



Produced by LEGEND's Core Land Support Team

Issue 13: April 2019

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

Responsible investments: are new initiatives hinting towards a shift in practice?

Philippine Sutz, Senior Researcher, IIED, LEGEND Core Land Support Team

A growing number of businesses are committing to invest more responsibly and abide by international standards. Translating such commitments into tangible changes **remains challenging**. A variety of **guides** have been developed to help companies understand the steps they need to take to implement more socially responsible investments.

As highlighted in **LEGEND Bulletin 9**, doing this in practice requires expertise many companies do not have in-house. It also requires changes in organisational systems to identify and address land rights risks.

We are now ready to share more details on two new tools foreshadowed in previous bulletins and which aim to provide the private sector with technical support in navigating these issues. The **Social License Platform (SLP)**, developed

by Landesa and TMP Systems (TMP), aims to help companies identify the services and experts they need to help ensure their investments create positive outcomes for both businesses and communities. An online platform will connect companies with local service providers – such as consultancies and non-profits – who have the required expertise.

The **Tenure Risk Tool (TRT)**, developed by ODI and TMP, is the first online due diligence tool of its kind that helps investors quantify the previously intangible tenure risk in a simple and intuitive way. It is based on the size and geographical coordinates of a potential investment. By capturing the costs of 'doing it wrong', investors can now make a business case for implementing measures that mitigate such risks, through for

instance the use of local technical expertise provided by the SLP. The development of the SLP complements the TRT initiative by giving the private sector an incentive to 'do it right'.

The various initiatives presented in this issue remind us of how different actors can come together to promote adherence to international standards.

Meanwhile, a **new LEGEND report** identifies ways to strengthen the due diligence and operational systems that development finance institutions (DFIs) use to identify and address land issues. Because of their position between development and commercial worlds, DFIs can be a key player in efforts to align private sector conduct with international standards. Their influence is linked not only to the leverage they exert on the businesses they finance but also to the 'demonstration effect' their policies and practices have within the private sector at large. At the same time, land rights issues are often complex, and often one of the many pressing issues responsible lenders face. While governments are primarily responsible for addressing systemic land governance issues, the report identifies ways in which DFIs can strengthen their due diligence and operating systems.

These various initiatives remind us of how different actors can come together to promote



adherence to international standards – from analysts to lenders and service providers.

The rise of tools aimed at strengthening operating systems possibly hints towards a more operational approach to responsible investments from a growing number of investors. Ensuring that operational approaches are widely

adopted by all partners alongside the investment chain could contribute to systemic change. But we need to better track how many private sector actors actually use existing tools, how they use them and what difference the tools make to their operations. There is also the continuing challenge of reaching beyond the ‘usual suspects’ in the responsible investor

community and getting a wider range of businesses onboard. The LEGEND Core Land Support Team will be trying to do just that in the coming months as it draws out key lessons across its portfolio.

Contact Philippine Sutz
philippine.sutz@iied.org

The Social License Platform: connecting investors and service providers to facilitate responsible investments

Danielle Granatt, Attorney and Land Tenure Specialist, Landesa

Over the last year, **Landesa** and **TMP**, with support from DFID’s LEGEND programme, have co-developed a new online tool called the **Social License Platform** (SLP). The SLP is designed to support companies and investors that are investing in agricultural land (together, “businesses”) find the services and experts they need to help ensure investments create positive outcomes for both businesses and communities. Landesa and TMP will launch the SLP as a pilot in Tanzania in April 2019 to test the system before expanding to additional countries and becoming a global resource.

The SLP aims to propel the global effort to advance responsible investments in land a step further. While international standards and practical guidance on responsible investments are now abundant and an increasing number of businesses are committing to invest responsibly, commitments still struggle to translate from paper to practice. As a result, land investments in emerging markets often fail to deliver the social and economic benefits that they should.

Social license – ensuring that local communities and stakeholders have the confidence that a business will behave in a legitimate, transparent, accountable and socially acceptable way – often demands extensive knowledge of land and natural resources governance and of local

context. Consultations with over 50 businesses as part of the design and development of the SLP have affirmed that most do not have these required skills in-house, and they often struggle to identify and engage the right external experts.

