

Emerging Corporate and Investor Practice to Support Community Land Rights

Case Studies from Malawi, Mozambique, and Malaysia

Washington, DC

March 2019



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Introduction

Companies may face operational, legal, and financial risks when operating or investing in locations where land rights are disputed or where tenure rights are not understood and respected. According to the Interlaken Group's Land Legacy Issues Guide, "an operator's social license to operate can be undermined when local tenure rights are violated or pre-existing grievances or land claims of local rights holders are left unaddressed." Perhaps more importantly, community access and rights to livelihoods and economic security may be negatively impacted by such investments.

As operators, investors, and governments increasingly recognize the need to respect local land rights, they have made a number of high-level commitments to do so. In response to company commitments, several organizations have produced guides for companies on how to incorporate emerging best practices on land rights into their investments and operations based on the internationally agreed Voluntary Guidelines on the Responsible Governance of Tenure (VGGT) (see box).¹

Examples of Guidance on Land Tenure for Companies

- » [The Voluntary Guidelines on the Responsible Governance of Tenure \(VGGT\)](#) calls for states and other actors to recognize and respect human and legitimate tenure rights, to safeguard these rights against threats and infringements, to promote and facilitate their enjoyment, to provide access to justice to deal with any infringements, and to prevent disputes, violent conflicts and corruption.
- » [Interlaken Guide on Respecting Land and Forest Rights](#) supports companies aiming to align their operations with the VGGT. The objective is to formulate practical and detailed guidance for companies to help them do their part to respect local land and forest tenure rights.
- » [The Guiding Principles on Large Scale Land Based Investments in Africa \(LSLBI\)](#) requires that land-based investments respect the human rights of communities, contribute to national plans for sustainable agricultural development, base decisions on principles of good governance, respect the rights of/benefit women, and minimize risks while maximizing benefits.
- » [The Analytical Framework for Responsible Land-Based Agricultural Investments](#) is an attempt to unify several guidelines and place them into a format that can be practically applied by operators of and investors in agricultural projects. It guides companies to improve their due diligence and risk mitigation related to land tenure rights, with the aim to ensure that companies respect the legitimate land rights of people affected by investments.
- » [Principles for Responsible Investment in Agriculture and Food Systems](#) promotes responsible investment in agriculture and food systems that contribute to food security and nutrition, thus supporting the progressive realization of the right to adequate food in the context of national food security.
- » [Operational Guidelines for Responsible Land-Based Investment](#) provides best practices related to the due diligence and structuring of land-based investments in order to help companies reduce risk and facilitate responsible projects that benefit both the private sector and local communities.

¹ FAO, 2012. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.

The VGGT seeks to “improve governance of tenure of land, fisheries and forests... and strengthen the capacity of implementing agents such as governments and the private sector to respect human rights consistent with obligations under international law, including the Universal Declaration of Human Rights and the United Nations Guiding Principles on Business and Human Rights (UNGPs).” According to the UNGP, “businesses have the responsibility to respect human rights,” meaning that businesses should avoid infringing on human rights and should address adverse human rights impacts with which they are involved. Land is an essential element for the realization of specific substantive human rights, such as the right to food, access to resources, and the rights of Indigenous Peoples to their ancestral lands.²

The Interlaken Group articulated its view on company responsibilities to uphold the VGGT through its Guide on Respecting Land and Forest Rights³ and its Guide on Land Legacy Issues.⁴ According to the Interlaken guides, businesses must be compliant with the law but should also commit to implementing policies to respect legitimate land rights. In addition, businesses should have due diligence and remediation processes in place to identify, prevent, mitigate, and account for how they address any potential impacts on land rights.

The challenge of putting such guidelines into practice rests with companies operating in a variety of governance contexts. In practice, implementing and upholding best practices on land tenure is complex, context specific, and requires ongoing engagement and dialogue. Very few organizations have gotten it exactly right and the process of doing so tends to be an iterative one based on field experience. Therefore, most companies are looking for insights on how to initiate and pursue their commitments to respecting land rights.

2 Office of the United Nations High Commissioner for Human Rights, 2015. Land and Human Rights – Standards and Applications. https://www.ohchr.org/Documents/Publications/Land_HR-StandardsApplications.pdf.

3 The Interlaken Group and the Rights and Resources Initiative (RRI). 2015. Respecting Land and Forest Rights: A Guide for Companies. Washington, D.C.: The Interlaken Group and RRI.

4 The Interlaken Group and Rights and Resources Initiative (RRI). 2017. Land Legacy Issues: Guidance on Corporate Responsibility. Washington, D.C.: The Interlaken Group and RRI.

Purpose and Limitations of These Case Studies

The purpose of this paper is to illustrate how selected companies are implementing commitments to international best practices on land rights. Given that the companies referenced in this paper are in the process of developing and improving ways to address land tenure rights, the cases ought to be viewed as examples of emerging company experiences, which can contribute to establishing best practices. The case studies below are not in-depth assessments, but rather convey company perspectives, without corroboration with communities' or other actors' points of view.

Cases and Methods

The Interlaken Group identified three companies that have faced land tenure challenges in their operations⁵ or investments⁶ and asked them to share their experiences turning their corporate commitments into action on the ground. The company case studies presented here feature a sugar producer (Illovo Sugar Africa), a forestry company (Portucel/Navigator) and an asset manager (New Forests), which operate in different geographies and at different points in the value chain. All three companies have made corporate-level commitments to upholding and respecting the rights of communities with legitimate rights to land in or near the company's operations and investments. Company representatives provided information through interviews and background documentation, which was supplemented by additional literature review on the companies and projects.

CASE 1: ILLOVO SUGAR AFRICA⁷ | MALAWI | SUGAR

About Illovo Sugar Africa

Illovo Sugar Africa is the largest sugar producer in sub-Saharan Africa. Headquartered in Durban, South Africa, the company operates agricultural and manufacturing operations in six countries.⁸ The company produces and processes sugar cane grown on its own agricultural operations and by independent out-growers. In 2016, London-based Associated British Foods (ABF) acquired the Illovo Sugar Group as a wholly-owned subsidiary. Through the Illovo Group's Guidelines on Land and Land Rights,⁹ the company commits to follow international best practices in line with the United Nations Global Compact (UNGC) and the United Nations Guiding Principles on Business and Human Rights (UNGP). Illovo also commits to a zero-tolerance policy on land grabs in addition to adhering to national and international land rights.

