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Harnessing the law for fairer agricultural investments

By **Lorenzo Cotula**, Team Leader – Legal Tools, IIED

Increased agricultural investment in low and middle-income countries has raised both hopes and fears for rural development prospects. Many studies show that while investment in agriculture can be a force for good, ill-designed or

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poorly implemented projects can undermine local livelihoods.

Rural people's ability to make informed choices, exercise rights and advance their position vis-à-vis government and the private sector is a key factor in enabling, or constraining, fairer investments that deliver positive sustainable development outcomes. Yet interactions between governments, companies and communities usually involve big mismatches in capacity, information, resources, influence and negotiating power.

Since 2006, I have been involved with IIED's **Legal Tools for Citizen Empowerment** programme – an

initiative to strengthen local rights and voices in natural resource investments. I have come to learn about the many approaches that legal empowerment practitioners have pioneered to harness the law and help communities to articulate their development agendas – including in negotiations with companies and authorities. Interventions vary greatly, as do the actors that take them forward. There is much work to do, but also a considerable body of evidence that can be used to distil lessons.

This issue of the LEGEND bulletin takes stock of some of this recent experience in legal empowerment. It brings together practitioners from institutions that are considered

global leaders in the field, but also from national organisations making a difference at the grassroots. The result is a kaleidoscope of approaches operating at different levels, and using different entry points, but pursuing broadly converging aims.

Some approaches seek to increase transparency and accountability in investment decisions. For example, the Columbia Center on Sustainable Investment presents its work to promote public scrutiny of agricultural investment contracts, while the Forest Peoples Programme discusses how to activate international complaint mechanisms when people cannot win redress in national courts.



Other initiatives work to secure land rights where agricultural investments and other factors intensify pressure on land. By helping rural people to exercise their rights, these initiatives also indirectly aim to promote better investment models and outcomes.

Examples include the longstanding paralegals programme implemented by the UN Food and Agriculture Organization in Mozambique; the work of the Land Rights Monitors supported by Hakiardhi in Tanzania; and the legal outreach programme that Open Data Myanmar developed to address land conflict. Similarly, Namati shares encouraging lessons from its community land protection programme in Liberia. Innovation, Environnement et

Développement en Afrique and the Centre pour l'Environnement et le Développement discuss their work to strengthen local-level preparedness for investment in Senegal and Cameroon, respectively, as part of a programme that also involves the International Institute for Environment and Development (IIED).

Overall, the experiences illustrate the multiple entry points for legal empowerment interventions in the context of transnational investments, highlighting the potential and some of the challenges. They also illustrate the proactive efforts needed to ensure that communities are 'agents' rather than 'beneficiaries', and point to the importance of combining legal service provision

with complementary interventions – from open data to community mobilisation.

While supporting local advocates emerges as a recurring theme, experience highlights the importance of also working with government – and FAO's 'twin-track' approach of strengthening the capacity of both paralegals and government officials illustrates how the two strands can be combined.

This wealth of diverse experience confirms the strong case for sharing lessons and building alliances that can help maximise impacts, and this issue of the LEGEND bulletin is a step in that direction.

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Supporting communities by making land deals more transparent and understandable

By **Kaitlin Y. Cordes**, Head of Land and Agriculture, Columbia Center on Sustainable Investment

For rural communities affected by agricultural investments, engaging meaningfully with investors or governments is difficult when deals are opaque, land rights are contested, or power imbalances and other factors tilt the negotiating table away from land users – as is common in many places where such investments occur. One common problem is a lack of equitable access to information about deals struck between investors and governments.

With support from the UK Department for International Development (DFID), the Columbia Center on Sustainable Investment (CCSI) is developing tools and resources to make relevant documents more easily accessible and understandable by communities affected by land investments.

One project, **Open Land Contracts**, is an online repository of publicly available investor-state contracts for agriculture or forestry

projects. The repository provides plain-language summaries and comparison tools to help make land investments more transparent and their accompanying contracts easier to understand. Through

With support from DFID, the CCSI is developing tools and resources to make relevant documents more easily accessible and understandable by communities affected by land investments.

these features, the repository can empower communities to access, assess, monitor and advocate around contracts that affect them. This approach is being tested in Cameroon, where CCSI has

provided a grant to the **Centre pour l'Environnement et le Développement** to pilot guidelines designed to assist communities to assess the social obligations included in investor-state contracts and to hold parties to account.

