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## **Certification schemes and the governance of land: enforcing standards or enabling scrutiny?**

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### **Abstract**

Given the challenges of upholding human rights in countries where land grabbing has been most acute, attention has turned to alternative regulatory mechanisms by which better land governance might be brought about. This paper considers one such approach: certification schemes. These encourage agricultural producers to adopt sustainability standards which are then monitored by third-party auditors. Used by the EU to help govern its biofuel market, they now also have an important mandatory dimension. However, through a study of Bonsucro and the Roundtable on Sustainable Biofuels, we find both flaws in their standards and failings in their ability to discipline the companies they are financially dependent upon. In sum, we suggest that the real value of these roundtable certification schemes might lie less in their ability to *enforce standards* than their (partially-realised) role in *enabling scrutiny*, providing new possibilities for corporate accountability in transnational commodity chains.

Certification schemes; land grabbing; biofuel; Bonsucro; Roundtable on Sustainable Biofuel

## Introduction

‘Buy land, they’re not making it anymore’. Mark Twain’s famous financial advice has been taken up in force during the last decade as over 200 million hectares of land have been sold, leased, licensed, or under negotiation worldwide (International Land Coalition, 2011: 4). Much of this activity has taken place in countries with weak land tenure regimes, jeopardizing the ability of the rural poor to block, or benefit from, this historic transformation of land control (Borras and Franco, 2012). Debates about how this should be governed have been marked by ideological division. Whereas some see it as bringing agricultural investment and development opportunity to the global South, others see a further stage in the alienation of peasants from the land and the entrenchment of industrialised forms of farming that do little to reduce poverty or protect the environment (see Robertson and Pinstrip-Andersen, 2010; McMichael, 2012). Yet despite these divergent positions, consensus has arisen on the need to prevent certain *types* of acquisition, particularly those lacking effective participation of current land users and which result in forced evictions, inadequate compensation and/or an absence of alternative livelihood opportunities for those displaced (Cotula *et al.*, 2009; World Bank, 2011).

In the first instance, responsibility for preventing these worst forms of land grabbing has typically been placed with the legislatures and judiciaries of national governments. For example, the UN Special Rapporteur on the Right to Food has pressed home the need for governments to fully comply with their human rights obligations, much of which is already enshrined in domestic law, including the right of all peoples to freely dispose of their natural wealth and resources and not to be deprived of their means of subsistence (De Schutter, 2011: 274). However, changing and enforcing national law is a slow, piecemeal and indeterminate process, with reform and recognition of land rights often especially intransigent. Moreover, it has been noted that in most instances it has been national governments that have actively facilitated land grabs, acting as handmaidens to investors, both foreign and domestic, seeking large-scale plots for plantations and other export/enclave projects (Zoomers, 2010). Attention has thus turned to alternative regulatory mechanisms by which better land governance might be brought about, including corporate codes of conduct, donor conditionality, summit declarations, land reporting initiatives, and voluntary guidance on agricultural investment and land tenure management (Borras and Franco, 2010).

We focus our attention on yet another mode of global governance: certification schemes. These transnational, non-state initiatives predate popular concern with land grabbing, being largely focused on land stewardship issues related to biodiversity loss and environmental degradation. Nevertheless, they have since been touted as a means to protect land rights as well (Nuffield Council on Bioethics, 2011; Renewable Fuels Agency, 2008; WWF, 2010a). Their appeal rests on the claim that they offer a credible alternative to patchwork national law enforcement by tying the fortunes of corporations based in the global North to the actions of their suppliers in the South. Others remain unconvinced, sceptical that private standards and certification schemes offer anything more than a novel form of corporate greenwash or a ‘technical fix’ to complex social problems (Friends of the Earth, 2008; Li, 2011).

This uncertainty over the effectiveness of non-state certification schemes has been mirrored in the hesitant treatment they have been given by international organisations. For example, in its principles for ‘Responsible Agro-Investment’ (2012), the World Bank stated that governments should ‘draw on the past good practices and experience gained’ in the area of private standards but pulled up short of recommending their actual use. Meanwhile, in its ‘Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests’, the UN Committee on World Food Security (CFS) removed a statement from an earlier draft to ‘promote the development of independent and voluntary quality certification schemes’ and now makes no mention of them at all (FAO, 2011 and 2012). Finally, in its ‘Sustainability Indicators for Bioenergy’, the G8’s Global Bioenergy Partnership ignored earlier statements by its Chairman that ‘labelling and certification of origin of biofuels should be agreed internationally and introduced into the global energy market’ and instead opted to provide only a best-practice guide to policy-makers (Clini, 2007; GBEP, 2011). In short, the various institutional guidelines all finally returned to the principle of state sovereignty, reluctant to sanction novel mechanisms of rule that might impose mandatory requirements on national governments.

Not all public authorities have been so circumspect. Most notably, the European Union has formally integrated certification schemes into the EU biofuel regime through its 2009 Renewable Energy Directive (RED). This is significant since most of the recent land deals that have been concluded have been for the production of biofuel, with the EU as one of the biggest exports markets for this commodity (International Land Coalition, 2011: 24). In this way, certification schemes and their associated standards have gained importance as ways of

monitoring and approving land acquisition in the global South. As with other sites of governance within the emergent ‘green economy’, such as the Clean Development Mechanism and the Reduced Emissions from Deforestation and Degradation (REDD) initiative, these are changing the way in which land and resources are owned and exchanged through novel market and legal mechanisms (Fairhead *et al.*, 2012). It is therefore critical to consider how these schemes seek to regulate corporate activity in relation to land tenure/transfer and to what extent they succeed in these endeavours.

