LEGEND
Land: Enhancing Governance for Economic Development

INVESTING RESPONSIBLY IN AGRICULTURAL LAND

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

Thematic Case Study 2:

Approaches to land rights documentation and mapping to protect local people's land rights in agricultural investment contexts

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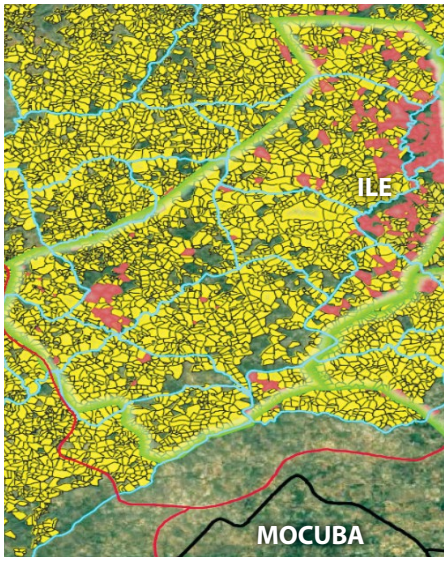


Introduction

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 thematic case study focuses on innovations in recognition, mapping and documentation of legitimate tenure rights by LEGEND and other responsible land investment pilot projects to address problems that resulted from weak due diligence in the planning of large-scale agricultural investments. It illustrates one of the principle lessons of practical experience and analysis by the LEGEND programme, namely that **legitimate tenure rights, both in and around investment sites need to be recognised, documented, and as far as possible made secure at the start of a land-based investment project. This is necessary to generate real benefits for host communities, and to minimise risks of delays, grievances, social conflicts and additional costs for the companies involved.**

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. Importantly this may include legacy issues that arise when companies acquire investments from previous projects resulting from historical disputes over the land.

Land rights mapping and documentation is an essential step in the process in order to identify the specific land resources and the people whose land rights may be affected by an investment or development project and to make visible their legitimate, albeit frequently customary or informal, tenure rights as the key counterparties in negotiation with proponents of a land-based investment, and also to identify the relevant customary community leaders and authorities to be consulted.

The case study explains how land rights assessment and mapping was done in the projects, to document the legitimate land rights holders with whom companies need to negotiate, and to identify land that local communities are willing to make available for investment. It shows the ways in which participatory land rights mapping can be used to help address failures to fully identify land rights issues early in the planning stages of land investments, to make community members' land rights more secure, and to provide a clear basis for community–business partnerships where government capacity to document and register land rights is lacking, as is frequently the case in sub-Saharan Africa.

BOX 2 KEY FINDINGS FROM RESPONSIBLE LAND INVESTMENT PILOT PROJECTS

Key findings detailed in the paper with reference to practical case examples include:

- It is always preferable to identify legitimate land rights holders before companies are granted government operating concessions and before they begin consultations with local communities
- Official government information on land rights is frequently absent in agricultural investment areas and needs to be supplemented by independent mapping and documentation efforts
- Community members need to be involved in the production of accurate land parcel and community land resource maps: participatory mapping methods using low-cost technology tools and backed by independent spatial data platforms are available for communities to use.
- Participatory land rights mapping and documentation should be validated internally by community members and endorsed by all parties. This approach helps to address land-related disputes, conflicts and grievances arising in large-scale land acquisitions.
- The legal context, the practical options for formally registering or certifying land rights, and the nature of customary landholding and use in different cases will all have an influence on the practical approaches to land rights mapping and documentation that should be adopted.
- Although land investors frequently have capacity for land rights mapping and documentation, they are primarily concerned with identifying land to develop and legal challenges they might face from other claimants, and assessing needs to comply with environmental standards. Community members, on the other hand, are concerned with documenting rights to protect land from expropriation and provide a solid basis for negotiation with potential partners.
- Independent spatial data platforms can provide faster and more effective services than formal government systems to meet communities' needs for land rights documentation and provide tools to help companies work in partnership with them. Common data standards and ways to incorporate independently sourced land rights data into official land administration systems are needed.
- Partnership mechanisms are needed to finance and mobilise capacity to undertake land tenure assessments and land rights mapping before companies make detailed investment plans.

