

Advisory Series
Lessons from CAO Cases:

LAND



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Advisory Paper

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The Office of the Compliance Advisor Ombudsman (CAO)
2121 Pennsylvania Avenue, NW
Washington, DC 20433 USA
Telephone: + 1 202 458 1973
Website: www.cao-ombudsman.org
e-mail: cao@worldbankgroup.org

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The Office of the Compliance Advisor Ombudsman
2121 Pennsylvania Avenue NW
Washington, DC 20433 USA
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Abstract

Against a backdrop of private sector investment in developing countries, companies and local communities typically face difficult land rights and land use contexts. It is therefore critical that communities, companies, and development practitioners develop and use constructive tools to help manage challenging relationships and circumstances. This Advisory Paper summarizes some insights that the Compliance Advisor Ombudsman (CAO) has gained from its experiences with communities and companies in the arena of land, private sector development, and conflict. Specifically, this Advisory Paper highlights recurring challenges faced by the communities and companies CAO has worked with—including competing community perspectives on private sector projects; competing national and local land tenure systems and development priorities; histories of land conflict; and information imbalances between companies and local communities—as well as competing development perspectives. It then focuses on some of the tools CAO has used to help address these challenges, including the use of third-party neutrals; participatory monitoring and project evaluation; company/community collaboration and land management; and strengthening grievance and redress systems.

This paper was originally prepared as a submission for the 2014 World Bank Group Land and Poverty Conference. It has been revised as an Advisory Paper to articulate the issues and challenges raised by complainants related to land, and to highlight some of the practical tools CAO has used to assist communities and companies in managing these challenges.



A Complex Set of Pressures on Land

Both human and environmental pressures on land and natural resources in developing countries are increasing in the face of global population growth and the mounting effects of climate change. Within the private sector, investments in resource-intensive sectors such as agribusiness and extractive industries continue to grow. Meanwhile, the range of local, national, and international interests related to large-scale, resource-based investments has also expanded rapidly as international and domestic development priorities reflect concerns over global resources and food security (World Bank 2011). Resource-intensive private sector investments often require large areas of land, creating competition with local communities and other land users. Such competition can lead to conflict.

Participatory land mapping, Indonesia (CAO).



With this global context, land-related issues continue to be a major focus of the international development community, particularly how to ensure that private sector investments create local benefits and promote sustainable resource management. The Office of the Compliance Advisor Ombudsman (CAO), as the independent accountability mechanism for the private sector arms of the World Bank Group—the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA)—helps address community grievances and disputes about environmental and social project impacts. Through its work, CAO engages frequently with land-related issues between communities and companies and from a third-party perspective. This creates a unique space where challenges can be addressed.

Concerns raised by locally-affected communities often focus on the extent to which people are benefiting from private sector development projects, and how these projects impact their livelihoods, local environment, and social fabric. Communities typically have little bargaining power in the negotiation, planning, and implementation of projects, even in circumstances where development finance institutions are involved. CAO's work with communities and companies has demonstrated a need to understand the impacts of private sector investments in land from the community perspective: in particular, to recognize the challenges that communities face in managing relationships with private sector entities where development projects affect access to and control of land, and what approaches can be used to help mitigate these challenges. Engaging with these issues is particularly critical in the context of development finance institutions like IFC/MIGA, which strive for positive development impacts through private sector investment.

The World Bank Group¹ has set out two ambitious goals for the next 15 years: ending extreme poverty and boosting shared prosperity (World Bank 2013b). The important role that the private sector plays in achieving these goals has been highlighted in a number of ways. The World Bank Group has articulated the need to work with governments, the private sector, and civil society to take on transformative projects that can help the poor lift themselves out of poverty (World Bank 2013a). Specifically, in relation to IFC/MIGA, whose roles are growing in significance, the World Bank Group is focused on attracting more private sector investment to developing countries (World Bank 2013b). Moreover, IFC's role has been emphasized because its “strong track record in environmental and social risk management has made it a partner of choice” (World Bank 2013b).

¹ The World Bank Group is made up of five institutions managed by their member countries: the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA), and International Centre for Settlement of Investment Disputes (ICSID).

IFC's growing role as part of the World Bank Group's long-term strategy, and as a partner for private sector companies in developing countries, means that it has an influential role to play in catalyzing the types of investments that can generate local benefits and promote sustainable resource management. IFC's Sustainability Framework should be an important part of achieving these positive development outcomes.² The Sustainability Framework offers both IFC/MIGA and its private sector clients the opportunity to engage with local communities, develop environmental and social management systems, and promote the kind of participation that can enable project benefits to reach the most vulnerable portions of the population. Importantly, it offers the tools for companies to manage environmental and social risks and protect communities from harm. However, the potential for conflict at the project level increases in instances where gaps exist between policies and implementation, when consultation with local communities is seen to be inadequate, or when company and community strategies to mitigate adverse impacts diverge.

As an independent accountability mechanism, CAO seeks to engage with communities and companies to help them manage conflict and find ways of improving project outcomes on the ground. In its compliance work, CAO assesses the application of how well IFC/MIGA has/have applied policies, procedures, and standards in relation to environmental and social issues raised in complaints. In its dispute resolution role, CAO works directly with companies and affected communities to address issues of concern at the project level. Since 2000, CAO has handled over 150 cases. While these represent only a fraction of the IFC and MIGA portfolios, CAO's annual caseload has grown and the complexity of cases has increased in recent years.³ Of the over 150 cases CAO has handled, just over half have raised issues related to land, including land acquisition, land compensation, resettlement, land management, land contamination, and land productivity.

CAO's understanding of land and private sector investment reflects the perspectives of communities and the challenges they face. When thinking about how communities can benefit from private sector land investments, CAO's caseload suggests that even within the context of institutions like IFC/MIGA, which are recognized for their best practice environmental and social standards, communities are rarely brought to the negotiating table; much less are they in a position in which they can leverage positive outcomes. Even where communities are consulted about project impacts, they still face challenges engaging with private sector companies from a position of relatively

² These standards apply to investments financed directly by IFC; investments implemented through financial intermediaries or managed by IFC's Asset Management Company or any other IFC subsidiary, as well as investments funded in part or in whole by donors; and IFC's Advisory Services.

³ CAO measures complexity of cases with the following proxies: number of stakeholders involved, number and complexity of issues raised, government participation, and capacity-building requirements. The annual caseload has grown from 3 cases in 2002 to 54 cases in 2014.

little power. Furthermore, many communities face challenges related to land that predate the private sector investment such as historical land conflict, or competing local and national frameworks on land tenure, land use, and development. In short, communities typically face difficult land rights and land use contexts with minimal capacity and resources.