This paper attempts to do this by focusing on two case studies: Bonsucro (formerly the Better Sugarcane Initiative) and the Roundtable on Sustainable Biofuels (RSB). These have been chosen, firstly, because of their applicability to biofuels, which as we have argued are central to the dynamics of land grabbing, and, secondly, given their status as two of the most ambitious schemes currently in existence in terms of their coverage of land and resource rights (German and Schoneveld, 2011). The paper proceeds in the following fashion. After outlining the emergence of certification schemes within the global governance architecture (section two), it then discusses weaknesses in the two schemes evident from close analysis of their standards and audit guidance (section three). It then goes on to consider problems encountered by certification schemes beyond ‘the text’, namely the structural constraints posed by the very economic environment in which they operate (section four). Taken together, these two sets of problems suggest that these schemes cannot deliver on their claim to protect the land rights of the rural poor. As a means of *enforcing standards*, then, we find them sorely tested as a means of land governance. However, by *enabling scrutiny* of transnational commodity chains, we suggest that they might have an important, and somewhat underplayed, role in providing new possibilities for corporate accountability (section five).

### **Roundtable certification schemes and the adoption of their standards**

While a variety of public and private standards-setting bodies and certification schemes exist within the world of agriculture, Bonsucro and the RSB are examples of those that have been developed by commercial and non-profit organisations in concert (see Daviron and Vagneron, 2011; Fuchs *et al.*, 2011). These ‘roundtable’ initiatives can be seen as distinct to those led either by companies and their trade associations (e.g. GlobalGAP, Sustainable Agricultural Initiative) or by conservation and development NGOs (e.g. Fairtrade Labelling

Organisation, Rainforest Alliance). The forerunner of these roundtables, the Forest Stewardship Council, was established in the 1990s and has since been followed by others focusing on particular sectors (aquaculture, fisheries and biofuels) or commodities (palm oil, cotton, soy, sugarcane, cocoa and beef). In each case the World Wide Fund for Nature (WWF) has acted as a founder member and through these schemes has sought to convince some of the world's biggest agro-industrial producers and consumer brands to implement standards which go beyond the comfort-zone of those devised in self-regulatory initiatives. By targeting those companies with the biggest impact on the supply-chain, the WWF aims to 'push commodity markets to a tipping point where sustainability becomes the norm' (WWF, 2012: 3).

Membership of the certification scheme's administrative unit – the roundtable itself – has typically been composed of retailers, manufacturers, traders, processors and farmers, along with global and local NGOs. As well as devising the standard against which producers will be certified, these members also elect a governing body that then oversees revisions to the standard, acceptance of new members, the commission of consultations, and the resolution of complaints that arise through their (non-judicial) grievance mechanisms. The blend of different stakeholders is not only important in bringing in industry expertise and support to the roundtable; it also has a role in garnering legitimacy for the initiative. Whereas public standards-setting bodies derive authority from the democratic mandate of the (inter)governmental institution in which they are embedded, non-state bodies have not had this option. The roundtables have thus come to set themselves higher requirements for inclusiveness, transparency and accountability than their state-based cousins. This has been reflected in governance structures designed to facilitate input from groups in developing countries and/or with smaller budgets, the open publication of assessment and audit reports carried out on members, and the tacit acceptance that NGOs would withhold or withdraw support should egregious environmental degradation and human rights violations be detected (Bernstein and Cashore, 2007).

While responsiveness to their community of interests has provided one leg of legitimacy for the roundtables, control of companies adopting the standard has given the other (Gulbrandsen, 2008). In other words, just as important as the ownership of the standard is compliance against it. Roundtables have sought to achieve this through on-site audits by independent third-parties 'based on objective and measurable performance standards' that are

‘free of conflicts of interest from parties of interest’ (WWF, no date). Consequently, as with other types of standard-setting schemes, roundtables have come to rely on the certification bodies that conduct the audits, as well as accreditation organisations that authorise and oversee the certification bodies and thereby ‘regulate the regulators’. Since certification bodies and accreditation organisations are separate companies from those that devised the standard, they are considered *in principle* to have no stake in the outcome of the certification process and are cast accordingly as independent arbitrators of production processes (Hatanaka and Busch, 2008). Out of the formal separation of powers between these three groups, then, a ‘tripartite standards regime’ is constituted; an institutional arrangement which has enabled ‘governing at a distance’ to take root in everything from organic cultivation methods to fair-trade labour practices (Loconto and Busch, 2010).

Once established, roundtables have persuaded companies to adopt their standard in two distinct ways. The most well-known has been through ‘eco-labelling’. This uses a certificate logo to communicate to shoppers that the product they are buying has been sustainably sourced, which in turn convinces producers to sign up to the standard and satisfy this growing market demand. In effect this attempts to rein in harmful business practices through the market itself, constructing ‘alternative spheres of production, trade and consumption’ in which the extra costs of avoiding pollution or paying decent wages are internalised within the product and paid for by the consumer (Hatanaka and Busch, 2008: 77). The other way has been through the integration of certification requirements into state policy on trade regulation, public procurement and natural resource management – described as a form of public-private or ‘hybrid’ governance (Bernstein and Cashore, 2007).