The SLP is designed to fill this gap by connecting businesses with local service providers, such as consultancies, civil society organisations, local academics and professional bodies. These service providers have the knowledge to navigate the social and cultural

contexts for investments, often thanks to a detailed understanding of the history and community needs around land. Through these service providers, the SLP will offer services including, but not limited to, consultation with affected local people (including women), land rights mapping and entitlement, impact assessment, the establishment of dispute resolution mechanisms, legal and institutional analysis, and ongoing investment monitoring. Businesses will be much better placed to design and execute plans



to gain and maintain social license to operate, fulfill their commitments to international standards and best practices, and ultimately, make more successful and responsible investments with this kind of “localised” support.

While international standards and practical guidance on responsible investments are now abundant, commitments from businesses still struggle to translate from paper to practice.

The SLP will have a particular focus on building relationships between businesses and local civil society organisations, as the latter often hold the requisite knowledge of local context that others lack. Such knowledge is imperative in developing relationships built on

trust and ensuring local interests are recognised and enforced.

Landesa has seen first-hand the value of building such collaborative relationships through its work with Illovo Sugar Africa in Malawi, Mozambique and Tanzania as part of the LEGEND Challenge Fund (discussed in **LEGEND Bulletin 11**). Consultations with a diverse range of potential users confirmed the demand for such relationships while identifying some of the inherent barriers to these relationships. The SLP will seek to address these barriers by providing support to businesses in articulating their needs, offering mechanisms to create financial separation and maintain independence, making available processes that enable transparency, monitoring and accountability, and delivering capacity development for civil society organisations on how to develop proposals and deliver work products that meet private-sector expectations. These services are further illustrated in the graphics on

page 2, which outline the process of user engagement on the SLP.

For the initial launch, Landesa and TMP are in the process of identifying investment projects in Tanzania that are interested in using and testing the SLP, a process that will include helping businesses to articulate their service needs, matching each with a qualified service provider, supporting both parties to develop terms of engagement and work plans and supporting implementation of the project through monitoring and reporting through the SLP. This pilot experience will inform improvements to the SLP as Landesa and TMP expand the reach in Tanzania and into additional countries as part of a phased scaling approach over the coming years. Landesa and TMP expect to leverage existing networks and initiatives to support the global scaling process.

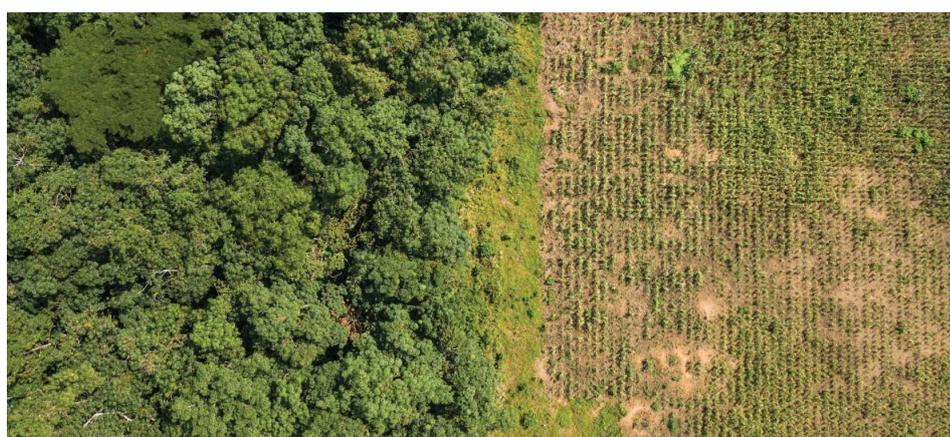
To learn more about this new tool or participate in the pilot, please contact Danielle Granatt dgranatt@landesa.org or Ben Bowie ben.bowie@tmpsystems.net.

The Tenure Risk Tool: helping investors quantify tenure risk and justify responsible investment

Joseph Feyertag, Research Fellow, ODI and LEGEND Core Land Support Team

Tenure insecurity poses risks for communities as well as investors. But there are many examples of responsible investment that have helped *strengthen* land rights such as AgDevCo and Agricane’s investment in the Phata sugar cooperative, featured in **LEGEND Bulletin 12**. However, too often companies do not have the processes and procedures in place to guarantee responsible land-based investment. Hundreds of recorded incidents of disputes over land or natural resource claims show that this risk remains endemic in emerging markets. This can result in companies suffering significant financial damages and rob communities of the developmental benefits of investment, including strengthened land rights.