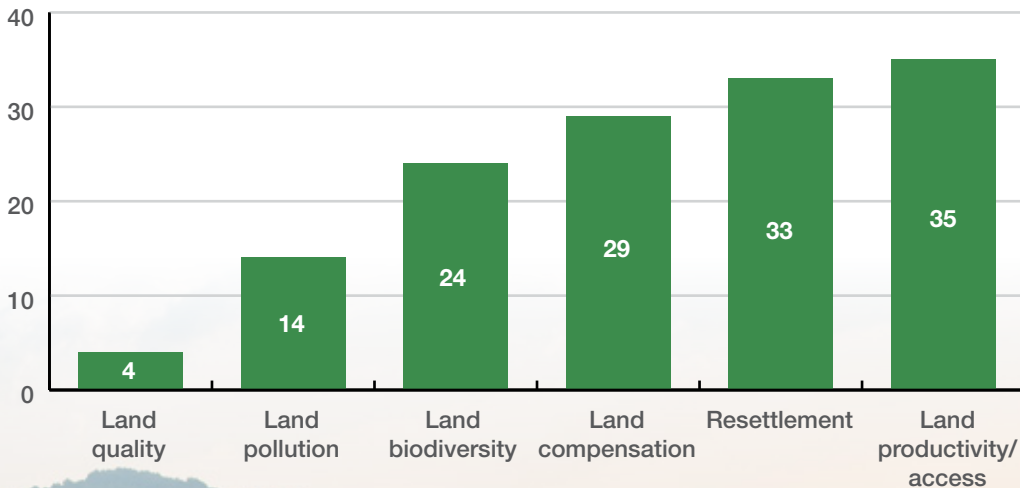
This Advisory Paper summarizes some insights CAO has gained from its experiences with communities and companies in the arena of land, resource management, and conflict. It touches upon recurring challenges faced by the companies and communities CAO has worked with, and focuses on some of the tools CAO has used to help them address these challenges. Given that CAO casework is driven by complaints received from communities, lessons on challenges and tools should be understood from that standpoint. CAO recognizes that there is a great deal of work that has been done on the subject of land and investment from other perspectives, particularly in relation to local and national land tenure systems. However, the challenges and tools outlined in this Advisory Paper are meant to serve as a guide for those seeking to improve resource management and enhance project benefits at the local level.

An Overview of CAO Land Cases

CAO caseload data illustrates that impacts on land have the potential to touch multiple aspects of life for communities. For example, in cases that raise issues around health, communities are often concerned about the impact of land degradation on increasing the opportunity for disease vectors (such as mosquito breeding grounds). Issues around land productivity and access are often linked to concerns about the capacity to use land to generate income either through subsistence farming or other forms of income-generating activities. Complaints that raise issues around land pollution and biodiversity speak about not only related to localized pollution, but also to the long-term impacts to ecosystems.

From health to livelihoods to the environment, land has both practical and cultural significance in the lives of many individuals and communities. As such, when private sector projects have negative impacts on land, they have the potential to impact every aspect of community life. In order to avoid and mitigate many of the issues that have been raised in CAO land cases, it is critical that the challenges surrounding land-intensive projects are not overlooked. The following sections illustrate some of the main challenges related to land emerging from CAO cases, and help to highlight issues that should be at the forefront of the planning and implementation of projects with a sensitive or substantial land component.

Figure 1. Land-related Claims in CAO Complaints



A total of 76 complaints have raised land-related claims, which amounts to 52 percent of all eligible complaints from 2000 to 2014.

Challenges

Recurring themes emerge in CAO land cases that characterize the types of challenges faced by project-affected communities. These themes—including information imbalances, a history of conflict, and competing local and national priorities—cut across the many unique regional and country-specific contexts.

New house being constructed by community member on land acquired as a result of CAO mediation process, Uganda (Felix Davey/CAO).



Challenge 1. Competing national and local land tenure systems and development priorities

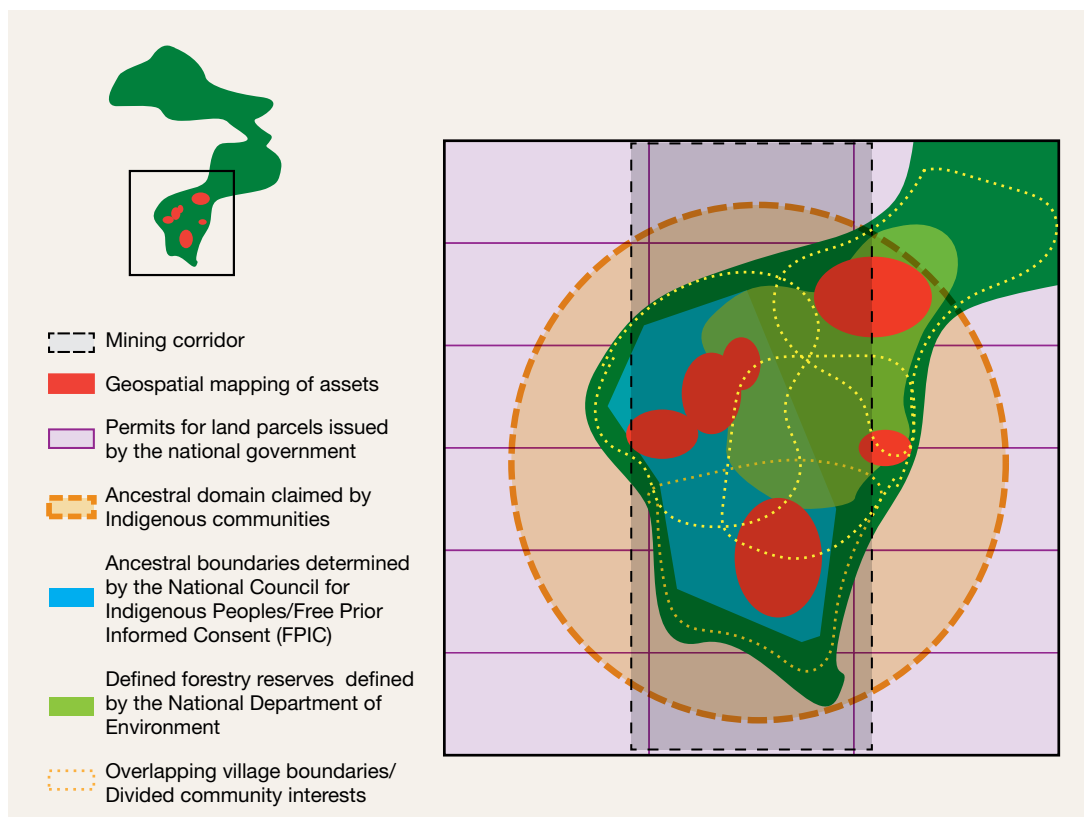
There is a considerable body of work and literature on the challenges of competing national and local land tenure systems. Whether working at cross purposes or simply faced with inadequate implementation regimes, government and community land tenure systems can be a source of friction in private sector investment projects.⁴ National agendas tend to focus on macro-level benefits that may accrue as a result of private sector investment, while local communities seek practical benefits that enhance their livelihood needs.