As noted above, given the high proportion of land that has been acquired to grow crops for biofuel, of particular interest to us is the way this happened in the EU RED. Through this legislation, the EU required 10% of its transport fuel to come from biofuels by 2020, and because of concerns that this might actually encourage environmental degradation as plantations expanded into peat land and forested areas, also attached criteria as to what would be considered ‘sustainable’ biofuel. This specified that biofuels must provide at least 35% greenhouse gas emission savings compared to fossil fuels and must *not* come from crops cultivated on land with a high biodiversity value or carbon stock. Though these are not legal requirements, since biofuels sold in the EU can only be counted against Member States’ binding energy targets and qualify for tax relief once they meet them, compliance does

effectively constitute a *de facto* market access requirement (Lin, 2011). Building on the examples that had been set by the UK, Germany and Netherlands in their national interpretations of EU biofuel law, the EU also specified that compliance would be monitored by certification schemes (including roundtables) rather than public agencies. Accordingly, the European Commission approved a number of schemes that met the EU's two criteria and demonstrated sufficiently credible auditing procedures – the RSB and Bonsucro being two of the first seven – and which would compete with one another to service the requirements of EU biofuel suppliers for certification.

A popular criticism of certification schemes has been that since the market-oriented method of enrolment is voluntary, there is nothing requiring companies to sign up to them (Harvey and Pilgrim, 2011). This is borne out by the low levels of coverage among even the established roundtables. Both the FSC and Marine Stewardship Council were launched in the 1990s yet still only cover 5% and 12% respectively of the timber and seafood industries (WWF, 2010a: 9). Related to this, even when companies do sign up to a particular scheme for eco-labelling purposes, they are not obliged to have all their suppliers audited. This means that buyers and producers can engage in 'selective certification' and choose to leave the sites/companies with more intractable problems aside. However, the mandatory requirements of the EU RED mean that this critique of voluntarism is no longer completely valid. Not all instances of land grabbing are undertaken to produce biofuel destined for the EU, but many certainly are, and, to the extent that the schemes approved by the EU adequately address land tenure issues, this may prove to be a compelling way to drive industry adoption of standards and better protect the rural poor. Bonsucro, for example, has expanded rapidly since its approval by the EU, certifying over 500,000 hectares of sugarcane in just its first two years of operation (Bonsucro, 2012; area calculated by authors). To assess these claims, we now consider the specific land-related criteria contained in the standards of Bonsucro and the RSB, the level of compliance producers must reach, and the way in which auditors verify this has been met.

### **Assessing the standards and their notion of 'sustainable' land deals**

Roundtable certification schemes have addressed two key aspects of land tenure, relating, firstly, to the ownership of land by certified producers, and, secondly, to the means by which any expansion/acquisition takes place. The argument presented is that if processors can only

source from those farmers and estates which have legitimate title to their land, and that any land deals affecting the supply-base have to take place with the ‘free, prior and informed consent’ of extant users and avoid conservation areas, then land grabbing becomes an unfeasible option for producers. Put simply, those investments dependent on improperly acquired land ‘would never get off the ground’ if the roundtable standards were applied (WWF, 2012: 25). Clearly this corresponds to a particular reading of land grabs, which emphasises the legality, transparency and procedural justice of land tenure change over those issues relating to the privatisation of common land, concentration of ownership and social justice for marginalised groups. Nevertheless, to the extent that this attempt to uphold tenure security and equitable agreements is considered normatively appealing, at least in preventing the worst forms of land grabbing, then there is good reason to explore their ability to achieve this end.

#### *Land tenure criteria*

Although all roundtables share this core approach to land tenure, by virtue of their unique memberships and institutional histories, the precise way in which it has been expressed in their standards has differed between them. To illustrate this we turn first to the Bonsucro standard. In terms of the ownership of land, Bonsucro’s (2011a) provisions specify that producers must ‘demonstrate clear title to land in accordance with national practice and law’ and show that their right to use the land is not ‘legitimately contested by local communities with demonstrable rights’. Importantly, then, this provision does permit recognition of communal and open access rights alongside private property rights, and suggests that simply having state-sanctioned land title is not necessarily enough to insulate suppliers from questioning. However, the burden of proof in establishing a ‘legitimate contest’ rests with those displaced or dispossessed.

In this respect, the provisions of the RSB are more onerous for companies. They state that no land under legitimate dispute can be used for biofuel operations, unless such disputes have been ‘settled through Free, Prior and Informed Consent (FPIC) and negotiated agreements with affected land users’ (RSB 2011a: 30). Moreover, in speaking explicitly of land *users* rather than those with just land *rights*, protection is explicitly extended to (non-local) groups like pastoralists that frequently access land yet do not claim title to it (Vermeulen and Cotula, 2010). Unlike the Bonsucro provisions, then, this recognises that even the rights of those

formerly living on and using the land in question may themselves have been contested, and that it is a prior condition of the company establishing its own land rights that it first determine what the existing rights are. This is hugely important given that in many parts of the world, legal recognition of land rights falls short of the negotiated and contested nature of land tenure (see Broegaard, 2005; Juul and Lund, 2002). This contributes to tenure insecurity that is particularly acute in cases when land tenure arrangements are under threat from outside intervention (Peters, 2004).

