to promote effective respect for legitimate tenure rights and increase transparency and accountability.

Although in recent years a few businesses have made commitments

to address lands rights and uphold the VGGT, implementation remains patchy and large sections of the private sector continue to operate outside or with limited awareness of international standards and good practice. It is now time for a real shift in private sector practice in order to promote effective respect for legitimate tenure rights, align investment with local development agendas, and increase transparency and accountability.

A number of tools – such as the LEGEND-funded **IAN** and **The Interlaken Group Interactive Guide** – have been developed to support businesses implementing the VGGT, including by addressing information gaps and identifying and resolving tenure disputes. While some are fully operational and have been tested by companies, others are still a work in progress. All the tools are yet to be widely adopted by the private sector.

Beyond encouraging the broader uptake of these tools, development

LEGEND wants to hear from you

The LEGEND Bulletin aims to provide an overview of recent news, updates and trends on land governance. We encourage our readers to submit feedback and comments on articles as well as examples of interesting projects or suggestions for future themes. Contact LEGEND legend@odi.co.uk

actors and practitioners – including development finance institutions (DFIs) and governments – need to start thinking about how to make inroads into the next tier of companies that may be less concerned about reputational risk, or whose land issues are buried far down their supply chains. We therefore urgently need to identify examples of good practice from other sectors on how to reach them and incentivise them to act.

Businesses that have made formal commitments to the VGGT – such as Illovo Sugar, Nestlé, PepsiCo, The Coca-Cola Company, and Unilever – also appear to be facing challenges in following through. Such companies often point to the level of complexity involved, the challenges of accessing reliable information, and a lack of specialist capacity, both in-house and amongst potential service providers. It is therefore also important to consider how best to support companies implement commitments on the ground. Some LEGEND partners are already exploring new ways to tackle these challenges, and DFID is keen to hear of ideas and projects that are trying to address these issues.



Investing responsibly in the sugar industry: lessons from Illovo Sugar Africa

By Kate Mathias, Group Development Consultant, Illovo Sugar Ltd.

Illovo Sugar Africa, wholly-owned by Associated British Foods Plc, is the largest sugar producer in Southern Africa and operates in Malawi, Mozambique, South Africa, Swaziland, Tanzania and Zambia. Like for other agribusiness investors, land is the foundation of the business: the company sources sugarcane from its own 72,000 hectares (ha) of estate land, as well as from independent farmers operating on approximately 178,000 ha.

Due primarily to the climatic and agronomic conditions required for sugarcane agriculture, Illovo operates in subtropical and tropical rural locations, often in communities facing significant challenges relating to food security, climate change, health and livelihoods. Agribusiness projects can exacerbate these challenges by encouraging the inward migration of people seeking employment or business opportunities, which then increases pressure on land and natural resources. When local people struggle to meet their own basic needs on diminishing land holdings, company operations often feel the impact in terms of increased incidences of land encroachment; disputes with local communities; disruption of the supply of raw materials; and reputational risks

posed by negative advocacy. Illovo has therefore opted to take a more nuanced approach to its investment decisions by finding ways to understand and mitigate the risks posed by land disputes, both in its own concessions and within its supply chain.

To that end, Illovo has developed a process that includes the adoption of the group's own **guidelines on land and land rights** which adopt a zero tolerance to land grabs and land rights abuses. The company has also adopted a comprehensive roadmap for avoiding disputes which encompasses better "on the ground" assessments and the application of more effective grievance resolution mechanisms, as well as measures to improve communication with communities.

Nevertheless, the company has identified a number of challenges when it comes to implementation of this roadmap. These include difficulties in finding ways to effectively communicate, define and address grievances, and manage expectations across different cultures, traditions and social contexts, particularly when levels of regulation and enforcement may differ.

For example, in a particular incident experienced recently within its operations, Illovo attempted

to circumvent the need to take legal action to evict encroachers on company land by attempting to create a sub-lease arrangement with terms that encouraged social development projects. However, the company has struggled to formalise an effective negotiation process with the community as a whole, leading to delays and frustration on both sides, and encouraging encroachment on the same land by other communities seeking similar pledges of company support. In another location, Illovo's attempts to address the issue of community land rights prompted some concern among local elites, whose interference has in turn hampered implementation.

Nevertheless, in general, Illovo has found that honest, open communication has allowed the company to forge a number of valuable partnerships with international land experts, development partners and CSOs. Some of these participate in the company's land roundtable offering advice, or play an active role alongside Illovo in the implementation of land-based projects.