CCSI is also partnering with **Namati** to develop resources to support communities in their interactions with investors, particularly when considering community-investor agreements. A first step was the creation of a **detailed Directory** of existing guides relevant to communities on a range of activities, from negotiating better deals to monitoring whether investors fulfill the terms of their agreements. These projects fit more broadly into CCSI's work to advance concrete steps that support communities – as well as host governments and investors – to address **"legal support gaps"** in the context of land investments.

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Where there is no justice: how the RSPO can help hold the powerful to account outside the courts

By Tom Griffiths, Tom Lomax and Conrad Feather, Forest Peoples Programme

The rapid expansion of the agro-industrial frontier in Southeast Asia, Africa and Latin America poses a major challenge for indigenous peoples and local communities, especially when their rights are inadequately protected by national laws and their governments collude with companies to distribute their land without community consultation, let alone consent. Faced with having community land taken without their permission (sometimes referred to as a 'land grab') and the ensuing environmental damage, communities are using a variety of judicial and non-judicial strategies to defend their land and human rights. This article considers the **Roundtable on Sustainable Palm Oil (RSPO)** as one such strategy forum.

In its engagement with communities in Southeast Asia, Africa and Latin America, **Forest Peoples Programme (FPP)** works with communities to address the marked power imbalance they face when seeking to defend their rights. In particular, FPP helps communities to navigate the various potential

avenues for ensuring these rights are respected. In such cases, the role of organisations like FPP and local civil society organisations will be to ensure that communities have the information they need (including legal advice) to collectively identify their concerns and demands, and to ensure they are heard and acted upon by sufficiently senior representatives of the companies concerned.

Community advocacy (via judicial or non-judicial means, including via the media) is sometimes the only way of getting a company's attention, and can also be an option if direct representations fail. Local courts are often inaccessible, and their proceedings are frequently protracted or lack independence. Land defenders named on a court docket may face **genuine threats to their security**. Where courts offer little or no prospect of redress, communities might be able to use the grievance mechanisms linked to voluntary agro-commodity certification standards (such as the RSPO) which require companies to

recognize peoples' rights to their lands and to decide what happens on them.

Where courts offer little or no prospect of redress, communities might be able to use the grievance mechanisms linked to voluntary agro-commodity certification standards such as the RSPO.

The RSPO standard as defined in its Principles and Criteria is one of the strongest of any existing certification standards. Experience shows that a complaint to the RSPO can help raise the profile of community grievances nationally and internationally. They have, in a few cases, enabled a suspension of company activities in the impact zone for a time. However, the RSPO is not yet adequately equipped to



hold palm oil companies to account when they violate their commitments and it has rarely delivered enduring redress for local complainants. A **recent review** found that the RSPO complaints system suffers from poor outreach to communities, a lack of resources for field investigations, a low level of transparency, weak enforcement mechanisms and a lack of independence. This is illustrated by the now highly protracted (2012) complaint levelled at Golden Veroleum Liberia (GVL), where despite initial progress the RSPO now appears paralysed despite the need to assess and address company non-compliance with its standards.

Major loopholes in the RSPO accountability framework were again exposed in October, 2016, when Plantaciones de Pucallpa (PdP), a Peruvian oil palm company and RSPO member subject to a complaint, **withdrew from the RSPO**. The complaint, submitted to the RSPO in December, 2015 by the indigenous community of Santa Clare de Uchunya in Ucayali, FECONAU and the Forest Peoples

Programme (FPP), provided evidence of violations of customary land rights and a principle known as **free, prior and informed consent (FPIC)**, as well as the clearance of over 5,000 ha of old growth rainforest by the company in direct contravention of RSPO standards. By handing back its membership, the company has escaped RSPO sanction, while clearance of the forest for oil palm continues.

Understandably, aggrieved communities are deeply disappointed. A strong standard is not enough. The RSPO must also have a robust and accountable system for implementing its standards and for monitoring and verifying compliance. It must also have an effective complaints system capable of enforcing compliance and delivering redress to communities.