Provisions related to the acquisition of land are again treated differently. In the Bonsucro standard, the most important criterion in this respect is the one that prohibits expansion into ‘high conservation value’ areas, which includes those areas ‘fundamental to meeting the basic needs of local communities’ and ‘critical to their traditional cultural identity’ (Bonsucro 2011a: 11). Clearly a lot rests here on interpretations of what a high conservation value area actually is, and it is arguable that in those cases where a community (constituted here by its political representatives) has entered into negotiations to sell land, then by definition it is not essential. At this point, the provisions requiring ‘transparent, consultative and participatory processes’ become most relevant. These specify that for any expansion, an Environmental and Social Impact Assessment (ESIA) that involves stakeholder engagement must first be conducted and complied with, and that an ongoing mechanism for consultation with these stakeholders must be present and ‘consensus-driven negotiated agreements’ pursued. What issues these ESIA should contain, however, and what checks should be carried out to ensure companies have acted on any stakeholder agreements, are both left unspecified. There are also important exceptions to this requirement: if the land expansion is less than 10% of total cane area or replaces land no longer providing cane to the mill, then an ESIA is no longer needed. Given the huge size that many cane farms reach, this enables significant amounts of unmonitored land acquisition ‘via the back door’.

As before, the RSB provisions appear more onerous. Along with the explicit requirement that any deal must require the *consent* of affected land users and not just their consultation, the RSB also puts in place criteria designed to reconstruct lost livelihoods, compensate for lost assets and improve the socio-economic status of local communities (RSB, 2011a: 15). This is intended to help deliver on the promises of waged jobs and contract farming opportunities that typically accompany large agricultural investments, but which often fail to materialise

once peasants have been alienated from their land and become, in Li's phrase, 'surplus people' (Li, 2011).

### *Compliance levels*

The other dimension of a standard that must be interrogated is the level and scope of compliance that companies are expected to reach to become certified. Standards schemes typically allow for some measure of failure, since it is unlikely that producers will meet every single one of their varied criteria. Bonsucro and RSB are no exception to this. For its part Bonsucro asks that producers meet five compulsory criteria in the standard and 80% of the remainder (Bonsucro, 2011a: 3). This is problematic for land governance insofar as the two criteria discussed above, relating to land ownership and stakeholder engagement respectively, are *not* compulsory. This means that producers can avoid complying with these requirements and yet still gain certification by meeting those easier criteria related to management practices and factory processes. As indicated by participants during a Bonsucro auditor training session in India attended by the author, this lack of emphasis on land rights will also affect the amount of time and effort that auditors dedicate to investigating them, since verifying the core criteria is considered a more important priority for the integrity of the scheme.

Consistent with our findings above, the RSB is also more stringent when it comes to compliance, setting a higher threshold for producers to meet. All of its criteria are compulsory in the sense that none can be failed as a 'major non-compliance', which includes violations which are systemic, uncorrected from previous audits, or compromise 'the good name of the RSB' (RSB, 2011b: 14). Nevertheless, auditors need only visit a representative sample of between 5% and 25% of the producer's subsidiaries and affiliates – 5% of a company's operations if they have been classified as low risk and 25% if high risk. Although producers do not have a choice as to which percentage of operations are audited, the sampling approach does depend on the willingness of the certification body to seek out and fully investigate issues around land disputes ahead of/during the audit.

### *Auditors and verification*

Consideration of the role of the auditors brings us to our final point, which concerns the different forms of evidence that exist and the voices they embody. As noted in other studies of certification schemes, the implementation of standards ultimately depends upon their auditability and this in itself imposes a highly politicised schema upon its subjects (Ponte, 2008; Silva-Castañeda, 2012). For example, research into the Roundtable on Sustainable Palm Oil (RSPO) has shown how community evidence drawn from localised and personalised markers, such as graveyards and hunting areas, is discounted in assessments of land tenure because it cannot be translated into the ‘language’ used by auditors (Silva-Castañeda, 2012). While the use of quantifiable targets and ‘objective’ measurements against ‘universal’ science-based indicators may be necessary in order to score companies in the same abstract way, their very use also undermines contextual understandings and negotiated practices.

In respect of our two cases, this can be demonstrated in terms of the evidence that is permissible. As revealed during a Bonsucro auditor training session, in determining land tenure claims, readily-available paper-based evidence is usually sought in the first instance. However, critics of certification have argued that documents obtained from land registries often fail to recognise communal and open-access land tenure because they are biased towards property rights held in private or by the state, and are also often incomplete or out of date (Friends of the Earth, 2008). Another common form of proof called for by the schemes is company documents, used to verify details of community consultations. However, while a written record that a majority of people at a particular ‘stakeholder meeting’ raised their hand to indicate their consent to resettlement might provide ‘objective evidence’ for these purposes, it would hardly prove the absence of dispute, for example, from those who did not attend the meeting or not raise their hands. Nor would it prove that such consent was free or voluntary. Existing literature on land transfers has widely criticised the notion of ‘willing-seller/willing-buyer’ and it is doubtful in this case that stakeholder consultations are likely to include, let alone draw out the views of, those who do not have sufficient influence in ‘affected communities’ to come forward themselves (Borras, 2003; Fortin, 2005). Finally, though both Bonsucro and the RSB also require auditors to conduct on-site interviews, these are conducted primarily with farmers and workers. The guidance on speaking with those *outside* the supply chain is far less prescriptive and largely left to the discretion of the auditors. This is important since it is precisely these people who are most likely to raise concerns about current patterns of land use.