Building on its experiences, Illovo is in the process of implementing two major projects to improve its approach to land rights. In Mozambique, the company is implementing a USAID-funded pilot project in partnership with Indufor and Cloudburst to test the Analytical Framework for Land Based investments in Africa tool in the context of addressing community land rights within the supply chain. Illovo has also created a partnership with Landesa under the LEGEND Challenge Fund project known as 'Commitment to Practice' (C2P). The goal is to build the capacity of Illovo's internal 'land champions' and local CSOs to enhance significantly the ability of both the company and communities to constructively engage with each other on land issues. These projects should help Illovo develop the relationships, skills, knowledge, tools and mechanisms to better manage land and land rights into the future.



Contact Kate Mathias
development@illovo.co.za

The Interlaken Group: catalysing private sector respect for community land rights

By **Andy White**, Coordinator, Rights and Resources Initiative (RRI)

Disputes over rural property rights – which undermine the rights and livelihoods of up to 2.5 billion people – have intensified in recent years as investors and corporations, encouraged by governments, have pushed into increasingly remote rural areas, seeking land for agribusiness, oil and gas exploration, infrastructure and renewables. The resulting conflicts over land have often wrought havoc on communities and hindered progress towards sustainable economic development. Indigenous peoples and local communities face increasing levels of violence for resisting these projects or simply for living on land desired by others. And when local elites and governments sign away local people's land for development, research shows that the quagmire of work stoppages, delays, and conflicts that ensues can increase the cost of doing business by as much as 29 times.

Forward-thinking companies and investors increasingly recognize the costs and risks that stem from a failure to respect community land rights and are also feeling the pressure from advocacy groups. In response, companies such as Nestlé, Cargill, Illovo Sugar, PepsiCo, The Coca-Cola Company, and Unilever **have committed to implementing the FAO's VGGT**. Making good on these commitments, however, requires navigating complex local realities and sprawling global supply chains. Key actors in the private sector note that addressing tenure issues has proved arduous – far more so, for instance, than in implementing environmental commitments.

These challenges have prompted a rethink on how best donor assistance can be used to leverage private sector support for community land rights. In 2013, RRI piloted a “pre-competitive safe space” where an informal group of leaders from progressive companies, investors, NGOs, and indigenous peoples' organisations could share their views, interests, and agendas with a view



towards finding common solutions to the problem of insecure community land rights. The hope was that these actors would eventually develop enough to be able to jointly find solutions and pro-actively leverage changes in practice by governments and local companies.

This innovation, now named **the Interlaken Group**, has raised hopes of better private sector performance on land rights. Co-chaired by the International Finance Corporation (IFC) and Rights and Resources Initiative (RRI), the group has expanded to include leaders from Nestlé, Oxfam, Olam, Unilever, Stora Enso, CDC, the European Investment Bank, and other DFIs, as well as a host of civil society organisations. It has catalysed the development of new due diligence tools that members have used to screen their investments and explore new business models: for example, Nestlé used guidance produced by the Interlaken Group on corporate implementation of the VGGT to assess the performance of its palm oil suppliers in Indonesia, while civil society groups in Laos used this guidance to develop a set of voluntary commitments to guide agricultural investment.

In early 2017, the Interlaken Group initiated a new phase of experimentation, testing the power of its global brands and purchasing power to advance local company and government action to respect local land rights within developing

countries themselves, starting with piloting pre-competitive networks at the country level in Kenya and Cameroon. The companies convened at these two pilot meetings collectively account for more than USD 1 billion (around GBP 767 million) in investments and 500,000 ha of concessions. That these companies engaged in the process, and requested follow-up activities, underscored the Interlaken Group's potential to foster widespread transformation at country and sector levels. The Interlaken Group plans to follow-up in Kenya and Cameroon and further develop this model in other pilot countries from 2017 forward, and is keen to hear from DFID country offices and other partners with an interest in engaging with this process.

Much more remains to be done to extend the power of secure property rights to indigenous peoples and local communities in the world's rural areas. But so far, the Interlaken Group is showing promise as a way to help forward-leaning companies and investors achieve their commitments, and become more positive and pro-active players in this battle. Scaling-up this effort should be a priority in advancing peace and prosperity in rural areas – development goals that civil society, the private sector, and local communities all aspire to achieve.

Contact Andy White
awhite@rightsandresources.org

IAN Tools: the power of data and local engagement to improve investment outcome

By Ben Bowie, Partner, TMP systems

Companies and investors in sectors such as agriculture often lack the expertise needed to operate responsibly in complex tenure regimes. As a result, many land-based investments in emerging markets spark tenure disputes that disrupt operations and damage reputations. These problems increase project costs while reducing market access and inviting regulatory censure. More importantly, they prevent investments from delivering the social, environmental and economic benefits that they should.