In CAO cases, these competing land tenure systems and development priorities have had a range of negative or unanticipated outcomes, with implications for communities, companies, and government entities. For example, in the Philippines the courts ruled in favor of expropriating land for a hydroelectric power plant despite claims by indigenous communities of communal rights to the land (see Case Study 1). This type of scenario can result in large-scale resettlement of populations, further complicated by inadequate consultation about the resettlement process or compensation claims that may go unaddressed. This was the case in the Philippines, where competing land claims remained unresolved for nearly 60 years before CAO received a request for assistance from affected community members. In other cases, CAO has seen how the overlay of national and customary laws can cause confusion, with land access and use rights being granted under one system or government agency, and denied under another. The situation is further compounded by inconsistencies in how customary rights are recognized by governments. This creates uncertainty not only for companies that are unable to navigate these complexities, but also for community members whose land title can be overruled by more powerful national systems.

In many of the most challenging land cases CAO has dealt with, issues related to communal land rights and resettlement have been a source of disputes between communities and companies (see Map 1). Resettlement has been raised as a concern in 23 percent of CAO's total caseload; of these cases, 69 percent claim that resettlement was involuntary, and 48 percent raise concerns about the inadequacy of the resettlement process. When communities are resettled, their livelihoods disrupted, and their ties severed from the important cultural and economic resource of land, they are left in vulnerable situations, which can create conditions for conflict. When communities also operate in contexts where there is no trusted or accessible system to address their concerns, there is little power they can leverage and few avenues they can pursue to address the challenges related to competing land tenure systems.

⁴ A Google Scholar search using the key words "competing land tenure" received 158,000 hits in 0.09 seconds. A Google Scholar search using the key words "land tenure conflict" received 230,000 hits in 0.07 seconds. Some useful resources include Feder and Feeny 1991; Banerjee and Iyer 2002; and FAO 2012.

Map 1. Overlapping Land Use Boundaries Reflecting Local, Regional, and National Priorities



Note: The boundaries in this diagram depict a fictional scenario based on a CAO case.

Challenge 2. A history of land conflict

In about 20 percent of CAO cases involving land disputes, even before private sector investment occurred, there was a history of land conflict associated with the area of project development. Longstanding issues include historically unresolved land claims, displacement, involuntary resettlement, and lack of adequate compensation for land. Prior disputes may have occurred within communities, between communities and companies, and between communities and the national government.

CAO's work with regard to IFC's investment in Honduras in Corporación Dinant demonstrates how long-running grievances over land can impact a private sector project and the communities around it. IFC made an investment in agribusiness in a region of

Honduras where there was a history of conflict over land involving large landholders, affiliates of former peasant cooperatives, and Indigenous groups. The sources of this conflict date back decades, but the conflict escalated and became violent in late 2009, after affiliates of former peasant cooperatives initiated a series of large-scale occupations of oil palm plantations operated by the IFC client.⁵

The land legacy issues highlighted by the Dinant case are not atypical in CAO's experience. In a CAO case in the Philippines regarding the Ambuklao-Binga hydroelectric project (Case Study 1), unresolved land claims related to Indigenous communities had been the source of tension in the region for over 60 years following expropriation of land by the government. These issues reemerged after IFC partnered with a local developer to privatize and rehabilitate the hydroelectric facility. These issues were raised by communities in a complaint filed with CAO in 2008.

These cases show how a history of land conflict can be reignited or intensified by the new pressure that private sector development brings. A failure to recognize how community livelihoods are impacted in the context of long-standing land disputes may result in any positive impacts generated by the project being dwarfed by the conflict it sparks.

Challenge 3. Information imbalances and competing development perspectives between the private sector and community

Close to 50 percent of CAO land cases cite lack of adequate information disclosure,⁶ and over 60 percent raise issues around consultation with affected communities.⁷ IFC's Sustainability Framework underscores the importance not only of disclosing information to communities but also of carrying out the appropriate consultation and risk assessments (IFC 2012b, 16, 18, 22). The Framework states that effective consultation "helps Affected Communities and other stakeholders understand the risks, impacts and opportunities of the project" (IFC 2012b, 18). While complaints to CAO often do not distinguish between the roles and responsibilities of IFC/MIGA and its clients, CAO's experience suggests that, at best, communities may feel these processes are lacking due to poor communication on the part of the project operator, or IFC/MIGA, or both. At worst, lack of readily accessible project information and partial or limited company disclosure and consultation create distrust among affected communities about the company's credibility and commitment to identify, mitigate, and manage impacts.

⁵ CAO Audit of IFC Investment in Corporacion Dinant, December 20, 2013. <<http://www.cao-ombudsman.org/cases/document-links/links-188.aspx>>

⁶ These figures are based on CAO's caseload for FY 2014. Requirements for information disclosure are outlined in IFC's Access to Information Policy (IFC 2012c). These figures are based on CAO's caseload for FY 2014.

⁷ These figures are based on CAO's caseload for FY 2014. Requirements for due diligence are outlined in IFC's Policy and Performance Standards on Environmental and Social Sustainability (IFC 2012a, 2012b).

During the development of the Chad-Cameroon oil pipeline, for example, complainants pointed to imbalances in information and differing understanding of project impacts between the Cameroonian project sponsor and affected communities. Despite the establishment of a local mechanism designed to address community concerns, communities noted that they were unclear about company measures to mitigate and address project impacts. From the complainants' viewpoint, there was also a lack of clarity by the company about the extent of environmental and social impacts on local communities.

Such information imbalances and consultation shortcomings generate tensions between private sector operators and communities. Particularly with regard to risk management and environmental and social impact assessments, community perspectives about project impacts may not always be adequately reflected, which may lead to unresolved concerns and unmet expectations. These sorts of concerns may be more pronounced with Indigenous communities, where impact assessments are “generally undertaken by proponents or their consultants and fail to focus on Indigenous peoples and issues of importance to them; adopt methodologies that are inappropriate and ineffective in the Indigenous context; and are embedded in value systems and world views that devalue Indigenous knowledge and understandings of project effects” (O’Faircheallaigh 2013, 3). As a result, communities and companies may speak at cross purposes, with companies believing they have adequately captured the scope of project impacts on land, and communities feeling that their issues have not been adequately addressed—which further contributes to a cycle of conflict and distrust.