In relation to the PdP case and others like it, FPP is now calling on the RSPO to adopt new rules to prevent the withdrawal of members during an ongoing complaint by requiring them to lodge a financial bond with the RSPO, which would

be forfeited if they pull out from the scheme during an unresolved complaint. In addition, the RSPO is being asked to publicly condemn the actions of such companies so that a public record of their behaviour is available to investors and buyers alike.

The deficiencies in the RSPO accountability mechanism (and in similar voluntary standard complaints processes like the **Organisation for Economic Co-operation and Development's Guidelines**) demonstrate the need for a major overhaul of international non-judicial grievance procedures. If meaningful reforms can be put in place, then the schemes might offer effective options for communities seeking to defend their land rights. If not, such grievance mechanisms will continue to promise much, but lose credibility by delivering little.

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Locally negotiated 'land charters': an empowering tool for good local land governance in Senegal

By Mamadou Fall, Programme Officer, IED Afrique

National law in Senegal vests elected local government bodies with significant powers in land governance. However, experience has shown that these bodies often fail to wield this power effectively. Decisions on land allocation are often made without consulting local communities or taking their needs into account. Also, national law leaves many blanks to be filled on how to ensure transparent, accountable and equitable decision making.

In 2014, Dakar-based organisation **Innovation, Environnement et Développement en Afrique** (IED Afrique) began exploring the feasibility of new, locally negotiated 'land charters' (*Chartes foncières*) in sites located in the Louga, Thiès and

Saint-Louis regions. The charters would set ground rules on how local government bodies should manage rural land. They would clarify roles and lines of accountability within local government, and create spaces for ongoing dialogue between elected officials and their constituents. Land charters have now been drafted in two sites and negotiations are underway between elected local authorities and local communities.

Working in collaboration with municipal authorities, IED Afrique is also training and supporting 45 community paralegals: community members with basic legal training who can promote legal awareness, facilitate local debate and raise 'difficult' questions with local authorities. The work of



the paralegals is seen as essential in enabling informed community dialogue about possible local charters, and in ensuring their implementation should those charters be adopted.

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Namati's Community Land Protection Programme: a powerful 5-part process empowering communities to protect their land

By **Rachael Knight**, Director, Community Land Protection Programme, Namati

Since 2009, **Namati** has been developing and implementing its **Community Land Protection Programme (CLPP)** in partnership with local organisations across Africa and Asia. Namati's community land protection approach is a **five-part process** that supports rural communities to protect their customary lands against bad-faith appropriation by national elites and large-scale investments. As part of this process, Namati and its local partners support communities to:

- Harmonize the boundaries of their lands with neighbours, then map, zone and document their lands as owned or used by the community as a whole;
- Create and adopt strong by-laws that ensure democratic governance, diverse and downwardly accountable leadership, and improved stewardship of lands and resources;
- Establish and implement strong protection for the land rights of women and other marginalised groups; and
- Become empowered to negotiate fair, beneficial contracts

should potential investors arrive seeking land.

Through legal empowerment, Namati's approach helps communities determine the course of their development themselves and gain the skills and capacities necessary to ensure community prosperity on their own terms. After more than seven years of implementation in more than 145 communities, data and anecdotal evidence indicate that communities who have undertaken Namati's CLPP *before an investor arrives* are empowered to demand that investors and government officials fulfill **free, prior and informed consent (FPIC)** obligations. Even where the national government has proved unwilling or unable to issue communities formal title to their lands, community members have been able to leverage their new community by-laws and maps to protect their lands.

One example of a community's successful efforts to hold their leaders to account occurred in the Liberian community of Duah. Despite having gone through the CLPP process, Duah's traditional leaders unilaterally signed away an

area larger than Duah's total territory to an investor without consulting the community – even though full community consultation in any land deal was clearly stipulated in the community's new by-laws.

Community members stood up to voice their concerns about the potential impacts of the agreement. Despite strong taboos against challenging traditional authorities, individuals questioned the elders, asking them why the community had not been consulted. As a result of this community opposition, Duah's elders travelled to Monrovia to meet with the investor and cancel the deal. They also agreed to respect their community's by-laws and to ensure full community involvement in all future discussions with potential investors. While the Duah community is not against investment, community members showed that they would only welcome investment when they are fully involved in the negotiation process.

