INVESTING RESPONSIBLY IN AGRICULTURAL LAND

THEMATIC CASE STUDIES FROM RESPONSIBLE LAND INVESTMENT PILOTS IN SUB-SAHARAN AFRICA

Thematic Case Study 1:

The need for proper attention to land tenure issues in investment planning and due diligence

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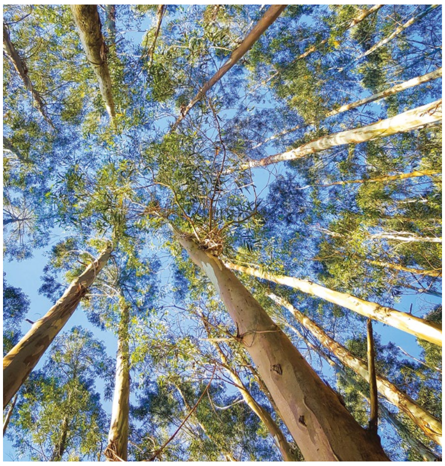

Introduction

This paper is one of three thematic case studies resulting from a set of pilot projects undertaken jointly by civil society and private business partners from 2016–2019 in five countries in sub-Saharan Africa. These pilots sought to test how private companies could collaborate with civil society organisations and other stakeholders to implement responsible agribusiness investments that recognise and respect community land rights, and to develop innovative tools and approaches that could be adopted and implemented at greater scale. Primarily based on learning generated by projects supported by LEGEND (Land: Enhancing Governance for Economic Development), a programme of the UK's Department for International Development (DFID), the case studies provide further detail on some of the key lessons from the pilots set out in a full LEGEND **Report and summary Briefing Note.**

This case study offers an account of the experiences of three LEGEND projects in addressing land tenure and governance issues that emerged in large-scale investment projects, which stemmed from insufficient attention to pre-existing legitimate land rights held by local people in investment planning.

These experiences illustrate one of the principle lessons learned by LEGEND, that **companies and investors need to pay proper attention to land rights issues at the investment planning stage, which implies a need for better due diligence, to ensure that legitimate land rights are recognised and respected, and to minimise associated risks**. Addressing land rights issues in a timely manner is always preferable to tackling them later, after problems have escalated, leading to conflicts that damage community relations, increase costs and undermine sustainability of the investment.

BOX 1

Land tenure issues include access to land, rights to use, control, and transfer land, as well as associated responsibilities and restraints. Associated **governance issues** concern the mechanisms, processes and systems for decision making on allocation of land rights and land uses, including the management and resolution of differing and competing interests amongst stakeholders in business, the community, government and civil society. **Due diligence** refers to carrying out a thorough investigation or audit of a potential investment, normally undertaken in a timely fashion and using appropriate tools before entering into an agreement or a financial transaction with another party.

Legitimate rights to land are rights established and held by local communities and their members over time that are recognised socially, even though they may not be formally recognised by national law or officially documented. Often described in Africa as customary rights, they include rights to specific land areas held by extended families, households and individuals as well as rights to access and use land and natural resources held in common and regulated by local rules and agreements.

Proper attention to land tenure issues involves screening specific investment sites, project proposals for feasibility, and compatibility with legitimate community land rights at the planning stage. This should include so-called land legacy issues that can involve legal complications, liabilities, boundary disputes, grievances and wider stakeholder conflicts derived from previous investment projects on the same site, how they were established and the practices of the original operators. Purpose-designed **due diligence and risk assessment tools** can be used to determine what further action is needed to ensure that legitimate land rights are recognised and respected during project planning and operations, and the type of monitoring measures and grievance mechanisms needed.

This case study details the experiences of three LEGEND pilot projects to illustrate what needs to be done to understand land tenure risks before investors and companies commit resources to developing land and take over from the state, communities, their leaders or previous project operators as the responsible land managers. In all three cases, improvements were needed to address land tenure conflicts and associated difficulties in company–community relations after the investment projects had already begun:

1. **Forestry investment in central Mozambique:** The initial planning and land acquisition process for a large-scale plantation development by the company Portucel failed to assess local communities' tenure existing tenure rights in the areas targeted and the risks involved. This situation was improved by the work of LEGEND partners ORAM and Terra Firma to map and document legitimate land rights systematically, helping the company to recognise and respect these rights, and strengthen community capacity.

2. **Reconfiguration of a large-scale oil palm concession in Sierra Leone:** An unfeasibly large-scale oil palm concession in Sierra Leone, acquired by Natural Habitats Group, was originally created without a proper planning or due diligence process. The NGO Solidaridad partnered with Natural Habitats to reconfigure the concession, resolve community grievances and conflicts and help put a smaller-scale, more sustainable, oil palm plantation in partnership with land-owning families and village communities.

3. **Development of a tool to implement Illovo Sugar's commitments to respecting land rights in Malawi, Mozambique and Tanzania:** Illovo's partnership with land rights NGO Landesa helped to improve company practices and strategies on land in long-established sugar estates and smallholder supply chains, and developed a customised diligence and management tool that can be adapted for use by other companies and for other crops and commodity sectors.

Other case studies in this series include information about innovations and improvements in land rights mapping and documentation undertaken by civil society partners, and adjustments made to business plans by the companies that helped to address problems derived from weak initial planning and due diligence. All three case studies draw on the first two investment projects discussed here, along with other cases.