In addition to the pilot projects, DFID and others have also supported digital land rights innovator, **Cadasta** founded in 2015 which develops and promotes the use of simple digital tools and technology to help partners efficiently document, analyse, store, and share critical land and resource rights information. By creating an accessible digital record of land, property, and resource rights, including data derived from open data sources and tools, Cadasta helps to empower individuals, communities, organizations, governments, and businesses, including a number of LEGEND grantees and partners, with the information they need to make data-driven decisions and put vulnerable communities and their needs on the map[1].

Although companies are familiar with legal titles, most rights in rural areas of sub-Saharan Africa have been established historically by rural communities and passed on from generation to generation on a customary basis. Although government capacity to document and register land rights varies from country to country, official cadastral and land information systems frequently have extremely low coverage, especially in remote rural areas, thus excluding most land users. In most cases, even in countries where customary land rights and tenure systems are legally recognised, land areas that are communally managed under customary rules are not properly mapped and documentation of households' and individuals' land rights is rarely available. This creates a problem for agribusiness and other companies that need to identify and negotiate with the

1. Cadasta has launched and built an infrastructure to achieve real impact, including a spatial data platform and readily available software tools to support the documentation of land and resource rights, with continual improvements based on user feedback. To date, over 1.7 million people from 815 communities in seventeen countries are documented on the Cadasta Platform, leading to over 71,000 formal tenure documents issued by governments.

legitimate land rights holders in order to access and assemble land. This is a main reason for the failure of land investments in sub-Saharan Africa to take account of established land rights, and the subsequent disputes, delays and difficulties in obtaining social licence to operate and realising investment plans that many companies have faced.

This case study explains the practical approaches and tools developed and applied successfully in the pilot projects by civil society grantees working alongside business partners, in four different land tenure, investment and development settings:

1. Documenting collective and individual household land rights in large-scale investment areas: the potential of digital spatial data platforms to map rights at scale and strengthen community capacity, illustrated by the plantation forestry investment case in central Mozambique.
2. Land tenure and land use planning assessments in forest land investment areas where extended landholding families have customary ownership: as undertaken by LEGEND projects in Sierra Leone.
3. Collective land registration and participatory land use planning to support natural resource-based community business partnerships: exemplified by LEGEND projects in Mozambique and Tanzania.
4. Support from agribusiness companies to formalise small farmer land rights land rights: illustrated by examples from Ghana and Sierra Leone.

Other case studies in this series focus on practical measures to address land tenure and governance issues derived from weak initial due diligence with insufficient attention to pre-existing legitimate land rights held by local people, and on adjustments made to investment plans and business models made by the companies involved in LEGEND and other responsible land investment pilots, to provide greater opportunities for local people and make the investments more inclusive.

1. Documenting collective and individual household land rights in large-scale investment areas: the potential of digital spatial data platforms

In Mozambique, the law enables the formal registration of established customary rights of communities and individual households. Although a national cadastral system is in place, and government promotes land titling, capacity is low, the absence of land documentation and jurisdictions of customary leaders not clearly defined have led to uncertainties about who should be consulted and who has authority to permit land transfers to investors. In turn this has led to conflicts between communities and investors and difficulties in establishing sustainable land investment that treat local people fairly.

Forestry investor Portucel faced exactly these problems, operating in a primarily agricultural region of increasing population density where most land is held and managed by individual families and households in parcels of around 2 to 10 hectares (ha) comprising cropland, fallows and remaining natural woodlands as reserves. In the LEGEND project that operated in Portucel's largest concession areas in Zambezia province, grant partners ORAM and Terra Firma used a virtual spatial data platform to identify and secure community, family and individual land rights[2]. (See **CaVaTeCo Briefing Note: Key Messages on the "Community Land Value Chain" Approach in Mozambique** and the **CaVaTeCo Technical Guide 1 – Stages of the CaVaTeCo Approach**). The background on Portucel's investment, the difficulties faced by the company and local communities, and the steps LEGEND took to help resolve and prevent further land conflicts are covered in **Case Study No. 1**; adjustments and changes in Portucel's business plans and models are described in Case Study No. 3 available on the **Land Portal**.

2. The spatial data platform used is often referred to as the CaVaTeCo platform, an abbreviation of the 'Community Land Value Chain' in Portuguese, which is a methodology developed by LEGEND grantees in Mozambique, ORAM Nampula and Terra Firma, to add value to informal and customary land rights through documentation to secure them and make them visible to outsiders, building capacity of community land management bodies and enabling people to use their rights, to participate in development programmes and to negotiate partnerships with business investors.