At a Glance

Main Land Tenure Challenges:

- » Legacy issues regarding land leases
- » Legacy issues regarding fair compensation
- » Legacy and current issues regarding encroachment

Main Strategies:

- » Rights mapping
- » Formal farming agreements
- » Community engagement and communication activities
- » Grievance mechanism

5 Operators run or oversee day-to-day operations of a farm or plantation. While some activities may be contracted to service providers, ultimately the operator is responsible for implementing core project activities.

6 Investors provide capital to a project with expectation of earning interest on the principal invested into a project. While not involved in day-to-day operations, most investors seek information prior to investing in a project to ensure that risk can be reduced, eliminated or otherwise controlled to ensure a higher return. They will often retain some control over the operator through shareholder votes.

7 Based on an interview with Kate Mathias, Development Consultant, Illovo Sugar Africa. on July 26, 2017.

8 Malawi, Mozambique, South Africa, Swaziland, Tanzania and Zambia

9 Illovo Sugar Group. Illovo Group Guidelines on Land and Land Rights. <https://www.illovosugarafrika.com/Group-Governance/Group-Guidelines-on-Land-and-Land-Rights>.

The company publicly reports on its progress to implement its land rights road map with support from international donors and technical assistance providers.¹⁰

Illovo's acquisition of development rights in Nchalo and Dwangwa, Malawi

Illovo started operations in Malawi in 1997 after acquiring sugarcane plantations from Lonrho¹¹, a diversified conglomerate, which acquired the land from the Malawian government in the 1960s in Nchalo and in the 1970s in Dwangwa. Around that time, the government displaced the communities living on 40,000 ha of land identified for sugar cane production. Following the displacement, Lonrho established plantations in Dwangwa and Nchalo, as well as a few smallholder schemes, with people eventually returning to the remaining land to develop household farms.

Illovo due diligence before acquiring Lonrho

During the original due diligence on Lonrho's assets, Illovo relied on reviewing the legal documentation underpinning Lonrho's lease, which was standard procedure at the time. It did not include extensive field work on land tenure rights or conflicts in the project site. Significant legacy issues caused by government land acquisitions in the 1960s and 1970s, therefore, remained unaddressed and unresolved.

- » **Nchalo:** The disputes pertained to the original land leases to Lonrho as obtained in 1965 and 1974. Community members claimed they were not compensated for the loss of their traditional lands, while Illovo claimed that community members were compensated according to the prevailing guidelines on compensation. Therefore, people's presence on the land after the company's acquisition was illegal.¹² Currently, there is a complex arrangement of "encumbrance buildings" within Illovo's lease boundaries, such as schools and churches, due to the length of time that passed and the staged expansion by Illovo.
- » **Dwangwa:** The main dispute arose in 1979, before Illovo took over the lease from Lonrho. The dispute centered around the question of whether Lonrho obtained a temporary or long-term lease from the traditional authority.¹³ Additionally, community members claimed that they were denied compensation, that compensation was inadequate, or was provided to illegitimate claimants. As a result, community claimants took up some areas of Illovo's plantation (about 54 ha of 6,500 ha) in 2002, blocking Illovo's access to land and subsequently causing operational problems.

Illovo actions to uphold legitimate tenure rights

- » In **Nchalo**, Illovo hired a land specialist in 2012 to solve the issue regarding land claims, and in 2013, the specialist retraced Illovo's boundaries (20,921.83 ha) to ascertain the original extent of the plantation. The retracement identified areas in which both Illovo and the community had exceeded their boundaries, by 17 and 1500 ha respectively. As of today a grievance and compensation process is ongoing. However, Illovo does not plan to reclaim all contested land, as this is considered a suboptimal solution. For example, the land on which a village of about 2,000 houses is built will not be expected to return to Illovo. Instead, Illovo's recommended solution for Nchalo estate is to surrender some land which has high reputational and financial cost of recovery while maintaining the land that has business viability.
- » In **Dwangwa**, Illovo first tried to solve the Mlala community's claim to land amicably through stakeholder involvement from 2002 to 2005. This was unsuccessful. In August 2006, the Mlala community presented the matter to the Ombudsman.¹⁴ Three years later (in 2009), the Ombudsman decided that the government of Malawi had not been able to provide evidence that it had paid compensation to the community. It was ordered to pay compensation within three months, and finally did so in December 2012. Compensation

10 Illovo Sugar Group, June 22, 2017. Update on Illovo's Land Rights Initiatives. <https://www.illovosugarafrika.com/UserContent/documents/Announcements/2017/Update-on-Illovos-Land-Rights-Initiatives.pdf>.

11 Mail & Guardian, May 9, 2017. Illovo Buys Lonrho Sugar. <https://mg.co.za/article/1997-05-09-illovo-buys-lonrho-sugar>.

12 Bledsoe, David, Reem Gaafar, and Leslie Hannay, October 2015. Malawi Case Study - A Case Study for the RIPL Project. <https://www.landsa.org/wp-content/uploads/Malawi-Case-Study-FINAL-10.6.15.pdf>.

13 Bledsoe, David, Reem Gaafar, and Leslie Hannay, October 2015. Malawi Case Study - A Case Study for the RIPL Project. <https://www.landsa.org/wp-content/uploads/Malawi-Case-Study-FINAL-10.6.15.pdf>.

14 The Ombudsman is an independent body of the government of Malawi that deals with deals with citizens' complaints against improper conduct of government. <http://www.ombudsmanmalawi.org/>

was favored instead of returning the land to the community given that Lornho and subsequently Illovo at that time had already developed the land. However, in 2010, the community asserted a claim for the return of the land, stating that Lonrho/Illovo had obtained the land rights illegally and requesting Illovo to return the land to the community. In response to the claim, Illovo's attorney requested government surveyors to resurvey the whole estate boundaries in 2011. Even though the survey confirmed the boundaries claimed by Illovo, the community took the case to court in 2013, with the support of LandNet.¹⁵ When the case was finally heard, the court decided in favor of Illovo based on the updated survey maps.