How to approach improved due diligence

A good basis for investors to approach due diligence is to follow the **Analytical Framework for Land-Based Investments in African Agriculture – AFDD** (Grow Africa 2015), developed in 2015 by international agencies committed to ensuring fair land governance and protection of legitimate land rights in investment processes. This sets out the land-related questions that investors should ask at the planning stage and throughout the investment cycle to assess compliance with recognised global principles and good practice based on the 'Voluntary Guidelines on the Responsible Governance of Tenure' (VGGT), actions needed to address deficiencies, and a series of 'red lines' – concerns that imply an investment should not proceed if corrective action cannot be taken, summarised in Box 5.

Companies can also use data-based risk assessment tools, such as Landscope, developed by LEGEND partner, TMP systems, and purpose-developed due diligence procedures such as the **Landesa LandAssess tool** supplemented by appropriate mapping and stakeholder consultation and survey techniques to better manage their existing investments and supply chains, as illustrated by Landesa's pilot project with Illovo Sugar, discussed in this case study.

1. Forestry investment in central Mozambique

In 2011, the Mozambique Government granted Portucel Mozambique leasehold titles (referred to locally as DUATs[1]) totalling approximately 356,000 hectares (ha) for plantation forestry on land already extensively occupied and used for agriculture in two central provinces, Manica and Zambezia. The aim of this investment project is to develop a eucalyptus plantation and pulp mill to supply European paper markets, and to generate export revenues for Mozambique. The mill's intended annual production capacity is one million tonnes of cellulose pulp, to be supplied by a 250,000-hectare plantation. The long-term plan to develop the mill was linked to government plans to expand transport infrastructure to permit bulk exports, requiring construction of a new port terminal, for which a deep-water site in Zambezia province was favoured. Phase I was projected to cost US $131 million, including a US $25 million equity investment by the International Finance Corporation (IFC), with the aim of establishing an initial 60,000-ha plantation producing woodchips for domestic and export markets for biomass power generation, and as a basis for further expansion in Phase II.

Portucel was granted the leasehold rights following a series of rapid government-facilitated consultation exercises with selected groups of community leaders and elders assumed to be representatives of the wider communities, in which the company offered employment and development assistance to community members in return for land. The land concessions were granted on condition that Portucel would meet national legal requirements to consult and reach agreement with representatives of land-holding communities to obtain the land to be planted, and that a full Environmental and Social Impact Assessment (ESIA) would be undertaken. Portucel Mozambique's parent Navigator Company decided to proceed with the investment on this basis. Satellite information indicated the presence of substantial areas of degraded natural vegetation which were suitable for forestry

1. In Portuguese, DUAT stands for Direito de Uso e Aproveitamento, meaning beneficial land use rights.

investment, and a relatively dispersed pattern of land occupation without large nucleated settlements. Despite this, the area was densely populated and subject to increasingly intensive agricultural land use, with shortening fallows and little remaining natural forest. More than 24,000 families (around 120,000 people), mostly reliant on subsistence and small-scale commercial farming, live in an estimated 80 village community areas which overlap substantially with Portucel's concessions in the investment's focus districts of Ile and Namarroi in Zambezia.

When the initial investment plans were made and the concessions awarded, due diligence for purposes of project feasibility and screening appears to have been entirely paper based, and without any consideration of risks related to land access and tenure. Existing land uses, the full extent of land occupation on the ground and the related financial, operational and reputational risks to the company's investment were not assessed. From 2012 onwards, Portucel began acquiring, demarcating and planting the land which the customary leaders consulted had initially indicated to be available. In practice, the land acquisition process proved slower and more difficult than expected, as the company faced complaints and grievances from community members concerning unmet expectations and unfulfilled promises of employment and the loss of land access. Fieldwork by the LEGEND project and independent research also found complaints from households that were pressured to release land, and evidence of intra-community-level disputes concerning land used by the company, stemming from the unclear consultation process and lack of land rights documentation. This hindered the assembly of land for large plantation blocks and led to delays in planting. By the end of 2017, the company had planted a total of 13,200 ha, approximately 4% of the total DUAT area, on parcels obtained mostly through voluntary agreements with 3,500 families, mainly in Zambezia, in a highly dispersed pattern. The ensuing delay in planting of over two years was compounded by delays in planned construction of rail and port infrastructure required to support the pulp and paper mill to supply export markets in Phase II of the investment.

The ESIA commissioned by the company had highlighted failings in initial community consultations and identified land tenure-related risks and the potential for negative impacts and related social conflicts. The IFC appraisal reviewed and updated the ESIA and the measures required to mitigate negative impacts, leading to an agreed Environmental and Social Action Plan (ESAP). In 2014, IFC granted an additional US $25 million in equity finance to help meet the total Phase I estimated cost of US $131m, conditional on satisfying the **IFC performance standards**. In practice, the formalised land use rights granted to Portucel, and the company's assurances that no forcible resettlement would be required were enough to satisfy IFC requirements. Portucel also agreed to apply new land access procedures designed to conserve enough land under community control for food production, estimated to require an average of 2.9 ha per family.