This pilot project involved the delimitation of the boundaries of 20 rural communities, the establishment of 20 corresponding Community Land Associations, the development of community land use plans, and the further delimitation of 10,201 household land parcels, covering a total area of 66,657 ha. ORAM's team of field staff provided simple GPS tools and digital tablets and training for locally recruited young people to map village community boundaries in consultation with elders and customary leaders from neighbouring villages, and subsequently to work with community members to map household and family parcel boundaries. The data was uploaded to the CaVaTeCo platform via the mobile phone network and the platform was used to generate parcel maps attached to land right certificates issued to each family by Community Land Associations that were legally registered and assisted by LEGEND. The certificates confirmed the legal identities of the land holders, using photographs and official identity cards.

Particular attention was paid to documenting women's rights: in the end, 67% of land parcels mapped were registered solely to women, with a further 3% as joint spousal or mixed gender co-titles.

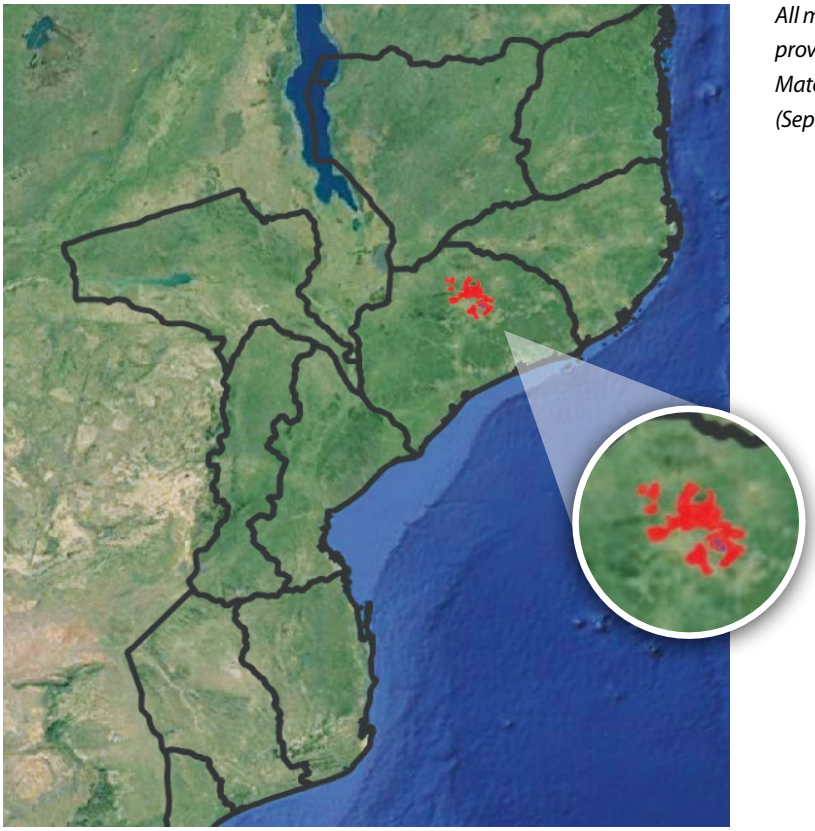
The capacity of the official system to map and register large numbers of customary land holdings is extremely limited, and government has also been reluctant to promote formal recognition of community land rights and engage the assistance of civil society organisations (CSOs) in investment areas such as upland Zambezia, fearing that this could promote resistance to large-scale projects by local people and deter investors. Although government now actively promotes household-level land titling in rural areas, through its national programme called 'Terra Segura' (meaning 'secure land'), this tends to be a cumbersome and costly bureaucratic process reliant on external funding and production of large numbers of individual parcel maps by government surveyors who are few in number.

The local land rights documentation approach, the spatial data platform and mapping tools developed by LEGEND partners offer a practical way forward for both government and private companies making land-based investments enabling large numbers of land parcels to be quickly mapped and certificates issued to rights holders at relatively low cost, as Portucel quickly recognised. Once land is mapped and the rights identified are certified as valid by community land associations, they are visible to agribusiness investors who need to know who holds rights to what land and with whom to negotiate to obtain land. The data can also be imported from the independent spatial data platform to the national cadastral system if a suitable technical interface is established and the community land certificates can be converted into formal titles as required by the land holders. Should landholding families agree to transfer land to a company, this can be done before land is titled avoiding a complex process to return the land to the state, and register a formal change of use and a new title in the name of the company as Mozambican land law – which does not recognise a formal land market – currently requires.