These differing perspectives on project impacts, mitigation measures, and development outcomes are exacerbated by information and power imbalances between the company and community. Largely left out of a project’s technical evaluations, communities are often poorly informed about the operational impacts of a project on their land, or how the company plans to mitigate any negative outcomes. Given the fact that information sharing, consultation, and impact assessment are often the first experiences that a company and community have with each other during the project’s development, failure to handle these interactions well can create significant barriers to developing the trust that is required for companies and communities to address other challenges associated with complex land issues arising from private sector investment.

Challenge 4. Competing community perspectives about private sector projects

In CAO's experience, communities are not always homogeneous, and neither are their views about private sector investment and local development. Differences may stem from uncertainties about whether projects will have a positive or negative impact overall; whether the expected project benefits will be shared equitably throughout the communities; and whether certain community members will benefit more, or be impacted more, than others. In relation to land, divergent views may arise with regard to the allocation and use of land for these projects, or around perceived project impacts to land, natural resources, or ecosystems at large. For example, land pollution, biodiversity, and land access or productivity have been raised frequently as issues in land-related complaints. Differences may also stem from divergences between legal and customary land rights. If community representatives are required to engage with government and private sector agents regarding the project, some community members may question the legitimacy of these representatives to act in the best interests of the whole community.

Such competing perspectives are illustrated in another case from the Philippines, where CAO received a complaint in 2011 from two Indigenous communities belonging to the ethno-linguistic group of Mamanwas in northern Mindanao. The complaint related to the social and environmental impacts of mining exploration on communities living in the vicinity of the project, and the impacts on an ancestral domain. Some community members who were not part of the complainant group did not share concerns about negative impacts to land and the environment, and were focused on the anticipated economic and social benefits of the project. The company, meanwhile, believed that the majority of people in both communities supported their presence and viewed the complainant group as the minority voice.

As this example illustrates, it is important to recognize that community perspectives on land and development are not always cohesive, and to understand how differing understandings of impacts and benefits, and differences in representation and voice, can influence the way that communities respond to land-related investments. Depending on a company's capacity to manage these cleavages, the outcomes can vary greatly. In some instances, the company or community may be unwilling to engage at all, while in other instances, the company might work with those factions in the community that favor the proposed investment. Companies that engage with communities in spite of such divisions, however, may not be able to gain support and consensus in the long term, as conflict builds between factions that see the benefit and rewards of investment, and others that remain wary of the negative impacts. These scenarios may deepen rifts that exist in communities and exacerbate challenging land dynamics.

Tools

Faced with a variety of challenges, communities often have few tools at their disposal to help them engage with the company in a constructive and meaningful way. This is the arena in which CAO does its work—when many of the other channels for remedy and redress have not met with success, or are not sufficiently developed and trusted. In the space CAO occupies, conflict is often already entrenched before communities seek intervention.

Through its work, CAO has developed and employed a number of tools to engage with communities and companies about land complaints. These tools have the potential to help put these parties on a more level footing in order to address issues related to project impacts and benefits, and thereby transform difficult relationships on the ground.

CAO team assessing complaint related to an oil pipeline in Cameroon (CAO).



Not all dispute resolution tools can be used in all circumstances. Deciding which tools might be effective depends on the context of the case and the willingness of the parties to engage with one another in good faith.

As the accountability mechanism for IFC and MIGA, CAO has the ability to engage with communities and companies from a third-party perspective. This creates a unique space where challenges can be addressed. The importance of neutral third parties in the community-company relationship is discussed below.

If voluntarily requested to do so by the parties, CAO engages with the issues raised by communities in an effort to offer remedy and redress. The focus is primarily on creating a space for dialogue in order to develop creative tools and strategies with local communities and private sector clients to address these challenges, even amidst difficult local, national, and international landscapes. These tools are discussed below. The tools and approaches that CAO has found helpful in addressing land disputes are grounded in practical solutions developed at the grassroots level. They are flexible, and should be adapted to the context and capacity of different parties, including communities, the company/companies, government, and other relevant stakeholders (see Box 1). Together, these tools offer insight into success factors that can help address challenging and often deeply entrenched issues related to land.

Building capacity for effective engagement

Capacity building has been employed, in some form, in all of CAO's land-related dispute resolution processes. Capacity building is a broad term, but from CAO's perspective, it involves providing training in practical skills aimed at ensuring that key parties—both communities and companies—understand the dispute resolution process and are able to participate effectively and confidently in it.

Both the community and the company should benefit from capacity building. The assumption is often made that only communities lack the capacity to engage around and address challenging issues associated with land. While it is true that communities can benefit from specific skills training to articulate and represent their interests confidently in relation to project impacts and benefits, in CAO's experience, company staff can also benefit from capacity building to improve their understanding of how to engage in a mediated process.

CAO has engaged in many different forms of capacity building with parties to a conflict. Specific capacity building needs are very much a function of the relative strengths of each party and the context in which they are operating. The discussion that follows highlights different examples of capacity building that can be conducted in the case of land disputes. It is important to understand that capacity building is a necessary component for each of the tools that will be discussed. Without capacity building at multiple levels, it is unlikely that parties will be able to overcome the significant hurdles to the resolution of disputed issues in the context of a land dispute.

Tool 1. Conflict assessment

Assessing, understanding, and mapping conflict is an important tool in dispute resolution and a fundamental part of CAO processes. Conflict assessments help facilitate a deeper understanding of the issues and dynamics that lie at the heart of a dispute, and allow for insights into the opportunities for resolution. Though there are many different approaches to conflict assessments, CAO follows a specific methodology in its assessment process with the goal of clarifying the issues and concerns raised by the individuals and/or communities that filed a complaint; gathering information about how different stakeholders see these issues; and helping the parties understand the different options available to them through CAO's Dispute Resolution and Compliance functions (see Box 2). This process is carried out in all CAO cases, not just those that involve land, and is a critical step in the process that forms the foundation of CAO's work.

An initial information-gathering stage allows CAO to map the main stakeholders, issues, and interests related to the complaint and to review any relevant documentation related to the project, including IFC/MIGA documentation and information submitted by the parties. Information gathered by CAO during the course of an assessment is in no way used to make judgments about the merits of the case or the issues that it raises, but helps to ensure that CAO is well informed about the issues, the project, and the context in which the dispute is taking place.

Preliminary interviews and discussions with IFC/MIGA project staff, the company, and the individuals and/or communities that filed a complaint provide CAO with a further opportunity to understand major issues from the viewpoint of the primary parties involved. These interviews also allow CAO to identify other relevant parties or stakeholders that may need to be considered during the assessment process. These may include, for example, government representatives, civil society actors, NGOs, private sector partners, or other affected communities.