IFC financed a pilot land rights identification process in one community, conducted by local NGO partners ORAM-Nampula and Terra Firma. This small-scale pilot demonstrated practical approaches to clarifying the jurisdictions of customary leaders in relation to different village communities, and techniques for mapping, documenting and certifying each individual household's rights to specific land parcels that could be applied across the concession area. This opened the way for LEGEND to fund land rights delimitation and capacity building for land management in 20 communities, concentrated in Portucel's priority planting areas of the Zambezia concession. As the LEGEND project began in 2016, Portucel agreed a set of new land access procedures with IFC and suspended new land acquisitions pending completion of the land rights identification process, while continuing to plant on land already obtained.

In late 2018, Portucel announced a shift in strategy and a renewed agreement with government to postpone decisions on planting an additional 120,000 ha of eucalyptus to provide the initial feedstock for the pulp mill. Instead, the company decided to focus first on developing a further 20,000 ha to supply woodchip export markets for energy generation and construction poles for local markets to be sourced from small-scale company- and out-grower-managed plantation blocks, arrangements likely to be more acceptable to local communities. Phase II, which still aimed to reach a total of 250,000 ha, would only begin when eucalyptus output reached the scale required for the mill, and remained conditional on government access to finance for the transport infrastructure. The delays required company shareholders to underwrite the costs of postponed and reduced returns and changes to its original business plans, including the costs of maintaining its project team for the additional period, and a process of land assembly and negotiation with local communities that was much more protracted than originally envisaged, also involving a higher level of investment in development assistance to participating communities.

New land access procedures meeting IFC standards have been in place since 2017 and the company has in effect accepted an approach based on Free, Prior and Informed Consent (FPIC) involving direct negotiations with the households and community groups concerned, which requires documentation of their land rights. Nevertheless, as the IFC acknowledged, the investment was still taking place *"in a scenario with overlapping land use rights held by (1) the Company and (2) individuals and communities under customary law. This is particularly sensitive from a social welfare perspective as the populations of both Manica and Zambezia are heavily dependent on subsistence agriculture (i.e. rain-fed crops produced primarily for survival purposes in a largely cash-free environment) and both, but particularly Zambezia, suffer from chronic food insecurity and are particularly vulnerable to food shortages due to fluctuations in rainfall and pests".* (Source: **IFC website**).

BOX 2

PORTUCEL'S NEW LAND ACQUISITION PROCESS

To address the challenge of overlapping land-use rights, the Company has adopted several basic principles governing its land acquisition process, namely:

(1) developing plantations that are smaller than the total area of the concessions awarded, to allow residents space to continue their agricultural activities undisturbed

(2) negotiating land access only from communities that consider they have sufficient, unused, surplus land to cede

3) avoiding physical displacement (i.e. relocation of homes) and maintaining a buffer of at least 50m around homesteads

(4) only acquiring unused land from families with enough land available to meet their own needs who are not land constrained (each household is to maintain at least 2.9 ha of cropland, which ESIA studies show is close to the maximum area that a household can cultivate)

(5) leaving highly productive, low-lying areas (baixas) for agriculture and conservation

(6) recognising and respecting the decision of households who choose not to cede land and planning their plantations accordingly

(7) relying on local leaders to work with residents to identify suitable, unoccupied lands for transfer to Portucel

(8) based on ESIA findings, targeting less densely populated and less intensively farmed areas for land acquisition Mozambique's Land Law (1997) and related regulations envision the transfer of land-use rights from customary users to the holder of a government-issued DUAT, based on consensual agreement of the parties.

Source: (Source: IFC website)

As a result of documentation of legitimate customary land rights by the LEGEND Zambezia project (see Case Study 2 on land rights mapping available on the **Land Portal**) individual families have the right to refuse to release land. Their positions have also been strengthened by capacity building of local communities to act as formal counterparties in negotiation with the company. The actual extent of community land use for agriculture may mean that the project cannot meet its production targets and may face difficulties in progressing to Phase II, for which it may need to obtain access to additional land by negotiation with communities outside the boundaries of its existing concessions.

The application of IFC standards and the documentation of land rights by LEGEND has undoubtedly assisted in protecting local communities and in enabling Portucel to adopt a responsible investment approach. Despite this, the situation still presents continuing risks to the company in fulfilling its investment plans, and also to local communities, in obtaining a fair share of value from the investment. As Mozambican law does not currently enable communities or their members to rent out land to external users, returns to the communities must take the form of income from the sale of timber or wood projects to the company, jobs created, or company investments in community services, livelihood development projects or other in-kind support in exchange for land.

In contrast to the IFC safeguards, the VGGT principles call for more systematic and proactive efforts to recognise and protect customary land rights in advance, and to develop inclusive investments that meet local people's needs, rather than a retrospective approach intended to mitigate negative impacts once the investment is underway. The application of risk assessment tools such as **Landscope**, and a ground-based due diligence land assessment following VGGT principles would have identified various risks and red lines at the outset and encouraged the investors to redirect the project to less densely populated sites where it might have been more feasible, or to design a less ambitious project based on an assessment of probable availability of land.