To help companies justify due diligence practices that mitigate



these risks – including participatory mapping, or allowing local communities affected by investments to give or withhold consent to a project that affects their territories (Free Prior and Informed Consent, FPIC) –, ODI and TMP developed a due diligence tool called the ‘Tenure Risk Tool’ (TRT) with support from

DFID. The **tool is publicly available** and provides a quick and intuitive way of quantifying the financial impact of tenure risk on a project based on its size and geographical coordinates. Overall, the results from the model show that the costs of ‘doing it wrong’ are many times higher than those of ‘doing

it right', as the cost of mitigation measures rarely exceed 2% of the project's value.

Developing TRT

The tool was developed using real data from 90 case studies of tenure disputes in Africa. This data allows the model to assess the probability and duration of tenure disputes. The spectrum is wide, ranging from small disputes with individual farmers causing delays of 12-14 days during the implementation phase of an investment, to widespread violence leading to years of suspended operations and millions of dollars in foregone revenue.

Users can enter the geographical coordinates of their project, which informs the model of the distribution of delays in that region, based not only on delay data from tenure disputes but from wider regional-level risk factors as measured by **Landscape** (available soon), a risk assessment tool developed by TMP Systems. Users are also required to enter projected future cashflows and the assumed discount rate. The risk is quantified as the impact that delays have on foregone revenue.

What the model shows

We collected additional granular financial cashflow data after consulting 80 investors, producers,

traders and processors across the African agricultural supply chain. This cashflow data was used to verify the results from the model against the original case-studies. Examples reviewed included an investor who abandoned a USD 52 million USD (around GBP 39 million) sugar cane investment in Tanzania. The investment had lost support from local communities and a subsequent lawsuit filed against the company caused severe delays during implementation.

The model shows that the cost of tenure risk can be as high as USD 101 million for commodities and locations particularly susceptible to conflicts over land.

We entered real financial cashflow data into the model and assessed the results across a range of scenarios that varied by commodity, scale and location. The testing revealed startling figures, even higher than those observed in our case studies: the cost of tenure risk can be as high as USD 101 million (around GBP 76 million) for commodities and locations particularly susceptible to

conflicts over land. These included West African palm oil and East African sugar cane due to the high upfront costs associated with these crops' intensification. However, even small-scale crops such as cocoa or rice face risk exposure many times the original value of the investment.

What next?

The tool clearly shows that tenure risk should be included in the calculus of any investment in African agriculture. These risks are not only here to stay, they will intensify in emerging markets as competition for resource rights intensifies. Companies can now use TRT to quantify their exposure to tenure risk, enabling them to justify investments in improved due diligence, including local engagement processes or land mapping. But there is more that needs to be done to help companies introduce the right mitigation measures, for instance by connecting investors with local services using Landesa/TMP's Social License Platform. It is also evident that tenure risk threatens investment in sectors and geographies outside African agriculture, including mining, infrastructure and renewable energy.

Contact Joe Feyertag j.feyertag@odi.org.uk
For more information on Landscape, contact Ben Bowie ben.bowie@tmpsystems.net

Are DFIs equipped to address land rights issues? A new LEGEND report explores

Lorenzo Cotula, Principal Researcher, IIED and LEGEND Core Land Support Team, and **Thierry Berger**, IIED Associate

Development finance institutions (DFIs) play an increasingly prominent role in the international aid architecture. Because of their position between development and commercial worlds, DFIs can be a key player in efforts to align private sector conduct with international norms and standards. A new **LEGEND report** assesses whether the policies and practices that European and North American bilateral DFIs apply in environmental and social (ES) matters adequately address land rights issues; and what

areas, if any, present opportunities for improvement.

The IFC Performance Standards and the VGGT

As DFIs' ES systems rely heavily on the **Performance Standards of the International Finance Corporation** (IFC-PS), the report compares the IFC-PS to the **Voluntary Guidelines on Responsible Governance of Tenure** (VGGT) – the key global instrument on land governance. It finds that the IFC-PS and the VGGT present significant convergence,

but they also take different entry points and approaches. While the IFC-PS focus on addressing project-specific impacts, the VGGT take a more systemic perspective to strengthening land rights and addressing the cumulative impacts of multiple forms of land use.