Box 1. The Role of Government in CAO Land Cases

Although CAO's primary interaction is with communities and IFC clients, government is often an important stakeholder, directly or indirectly, as well. This is particularly true in cases related to land, where there may be a conflict between different land rights frameworks and approaches to land ownership and management.

The extent to which government entities—whether at the local, subnational, or national levels—are involved in CAO dispute resolution processes varies greatly, and may include their role as participants, observers, or endorsers of agreements. In some instances, government has played an active role as a direct stakeholder in a dispute resolution process. In Indonesia, for example, affected communities and the company—a subsidiary of Wilmar Group, an IFC client—agreed at the outset that CAO would work closely with government toward a mediated solution to concerns over the destruction and clearance of community lands. The dispute resolution process was guided by a Joint Mediation Team composed of CAO mediators and local government officials, and was supported by an Official Decree of the Governor of Jambi Province in Sumatra (see Case Study 2).

In Uganda, CAO has facilitated two dispute resolution processes related to land evictions around timber plantations managed by New Forests Company, the investee of an IFC-supported private equity fund. The issues in the dispute highlight some of the challenges resulting from allocation of land by government to private sector investors. The government has shown support for the CAO mediation at different points throughout the process. For example, district-level government officials observed and endorsed the first Annual General Meetings of community cooperatives, which were established to help affected communities manage financial and other development support they received as a result of agreements with the company (see Case Study 3).

In other instances, government has been involved in supporting the implementation of agreements and monitoring of outcomes from CAO dispute resolution processes. In the Philippines, as part of a dispute resolution process to address land legacy issues in the hydropower sector, the provincial government worked with the company and Indigenous Peoples' organizations in the joint planning and participatory monitoring of corporate social responsibility and livelihood programs resulting from agreements reached through the CAO (see Case Study 1).

In most cases, CAO will travel to the field to conduct interviews and meetings with the parties, affected communities, and the company, as well as other key stakeholders identified during earlier stages of the assessment process. The form that these meetings take depends on the circumstances, but may include private meetings, small group discussions, and/or public consultations. In order to ensure that affected parties are offered the chance to speak openly and freely about their concerns, CAO engages translators or local facilitators to help facilitate meetings in the local language and in a manner that is sensitive to, and respectful of, local customs.

Discussions held with stakeholders during the assessment not only help CAO understand the basis for issues raised in the complaint, but also help parties identify acceptable options for addressing their concerns—whether CAO Dispute Resolution or CAO Compliance. Importantly, the assessment provides parties with an opportunity to reflect on what they really want to get out of the CAO process, as well as consider issues from the perspective of other stakeholders—often for the first time. In cases that do proceed on to CAO dispute resolution, the assessment will inform the scope and design of a mediation process. Issues documented during assessment will also inform CAO’s compliance work.

Tool 2. Third-party neutrals

Through dispute resolution, CAO helps provide a neutral space for companies and communities to engage where grievances have escalated to the point of conflict. The process is often able to take parties from adversarial positions focused on blame and liability to one where the parties are able to address the difficult realities that have led them to conflict. Particularly when tensions have caused relationships to break down, a neutral facilitator can engage the estranged parties and encourage dialogue. For example, in instances where disputes are a result of differing community perspectives, a neutral space gives the opportunity for all voices to be heard. This is not only important for the community but may also help the company and other influential parties better understand the nature of community concerns and how they might be addressed. In instances where communities and companies are constrained by inconsistencies in land tenure systems, a third-party neutral may be able to help the parties look for other avenues of managing these inconsistencies and thus mitigate conflict.

Constraints exist, however, since communities do not often have the means, capacity, or leverage to access third-party neutrals, and third parties employed by the company might not be perceived as neutral or independent. By explaining and exploring the potential benefits of working with a third-party neutral, and by providing a safe space for parties to engage with one another when they are ready to do so, CAO can help build trust, transform relationships, and create a more level field for engagement—ultimately to the benefit of all parties (see Case Studies 1–4 for examples).

Box 2. What Does a Typical CAO Assessment Look Like?

Once a complaint has been determined eligible,^a CAO conducts a desk review of project documentation from IFC/MIGA and the project sponsor, and meets with IFC/MIGA's project team to understand the financial structure of the project, as well as the environmental and social due diligence undertaken by IFC/MIGA. Based on preliminary discussion with project staff, the private sector sponsor, and the complainant, the CAO team identifies key stakeholders to meet during its assessment trip. During this trip, CAO typically visits the project site and meets with local and national stakeholders in different locales. CAO also informs stakeholders about the options available to them to address their concerns through CAO processes. Examples of meetings are summarized in table B2.1.

Table B2.1. Examples of Meetings with Stakeholders

| Stakeholder | Assessment process |
|---------------------------------------|--|
| Complainants | A town hall meeting with the affected communities and the head of the village, to facilitate open participation and allow community members to speak freely about their concerns |
| NGO representatives | A small-group discussion with the representatives who supported filing of the complaint |
| Company | Small-group meetings with senior management of the company |
| Provincial government representatives | Meetings with the governor, deputy governor, and chairman for the Committee on Land Acquisition, who have a key role in the land acquisition process. |

a. CAO has three criteria for determining whether a complaint is eligible: (1) The complaint pertains to a project that IFC/MIGA is participating in, or is actively considering; (2) The issues raised in the complaint pertain to CAO's mandate to address environmental and social impacts of IFC/MIGA projects; and (3) The complainant is, or may be, affected by the environmental and/or social impacts raised in the complaint.

Case Study 1.

Transforming Relationships between Communities and Companies in the Philippines

Ambuklao-Binga Hydroelectric Power

In 2008, CAO received a complaint from the members of the Bokod, Ibaloi, lowak, and Tinongdan Indigenous communities living near the Ambuklao-Binga Hydroelectric Power Plant in the Philippines. These communities were displaced from their land during the initial development of the project site in the late 1950s, and had been in difficult negotiations with the National Power Corporation (NPC) and provincial and national government over land claims for nearly 60 years when the plants were privatized with IFC's support in 2008.



Contextual challenges

Competing land tenure systems. The Ibaloi and lowak Indigenous groups were displaced from the original project site of the Ambuklao and Binga hydropower facilities in the 1950s. Despite their claims to land in the Ambuklao-Binga watershed, the national courts ruled in favor of expropriation of land in the 1970s. The process resulted in partial payments and resettlement of some of the displaced communities, but a large majority of Indigenous claims remained unaddressed at the time the plant was privatized.