2. Reconfiguration of a large-scale oil palm concession in Sierra Leone

In Sierra Leone, during the establishment phase of an oil palm investment project, Natural Habitats Sierra Leone (NHSL) worked with the NGO **Solidaridad** to apply an ongoing, retroactive approach to due diligence that enabled the company to identify risks and red lines stemming from the failure to take full account of legacy problems when NHSL acquired a large-scale concession from a previous operator in 2014. The original concession extended over 40,000 ha, occupying the entire traditional Makpele chiefdom in Pujehun District in eastern Sierra Leone and the LEGEND project implemented by Solidaridad aimed to test how a sustainable investment could be developed in partnership with local communities by following internationally recognised good practice. The project was required in the absence of any effective prior due diligence and to understand the implications for NHSL of globally accepted VGGT principles that require recognition and respect for landowning families and community members' legitimate land rights.

In 2017, Sierra Leone adopted a National Land Policy (NLP) that was substantially based on the principles of the VGGT, although this was not in force at the time the original concession was created. Amongst other provisions, the NLP sets a maximum limit for agricultural land concessions of 5,000 ha.

When NHSL began its operations, the company confronted a situation in which conflicting stakeholder interests for and against the oil palm plantation had become entrenched amongst the village communities affected for a decade or more. This involved two rival landowners' organisations, one comprising land-holding families willing to release land to obtain rental income from the company, and the other unwilling, citing lack of FPIC, the sidelining of family members and loss of land with which people could improve their livelihoods. In addition, there were numerous disputes and grievances with the company and within local communities concerning loss of land access, unpaid land rents, and inadequate compensation for standing crops lost.

- For a full account of Solidaridad's project with NHSL and its accomplishments and lessons in enabling the oil palm investment to gain social licence and become VGGT compliant, see **Solidaridad's project booklet**.

After 2002, as Sierra Leone emerged from a long civil war, national Government sought international investment as part of a wider post-conflict reconstruction effort to stabilise the economy and create employment in conflict-prone areas. In 2014, NHSL inherited the oil palm concession lease in Pujehun district from the World Bank's 'West Africa Agriculture 2' project (WAA2) which had acquired the land in 2012. The lease for this concession, and leases for other concessions in Sierra Leone, had been negotiated in 2011 through a consultation process arranged by local politicians which led to the signing of a leasehold agreement by the late Paramount Chief (the highest-ranking traditional leader), the local MP and 11 other individuals, understood to have been drawn from the Chiefdom Council. There was no land rights assessment or process to achieve FPIC of the actual landowners, recognised under the Sierra Leone constitution as the land-holding families and their members. This lease, and others, were acquired by a British national through a shell company (that exists only on paper to carry out transactions) that passed them on to the WAA2 programme. As this was wound up, companies such as NHSL with aspirations to operationalise the concessions, acquired the leases.

- For a fuller analysis of such land acquisition processes, their effects and implications see **LANDac Policy brief No. 6** *Negotiating and implementing large scale land deals in Sierra Leone: Improving transparency and consent.*

Natural Habitats Group (NHG) is a Netherlands-based organic oil palm producer, which had been seeking to expand its supply base in West Africa. In 2014, NHG acquired the NedOil operation in Tonkilili District, adjacent to Pujehun, which comprised a palm oil mill, a 66 ha-nucleus plantation and an active network of outgrowers. Shortly afterwards, the company acquired the Pujehun concession lease and established Natural Habitats Sierra Leone (NHSL) to manage the two operations in country.

The full 41,218 ha concession area included the buffer zone of the Gola National Park, which could not be developed; in practice, the operational concession was for 30,700 ha, of which NHSL initially hoped to develop around 50%. The company then embarked on a round of consultations, beginning with the Paramount Chief and subsequently involving local chiefs and other stakeholders, with a view to acquiring specific land parcels for planting. Significant legacy disputes existed over the land offered and available to the company, unpaid land rentals and escalating tensions between a landowner organisation willing to release land to the company and another seeking to prevent it. This threatened social stability in a large area that was previously subject to armed conflict. The company aspired to operating a responsible investment that complied with VGGT principles and recognised the discontent of community members. NHSL approached Solidaridad for assistance, and together they were successful in obtaining funding from LEGEND. Solidaridad's principal project objectives, closely aligned with the application of the VGGT and the AFDD tool, were to achieve:

- Reduction of concession size: The aim was to replace the original concession for the entire Makpele Chiefdom with a new overall lease arrangement supported by leasehold agreements made directly with landowning families who had explicitly consented to release land.
- Recognition of all rights holders through a more proactive process of community engagement: this required active community sensitisation and outreach to explain the intended investment activities and people's rights to opt out.
- Recording and formalising land rights and lease agreements: the process of mapping the land with GIS and formalising the land leases with contracts.

Jointly with NHSL, Solidaridad embarked on a retroactive due diligence process that applied VGGT principles, and operationalised the AFDD tool in ways that i) served to promote stakeholder engagement and capacity building in the project area, and ii) provided learning and feedback on usefulness of the tool by other companies and investors. This active, ground-based due diligence process identified how the investment project crossed various 'red lines' associated with VGGT principles, and the actions needed to change this, including:

- Village and group-based consultation jointly with NHSL
- Land rights mapping and identification of areas important for food security
- Establishment of a Multi-Stakeholder Platform (MSP) through which extensive consultation and engagement meetings were conducted, at both village and district levels. This enabled land-holding families and the company to dialogue and establish new agreements
- Legal intermediation by a legal empowerment organisation, Namati
- Introduction of livelihoods support projects, particularly targeting women, that the company could continue to support.