TMP Systems developed the **IAN tools** with the support of RRI to address these gaps in knowledge and capacity. IAN provides companies and investors with relevant data and detailed guidance on how to identify, remediate and resolve tenure disputes. For example, IAN provides granular social and environmental data to help sugar companies in East and Southern Africa to identify potential challenges. Using IAN, they can evaluate whether their actions might: drive displacement (population data); exacerbate pre-existing disagreements (conflict data); or reduce local access to critical resources (data on the availability of water and nutrition).

Geospatial data, in particular, can be used to tailor specific steps to address and resolve the drivers of disputes. Such approaches can

be designed to consolidate a social license to operate, or to gather the data required for informed risk management. Each suggested action is paired with detailed guidance on implementation and how to recruit for specialist jobs such as land registration.

IAN helps companies to work with local people to design and implement cost-effective, participatory solutions to operational and reputational challenges.

This formulation of IAN was developed over several iterations. Early in IAN's development we realised we had to release the tool much earlier than originally anticipated to allow sufficient time to test, improve and deploy it. So, since September 2015, TMP's efforts have been dedicated to gathering feedback from investors such as the IFC, from our Interlaken Group colleagues, including the European Investment Bank, and subsequently from our LEGEND Challenge Fund participants: The Coca-Cola Company, ED&F Man, and Nordzucker.

These dialogues have confirmed that IAN's value is rooted in allocating expertise efficiently to projects that really need it, and to the likely drivers of risk. At the same time, IAN helps companies to work with local people to design and implement cost-effective, participatory solutions to operational and reputational challenges such as forest and water management.

Thanks to this process of adjustment, improvement and exposure, 22 different organizations from 13 different countries have agreed to test or adopt IAN in some form. This includes leading investors such as ABN AMRO, insurers like MS&AD and well-known brands such as PepsiCo, as well as regional agribusiness concerns, certifiers and traders. We have also talked in depth to over 70 interested private organizations, which underlines how much effort has gone into building a profile for IAN. In the process, we hope to have raised awareness of tenure issues among private actors, industry bodies and host governments.

TMP is now in the process of responding to feedback from companies and investors to further improve IAN. The next stage of this initiative will involve a set of influential DFI partners, and it aims to: improve data security; develop an intuitive user interface; produce scalable training materials; and align the tool with international standards (particularly the IFC's). We see DFIs as ideal partners in this work because they have the necessary knowledge, market position and influence to improve the tool and spur widespread adoption.

We hope IAN can increase the competency of these actors while helping to standardize tenure risk management. With this support, we hope that IAN can become the go-to tool for companies and investors interested in addressing tenure risk.

Contact Ben Bowie
ben.bowie@tmpsystems.net

IAN Risk: Quantitative Assessment of Risk Using a Global Geospatial Database



NEWS AND UPDATES

LEGEND's fourth UK Land Forum: the use of new technology to map and document land rights

By Anna Locke, LEGEND Core Land Support Team, ODI

LEGEND's **fourth UK Land Forum** was held at the Overseas Development Institute in London on 26 April 2017 to discuss the use of new technologies to map and document land rights, and their impact on land registration and administration.

An animated discussion confirmed that recent technological innovations such as the use of mobile applications, drones and GPS technology are transforming efforts to document land rights and to open up access to land data around the world.

New technologies are creating exciting opportunities to reduce costs at certain points in the process of mapping and documenting land rights, and improve transparency and agency. By ensuring that the approach to land registration is **'fit-for-purpose'** – a flexible and pragmatic approach to support security of tenure for all and to sustainably manage land use and natural resources –, all actors can help to resolve trade-offs between the costs and accuracy of mapping and registering land rights.

These processes can help improve the availability of baseline maps and imagery, which will

be vital to reducing the costs of mapping and documenting land rights. Encouraging governments to invest in providing such spatial data as a public good or by promoting public-private partnerships both offer promising ways forward.

However, there are clearly important land tenure issues where technology cannot significantly reduce costs or time. These include consultation and negotiation during the adjudication process and the resolution of historic conflicts, which require face-to-face contact.

Moreover, using mobile applications, GPS technology or drones to document and map land rights is not without challenges – both for users and in going to scale. To move beyond pilot or niche applications, designers need to think about:

- How to store and process the huge amounts of data being generated, and make sure it is both easy to access and stored transparently;
- How to convince land professional organisations that may be resistant to these new approaches – such as surveyors, lawyers and project managers –

that innovative approaches can adequately meet land registration standards;

- Cybersecurity and how to secure land rights information in an age when even the most sophisticated agencies are vulnerable to cyberattacks;
- Advocacy with governments and the need to get politicians on board to enable formal recognition of applying innovative technology that has proven to be fit for the purpose of each country.