A legacy of land-related issues. For many years, affected communities saw their only option as reclaiming land ownership through legal means. Not only was this process difficult to navigate for local communities, but it was also largely unsuccessful. Sustained debates about land ownership between communities and the NPC inevitably resulted in challenging relationships, which constrained discussions about land-related issues as well as the exploration of nonadversarial solutions. The private sector operator (SN Aboitiz Power Benguet) then inherited these problems when it purchased the assets from the government with support from IFC.



Tools

Capacity building. CAO helped strengthen community institutions by helping the community decide how to create effective representation. This was critical to ensuring that communities were able to enter into discussions concerning individual and historical land claims, as well as broader community interests in relation to the privatized project. CAO also facilitated joint training for representatives nominated by each principal stakeholder (community members, company management, elected

local officials, NPC, SN Aboitz, and PSALM, the government entity in charge of asset privatization) to increase skills and capacity for multiparty dialogue. The joint training was critical in breaking down barriers and misconceptions between the parties, and was the beginning of a process of building trust.

Land management. One of the most significant achievements of the dialogue process was the creation of an Indigenous Peoples Cultural Heritage site, which granted Indigenous communities the right to use and manage “residual areas” of NPC land (areas not included in privatization of the power plants). This allowed communities not only to determine the use of the land, but also to ensure its maintenance for future generations.

Joint planning/Participatory monitoring of corporate social responsibility and livelihood programs. In addition to the use and management of residual land, Indigenous People’s Organizations were tasked with providing technical assistance to the company and provincial government for the development and monitoring of Indigenous Peoples programs.

The Ministry of Energy recognized the solutions identified in the dialogue process as “a new model in development” for promoting the resolution of complex project-related issues. The process created a forum in which communities could talk directly to key stakeholders, as well as a sustainable structure for future engagement around community needs. Most significantly, the dialogue process resulted in a shift away from an emphasis on land tenure and land ownership to a greater focus on the use and meaning of land as it related to the cultural and economic needs of Indigenous Peoples.



Stakeholders sign agreement following resolution of historic issues related to a hydropower project in the Philippines (CAO).

Tool 3. Participatory impact assessments and monitoring

One of the critical issues facing communities is that they typically do not have input into the development and subsequent monitoring of project environmental and social impact assessments (ESIA). The absence of an inclusive process may lead to misunderstanding on both sides: the company may be unaware of what impacts the community sees as most pertinent, while the community may not have a full understanding of the company's perspective on expected project outcomes and measures to mitigate adverse impacts. This may lead to an environment of mistrust, particularly when managing contentious land issues.

Participatory approaches that involve both the company and community, and encourage them to work together to identify joint solutions and outcomes, can help alleviate some of the challenges associated with ESIA's. Participatory approaches have been used in CAO cases with some success. CAO has addressed a number of small land claim cases related to the Baku-Tbilisi-Ceyhan (BTC) oil pipeline, which traverses Georgia, Turkey, and Azerbaijan. In one case, community members cited concerns that the company's ESIA had not assessed the effects of the pipeline construction in the area, a severe landslide zone, and maintained that the company was therefore unable to determine adequate mitigation measures.⁸ Through the CAO process, the company made its studies available publicly and CAO suggested that farmers participate in the monitoring strategy to assess the risk of landslides. In another BTC case, where farmers raised concerns that the company had not fulfilled previously agreed commitments to restore land, the company and farmers agreed that assessments of crop yields would be carried out jointly to determine whether or not the company should compensate farmers for crop losses. In cases where land rights have been in contention, CAO has helped facilitate participatory processes such as "walking the land," where companies and communities walk the boundaries of the contested areas to gain a better understanding of the other's perspective and concept of territory. This technique was used in the Wilmar case in Indonesia, where company and community representatives jointly identified disputed land around oil palm plantations (see Case Study 2). This type of participatory approach generated data that were considered credible by both parties, created consensus, and reduced contention in a way that allowed them to move forward in the dispute resolution process with a higher level of trust.

⁸ Since 2004, CAO has dealt with 33 cases related to the BTC pipeline in Georgia. The full details of each of these cases can be found on CAO's website: <http://www.cao-ombudsman.org/>.

In conjunction with capacity building, participatory processes can also help communities use local knowledge and translate it into the terms and metrics that companies need to demonstrate their compliance with standards and requirements. By the same token, companies can gain local knowledge that will improve their understanding of impacts and how the community perceives those impacts. When effective, participatory assessment and monitoring ultimately contribute to better engagement between the community and the company. Moreover, having the necessary skills to monitor impacts such as land degradation and pollution enhances community members' capacity to engage with the company on issues that have the potential to negatively impact their livelihoods before those issues become egregious. Participatory processes have the added benefit of helping the company and community establish regular lines of communication, which further helps build trust.

Young girls from the Ibaloi community impacted by a hydropower project in the Philippines (CAO).



Case Study 2.

Addressing Land Disputes in the Indonesian Oil Palm Sector

Wilmar Group

Between 2007 and 2011, CAO received three complaints related to IFC's investment with supply chain links to the oil palm sector in Indonesia. The complaints were filed by communities in Jambi, Kalimantan, and Sumatra, and covered a range of issues from the clearance of customary lands without community support or permission to the destruction of forests and natural resources of high value to local communities.



Contextual challenges

Competing land tenure systems. Development concessions granted to Wilmar Group (the company) and its subsidiaries by the government failed to fully consider complex communal land rights. As a result, local communities believed that the oil palm plantations were encroaching on their land without their approval.

Information imbalances and competing development perspectives. CAO's assessment of the complaint documented a lack of community support for the project, and questions about the legality of the company's actions. Communities involved in submitting the complaint believed that Wilmar had not carried out adequate environmental and social impact assessments (ESIAs) and was clearing land without the required permitting.

A history of land conflict. When CAO began working on the case, there was very little trust between the communities and the company. Communities held that oil palm development was threatening their livelihoods by encroaching on their land and valuable natural resources, while the company held that it had all necessary approvals from government to do business in the area.

Power imbalances and questions of representation. The community and the company were wary of engaging with one another. The community sought reassurances that the company would enter the dialogue in good faith, while the company requested that community representatives have the power to make decisions on behalf of their groups, or provide assurances that agreements would have the backing of wider community groups.



Walking the land on a CAO assessment of issues related to palm oil plantations in Indonesia (CAO).

Tools

Capacity building. To help communities and the company engage comfortably in dialogue, CAO worked with both parties before mediations began. Capacity building sessions took the form of more formalized training, as well as regular meetings ahead of mediation sessions to help the parties explore their interests and address questions of representation, while encouraging participants to share information more effectively within the wider community groups. This process also helped build consensus around important decisions during the negotiations.

Participatory mapping. One of the ways that CAO encouraged the parties to come together to overcome a history of mistrust was through a participatory mapping exercise in which parties traveled to the field to jointly identify areas of land that were in dispute. The exercise demonstrated that collaboration between the communities and company could lead to tangible results, and opened up space for the parties to engage more productively around disputed land claims.