Ultimately these measures led to:

- Redefinition of the size and boundaries of the concession to 2,400 ha within the 5,000-ha limit of the NLP
- Individually negotiated lease contracts with families willing to release land, with payments of back rents for land already released and held by the company
- A new concession lease agreement, based on an arrangement that suited everyone
- Peaceful relations between interested parties.

In addition to protecting community land rights and helping the company to build a sustainable partnership, the application of the VGGT-based due diligence framework aimed to capture examples of planning and stakeholder engagement activities undertaken by the company that proved successful and others that were more challenging, and to identify lessons on partnership, roles and timing. Although certain necessary activities – such as the mapping and land rights inventories for areas that families agreed to release and the renegotiation of the concession lease – are one-off processes that can be considered completed, others – such as meetings of the platform for stakeholder engagement and company assistance to sustainable community food production and livelihood activities – need to continue after the LEGEND project ended. These need to be planned and communicated clearly in advance to ensure continued transparency and trust among the partners and stakeholders involved.

To apply the framework for VGGT-based due diligence in other contexts, Solidaridad concluded that clear timelines, division of roles (e.g between the company and its service providers or NGO collaborators) and quality assurance requirements for evidence were lacking in the current version of the framework. Rather than developing a specific tool (as Landesa did with Illovo Sugar, discussed in the third case in this document), Solidaridad emphasised the importance of looking at due diligence as an ongoing process which entails:

1) working in partnership with local and national government, various CSOs, and community representatives
2) understanding of different roles and responsibilities of the company, the investor and other stakeholders within these partnerships
3) transparency surrounding intended development stages for the plantation, requiring a clear timeline in which plans, progress to date are clearly communicated and shared with partners and stakeholders and feedback is gathered.

- For a full account, see **Solidaridad's report of the due diligence process**.

3. Development of a tool to implement Illovo Sugar's commitments to respecting land rights in Malawi, Mozambique and Tanzania

The 'From Commitment to Practice' project, known as 'C2P' was supported by the DFID LEGEND programme Challenge Fund to assist **Illovo Sugar Africa**, Africa's largest sugar producer, to realise a commitment to "zero tolerance for land grabs" across its operations and supply chains in Southern and Eastern Africa, and in rolling out its Group Guidelines on Land and Road Map on Land Rights. This was in response to Oxfam's 'Behind the Brands' campaign. To address the barriers in implementing these commitments, **Landesa**, Illovo's chosen international NGO partner, worked with the company at its operational sites in Malawi, Mozambique and Tanzania to:

- build the capacity and 'buy in' of Illovo staff regarding the importance of implementing Illovo's land rights commitments and policies to address current and emerging land risks and issues across company operations
- build the capacity of local CSOs to help promote more responsible investments by working in direct collaboration with the private sector, and develop partnerships with Illovo staff and CSOs, which included building trust and understanding.

- For a full account of the C2P project's operations and achievements, see **Landesa's narrative report from the C2P project**.

In practice, Illovo found that a general guidance tool such as the AFDD (see Box 5) was not enough, and that sector- or company-specific tools were needed to address tensions between the company and local residents across their sites in Malawi, Mozambique and Tanzania.

The Illovo LandAssess tool

Through the LEGEND **C2P project**, Landesa developed a purpose-designed tool called '**LandAssess**' for Illovo to use for land-related due diligence activities across smallholder supply chains and to identify and mitigate land conflicts in established investment sites, and in a potential new outgrower scheme. The LandAssess Tool provides a risk assessment and management framework for a company to assess and manage the land rights dimensions of their operations and associated issues and conflicts. It was developed through consultation with company staff and local CSO land practitioners to ensure that it met both the VGGT tenure governance standards and the company's needs.

The Tool comprises a series of checklists to measure whether a company's operations align with key requirements and global good practice to ensure that land-based investments are responsible. These range from consulting and engaging with communities impacted by company operations, to entering into fair and equitable contracts with existing land users to access land. The Tool helps companies ascertain their position in relation to their land rights commitments and generates reports to highlight and prioritise areas for improvement in company planning.

How the LandAssess tool was developed

While the AFDD – the VGGT based analytical framework for due diligence – provided the starting point for the development of the LandAssess Tool, Landesa made significant additions and changes which made it directly useful to companies and a material step forward from a general framework for land due diligence and from other international guidance that is tailored more toward government and civil society users.

The Tool was developed in a participatory way with Illovo staff, and underwent three cycles of testing and revision. In each project country, Landesa held a workshop to run through the prototype with Illovo staff and management, led by company and CSO 'Land Champions' – staff members chosen to lead the task of addressing land issues in each country. Following joint field visits to production sites in Malawi, Mozambique and Tanzania, Landesa gathered feedback and set up a remote training programme to ensure that Illovo Land Champions were kept up to date on changes made to the Tool. The Tool was designed and piloted in a gender-responsive manner in consultation with staff and community stakeholders in field assessments, using women-only focus groups and key informant interviews to ensure that women's perspectives were captured.