From the community perspective, the court finding had not addressed the claim that the government of Malawi had once illegally appropriated the land from the community. In response to the court finding, the community expanded their use of contested lands. This was followed by assaults by some members of the community on Illovo's workers and burning of sugar cane. Although police were notified, no arrests were made for fear of exacerbating an already tense situation. The community then petitioned for an injunction to restrain Illovo from accessing or cultivating the land. After further court engagement, the court requested the area be re-surveyed against lease documents by a government surveyor. The surveyor confirmed the boundaries were the rightful legal boundaries as gazetted by the government in 1983, and advised Illovo to re-erect beacons to make the boundary lines visible. As the court still had not addressed the issue at heart, the community requested another survey from an independent surveyor in 2014, chosen and paid for by Illovo and the community. This third-party surveyor also verified the boundaries and marked the encroachment. In 2015, the court used the updated survey to decide the case in favor of Illovo.

Once the case was finally ruled, Illovo did not request the community to leave as this would not solve the issue or improve the relationship with community members. Instead, Illovo sought advice from experts, such as Landesa, an NGO that focuses on land rights. After a long engagement process involving the community, local government, District Commissioner, and local chiefs, Illovo decided to allow community farming on the condition that no deforestation would be allowed and that a formal organization be incorporated so that there could be a legal agreement between the company and the members of the community. Currently, the community has unanimously accepted the agreement and is working to register the organization as a legal entity.

Given the precarious relationship between Illovo and the community, Illovo recognized the need to implement other measures to mitigate the effects of insecure land tenure.

In 2016, Illovo and Landesa successfully applied to DFID's LEGEND¹⁶ grant program to support the implementation of Illovo's *Land Guidelines and Roadmap*.¹⁷ As part of the LEGEND project, Landesa and local organization LandNet conducted a more detailed land assessment of the areas in Dwangwa and Nchalo that would be most likely contested. A key finding in this work was that the identities of legitimate community representatives were not always known and, in several cases, individuals

Interlaken Groups's Land Legacy Issues Guide

"A court judgement does not necessarily mean a grievance is resolved. Given the governance gaps in many places where legacy land issues exist, it is critical that the affected community supports the final resolution to their grievance. Moreover, as the government often plays a central role in legacy land disputes, the role of the government can be complicated and contested and should not be emphasized as undergirding company claims to land."

Interlaken Groups's Land Legacy Issues Guide and UNGP

"A company may be required to conduct early and frequent consultation with affected communities to verify legitimate representatives."

¹⁵ LandNet is a network of at least 40 CSOs that advocate for pro-poor and equitable land and natural resources policies and legislation.

¹⁶ [Land-Enhancing Governance for Economic Development program](#) aims to drive innovative and responsible investments in land and agriculture. Funding has been awarded to 7 CSOs that have formed partnerships with businesses to test innovative approaches.

¹⁷ The project is called 'From Commitment to Practice: Supporting the Operationalization of Private Sector Land Rights Commitments through a Pilot of the New Alliance's Due Diligence Tool', with the working title being 'Commitment to Practice' (C2P).

claiming to represent the communities were not acting on behalf of the community. In addition, the organizations verified land boundary assessments and developed strategies to address land challenges. These strategies aim to improve the understanding of, and communication with, the neighboring communities and aim to develop grievance mechanisms to address concerns regarding potential tenure and access rights before they become disputes.

Results of Illovo's actions to uphold legitimate tenure rights

Illovo's efforts to resolve land tenure issues in Malawi are on-going with the intent of demonstrating to local community members that the company is committed to resolving the use of contested land fairly, while working with legitimate claimants. Illovo has proactively sought opportunities to learn about land rights and their impacts, and the business case for embedding ongoing land tenure due diligence into their standard operating procedures. In addition, Illovo has proactively supported the identification and demarcation of legitimate land rights in out-grower areas in their Maragra site in Mozambique.

Challenges & Lessons Learned

- » **Identifying stakeholders:** Determining the legitimate land tenure rights holders has been a source of considerable challenge for the company. Illovo learned that engaging with key stakeholders from affected communities, their designated representatives, and non-governmental organizations earlier in the process is necessary to assure proper representation of communities—including paying special attention to human rights impacts on vulnerable minority groups and women.
 - › **Use multiple sources to verify ownership and legitimate land rights.** When acquiring land, companies should engage a civil society organization (CSO) or other independent contractor to conduct rigorous due diligence, including field verification of documents and detailed analysis of how the land was originally acquired.
 - › **Invest in understanding the community.** Thorough stakeholder mapping can support better engagement and a more complete understanding of who might have legitimate claims to the land.
 - › **Work with a CSO or other independent contractor** to seek community engagement and ensure inclusion of marginalized groups, such as women. As stated in the Interlaken Group's Land Legacy Issues Guide it is important to create a safe space for dialogue and building consensus together with communities and aggrieved parties. Professional mediators/CSOs can often be instrumental in facilitating such dialogue, but must be selected and agreed upon by all parties.
- » **New land claims can overlap with or exacerbate previous claims:** Staying aware of new claims is necessary to avoid further conflict and keep legitimate stakeholders engaged.
 - › **Continuously communicate the company's position:** Make communities aware of why the company needs its land, and explain current and future purposes in case land lays fallow for periods of time.
 - › **Maintain a presence and continue to act.** Articulate the problem and produce a plan to solve it while recognizing that there is no silver bullet for complicated legacy land issues. Addressing land rights challenges is a continuous process and cannot be dealt with through a single intervention.
 - › **Training.** Train operational staff on land rights issues and conflict resolution and mediation.
 - › **Adapt to the local context.** Some land tenure systems are clearer than others. Make sure the company knows the difference and devotes enough resources to understand and adapt their approach to complex systems.
 - › **Communication channels.** Translate corporate-level commitments to the project site through increased external company communications and involving outside technical assistance providers.
 - › **Clearly define boundaries:** Place signs and/or flags around company land to make boundaries visible.