Joint monitoring. Dispute resolution led to a number of land agreements. With consensus from the parties, a Joint Monitoring and Evaluation Team was established to monitor the implementation of agreed actions. This helped improve the flow of information between the community and company and build trust, as both the community and company were involved in confirming data and ensuring the accuracy of results.

While this case was not without challenges, it is an example of how relationships can be transformed from conflict to collaboration in a way that enables communities to have a voice in the development and management of land on which they depend, and the company to develop more trust in its relationship with the host/neighborhood communities.

Tool 4. Company/community collaboration and land management

In the face of complicated systems and regulations around land, which are often coupled with historical disputes and conflicting narratives about land rights and uses, communities and companies must be willing to come up with creative solutions to address these challenges together. Often these solutions require unique land management strategies (see the case in the Philippines, featured in Case Study 1).

In Uganda, changes in land use associated with growth in investment in the forestry sector have in some instances caused frictions to flare between stakeholders. In 2011, the government of Uganda claimed responsibility for the eviction of community members from forest reserves, stating that the land had been demarcated for commercial forestry plantations and had been illegally occupied. Two affected communities submitted complaints to CAO, as the company operating the plantations is an investee of private equity fund supported by IFC. Through a CAO dialogue process that involved a great deal of critical and innovative thinking on the part of both the communities and the company, agreements were reached through which the company is extending development assistance through two community cooperatives that were constituted and registered under Ugandan law. Forming the cooperatives was a critical step in ensuring a rational and comprehensive approach for developing the communities' capacity to benefit collectively from the CAO process and, in turn, for them to manage financial and other development support for collective projects. Community members have purchased land for resettlement and agriculture, and the process of restoring and enhancing livelihoods has commenced.

The cases in Uganda and the Philippines highlight positive outcomes from company and community collaboration over land management, but arriving at these outcomes did not come without challenges. It is important that in company and community collaboration, both sides are willing to engage in dialogue in an open and transparent way. It also requires both parties to find unique solutions within what may often be prescriptive legal and regulatory contexts. Both these cases required intense trust building, capacity building, and engagement by a neutral third party or convener to allow the parties to arrive at a point where they were able to define solutions to fit their context. They also required the participation of government through different national entities, which is often a necessary component in the search for solutions for successful outcomes. Most importantly, in spite of the substantial obstacles to success, these cases highlight the opportunities available to overcome entrenched and contentious land rights issues if companies and communities are able and willing to collaborate in good faith.

Tool 5. Strengthening grievance mechanisms and redress systems

CAO views project-level grievance mechanisms as a critical tool in managing the challenges associated with land and private sector investment. Sometimes CAO conducts its work in contexts where companies or national grievance mechanisms are either not present or are ineffective. Whether they failed to gain the trust of the people they serve, or whether companies do not have the capacity to handle the complaints they receive, the lack of adequate grievance mechanisms is often an issue raised in complaints to CAO. CAO's dispute resolution work seeks out opportunities to strengthen existing grievance mechanisms, where possible, rather than attempting to create parallel systems. For example, a CAO dispute resolution process in Cameroon addressing issues regarding the Chad-Cameroon oil pipeline has worked to strengthen an existing local mechanism jointly managed by civil society, government, and the private sector for addressing community concerns (Case Study 4). In cases where this is not possible, helping companies and communities create mechanisms that work within their context is imperative.

Guidance on designing and implementing project-level grievance mechanisms to mitigate negative project impacts for communities and enhance positive development outcomes can be found in another CAO Advisory Note (CAO 2008). As with many of the tools already outlined, project-level grievance mechanisms help improve the lines of communication between companies and communities. Creating a predictable and responsive mechanism reassures communities that their concerns will not only be heard but that they will also be addressed. It also allows communities to hold the company to a measure of accountability that is based on local issues and concerns. For companies, grievance mechanisms can serve as an early warning system that identifies problems and enables them to manage challenges proactively, rather than reacting to a crisis. Grievance mechanisms also help companies clarify internal roles and responsibilities for responding to community concerns, integrate those responses with the company's existing systems and protocols, and track responses to make sure that issues are resolved in a timely manner.

When addressing land issues, a functioning grievance mechanism is integral to minimizing local impacts, ensuring that local benefits from projects are delivered as promised, and clearing up miscommunications and misperceptions between companies and communities. A key component to promoting the lasting success of agreements is to ensure that grievance mechanisms are used to address issues that arise during implementation of company-community agreements, before they become entrenched.

This section began with remarks on the importance of neutral third parties, and the role they can play. It also acknowledged the reality that this is not always a resource that companies or communities are able to employ. In the absence of a neutral third party, grievance mechanisms, when implemented effectively, can help offer a safe space for companies, communities, and even government to engage with one another and address challenges related to land investment.

Case Study 3.

Working with Communities and Companies around Timber Plantations, Uganda

Agri-Vie Fund

In 2011, CAO received two complaints from communities living around timber plantations in central Uganda. Representatives of communities in the Kiboga and Mubende districts claimed that communities had been evicted from land that was licensed for commercial forestry plantations by the Ugandan government.



Contextual challenges

Competing land tenure systems. The New Forests Company (NFC) began operating in Uganda in 2005 and has more than 20,000 hectares of forestry land in the country. By 2011, about half (10,400 hectares) of this land had been developed for pine and eucalyptus plantations. According to NFC, its operations are being carried out in accordance with licenses granted to them by the National Forestry Authority (NFA). Communities living around some of NFC's plantations believe they were involuntarily evicted from land to which they had a legitimate claim. The Ugandan government claimed responsibility for the evictions, stating that the land had been illegally occupied.

Community members walking newly acquired land as a result of a CAO mediation process in Uganda (CAO).



Asymmetries of power and information. Representatives of affected communities had concerns about the adequacy of due diligence and consultation carried out on the part of IFC and the company. They also raised concerns about the process through which evictions were carried out.

Tools

Capacity building. In order to help communities overcome some of these fears and uncertainties, and to allow parties to participate in dialogue on a more equal footing, CAO conducted extensive capacity building sessions with community representatives over a number of months prior to the commencement of dialogue. Capacity building was also an ongoing process throughout the course of the dispute resolution process. CAO designed a capacity building program so that community representatives could be directly trained in mediation and dispute resolution skills. The community representatives also designed different feedback loops to ensure information sharing between representatives and the wider community, in order to keep the broader community informed of the process. In addition, the communities took part in cooperative management training with the Uganda Cooperative Alliance as coops were being constituted and registered. At the request of community representatives, local and international nongovernmental organizations (NGOs) played an advisory role to communities in the dialogue process.