BOX 3 HOW THE LANDESA – ILLOVO LANDASSESS TOOL WAS DEVELOPED

1. AFDD framework content was developed and modified so that companies could use it to make a thorough assessment of compliance with the key elements of responsible land-based investment. Additional questions or explanations were included on how existing land rights are assessed, and on consultations and engagement with communities, with additional checklists for key topics, such as land encroachment and land use risks, prevalent throughout Illovo's operations.
2. The LandAssess Tool was designed explicitly to apply to both new and existing operations, as well as a range of business models providing separate check lists for large-scale estates and smallholder supply chains including outgrower schemes and contract farming arrangements.
3. Users are asked to designate a 'status' to indicate the level of progress the company has made in different areas. The option to mark any item as 100% complete was intentionally omitted as compliance with responsible land-based investment principles is dynamic and ongoing.
4. The tool replaced the idea of 'red lines' based on pre-determined risk levels, which require a company to cease operations until specific problems are resolved, with a more open approach in which users determine the risk levels according to specific circumstances and operating contexts. Whereas a greenfield investment may be able to adhere to red lines, this may not be possible in the case of established brownfield investments (such as Illovo's major estates, previously under national ownership or operated by other companies) which may have a series of inherited legacy problems, for which development of an action plan to address the land risks while maintaining operations is more relevant.
5. The LandAssess Tool is able to auto-generate and auto-populate a report that requires users to detail follow-up actions the company will take to mitigate problems, according to high, medium or low risk levels identified, and to indicate which internal and external actors will be responsible for carrying out the follow-up actions within a certain timeline. This feature makes the Tool a dynamic resource that companies can use on an ongoing basis to help assess and manage risk.

Pilot project experience with LandAssess

Landesa decided to broaden the scope of the LandAssess Tool to ensure its applicability to all of Illovo Sugar's operations, external supply chains and member companies including Kirombero Sugar Company (KSC) in Tanzania, Illovo Sugar Malawi, Maragra Açúcar in Mozambique, and Zambia Sugar.

The Tool and User Guide are now available in English, Portuguese, and Swahili to ensure key company staff and local CSOs in all three project countries can use it.

Use of the Tool enabled Illovo staff to become more aware and better prepared to incorporate a land perspective into mainstream business operations to avoid negative impacts on local communities and farmers, and to resolve any outstanding conflicts that might jeopardise sustainability. The results of the application of the Tool in each country revealed many commonalities among the issues faced and outlined the types of strategies required for context-adapted approaches. In Malawi for example, this has already involved the participative mapping of encroachment areas by Illovo's Dwangwa Estate on community land. The next steps involve developing an Illovo group-level policy to manage these important issues. According to two of the Illovo Land Champions:

"The Tool helps you to understand your operation from a land rights point of view…and how to prioritise issues, so you earn the social licence to operate in the community."

"The Tool has allowed us to understand [land] issues in a more engaging way; engagement has been a key lesson from the Tool. [The Tool] is creating a new way for us to relate to stakeholders …"

Other companies, including Proforest, Malawi Mangoes, The Coca-Cola Company, Smoke-Free World Foundation, and AB InBev have demonstrated a clear interest in using the Tool to identify land risks and issues in their operations and to manage responsible land investment efforts. Interested companies can access the **Tool and user guide** to assess how they might use it, and can approach Landesa directly for more information on how to adapt it to their own specific needs.

Illovo's expansion zone assessment in Tanzania

During the C2P project, preliminary versions of the LandAssess Tool were used during a field assessment as part of the due diligence for a potential expansion of Illovo's KSC operations in Kirombero District in Tanzania. It was used to identify potential risks that the KSC expansion plan could pose to the 20 villages and seven townships within the expansion zone, necessary action to mitigate these risks, and to define the scope and priorities of an in-depth field assessment undertaken by PELUM, Landesa's local NGO partner.

Illovo has not yet decided to go ahead with the expansion plan which entails a potential doubling of Kirombero Valley sugar growers from 8,000 to 16,000, affecting a 36,000-ha area that already includes 20 villages and seven townships. The expansion was planned to occur over approximately five years and does not include increasing KSC's own landholdings for cane production, although the company anticipates securing rights to the land needed to deliver necessary resources to growers (e.g. for seedling production in nurseries). Farmers in the expansion zone currently grow a variety of food crops, notably rice which requires similar growing conditions to sugar; the expansion would require farmers to switch from rice to sugarcane production. The Government of Tanzania supports the proposed expansion, as domestic sugar consumption currently exceeds production, resulting in a deficit that is currently filled by imports. Recent intervention and regulations have sought to crack down on illegal imports, and support local sugar industries to fill the gap, as part of the government's industrialisation agenda.

PELUM's in-depth baseline research helped Illovo better understand the potential impacts of the proposed outgrower expansion plan on land rights and uses, food security, and livelihoods. It sought specifically to identify the status of Village Land Use Plans (VLUPs); the proportion of households with certificates of customary rights of occupancy (CCROs) in the villages concerned; the ways in which land is owned, used, and accessed, including differences for men and women; the primary sources of livelihood and food security; and the capacity of village institutions (e.g. Village Councils, Village Land Committees) to manage and resolve both recent and long-running historical land disputes and conflicts.