About New Forests

New Forests Pty Limited is an investment fund specializing in forestry, land management, and conservation projects. Currently, the company has investments in Australia, New Zealand, Southeast Asia, and the United States. New Forests raises funds from private investors and development finance institutions and then deploys the capital as it identifies promising opportunities. Its Tropical Asia Forest Fund (TAFF) targets sustainable managed timber plantations and works with its investments to improve operations and eventually achieve Forest Stewardship Council (FSC) certification. New Forests has been committed to including mandatory due diligence on land tenure rights before making investment decisions since 2012.

At a Glance

Main Land Tenure Challenges:

- » Legacy issues regarding access to land
- » Legacy and current issues regarding encroachment

Main Strategies:

- » Land tenure assessment and mapping
- » Community engagement and communication activities
- » Right-sizing plantations
- » Joint-venture opportunities

New Forests' acquisition of development rights in Sabah, Malaysia

In June 2013, New Forests, through TAFF, made its first equity investment in Acacia Forest Industries (AFI), a plantation company, with a lease of 25,000 ha of established eucalyptus plantations in northern Sabah, Malaysia. The plantations were established in the early 1980s by the Sabah Forestry Development Authority (SAFODA) as a part of watershed restoration efforts with support from New Zealand. The hardwood plantation project included areas that were de-gazetted by SAFODA for community use, including occupation by households.

When TAFF made its investment in 2013, the project inherited several legacy tenure issues. Firstly, there was a lack of documentation for the communities, mostly indigenous peoples, under the reforestation and resettlement scheme of the 1980s. The issue was that SAFODA had not processed the land applications of the villages located within the de-gazetted area. As such, the members of the villages did not have documentation to verify the size and location of the area, nor were they aware of the boundaries between their land and de-gazetted SAFODA land. Secondly, there had been a lack of clear communication between SAFODA and the communities, resulting in low levels of trust from the communities—illustrated by the communities' expressed uncertainty as to whether there would be any fulfillment of perceived or real prior promises. Another challenge further complicating the situation included (agricultural) governmental land development programs which compete for land with the villages.

New Forests due diligence before investing

Before deciding on whether to invest, New Forests commissioned a study on existing land rights by a local consultant. The study aimed to understand the full extent of land tenure claims and to determine the minimum area that could be planted while avoiding potential conflicts and meeting financial objectives. A gap analysis to compare AFI's existing practices to Forest Stewardship Council (FSC) and International Finance Corporation (IFC) Performance Standards was included in the study in addition to a separate study conducted on this topic, commissioned by New Forests. As Free, Prior and Informed Consent (FPIC) is an essential requirement by the FSC and IFC, the gap analysis provided pivotal information to New Forests on whether FPIC had taken place, and if not,

Interlaken Group's Land Legacy Issues Guide

“While companies might not be accustomed to using external mediators, there is a growing acknowledgement of the value that professional mediators can add to resolving community company conflicts before they become intractable.”

¹⁸ Based on an interview with MaryKate Bullen, Associate Director of Sustainability & Communications, New Forests on July 26, 2017.

whether it could be achieved. Although New Forests, as a potential investor, would not be able to obtain FPIC on behalf of an operator, the gap analysis was used to identify current status as well as develop recommendations and plans for action that could be used to encourage an operator to obtain FPIC. The analysis found that while a full FPIC process had not been achieved, that Free, Informed Consent (FIC) would be possible—omitting the critical ‘prior’—as the project was already in operation, and that communities would not be negatively impacted by the investment. As such, New Forests invested into a share of the whole area.

New Forests actions to uphold legitimate tenure rights

New Forests and its partners developed a community engagement plan based on a multi-year social baseline study conducted by a local NGO, PACOS Trust. Importantly, PACOS Trust was already well-versed in dealing with community land in the region. The NGO was instrumental in helping the project gain access to key stakeholders, further illustrating the importance of engaging professional mediators to facilitate.

Additionally, New Forests encouraged the operator to commission participatory mapping of the project area by a respected local consultant, which was completed in 2016. The objectives of the participatory mapping were to identify:

- » The perceived boundary between SAFODA and villages;
- » Land use development and claims by outsiders;
- » Important sites for the community; and
- » Extent of land use disputes within the gazetted area.

In all, the mapping identified around 12,000 people in 59 communities in the project area and produced 59 community maps. All land use activities were identified through fieldwork in consultation with the community. The mapping was generally perceived as positive, with only four villages out of 63 choosing not to participate. Overall, the communities appeared to recognize that AFI was working to address issues regarding land tenure. Based on the mapping, AFI’s operational plans were adjusted to give the communities additional space. In addition, during the participatory mapping, AFI identified joint-venture opportunities to increase community benefit sharing and ownership of the project, as there are few economic opportunities in the region outside of subsistence agriculture and plantation work. The mapping also identified the need to increase local capacity in natural resource management. Subsequently, AFI held a series of workshops within village clusters to provide education on natural resource management.

AFI established a grievance mechanism (GRM) to comply with FSC and IFC performance standards, which is also suggested by the United Nations Guiding Principles on Business and Human Rights (UNGP). As part of the development of a GRM, AFI conducted an intensive training program for their social team to teach them to handle grievances through informal and formal communication channels. Currently, there are three community liaisons actively engaging with communities to identify and address complaints before they become major grievances. Additional communication channels are available, including WhatsApp if urgent needs arise. All grievances and comments are received and recorded in a register held at AFI’s office by the social team.

Results of New Forests’ actions to uphold legitimate tenure rights

All of New Forests’ actions were intended to demonstrate the company’s willingness to actively avoid land tenure conflict and to encourage local development on the communities’ terms. As a result, active conflicts over land tenure are minimized, although some residual use of contested lands does occur after final harvest. Additionally, the outcomes of the land tenure assessment and mapping exercise included a better understanding of the operational environment and indicated the need to establish trust and communication channels with communities, such as a GRM. The GRM has proven to be effective and accessible, based on the level of engagement from the community. Over the last two years a total of eleven grievances from nine villages (15 percent of the 59 villages) have been received and processed. Moreover, because of the assessment, AFI reduced its planted area and ensured that contested areas were not replanted. Within the gazette area of 25,000 ha, around 10,000 ha are designated as biodiversity protection areas and for a variety of community land uses, including land under government agricultural schemes. AFI also promoted a shared value approach to land management by identifying joint-venture opportunities in consultation with communities in and outside of the gazette area. One of the joint venture models was selected for a pilot that will start

in 2018. The progress and results of this pilot will be closely monitored and used as input for future scaling of the venture models.