Community-company partnerships. The dialogue process ultimately led to agreements between the parties about the need to strengthen relationships and to build stronger and more mutually beneficial ties between the company and communities. Through an expansion of its social responsibility investment program, NFC committed support to two cooperative societies, which were established to address major community needs. Through the cooperatives, parties have worked together on a range of sustainable community development projects. Both community cooperatives have acquired land for resettlement, ultimately resulting in land tenure security, which is critical for restoring and building livelihoods.

Land management. Joint planning and development of community projects has also encouraged the company and community to explore more effective and mutually beneficial ways to manage land and local resources.

This example shows how the allocation of land for private sector investment can create complex challenges for both communities and companies. However, transforming the nature of community-company relationships away from conflict and toward productive partnerships can create avenues for exploring new opportunities that create mutual project benefits.

Case Study 4.

Addressing Multiple Land Claims alongside a Major Oil Pipeline in Cameroon

The Chad-Cameroon Oil Pipeline

The Chad-Cameroon oil pipeline is a major development project undertaken by the governments of Chad and Cameroon, a consortium of oil companies, and the World Bank Group to develop the capacity of oil fields in southwestern Chad and to deliver oil via pipeline to floating facilities off the Cameroonian coast. In 2011, CAO received complaints from communities in both countries related to impacts experienced during and after construction of the pipeline.

In Cameroon, where the pipeline traverses some 240 villages on its way from the Chadian border to the coast, local communities raised a number of concerns related to impacts on land and livelihoods. Among the major concerns raised were that the laying of the oil pipeline led to the displacement of the Bagyéli communities living in the area, as well as those living in an area designated as a national park, and thus to the loss of their user rights in areas.



Contextual challenges

Competing land tenure systems and history of land issues. Seeking resolution for unresolved grievances after the pipeline was built, project-affected communities and several individuals requested assistance from CAO in addressing a number of social and environmental concerns, including those related to the displacement of Indigenous communities. After construction of the pipeline was complete, the Cameroonian project sponsor, the Cameroon Oil Transportation Company (COTCO), established a tripartite platform for addressing and managing community concerns related to the pipeline's development and management. However, according to those submitting the complaint, the process did not generate settlements for a number of cases brought before the platform, nor did it result in a better understanding of additional cases documented by NGOs, leading project-affected people to seek alternative avenues for the resolution of open claims.

Lack of or asymmetrical information between the company and communities. Based on discussions with local communities and NGOs during its assessment of the complaint, CAO came to understand that the communities lacked clarity about how the project was meeting national and international standards, and that there was a need for improved awareness about the company, COTCO's compensation plan, and the response to pipeline-related accidents. Similarly, in relation to grievances pertaining to project impacts, signatories to the complaint claimed that many additional cases documented by NGOs were inadequately understood or addressed by COTCO and the tripartite platform.



CAO team listens to a community member's concerns while assessing a complaint, Cameroon (CAO).

Tools

Resolving specific cases through mediated dialogue. CAO convened a mediated dialogue around a number of disputes raised by the complainants. These dialogue processes are in different phases, ranging from active dialogue in the early stages to advanced mediations that are resulting in full implementation of agreements.

Strengthening grievance and redress systems. CAO has worked with stakeholders to enhance collective processes for addressing community interests. Given that the tripartite platform represented an existing local mechanism for addressing community concerns, CAO's process has focused on working with members of the tripartite platform to sustain and strengthen the mechanism.

Capacity building. Capacity building has helped the complainants on a number of fronts. It has been used to assist a fishermen group to fully engage with the company in the CAO dialogue process, and ensure that wider community inputs are sought and incorporated into the process. Additional goals are to strengthen the communities' organization and ultimately the sustainability of mediated outcomes. Capacity building activities to date have included workshops with fishermen representatives alone as well as with the various villages, during which participants evaluated the structure, roles, and responsibilities of the fishermen's existing organizations, as well as their engagement and communication with their respective villages. In the course of 2015, more capacity building workshops are planned.

Conclusion

CAO's casework has highlighted a number of challenges that communities face regarding private sector development related to land. Communities are often outsiders to a process that is driven predominately by companies and governments. This leaves them managing challenging company and government relationships with minimal leverage or capacity. In addition, as more land and resources are required to sustain growing infrastructure and agribusiness sectors, local communities are often the ones left bearing the burden of growth without fully reaping the benefits. Development can exacerbate already fractious relationships and further isolate vulnerable populations. Livelihoods of rural farmers may be destroyed as traditional land rights systems conflict with national government land acquisition policies to encourage private sector development. Information and power imbalances between communities and companies may mean that those affected by projects are ill-equipped to understand and monitor how their resources are being managed.

As the World Bank Group focuses on catalyzing private sector investment in fragile and emerging markets, engagement is needed with all actors to avoid or mitigate land-related conflict, especially in localities with a history of unrest (IFC 2013). The private sector's involvement in development has great potential to generate substantial benefits at the macro and micro level, but the potential also exists for negative impacts to be experienced by communities that host these projects. Collaborative approaches, such as those outlined in this paper, are needed to help communities and companies engage in a way that maximizes the community voice and opportunities for shared value, while minimizing negative impacts arising from land-intensive investments.

Given this challenging context, CAO has worked with communities and companies to develop strategies and tools to help manage conflicts associated with land. These approaches have not always resulted in success. In cases where companies and communities are unwilling to engage in dialogue, or where government policies present structural barriers to the search for solutions, or where the gap between community and company expectations is so great, these strategies can fail. However, this Advisory Paper has illustrated cases where CAO has applied tools successfully in some of the most difficult of contexts and demonstrated that even the most protracted company-community conflict can be transformed into something positive. It is imperative that as the World Bank Group looks to encourage private sector investment that directly benefits the poor, it does so with a mind to developing robust tools to help its private sector clients achieve these outcomes. In a sector prone to conflict and already under pressure, land investment on the part of development institutions requires a concerted effort to ensure that projects positively transform the lives of the people who depend upon it.



CAO team meet with community members in Chad (CAO).

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Authors: Elizabeth Mensah and Carissa Western (CAO)

Contributors: CAO staff

Peer Reviewers: David Fairman (Managing Director, Consensus Building Institute) and
Dennis Sandole (Professor of Conflict Resolution and International Relations, George Mason University)

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and Multilateral Investment Guarantee Agency (MIGA), Members of the World Bank Group

2121 Pennsylvania Avenue NW
Washington, DC 20433 USA
Telephone: +1 (202) 458-1973
Fax: +1 (202) 522-7400
e-mail: cao@worldbankgroup.org
Website: www.cao-ombudsman.org



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