Data was collected from all villages and townships in the expansion zone through key informant interviews with Village/Township Chairpersons, Agriculture Extension Officers, and Executive Officers, and in separate women's and men's focus groups in each village. PELUM also trained KSC's new agricultural supervisors and extension officers and monitored Illovo's consultation and engagement with local communities. Working with Illovo and Landesa, PELUM was able to identify areas of risk and recommend mitigating actions. This research informed Illovo's next steps in exploring the feasibility of expanding its grower base and helped to shape the company's procedures and measures for risk assessment and mitigation for the possible expansion.

BOX 4 ACTIONS PROPOSED TO MITIGATE LAND-RELATED RISKS IN 20 VILLAGES AND SEVEN TOWNSHIPS IN THE KIROMBERO SUGAR COMPANY'S POTENTIAL EXPANSION ZONE

- *Finalise CCROs by completing the verification and signatory process in all 20 villages involved.* Without this, KSC will not be able to verify land ownership.`
- *Develop a strategy for mitigating food security risks*, which may be serious as land currently used to grow food will be converted into sugarcane plantations, and communities will need to shift from growing to purchasing food, given that increased incomes from sugarcane production, accruing primarily to men will not necessarily translate into better family access to food.
- *Develop a strategy to mitigate exacerbation of gender inequalities:* as sugarcane is a capital-intensive crop and men have greater access than women to capital resources and to land and agricultural inputs, this could lead to increased conflict within households about growing sugarcane. The strategy could include women-focused income-generating projects, measures to direct payment to female growers and distribute payments within households, and coordination with the work of local community development officers in promoting gender equality.
- *Train new Kirombero Growers on financial literacy and management:* the expansion would increase cash flow in the area and change the frequency of payments for sugarcane to an annual basis.
- *Additional research to assess the extent of land ownership and rental by farmers in the expansion zone:* understanding the operations of active informal rental markets at village level is essential to determine options for contract farming arrangements between the company and new prospective growers.
- *Safeguard grazing land to mitigate risks of conflicts between pastoralists and farmers:* there is a relatively high incidence of land-related conflicts between farmers and pastoralists in the region, and KSC will need to ensure that land designated for grazing or for agriculture and food production is protected.
- *Educate new Kirombero growers on contracting terms and conditions*, to ensure all parties' expectations are clear and realistic.
- *Establish a direct two-way feedback mechanism between Kirombero Growers and KSC, essential to* ensure that potential growers receive information on the terms and conditions of growing sugarcane, and its potential social and environmental impacts. This should also allow communities within the expansion zone to request information from KSC and help it to meet Illovo's group level commitment to establish company-based grievance mechanisms.
- *Sensitising Government on Illovo Sugar land policies:* As Government encourages companies to increase sugarcane production to meet the deficit, KSC must ensure that Government understands Illovo Group's internal policies and strategy on land, which go beyond the requirements of domestic laws and policies.
- *Conduct a census on projected migrant labour*, to ensure KSC understands the full extent of potential impacts of increasing in-migration as a result of the expansion on access and use rights to land and natural resources, and the additional pressures on available infrastructure and services in the Kirombero valley.

(Sources: **Landesa's C2P project narrative report** and Kirombero Expansion report to Illovo Sugar)

This feasibility and risk assessment process illustrates the importance of supplementing due diligence tools like this with thorough field assessments to ensure that the necessary empirical information is in place for a realistic risk assessment, and that due diligence is not treated as a tick box exercise. This requires companies to have the necessary partnerships in place to conduct field assessments like this in cases where new projects and operations are proposed.

Conclusions

The experiences of the three LEGEND projects and the companies involved – Portucel, Illovo and NHSL – show that failing to identify land rights risks early on in the investment planning process, can lead to serious tensions and significant harm being done to project-affected communities. In the cases where land rights were overlooked by governments, financial institutions or shareholders in investment approval processes, the companies later found they had to put in place context-specific approaches to address land tenure issues, manage company operations, and mitigate problems arising. This implies that companies need to be prepared to address land tenure risks and conflicts whether they result from incomplete environmental, social and governance (ESG) risk assessments at the initial planning stage, or from issues inherited from previous owners and operators.

In the Portucel Mozambique and Natural Habitats Sierra Leone cases, proper due diligence at the outset to identify land-related risks would have indicated needs to map and document land rights and deepen community consultation in the investment project area to identify how the investment plans would affect the existing land uses and rights of local people, prior to finalising project plans, committing finance and beginning the work.

By properly assessing in advance existing land-holding arrangements, investors and operating companies can find out the willingness of land-holding communities to release land and its likely availability of land for investment. In this way, they can better understand how much land is likely to be available, if there is scope to adjust project design to better include local communities and accommodate existing land rights, and thus if the chosen site is suitable for the investment proposed, or if they need to look elsewhere.