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The FAO paralegal and local government legal empowerment programme in Mozambique

By **Christopher Tanner**, Mokoro, and **Marianna Bicchieri**, Regional Land Tenure Officer, FAO



Mozambique is well known for its 1997 Land Law, which recognises customary land rights within a unifying legal framework that also governs private sector land rights. The management of customary land rights is achieved primarily through the Local Community, a territorial entity defined in terms of how groups of villages collectively use land, share resources, and work and live together. The idea is not to protect people in ways that keep investors off local land, but to promote agrarian transformation in a negotiated and inclusive way. Investors who seek land must consult with communities and reach an agreement with them, including on economic and social benefits.

Doing this in practice has been difficult, partly because government officials at the local and national level do not always understand the law and how to use it. Telling local people about their rights is one thing; getting 'frontline' local government officers to apply the law correctly is often a much bigger challenge.

Between 2006 and 2014, the United Nations Food and Agriculture Organization (FAO), with Dutch and Norwegian funds, supported a legal empowerment programme developed and implemented by the Centre of Legal and Judicial Training (CFJJ) of Mozambique's Justice Ministry. The 'twin-track'

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approach provided legal support to communities through paralegals who could advise and support them in their dealings with the state and investors; and legal and civic training

for local government officers. The focus for each was the same: how to use legal rights and instruments to promote participatory, inclusive development.

Over nearly eight years, the programme trained about 900 NGO and community activists as paralegals (40 percent of whom were women); and a total of 443 district-level government staff, including district administrators, land managers, judges and police chiefs (22 per cent of whom were women). The programme also trained 311 provincial and central level officers in sectors dealing with land, the environment, rural development, and private investment.

Today, the figure of the paralegal is well known at the community level, and is routinely used as a resource to resolve conflicts and support new development initiatives, by NGOs and local governments alike. The impact of government training is also clear, with staff who have taken part gaining a far stronger understanding of how to use the Land Law. Almost 20 years after the law was passed, much remains to be done. But the methodology developed at the CFJJ has proved itself as a model worth considering in efforts to promote the implementation of progressive legislation.

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Proximity support to remote rural communities in Cameroon: the experience of Junior Lawyers

By **Téodyl Nkuintchua**, Programme Coordinator, and **Apollin Koagne**, Central Africa Coordinator of “Greening the Human Rights” Initiative, **CED**

In Cameroon, the rise of large-scale land-based investments has exposed the weaknesses of the accountability mechanisms that are meant to protect the land rights of affected communities. Decisions on land allocation are often made without adequate local consultation or appropriate compensation, and communities often struggle to know who to hold to account. Barriers to accountability include not only objective constraints determined by law and socio-economic realities, but also local perceptions about distant and inaccessible decision-making fora. Little support is available for rural people to overcome these constraints or change their perceptions. At the same time, law schools are producing new graduates eager to gain experience and put their legal expertise to fruitful use.

The Junior Lawyer Initiative, implemented by the Yaoundé-based **Centre pour l'Environnement et le Développement** (CED), aims to fill this gap. Recent graduates, known as junior lawyers (*jeunes juristes*), are seconded to the field to assist rural people or grassroots organisations for six to twelve months. CED trains

the junior lawyers, who are hosted by a grassroots-based organization, and provides them with ongoing technical support. The junior lawyers act as a first port of call for advice to villagers and local advocates, and discuss more difficult cases with CED's more senior lawyers.

The initiative is now on its third 12-month round and has so far deployed 12 junior lawyers to support more than 20 communities across Cameroon. Achievements include:

- Enabling the voiceless to speak out: junior lawyers have enabled the Bandevouri community in the Southern region and eight communities in South-West region to be invited to the negotiating table for agro-industrial projects. They now have space and better capacities to set their terms;
- Enabling greater official responsibility: after discussions with junior lawyers, key administration officers in the South-West and South regions committed to support communities in documenting their rights in existing land allocations,

and to *de facto* recognise when an initial allocation had been misconducted;

- Protecting environmental rights defenders: in North-West region, community rights defenders targeted by the Cameroonian elite are currently receiving support from junior lawyers;
- Strengthening the capacity of grassroots organisations by very simple actions such as making relevant legislation available, providing explanation on such legislation, or acting as staff for the organisations;

These achievements stem from the initiative's emphasis on building strong networks between affected communities, local to national organisations, and decision-makers. By operating at the interface between these different stakeholders, junior lawyers facilitate a collective process of problem-solving and help share the solutions more widely.