Challenges & Lessons Learned

- » **The different roles of investors and operators.** Given that New Forests makes investments in operating forestry companies, New Forests cannot obtain FPIC on behalf of an investee. Instead, on-the-ground operators have the responsibility and duty to achieve FPIC. Investors can choose to invest in operators that either have obtained FPIC or can achieve FIC in the early stages of an investment. New Forests, therefore, might make an investment in the absence of FPIC when research indicates that local communities will not be negatively impacted by the investment. The operator will then plan to achieve just FIC.
 - › **Have a clear plan in place if FPIC is not possible pre-investment.** Proactively seek out the best local consultant to engage with communities and their leaders to evaluate the existing land claims and advise on whether achieving FPIC is possible through a rigorous consultation and engagement process. After investment, use both the FSC and IFC PS to guide an appropriate approach to FIC/FPIC, which may also require addressing legacy impacts and issues.
- » **Diverging standards.** FSC requires FPIC for all communities, while IFC¹⁹ only relates to Indigenous Peoples.
 - › New Forests has committed to obtain at minimum FIC, and preferably FPIC, from all communities to comply with FSC's standards and go beyond IFC's requirements.
- » **FPIC must factor into investment decision-making:** FPIC can affect the cost of project implementation and potentially impact the total land availability for plantation operations.
 - › **Do not proceed if there is no social license to operate** and do not force project implementation if the social risks are too high. New Forests chooses not to invest when the absence of FPIC impacts the social license to operate and renders a project unlikely to reach commercially viable scale.
- » **VGGT recommendations can be difficult to incorporate in the investment process.** As an example, the VGGT may call on businesses to use only the minimum area possible for their investment. Quickly and accurately identifying all existing land claims and legacy land issues to estimate the minimum plantable area²⁰ is challenging without extensive on-the-ground mapping and consultation, which might not be possible for an investor evaluating its investment opportunities.
 - › **Clear communication between investors and operators about the importance of land tenure risks is critical.** As operators are key to upholding best practices on the ground, investors need to facilitate and ensure plans are made and implemented in line with best practices.
 - › **Engage with affected stakeholders early, especially during project design.** Attain a better perspective of the situation and avoid the assumption that the conclusions of the previous project owners are completely reliable. During due diligence, identify and interview the appropriate type and number of mid-level staff, such as community liaisons and technicians.

19 IFC, 2012. IFC Performance Standards on Environmental and Social Sustainability. https://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afdf998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES.

20 During the pre-investment phase, New Forests estimates its expected returns from making the investment based on a minimum plantable area (i.e. the amount of land that must be planted to generate enough revenue to exceed costs and return a profit).

CASE 3: PORTUCEL MOÇAMBIQUE²¹ | MOZAMBIQUE | FOREST PLANTATION

About Portucel Moçambique

Portucel Moçambique is part of The Navigator Company, a pulp, paper, and energy company with headquarters in Portugal. Between 2009 and 2014, the company started a pre-project phase of testing and licensing and established consistent forestry operations from 2015 onwards. The project in Mozambique is divided in two phases: the first phase is to plant 40,000 ha and build a woodchip mill to start operating in 2023. In the event of a successful first phase, the second phase is to plant up to 120,000 ha and build a paper pulp mill in a total investment of USD 2.5 billion. In Portugal, Navigator operates four mills and 120,000 ha of woodlands. Portucel Moçambique's commitment to best practices in land rights and international and national laws is based on Navigator's Community Involvement Policy,²² Portucel Moçambique's Land Access Procedure,²³ and Portucel's code of conduct. Currently, Portucel is revising the Land Access Procedure to incorporate contributions from all stakeholders, and ensure compliance with IFC Performance Standards. The IFC is a partner on the forestry project, with a 20 percent stake.

At a Glance

Main Land Tenure Challenges:

- » Community land rights and use in land designated for plantation
- » Ensuring communities understand the impact and benefits of a long term project

Main Strategies:

- » Community engagement and communication activities
- » Stakeholder involvement (community leaders, government entities, civil society)
- » Land mapping
- » Grievance mechanism
- » Right-sizing plantation area
- » Mapping of community areas and symbols of interest for conservation

Portucel Moçambique's acquisition of development rights in Manica and Zambézia

In 2009, Portucel Moçambique received approval from the government of Mozambique to invest in the development of an integrated forestry and industrial project based on eucalyptus plantations, with the stipulation that the company gains consent from local communities.²⁴ Now, Portucel Moçambique holds a 50-year official government lease that allows community and commercial use of land for 356,000 ha located in two provinces: Manica (183,000 ha) and Zambézia (173,000 ha). The company is authorized to plant eucalyptus on up to two-thirds of the total concession area, while the remaining land (around 119,000 ha) must be preserved to promote community wellbeing, such as income and food security, as well as to protect environment and ecosystems. To date, the plantations cover less than 4 percent of the total concession area (13,200 ha). In Mozambique, land is owned by the state. Families and communities can have rights to land based on customary law. Portucel developed a Land Access Procedure that was designed to ensure that the land ceded by communities and families to plantation respects the Land Law, customary systems and the wellbeing safeguards.

Portucel Moçambique's actions to uphold legitimate tenure rights

Assessments prior to development of the project: From 2010 to 2014, the company conducted an Environmental and Social Impact Assessment (ESIA)²⁵, with a human rights dimension, to identify the benefits and potential risks of the plantations for the local communities and the environment. More than 24,000 families were found to be living in the concession area: 113 communities in Manica and 80 communities in Zambézia. The main socio-economic impacts of the project for the communities in Zambézia and Manica were expected to be loss of access to land and natural

21 Based on interview with João Lé, CEO, Portucel Moçambique on August 7, 2017.

22 Portucel Moçambique, July 2006. Portucel Soporcel Policy on Community Involvement. http://en.thenavigatorcompany.com/var/ezdemo_site/storage/original/application/b15ef8b850495d7c0cf8564fffaa453b.pdf.