The specific findings and conclusions are:

- **Effective due diligence procedures need to be integrated into companies' broader ESG strategies** so that they can be applied early in the planning stage, and throughout the investment cycle for any particular site or project. Due diligence approaches must fit with the project context and respond to emerging issues and problems.
- **Standardised, desk-based, legalistic approaches to due diligence are inadequate.** More practical approaches are needed to identify the conditions required for a company to have a social licence to operate. This includes investigating land-related risks in depth and field-based assessments to screen investment proposals for land risks and negative impacts.
- **Companies need context-specific tools and approaches to apply to their own operations.** Despite the utility of general guidance on land-based investments like the AFDD framework, tools that are specific to their role and position within investment processes and/or supply chains are needed.
- **Combining two due diligence approaches allows companies to navigate land issues responsibly** to understand what action needs to be taken to ensure legitimate tenure rights are respected, and to follow globally accepted VGGT principles:
    i. **Using desk-based due diligence and risk tools currently available**, e.g. the Landscope tools developed by TMP Systems that draw on the full range of data sources on land occupation, population density, land cover and land use, existing tenure systems, and the incidence of insecurity and conflict.

    ii. **Field reconnaissance and ground truthing to fill gaps in available information**, undertaking land tenure assessments and initiating consultations with affected stakeholders. This is especially important in cases where suitable datasets are not available for desk-based risk and due diligence tools to deliver clear results.
- **Carrying out effective ground-based due diligence** including awareness raising and community empowerment around necessary legal processes, participatory mapping of existing land rights and holdings, inclusive consultations and surveys of land users and community members.
- **Transparent processes of community engagement, implemented and overseen by capable NGO staff** acting independently of the company, proved to be essential in all three of these project experiences to promote awareness and learning amongst company counterparts.

BOX 5 LAND RIGHTS – RELATED RED LINES FOR DUE DILIGENCE ON AGRICULTURAL LAND INVESTMENTS

The VGGT-based Analytical Framework for Land-Based Investments in African Agriculture includes a series of red lines that indicate in which situations investment projects should be cancelled if no benign alternatives can be found:

- If resolving existing conflicts is not possible
- Lack of reliable mapping of all legitimate land rights, impact assessments and ESIA
- If the impacts on legitimate local land rights cannot be mitigated
- If involuntary displacement through expropriation cannot be avoided
- If existing land tenure conflicts or violence in the area worsens as a result of the project
- If stakeholders have not been and cannot be consulted properly
- If those who signed the contract are not the legal or legitimate representatives of the local land rights holders
- If FPIC has not been obtained from indigenous peoples
- If the affected persons, and the community at large do not support the project as reflected in the final contract. Where national law or regional agreements require FPIC from all affected groups, this needs to be respected.
- If no monitoring mechanism is in place and/or no remedies clause is included in the contract
- If no complaint mechanism has been agreed upon and/or is not functioning effectively
- If corruption risks cannot be excluded or corruption is already observed in project context
- If the project will create or exacerbate local or national food insecurity
- If infringements of human rights cannot be avoided
- If there are serious risks of irreversible environmental damage (pollution of ground or surface water, soil erosion, destruction of wetland areas of ecological interest, proliferation of invasive species, etc.)

The Analytical Framework consists of the following columns: *Recommendations, Questions, Necessary Actions and References to additional resources*. In total there are five themes for which recommendations and actions to avoid the above red lines are elaborated on: 1) Tenure Rights, 2) Participation, Consultation and Negotiations, 3) Grievance Mechanism – Dispute Resolution, 4) Transparency and Corruption, 5) Food Security, Human Rights, Environmental Sustainability and Local Capacity Building.

Source: Grow Africa (2015) *Analytical framework for investors under the new alliance: Due diligence and risk management for land-based investments in agriculture*. New Alliance for Food Security and Nutrition.

This case study is one of a series of three exploring lessons on cross-cutting issues in agricultural land investments derived from a set of pilot projects undertaken jointly by civil society and private business partners from 2016–2019, in five countries in sub-Saharan Africa: Ghana, Malawi, Mozambique, Sierra Leone and Tanzania. The case studies are based primarily on the results and findings of seven pilot projects supported by the LEGEND (Land: Enhancing Governance for Economic Development) programme of the UK's Department for International Development (DFID). Pilot projects supported by USAID and by the UK's P4F (Partnerships for Forests) have also provided relevant information and learning.

LEGEND aims to improve the security and protection of land rights while also promoting more responsible land-based investment by the private sector in priority countries by mobilising knowledge and skills to strengthen policy and practice, and by promoting innovation in land governance.

The pilot projects sought to test how private companies could collaborate with civil society organisations (CSOs) and other stakeholders to implement responsible agribusiness investments that recognise and respect community land rights, and to develop innovative tools and approaches that could be adopted and implemented at greater scale.

The lessons and practical outcomes of the pilots complement the findings and conclusions of recent research and analysis on land governance and agricultural investment undertaken by LEGEND. The case studies present practical project experiences and lessons learned of how the projects addressed particular issues and challenges to ensure that the agribusiness investments involved recognised and respected legitimate community land rights and laid a basis for sustainable partnerships and benefit-sharing arrangements between private business and host communities.

The case studies cover three topics of interest to practitioners, professionals and researchers, in the public and private sectors and civil society concerned with responsible land governance and agricultural investment in developing countries: Due Diligence of land based investments; Mapping and documentation of legitimate land rights, and; Shifts in business plans and models to becomes more inclusive.

LEGEND publications aim to initiate and stimulate debate, research, analysis and action on current issues in global land governance, by drawing together and assessing evidence and understanding on questions of emerging relevance and making recommendations for policy, development programming and stakeholder practice.

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