For more information see <http://pubs.iied.org/12588IIED>
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Open Data Myanmar: providing legal services to communities affected by land disputes

By **Catriona Knapman**, independent Research Consultant, and **Wai Wai Lwin**, Executive Director, ODM



Conflict over land is a key concern in Myanmar. Land governance bears the mark of past injustices, and as the country opens up to new investments in its farmland and natural resources, changes are putting the livelihoods and land of smallholder farmers at risk. Historically, there has been a lack of transparency and data sharing in Myanmar, including on land governance. While this trend is beginning to change, the implications are still being felt: a lack of data sharing between government departments leads to confusion around land management and a serious lack of transparency. There is still no accurate record of land allocations to investors or of existing land conflicts.

It was against this backdrop that in 2015 **Open Data Myanmar** (ODM), a national civil society organisation, was established to develop an online source of independent, verified data on land conflicts from across the country. ODM focuses

on documenting conflicts between individuals and companies or government actors, presenting data in a way that can be used by civil society, members of parliament and policy makers. To do this, ODM plans to investigate and present patterns of contentious land deals across Myanmar, including data on conflict resolution.

Although primarily intended as an open source data platform,

ODM focuses on developing an online source of independent, verified data on land conflicts from across the country, presenting it in a way that can be used by civil society, members of parliament and policy makers.

ODM's work has evolved to include the provision of legal services to communities affected by land disputes. Demand for legal support emerged during ODM's fact finding work on land conflicts, when it became apparent that the fact finding created a space for dialogue between key stakeholders. ODM could help ensure that dialogue takes place, as well as addressing power imbalances so that it occurred on an equitable basis.

Two types of legal services are provided. First, ODM carries out a legal literacy training with the affected community. The training usually takes place over two days at times tailored to the availability of community members. It empowers participants by giving them the knowledge they need to engage with the authorities and the private sector. Participants also have opportunities to discuss key aspects of law and policy relevant to their situation.

Secondly, ODM facilitates access to *pro bono* lawyers where there is demand for it, covering transport and accommodation costs for them to assist communities. These lawyers write letters to relevant authorities and, where needed, they represent communities in mediation and even court cases. To date, legal services have been provided in all data collection sites, though ODM only offers this support where no other legal advisory services are available.

This experience shows that legal assistance and open data can be combined to empower communities at the grassroots. A number of disputes have been successfully settled through mediation, and the growing body of data gathered during this process is now being used to build an online database for national advocacy and campaigning.

For more information see <http://pubs.iied.org/17592IIED>
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Land Rights Monitors in Tanzania: how Hakiardhi is training elected villagers to become agents of change within their own community

By **Godfrey Eliseus Massay**, Programme Coordinator, Tanzania Natural Resource Forum

In Tanzania, land conflicts are becoming more frequent, including in connection with large-scale land acquisitions for agricultural investments. Several factors can make it difficult for villages to secure their rights, or seek redress when needed: a lack of awareness of laws, regulations and legal proceedings; a lack of monitoring and reporting of land rights violations; poor accountability mechanisms; and limited access to justice.

To address these challenges, **Hakiardhi** – a research and advocacy organisation working on land governance, based in Dar-es-Salaam – trained a 600-strong network of male and female ‘Land Rights Monitors’ (LRMs) operating in 300 villages across the country. LRMs are local people elected to support their community on land issues. They train and advise villagers and members of village-level land administration bodies on land

rights and governance issues. This includes land acquisition procedures, land use planning, and dispute settlement procedures. Examples of successful interventions by LRMs to assist communities affected by agricultural investments suggest that this approach holds considerable potential and replicability.

For more information see <http://pubs.iied.org/17587IIED>
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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.

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