23 The Land Access Procedure and Principles is based on Mozambican law and IFC performance standards <http://en.thenavigatorcompany.com/Institutional/Portucel-Mocambique#modulo625>

24 Mozambique's land law (Lei de Terras 19/97) stipulates that all land is state-owned, but customary inhabitants hold rights acquired through occupation to use and benefit from land (known as a DUAT). Companies and others can apply to the government for limited duration DUATs for specific purposes like housing or commercial investment.

25 Impacto, and Portucel Moçambique, September 2014. Relatório Do Estudo De Impacto Ambiental. http://www.portucelmocambique.com/var/ezdemo_site/storage/original/application/4c6d4fda3a078a913cfd97b7f850e41.pdf.

resources, while there would be more opportunities for employment and economic development.²⁶ Conflict with residents of villages due to these impacts was highlighted as a potential risk. However, the ESIA concluded that the mitigation measures presented and detailed in Portucel's management plan were sufficient to ensure the environmental and social viability of the project. In 2016, Portucel also undertook a Self-Assessment on Security and Human Rights as part of recommendations from IFC. Portucel continues to monitor the assessment's results and plans to undertake a Human Rights Impact Assessment (HRIA) as part of a certification process.

Voluntary land agreements with communities: When the ESIA indicated that Portucel's mitigation measures were sufficient, Portucel continued with the next step in the development process: consulting with communities and with each family in the concession area to gauge their interest in voluntarily ceding their land to Portucel. Once the community and family agreed to cede their land, they signed a voluntary land agreement. The agreement was then validated by traditional community leaders and approved by the local government representation, with a clause allowing families to revoke it within 15 days. As part of the agreement, the family then selected the land to be ceded, ensuring they maintained sufficient land for subsistence and related activities. Families were also included as beneficiaries of Portucel's social development program and gained priority for employment by the company.

Portucel is committed to disseminate information on land rights to assure that communities are well informed regarding their land rights and are fully aware of their decision to voluntarily cede part of their land. The government of Mozambique and NGOs are implementing several programs to ensure communities' awareness of land rights. However, the project has been regarded as controversial by (local) NGOs, as it represents one of the largest single land concessions in Mozambique. Although more large-scale concessions have been granted recently, NGOs claim that the way Portucel obtained the land is disputable. According to the NGOs, the consultation meetings were not held in the local language, making it impossible for communities to comprehend the terms under which they were ceding their land. Portucel has a different reading and, while acknowledging that this is a learning process that requires continuing improvement, argues that it has developed a robust Land Access Procedure and also has a systematic and one-to-one analysis of all grievances.

Mapping and demarcating community lands: In addition to government programs on land rights, Portucel collaborated with local technical assistance providers, currently Terra Firma and a national NGO, ORAM, as part of DFID's LEGEND program to implement community rights mapping. The mapping process began with local community members sensitizing families on their rights held under Mozambican law. According to the law, members of communities have a perpetual title to land under customary systems, without the need to delimit or record the land title to assert their rights. Following the awareness process, selected community members were trained to use GPS devices and a low-cost data collection system to identify the boundaries of communities and subsequently, family parcels. The communities were also involved in the identification and mapping of high-value conservation areas to assess the relevance

United Nations Guiding Principles on Business and Human Rights (UNGPR)

- » “Be aware of the power imbalance that exists between a company and community when entering in a dialogue;
- » To subsequently take actions to ensure equal footing during negotiations; and
- » To be prepared to communicate any action taken by the company to address human rights impact externally, especially when concerns are raised on behalf of affected stakeholders or other third party.”

The Voluntary Guidelines on the Responsible Governance of Tenure (VGGT)

“Companies should be held accountable for any of their actions that affect food security, including diminished yields on poorer soils.”

26 ESIA: Impacto, and Portucel Moçambique, September 2014. Relatório Do Estudo De Impacto Ambiental. http://www.portucel-mocambique.com/var/ezdemo_site/storage/original/application/4c6d4fda3a078a913cfd4f97b7f850e41.pdf. & Impacto, and Portucel Moçambique, September 2014. Projecto Florestal De Manica. http://www.portucelmocambique.com/var/ezdemo_site/storage/original/application/2ebf2b94e6be2870799d0c29da61e84b.pdf.

of specific ecosystem services in their lives. After confirmation of the boundaries by neighbors through a community-wide objections and corrections phase, the members of the community were provided with declarations and maps outlining the boundaries of their parcels. The declarations, issued by community land associations, contain all the information required to apply for an official government land title together with supporting information in Terra Firma's database. The mapping and demarcation process was intended to increase community ownership of the local development process. Through this process, the communities got to know the limits of their land and how/who could use their land.

Ensuring food security: The company also requested that families that were ceding land confirm that they would maintain sufficient land for their own use. Although families have been reluctant to disclose how much land they have, they do confirm that they have sufficient land for their own subsistence. The information is then corroborated by the traditional leaders. The ESIA found that families on average have access to 2.9 ha of farming land, which is 1.5 times higher than the average Mozambican farming family has.²⁷ It should be noted that not all areas in the concession are suited to grow food. To ensure that the land is of acceptable quality, Portucel sensitizes families to select and keep the fertile land. In addition, to ensure food security, Portucel invests in initiatives, such as teaching new farming techniques and handing out improved seeds, as well as building improved barns for post-harvest conservation, demonstration plots and vegetables distribution, vaccination of chickens, handling livestock for reproduction, and opening water boreholes, among others. All of these activities are part of the Portucel Community Development Program.