The course of action taken when disputes over a company's right to land *are* detected also suffers from biases. To decide whether these are legitimate, the Bonsucro scheme instructs its auditors to gather additional information from an 'independent authority such as government or local agencies' and to evaluate 'local level solution[s] on land ownership, access and use' (Bonsucro, 2011b:11). This is highly problematic in that many of the most prominent land grabs in the sugar sector – from Cambodia to Uganda – have been state-sanctioned, meaning that 'independent' bureaucrats are acutely implicated in the process of alienation (Richardson, 2012). Moreover, since land tenure disputes tend to be entrenched, complex and potentially irresolvable, it is exceedingly difficult for auditors to decide conclusively 'whose land it is' and, in this context, to judge decisively against a company for violation of the standard (Berry, 1992; Sikor and Lund, 2009).

What should by now be evident is that simply writing in references to land tenure in standards does not guarantee that they will be upheld through the process of certification. Notwithstanding the differences between the RSB and Bonsucro standards, by looking at the minutiae of their criterion and compliance thresholds, various loopholes and limitations become apparent that negate watertight and comprehensive coverage of land issues. Moreover, through the values inscribed in global standards-setting and auditing practices, we see how the notion of a 'sustainable land deal' is constructed by actors 'dislocated and distanced from the places they govern' (Fairhead *et al.*, 2012: 247). Whether the specific criteria underlying it are met or not, this helps legitimise a particular form of land acquisition that favours those able to express and evidence their claims in a legalistic manner. This is crucial when considering the extent to which such schemes protect conventions of land use that are not already secured in law or in practice, and whether they unwittingly reinforce the asymmetry of power between companies and communities, or even within communities, of the powerful against the powerless.

### **Structural constraints to the adoption and enforcement of private standards**

Much of the commentary on the use of roundtable certification schemes has assumed a technocratic character, putting forward various suggestions on how the kinds of loopholes and limitations identified in the previous section could be closed and overcome (see IUCN, 2010; ISEAL Alliance, 2012; UNCTAD, 2008). This is very much the world of paper

standards, focused on benchmarking one certification scheme against another with a view to ‘ratcheting up’ and harmonising the various criteria. However, in isolating the certification schemes from the context in which they are adopted and enforced, these approaches overlook the market and capitalist structures that hinder the upward progression of standards and the ability of their administrative bodies to avoid cliental relations with the producers they are meant to be monitoring. As we now explore in this section, where standards remain patchy and the ability of certification schemes to enforce them weak, then their utility as a mechanism of effective land governance must be doubted.

### *The market for certification*

Since certification schemes are financially dependent on their members’ subscription fees and on producers’ certification fees, there is a need to ‘sell’ their standard to those companies they are endeavouring to discipline. This creates the incentive for schemes to lower the stringency of their standards in order to attract clients, a phenomenon known in the literature on eco-labels as ‘a race to the bottom’ (Bartley, 2011; Haufler, 2003). What is also important to recognise, however, is the way this also applies to certification schemes operating under the EU RED. Under this regime, the European Commission have approved a number of schemes that simply meet the minimum criteria on GHG emissions and conservation. So, while schemes like Bonsucro and RSB go beyond these to cover land tenure issues as well (albeit imperfectly) other approved schemes do not. As Table 1 shows, the seven schemes initially approved were highly uneven on the issues they covered, with some, namely those industry-led standards, containing no reference to land and resource rights whatsoever. An incentive to ‘shop around’ was thus created, as biofuel producers with contentious land claims would be able to opt for certification schemes with weaker standards. The dilemma this creates for the roundtables has been openly recognised by the RSB:

How do we make compliance with RSB standards practical and cost-effective for companies while addressing complex issues such as biodiversity, food security or land rights? In other words, how can the RSB cope with fierce competition from a number of emerging schemes offering cheap and simple alternatives, while at the same time remaining true to its aspirations of comprehensively addressing sustainability? (RSB, 2012a: 1)

## **INSERT TABLE 1**

For its part, the WWF has called for European policy-makers to raise the floor of permissible standards by including more mandatory criteria in the RED (WWF, 2012: 25; see also Oxfam, 2011a). Other NGOs have criticised the EU's decision to grant licenses to schemes that fail to protect local communities and prevent deforestation, with some even suing the Commission for failing to release details about the approval process (ClientEarth, 2011). In lieu of regulatory change, the RSB itself has responded through institutional innovation. It has spun out a separate sister company, 'RSB Services', from the original standards development organisation now known as 'RSB Standards'. The role of RSB Services, which is not 'multi-stakeholder' but simply a non-profit corporate entity, is to manage the certification scheme, market the standard, and expand its uptake.

The thinking behind such separation is that with a more 'entrepreneurial' team RSB Services will be better placed to get companies signed up to the scheme, notwithstanding the rigour of the standard (RSB, 2011c). Yet it has struggled in this endeavour, having secured the certification of just two producers in its first year of operation. This helps explain RSB's second innovation, which is its decision to form an alliance with another (NGO-led) certification scheme, the Rainforest Alliance. To lower audit costs to producers and make certification more appealing, farms already certified according to the Rainforest Alliance standards will be able to receive RSB certification through a simplified audit process, simply adding on some requirements linked to GHG emissions and food security (LaChappelle, 2012). Yet in respect of land tenure, the weaker Rainforest Alliance criteria are left intact, meaning that the more demanding aspects of the RSB's standard will be avoided and the notion of a race to the bottom again given credence.