Participants felt strongly that technology must keep user needs front and centre in the process of innovation, rather than the other way around. The number of options available – and their implications – can seem overwhelming, and there were calls for more research on practical ways to move forward, preferably with a view to a donor championing guidelines or criteria for assessing what would work best in particular contexts.

Finally, anyone wishing to champion the use of new technology in land registration should build in the importance of political buy-in and alignment with a country's legal and policy framework into their analysis.

The LEGEND team plan to do a piece of work to assess the benefits of new technology more systematically, and apply the results to assist DFID country offices supporting land tenure registration programmes.

For more information on new technologies and land rights, see issue 7 of the LEGEND Bulletin at bit.do/legend-7

NEWS AND UPDATES

New LEGEND Analytical paper – Legal empowerment in agribusiness investments: harnessing political economy analysis

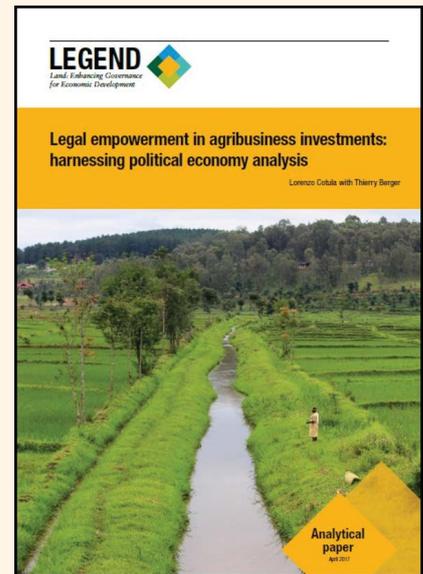
What is the best way to empower rural people so they can make informed choices and engage with private sector companies from a position of strength? Legal empowerment practitioners – from lawyers to non-governmental organisations and grassroots groups – have pioneered a wealth of approaches to help rural people to advance their rights.

But by the time a business venture hits the ground, key decisions will already have been taken, and powerful vested interests are often at stake. If legal empowerment is to be effective, interventions at the national and international level may be needed to complement grassroots action, and the political dimensions need to be properly considered.

A new LEGEND analytical paper discusses how political economy analysis can help practitioners to make sense of these issues, identify the most appropriate levers of influence, manage the risks involved, and ultimately design and implement more effective legal empowerment interventions.

The paper argues that grounding interventions in political economy analysis could broaden the range of possible approaches to include politically savvy initiatives at the local, national and international levels. In turn, these may require new alliances to tailor and coordinate initiatives at different levels, bringing together actors with complementary expertise in different areas of law and practice, and with the ability to act at different levels and in different places.

Insights from the paper are now feeding into the design and implementation of legal empowerment initiatives – such as LandCam, a programme led by the **International Institute for Environment and Development (IIED)**, the **Centre for Environment and Development (CED)** and the **Anti-Hunger Network (RELUFA)** to support public engagement with land law reform in Cameroon. LEGEND partners’ initiatives to promote legal empowerment also include **Namati’s Community Land Protection Programme**,



which supports rural communities to protect their customary lands in countries including Liberia, Kenya, Uganda and Nepal.

Cotula, L., with Berger, T. (2017) Legal empowerment in agribusiness investments: Harnessing political economy analysis. Analytical paper, April 2017, London, LEGEND.

The full paper is available for download at bit.do/legend-AP4

Photo credits:

Page 1: August 2010: coffee farmer in Mexico. Nestlé announces an investment of CHF 500 million in a wide-ranging plan to address responsible farming, sourcing and consumption across its coffee supply chain / Nestlé via Flickr, CC BY-NC-ND 2.0

Page 2: Sugarcane harvest in Kenya, 2014 / Arnau Ribera via Flickr, CC BY-NC-ND 2.0

Page 3: Workers transport mining equipment through the forest in Liberia. / iStock.com/Konoplytska

Page 4: The IAN:Risk toolkit / Screenshot, RRI, rightsandresources.org

Page 5: The Cadasta Platform provides mobile and web based tools designed to help partners collect, analyze, store, and share data on land and resource rights. / Screenshot, Cadasta, <http://cadasta.org/platform/>

About us

Land: Enhancing Governance for Economic Development (LEGEND) is a DFID programme that aims to improve land rights protection, knowledge and information, and the quality of private sector investment in DFID priority countries. It includes the development and start-up of new DFID country land programmes, alongside knowledge management activities, a challenge fund to support land governance innovations, and management of complementary DFID grants, MoUs and contracts, and supported by a Core Land Support Team.

Future issues of this bulletin will feature updates on our most interesting findings and results, keeping you posted and enriching the debate. Contributions reflect their authors’ views, not those of DFID or members of the LEGEND Core Land Support Team.

You can send suggestions and comments on this bulletin to legend@odi.org.uk