Community engagement: To review the project's progress and challenges, the company established 25 community consultative committees, which meet every four months. Members of the committees participate on a voluntary basis. Within these consultative meetings, strategies to overcome challenges are discussed collectively. Common challenges include conflicts between families, employment issues in forest operations, and access to social development initiatives. At the end of each meeting, task forces are created to follow up on specific issues. To further support and implement the communication process with the communities, the company also established community monthly meetings and contracted community liaison agents (CLAs). The CLAs are individuals selected from the local communities with the participation of local population and traditional leaders. To date, 30 CLAs are operating in Zambézia and 10 in Manica. Some of their activities include organizing meetings and collecting and referring grievances.

Grievance mechanism: In 2014, Portucel created a grievance mechanism based on Mozambican law and IFC's performance standards in order to receive feedback and concerns from community members and the general public. All procedures have been developed with the advisory services of the IFC²⁸ and are tracked electronically to monitor progress on the company's land right commitments through indicators, such as number of solved grievances, participation in meetings, and social benefits. Portucel's grievance mechanism is a structured process to identify and resolve issues between the company and community. At the community level the grievance mechanism is implemented as follows:

- » Grievances are collected by the CLAs and company communication technicians using a dedicated form;
- » Each grievance is analyzed by all the relevant departments and community stakeholders to assess its legitimacy;
- » Based on the outcome of the assessment, a solution proposal is presented to all the relevant stakeholders and discussed until an agreement is reached that satisfies the claimant;
- » For all closed grievances, an official resolution form is completed and signed by the company, the claimant, and the respective traditional leader.

Multi-stakeholder platform: Portucel has supported an initiative by civil society to set up an Advisory Board – *Partnership for Prosperity with Civil Society* – with independent status in relation

²⁷ Ministry of Agriculture, Republic of Mozambique, October 2010. Strategic Plan for Agricultural Development (PEDSA 2010-2019). <https://www.grain.org/attachments/2686/download>. UNAC, Outubro/Dexembro 2016. Newsletter.

²⁸ Portucel Moçambique, 2016. Gestão Da Relação Com as Comunidades. <http://www.portucelmocambique.com/Comunidade/Gestao-da-Relacao-com-as-Comunidades>.

to the company, to help provide guidance for the project, essentially on environmental and social issues. Membership is drawn mostly from civil society organizations. The Advisory Board includes one representative of the government and another of Portucel Moçambique. This body is an innovative approach to engaging civil society at the highest level, bringing transparency and accountability to determining the project's strategic options and proposed actions, as the Advisory Board members go to the field to verify and report the implementation of the project.

Results of Portucel Moçambique's actions to uphold legitimate tenure rights

Portucel Moçambique's efforts to respect human rights and land tenure are on-going. According to the company, project land management is an inclusive approach that does not consider resettlements. It shares the land for a variety of community activities in a mosaic model. Although the project aims to ensure communities' land rights, the company has experienced increased risks to their operations due to some unresolved land tenure issues, as highlighted by NGO claims that some families may have ceded their land without fully understanding the consequences. In a response to these issues, Portucel has focused its efforts on demarcation and registration of community land rights (known as *Direito do Uso e Aproveitamento da Terra – DUATs*) as outlined under the DFID program, updating its land access model and enhancing community understanding of the project. The company is actively engaged in dialogue with communities and outside experts to support its efforts to respect legitimate land holders and address their grievances.

To date, Portucel has voluntary land grant agreements with approximately 3,500 families and has paid over 425 million Meticais (about USD 10 million²⁹) in remuneration to local workers. In addition, the company has reached around 7,000 people through their public consultations for the ESIA and solved 70 percent of grievances, and is presently addressing the remaining 30 percent. To assess the level of satisfaction with disputes managed via the grievance mechanism, Portucel has held community meetings. Although the meetings showed that communities are relatively satisfied, the main recommendation suggested a reduction in the duration to resolve a grievance (less than 15 days). To respond to this need, the company is currently increasing the number of communication technicians.

While the Mozambique project is Navigator's only direct investment in Africa, the company has learned from the process of identifying community and household land rights through active communication and technical support, with guidance from Interlaken guides and UNGP. The lessons will be useful for its long-term commitment to its operations in Mozambique and possibly other projects it undertakes in the future.

Challenges & Lessons Learned

- » **Filling a governance gap.** Following the government authorization for Portucel's operations, the company had to consult all local communities and households in a large area before proceeding with planting. According to the Interlaken Guide on Land Legacy Issues, it is important to conduct "a robust assessment of the political economy where a company is investing."
 - › **Ensure that the communities understand the impacts of the project and are fully equipped to participate in negotiations.** The ESIA indicated that the communities reported high concerns regarding the mechanism used for land negotiation and lack of a transparent communication mechanism between the company and the communities. As there is a power imbalance between companies and communities during negotiations, companies can ensure equal footing during negotiations by allowing more time for conversation and dialogue, hiring community engagement staff with proper training, and when appropriate engaging NGOs in the process.
 - › **Provide access to third-party organizations that can assist communities in negotiations or legal documentation of land rights.** The company can further engage community members by making them an integral part of a participatory mapping exercise.

29 According to Portucel information.

- » **Responding to third-party critics regarding the company's operations.** Some surveys³⁰ performed by (local) NGOs indicated that land had not been acquired with the approval of local communities. In addition, they stated that there was a lack of clarity regarding the land transfer process and that families had ceded their land without fully understanding the consequences.
 - › **Have an external communication strategy.** Investments that involve land tend to attract public attention, particularly in countries where subsistence farming is the main source of income. A company's communication strategy should proactively address concerns, such as maintaining the community's rights to access to natural resources to ensure their food security.
 - › **Company accountability to all stakeholders is crucial.** Regular meetings with government, communities, and civil society should be held to provide updates and receive feedback on the project and investments in social benefits.
 - › **Include local NGOs, focused on land rights, in project design and implementation phases** to improve stakeholder engagement and increase transparency.
- » **Expectations management.** The vast majority of participants in the consultation sessions had come with high hopes of the company offering employment and improving living conditions. As a strategy to address this, the company will publicly share a timeline of the project implementation with information related to labor forecasts and a social investment action plan.
 - › **Monitor community expectations and understanding of project.** The company plans to verify through surveys whether the communities understand the information disseminated during community consultation meetings and what their expectations are to adjust companies' activities as needed.