The market for certification not only affects the ability of schemes to enrol companies without undermining their standards but also their ability to effectively discipline them once they are signed up. In principle this should happen through the suspension of a company's certificates or expulsion from the scheme, yet the risk of penalising influential firms and losing their business acts as a powerful constraint on such action (Pattberg, 2005). The RSPO, for instance, has been accused of this failing in relation to its handling of land-use violations by the major palm producer, the IOI Group. Even after it was found guilty by the RSPO's Executive Board, the roundtable still allowed IOI to sell palm oil from its existing

certified plantations, extended the timeframes for complaint responses, and failed to speak out against the company's denial of wrongdoing. This left NGOs even within the RSPO itself calling its credibility into question (Fernandez, 2011). A similar example could be found at Bonsucro, where one of its founder members, Tate & Lyle, was been buying sugar from Cambodia grown on land illegally granted to private companies by the state (Inclusive Development International, 2012). Although the company had not certified its suppliers in Cambodia, complaints were lodged by local NGOs against Tate & Lyle for violation of the Bonsucro Code of Conduct, which asks (but not requires) members to endorse its objectives and implement its standard. Yet over a year later, and during which time thousands of people remained without land or livelihoods, Tate & Lyle had still not agreed to arbitration but nor had it been asked to resign its membership of Bonsucro.

These cases also illustrate the difficulty in getting companies to resolve disputes through remedial action like the restitution of land or payment of compensation. Certification schemes can push them toward this end, but as non-judicial systems they must always seek to negotiate with the 'guilty party' over the terms of their infraction. Hence it is also problematic if companies simply decide to abandon a scheme which appears to be making excessive demands upon them. The trade association for European biodiesel producers publicly resigned its membership of the RSB after a disagreement over its 'excessively complex and theoretical' approach, while Bonsucro has suffered the loss of at three major sugarcane millers after being made the subject of complaints lodged by activists. The self-withdrawal of actors whose practices contravene a given standard could be interpreted as a boon for the integrity of the roundtable schemes. However, given their very purpose is to improve the sustainability of sugarcane/biofuels production, the withdrawal of recalcitrant producers from certification schemes underlines their limited ability to actually *enforce* their standards.

Conflicts of interest resulting from the power held by companies do not just affect the independence of certification schemes but also permeate the certification process itself. We noted earlier the division of powers within the tripartite standards regime between certification schemes, auditors and accreditation bodies that was supposed to give it credibility as a means of governance. However, while audit firms possess organisational independence from the companies and certification schemes they work for, their need to establish a reputation conducive to repeat custom means that their *operational* independence

and ability to do the job without any ‘outside influence’ on audit quality, intensity and adjudication is less clear-cut (Hatanaka and Busch, 2008; Fuchs *et al.*, 2011). This claim is given empirical weight by large-N studies highlighting variance between different auditors on the varying degrees of ‘toughness’ in how they judge companies, with one important factor being the reluctance of auditors to flag up problems lest other companies become reluctant to hire them for their certification in the future (Albersmeier *et al.*, 2009).

In terms of land tenure, a prominent case involving the FSC also casts doubt on the assurances of the tripartite regime to ‘regulate the regulators’. In 2011, Oxfam complained to the FSC about the veracity of an audit of the New Forests Company in Uganda, which, the NGO claimed, had overlooked the eviction of 22,500 people from their land to make way for the plantations. Since the accreditation body overseeing the process had previously given the auditors a clean bill of health for its certification of the New Forest Company, the FSC therefore had to ask the auditors to investigate themselves. Yet even *after* Oxfam had informed the auditors about the evictions and told them exactly who had attested to their forced displacement, in their internal review the auditors stuck by their original decision to award the certificate, partly justified by the positive findings of the accreditation body (Oxfam International, 2011b).

### *The imperative to expand*

Some critics see certification as actually facilitating land expansion, in that it sanctions as ‘sustainable’ a particular model of production that involves large-scale acquisitions of land. This is especially important in the context of land grabbing, where it is precisely the expansion of monoculture production to feed/fuel ‘the global consumer’ that is held to be accelerating dispossession through new enclosures (McMichael, 2012). While the general validity of this argument may be contestable, since most agricultural markets make little, if any, use of certification schemes to legitimate their existence, within the context of EU biofuels it does have more appeal (McCarthy *et al.*, 2012). Certainly in the eyes of NGOs critical of the very idea of mass-market biofuels, certification is ‘little more than a green fig leaf’ which has been used instrumentally by European politicians to ‘reduce opposition to the development of agrofuels’ (World Rainforest Movement, 2008; Biofuelwatch *et al.*, 2008). Notably, in both the Bonsucro and the RSB standards, there is no upper limit placed on the geographical size of individual farms or total supply-areas. The reason is simple: while agro-

industrial companies have submitted to the inclusion of (some) land and resource rights in the various roundtable standards, they have forcefully rejected any impediments on their ability to expand (see Mier y Teñan, 2011).

Another dimension to the relationship between certification and expansion is the ‘knock-on’ effects seen in indirect land-use change (ILUC). This refers to the changes in land-use caused by biofuel production, whereby an increase in demand for biofuel ‘feedstocks’ in one area results in farmers in other areas converting land to fill the resultant supply-gap. For example, in Brazil, as sugarcane producers have bought up commercial crop/pasture land to increase their cane supply, it has been argued that the previous occupants have either moved their cattle ranches or soybean farms into environmentally sensitive and inhabited land themselves, or else turned their hand to cane farming and created economic incentives for others to do so instead (Friends of the Earth Europe, 2010).