More than the IFC-PS, the VGGT emphasise rights language throughout and reiterate the underlying human rights obligations of states and responsibilities of businesses. Further, the IFC-PS primarily reflect a 'do no harm' approach, while the VGGT call for 'smallholder-sensitive investments'

that positively contribute to policy objectives, such as poverty reduction, food security and rural development.

Some such differences reflect the different nature of the two instruments, with the IFC-PS being designed for operational use in commercial investments, and the VGGT primarily to improve land and resource governance. But the differences also raise questions as to whether prevailing ES standards fully reflect the latest thinking and policy consensus on land rights. Some DFIs have expressed support for the VGGT and developed guidance to address land rights issues that are covered by the VGGT but not the IFC-PS.

Land rights in operational systems

The report also finds that DFI awareness and practices concerning land rights have significantly improved over time. The DFIs that participated in the research have developed, and improved over the years, sophisticated ES systems that cover land rights issues. They also host growing ES teams of dedicated staff that are integrated into investment decision making.

These advances have been made despite the challenging situation DFIs have been operating in. DFI ES teams must deal with several difficult issues, besides land rights. The international pool of land governance experts available to DFIs is relatively small. Several governments are encouraging their DFIs to work in more difficult environments – including fragile states and post-conflict situations – where land challenges are even more acute. Prospective clients often approach DFIs after key project parameters

have been established; and although DFIs can, and often do, seek changes to align ES systems with their institutional policies, they are rarely able to start with a clean slate.

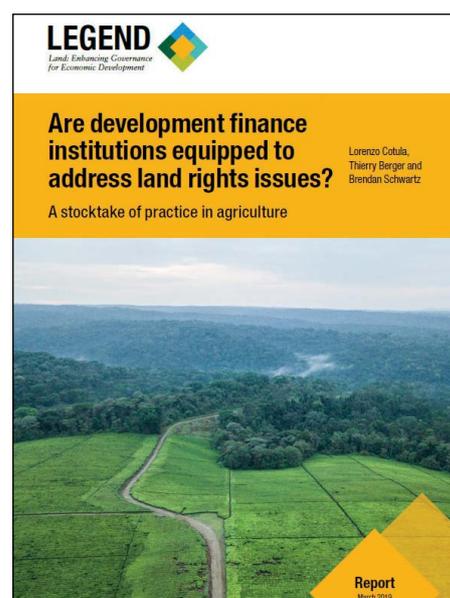
Areas for improving DFI policies and practices

While these advances and constraints need to be acknowledged, the report identifies a strong case for DFIs to invest in further improving their policies and practices related to land rights, and to play an even more proactive role in improving private sector conduct in this area. There is also a compelling case for governments and donors to invest in strengthening land governance in more systemic terms.

If not properly addressed, land rights issues can expose people affected by DFI-financed activities to severe negative impacts and human rights violations. They can also expose DFIs and their clients to reputational and operational risks.

As different DFIs follow somewhat different approaches, opportunities for improvement vary – but in general terms, they include issues such as:

- Increasing opportunities for public input into, and scrutiny of, due diligence processes, including by the people who stand to be most directly affected by the proposed projects;
- Aligning due diligence with the fuller spectrum of land rights issues covered in the VGGT;
- Developing approaches to assess, and where relevant promote improvement of any partnerships which clients establish with land rights holders;



- Creating arrangements to finance independent technical, legal and other capacity support for affected people in their relations with DFI clients;
- Strengthening arrangements to review the contracts project developers may have signed with the host government or other parties, and ensuring that land rights issues and wider ES issues are fully integrated into the DFIs' contracting arrangements;
- Disclosing project contracts;
- Taking systematic action to ensure land rights defenders are not at risk, including by assessing and monitoring risks and developing rapid response systems;
- Supporting independent third-party compliance monitoring and more effective and accessible grievance mechanisms.

Contact Lorenzo Cotula
lorenzo.cotula@iied.org and
 Thierry Berger thierry.berger@iied.org

Photo captions and credits:

Page 1: A rice farmer talking with an agriculture supervisor, southern Mozambique. Credit: CIF Action, Creative Commons via Flickr
 Page 3: Maize near Yangambi, DRC, 2018. Credit: Axel Fassio/CIFOR, Creative Commons via Flickr

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