30 Justiça Ambiental, 2016. Portucel - The Process of Access to Land and the Rights of Local Communities. https://wrm.org.uy/wp-content/uploads/2017/04/Portucel_The_process_of_access_to_Land_and_the_Rights_of_Local_Communities.pdf. Baffoni, Sergio, Mandy Haggith, Quercus, ARA, and KKM. November 2017. A Land Grab for Pulp New Mill Project by Portucel Mozambique. <http://environmentalpaper.org/wp-content/uploads/2017/11/171117-Discussion-Document-Portucel-Report-2017-English.pdf>.

Conclusion

The purpose of this paper is to illustrate company experiences supporting local land rights and the lessons they have learned. These cases also show how addressing risks related to land tenure can be complex and require ongoing engagement. Increasingly, acting responsibly can generate robust relationships with communities as well as a competitive advantage for companies reliant on sustainable access to land. With this paper, the Interlaken Group aims to contribute to the suite of emerging best practices that companies can implement to enhance their own sustainability practices and raise the standard for all companies investing or operating in land.

As more companies share what they have done and learned, their peers can adopt successful approaches and adapt to improve their own company operations. Key lessons include: engaging with communities earlier in the project, performing in-depth initial tenure assessments to determine the projects impact on legitimate land rights, use mapping and FPIC processes at the right time in the investment decision-making process, and continuously consult with communities, government, and civil society throughout the lifetime of a project. While each situation is unique, emerging common lessons are described in the table in the next section.

Key Lessons Learned

Project phase	Lessons
Design	<ul style="list-style-type: none"> » Communicate clearly with investment partners why land tenure risks are important; » Identify and verify ownership and use rights through multiple sources of information, including records, maps, stakeholders, and field due diligence; » Identify key stakeholders early on, including those from government, civil society, and communities; » Engage with key stakeholders early on to establish communication channels (e.g., a grievance mechanism) and identify potential areas of concern, including any existing conflicts between project partners and communities; » Conduct rigorous HRIAs, ESIA's and baseline socio-economic analyses; » Develop an inclusive land access model where areas are identified for food production or access to other resources; » Right-size the operations to use only the minimum amount of land possible; » Be aware of, and work with, communities to help manage expectations about what the investment will bring; » Be cognizant of the implications of operating near communities who may not benefit from essential government services.
Implementation	<ul style="list-style-type: none"> » Continuously manage community expectations; » Support local enterprise and aspirations to promote robust community economic development; » Retain local expertise to ensure the company has a full understanding of the land rights in the project area, including possible support for participatory mapping or titling efforts; » Ensure operational-level grievance mechanisms are well understood and easily accessible; » Build relationships with organizations that have had similar issues to see if there are any actions that can be used to address land tenure problems quickly and fairly.
Monitoring	<ul style="list-style-type: none"> » Monitor the claims brought to the grievance mechanism and the resolutions provided; » Modify operations accordingly to results of impact assessment on local food security and other indicators related to land access; » Engage with key stakeholders regularly to identify any new areas of concern over land tenure and access.

Recommendations

- » Even large companies struggle to overcome land tenure issues, especially as they face more scrutiny by independent third parties. Working through public-private partnerships or teaming up with more experienced companies can lead to greater uptake on new procedures and awareness of tenure risks and impacts.
- » It is not enough for companies to follow the law or “take the government’s word that the land is free and clear” to avoid or mitigate land tenure challenges. These three cases illustrate that ignoring local land uses could eventually lead to conflicts between communities and the company—potentially leading to sub-optimal outcomes in terms of local development and the sustainability of the project.
- » Consider working with local/community organizations as providers/sources of services/data to help solve land tenure challenges. A local organization is often instrumental to gain access to communities, build trust and engagement, conduct independent participatory mapping services, and help provide investors with an understanding of local practices and norms. Moreover, providing local communities with access to a neutral party to assist them with legal advice and/or contract negotiation is essential to respecting legitimate land holder rights.
- » Multi-stakeholder platforms are emerging as safe spaces for companies to share their experiences addressing land rights. They are valuable venues for companies to learn from each other, and develop emerging practices for respecting land and human rights. Companies should take advantage of such opportunities, and international development partners can further support company participation in policy dialogues and exchanges.

About the Interlaken Group

The Interlaken Group is a multi-stakeholder forum composed of individuals from leading companies, investors, international organizations, and civil society groups. The group first convened in 2013 during the International Conference sponsored by RRI, Helvetas, Oxfam, and IUCN on Scaling-Up Strategies to Secure Community Land and Resource Rights. Their discussions focused on insecure land tenure in land acquisitions and the particular roles of companies and investors in addressing these challenges while protecting the rights and livelihoods of existing rights holders. The Interlaken Group has met regularly since this conference to identify practical ways that companies and their investors can support improved land governance and the land rights of rural populations.

The Interlaken Group is convened by the Rights and Resources Initiative (RRI). Representatives from the following organizations have participated in the Interlaken Group process: Nestlé, Stora Enso, Rio Tinto, Coca-Cola, Unilever, IFC, Rabobank, TMP Systems, Oxfam, Global Witness, RRI, ERM, The Forest Trust, Landesa, Forest Peoples Programme, Olam, Omidyar Network, and Dfid. The meetings are held under the Chatham House Rule.

THE RIGHTS AND RESOURCES INITIATIVE (RRI)

The Rights and Resources Initiative is a global Coalition of more than 200 organizations dedicated to advancing the forestland and resource rights of Indigenous Peoples, local communities, and rural women. Members capitalize on each other's strengths, expertise, and geographic reach to achieve solutions more effectively and efficiently. RRI leverages the power of its global Coalition to amplify the voices of local peoples and proactively engage governments, multilateral institutions, and private sector actors to adopt institutional and market reforms that support the realization of rights. By advancing a strategic understanding of the global threats and opportunities resulting from insecure land and resource rights, RRI develops and promotes rights-based approaches to business and development and catalyzes effective solutions to scale rural tenure reform and enhance sustainable resource governance.

The views presented here are those of the authors and are not necessarily shared by the agencies that have generously supported this work or all of the Partners and Affiliated Networks of the RRI Coalition.

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