Critics of this process have focused on the impacts this has had on the ‘real’ greenhouse gas emissions of biofuels (Searchinger *et al.*, 2008). The debate has not, however, widened to consider other forms of ILUC so as to include the adverse impacts when people are displaced or concentrated into a particular portion of land as the indirect result of the expansion of a nearby plantation. The problem roundtables face here is that they only certify land used in the production of their particular crop, or, in the case of the RSB, any crop turned into biofuel. Hence for episodes of land alienation that are indirectly caused by the expansion of a roundtable producer, but which happen beyond the boundary of its supply area, then certification schemes run up against their spatial limits. As noted even by the RSB (2011a:3): ‘voluntary certification alone may not be the best tool to address indirect impacts, since these macro-level impacts are likely to be beyond the control of the individual farmer or biofuels producer seeking certification’.

Roundtables and their members have sought to square the circle of indirect impacts by encouraging producers to farm on idle land, improve productivity through higher yielding crops, and make better use of plant residues – a strategy of ‘sustainable intensification’ also put forward by the World Bank (see Shell and IUCN, 2010; World Bank, 2011). Establishing a set of criteria that would identify biofuels produced from these sources, the WWF have suggested that certification schemes could thus promote biofuels that are less likely to result in farmers being displaced and ‘virgin’ land brought under cultivation (WWF, 2010b; see

also RSB, 2012b). Yet the notion of underused land that is ‘idle’ or ‘marginal’ remains highly contentious – needed, still, by unnoticed ‘marginal peoples’ – as does the claim that increasing per hectare output necessarily leads to an aggregate reduction in the demand for land (McMichael, 2010; Nalepa and Bauer, 2012). Together, this leaves certification schemes unable to resolve the ILUC question even in theory and suggests that much more bounded claims must be made for their utility in protecting the rural poor.

### **Roundtables beyond certification: indirect contributions to land governance**

The previous section laid out two sets of structural constraints that cut across all certification schemes and created systemic impediments to their ability to control what companies do on the ground. In spite of these criticisms, in this section we discuss ways *beyond* the certification process in which roundtables can contribute, albeit indirectly, to the protection of land and resource rights. As part of this enquiry, we also forward suggestions as to how these alternative contributions may be improved to better support the interests of the rural poor.

First, it has been noted that investors and host governments have every incentive to shield the land deals they conclude from public scrutiny (De Schutter, 2011: 274). In this respect, through the public availability of their detailed certification and monitoring audits, roundtables can help expose the details of certain land acquisition processes and illuminate wider industry practices to advocates of agrarian communities. This could be furthered by promoting engagement between locally-informed civil society actors and the auditing team, preferably prior to certification, in order to gather information about land conflict ahead of the audit and bring these accounts to light as well. This would require the same kind of awareness-raising and training for community associations and NGOs as the roundtables have carried out with potential producers and auditors, and essentially asks them to extend the ‘multi-stakeholder’ ethos of inclusive participation into the process of certification itself.

Second, land deals can be difficult to challenge because of the power wielded by investors, especially those acting as conduits to valuable foreign markets (Zoomers, 2010). Roundtables help address this asymmetry by leveraging the influence of campaign groups against ‘big brand’ transnational companies, explicitly using these companies’ status as roundtable members to have them adapt their purchasing practices. In this way, campaigners have also been able to target those producers outside the scheme but linked, via the supply chain, to a

member within it. One example would be the lobbying of Unilever, a founder member of the RSPO, to suspend purchases from Sinar Mas, a large palm oil group with many subsidiaries outside the palm oil roundtable (Schouten and Glasbergen, 2011). Another would be the additional pressure brought to bear on Shell as a member of Bonsucro and the RSB in its decision to discontinue purchases of sugarcane grown on indigenous land in Brazil (Shell, 2011: 13). Roundtables could further this kind of corporate accountability through the creation of ‘resolution forums’ in cases where land conflict is discovered in the audit process, bringing companies to the negotiating table to discuss land tenure cases with representatives of the affected groups and relevant public authorities. This would complement the call of the CFS to ‘set up multi-stakeholder platforms and frameworks’ to implement its guidelines on land tenure; a task currently left to states alone (FAO, 2011: 39). Moreover, it would also help integrate the certification process with those existing regulatory networks that have a strong local character, rather than with those equally remote institutions like the UN’s REDD with which the roundtables are exploring ties (cf. Vandergeest, 2007; RT-REDD Consortium, 2012).

Third and finally, recent scholarship points to the ways in which private regulatory schemes like roundtables are able to create ‘pathways’ to improved public policy (Bernstein and Cashore, 2012; Overdevest and Zeitlin, 2012). This could be in the form of test-beds for ideas and deliberative spaces in which controversial issues of industry regulation, such as ILUC, may be aired. It is notable that the EU’s 2012 proposal to cap the use of biofuel made from food crops and apply heavier carbon emissions weightings to certain feedstocks draws on very similar ideas to those discussed in the RSB’s parallel work on ‘low indirect impact biofuels’, particularly the need to address the impacts of biofuels on food prices and biodiversity loss (RSB, 2012b; Carrington, 2012). Another kind of pathway involves the diffusion of governance mechanisms through adaptation and replication. The early certification schemes had demonstrated to states that getting industry buy-in to tougher standards of production was a feasible option, if not entirely problem-free, and that certification itself was a mode of governance that could be readily adapted to public regulatory systems. As certain countries in the EU now look to apply certification requirements to other commodities, and other states look to and learn from the EU’s experience with certification (given Europe’s status as a ‘green normative power’ within world politics) it is possible that this tougher type of trade regulation could be replicated beyond the EU biofuel sector (Falkner, 2007).

## Conclusion

This article has considered the extent to which two global sustainability standards and certification schemes, Bonsucro and the RSB, are able to protect the land rights of those whose land tenure is insecure. This is crucial given the unprecedented scale of land deals in the global South that have been concluded over the last decade – the majority for the production of biofuels. This transnational form of global governance, produced in these two cases by ‘multi-stakeholder’ roundtables, steps into a regulatory vacuum that persists at both national and intergovernmental levels. However, our analysis indicates that such an approach falls short in the protection it affords against land grabs by the powerful over the powerless.

The approach taken to land acquisitions by both schemes is predicated on the logic that if processors only source from suppliers which have legitimate title to land and if land deals take place with the free, prior and informed consent of users, then land grabs will be prohibited. Not only have we found flaws in the way the two schemes endeavour to implement this approach but we have also criticised the approach *per se*. It provides scope for acquisitions of land currently being used by pastoralists or for subsistence farming, provided it is done ‘by the book’, and legitimises the language of ‘objective evidence’ and ‘proof’, changing the terms (literally) within which markets for land and resources are constructed and managed. This is particularly important given that those land rights which are most at risk are those subject to dispute or not secured in law (Peters, 2004).

That said, Bonsucro and the RSB are two of the more rigorous schemes approved by the European Commission under its RED legislation and could be used to challenge some types of land alienation, especially those that clearly contravene national law. However, even though the EU RED criteria defines ‘sustainable biofuels’ for the purposes of attaining market access, it fails to include basic criteria related to land rights. As we have pointed out, this has undermined the limited protection roundtable certification schemes do offer since they can be undercut by competitors with less stringent criteria on land tenure. Coupled with economic dependencies of both the certification schemes and the auditors upon the very companies they are seeking to discipline, as well as the inability of certification to address the implications of indirect land-use change, we find that as a mode of governance, its efficacy to protect against land grabbing cannot be assured.

In sum, we suggest that the real value of roundtables might lie less in their ability to *enforce standards* than their (partially-realised) role in *enabling scrutiny*. In so doing, we do not overlook the other side of this political bargain, namely that roundtables ‘provide lead firms [in commodity chains] with a pragmatic means of ameliorating reputational risk’ (McCarthy *et al.*, 2012: 564). However, notwithstanding the acceleration of land alienation over the last decade, we would maintain that its steady privatisation and the concomitant displacement of peasants has been a consistent feature of world agriculture (McMichael, 2012: 2). As such, the immediate opportunity to open up this process to contestation, first via scrutiny of these lead firms then lobbying and regulation, should not be readily dismissed. While they cannot give assurances that violations of existing rights and of their own standards can be prevented, roundtables are in a position to help improve existing processes of land governance. What we do concede is that certification schemes in general must be situated in a pro-poor policy framework that advances land and agrarian reform (see Borras and Franco, 2010). Since roundtables can only preserve existing land rights rather than progress new ones, foremost among these policies must be to secure the underlying rights of farmers, herders and fisherfolk to their land (De Schutter, 2011). While we believe that certification as a mode of governance is not necessarily inimical to such efforts, focused primarily on the governance of agribusiness it does not help advance the kind of rural development that can provide more and better livelihoods in the global South.

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**Table 1: Land and resource rights addressed in EU-approved certification schemes**

	Industry-led schemes			Roundtable schemes			
	Abengoa	Biomass, Biofuel, Sustainability Voluntary Scheme (2BSVs)	Greenergy	Bonsucro	International Sustainability & Carbon Certification (ISCC)	Roundtable on Sustainable Biofuels (RSB)	Round Table on Responsible Soy (RTRS)
Proof of legal ownership or lease	-	-	High	High	High	-	High
Proof that land tenure is not under dispute	-	-	-	High	-	High	-
Prohibition of involuntary land acquisition/resettlement	-	-	Low	-	-	High	-
Free, Prior and Informed Consent as the basis for decision-making on the relinquishment of rights by all land owners and users	-	-	Low	-	-	High	Low

Identification of customary land and resource rights	-	-	Med	-	Low	High	Low
Identification of potential impacts on customary rights, property and resources	-	-	High	Low	-	High	-
Livelihood baselines for affected land users	-	-	-	-	-	High	-
Mitigation of negative effects on rights, land and resources	-	-	Low	Low	Low	High	-
Compensation for lost assets (land, crops, economic trees, 'improvements')	-	-	-	-	-	High	Low
Compensation for loss of access rights to common property resources	-	-	-	-	-	-	-
Livelihood reconstruction for land/resource-losing households	-	-	-	-	-	High	-
Proof of effective compensation, livelihood reconstruction and impact mitigation efforts	-	-	-	-	-	High	-

Note: The ratings here are not conclusive but indicative of the uneven coverage between different schemes; it was suggested to us in personal correspondence that the RSB does require both proof of legal ownership and compensation for loss of access rights. Source: German and Schoneveld, 2011: 12-13.