- For a full account of the local land rights documentation system applied and tested in the LEGEND Zambezia project, and its potential to assist implementation of land policies and support economic development in rural Mozambique see **Terra Firma's Policy and Practice paper** and **summary briefing**.

The series of maps that appear on the following three pages illustrates the use of the CaVaTeCo platform and tools to develop a local system of mapping and documentation of community and household rights, including the challenges in reconciling these with the process of assembling land for forestry plantations, ensuring the legitimate land rights holders' consent to any land transfers to the company, and the resolution of conflicts that arise.

Location of Portucel Concessions in Zambezia Province, Mozambique



All maps in this section were kindly provided by Dan Mullins and Maria Matola of Terra Firma, Mozambique (September 2019)

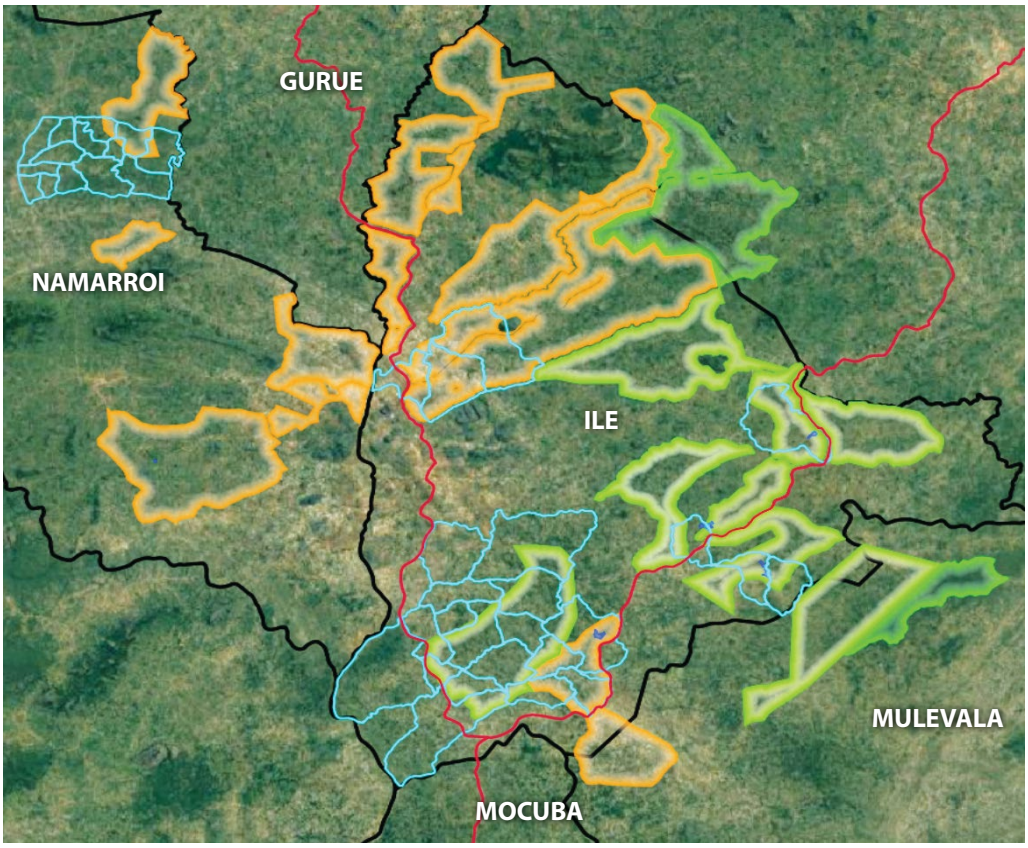


Fig. 1 (left). The overlap between village community land holdings mapped by ORAM and Portucel's concessions in Ile and Namarroi districts.

- Village community and holdings mapped by ORAM
- Portucel's concessions in Ile and Namarroi districts
- Areas prioritised by the company for eucalyptus planting

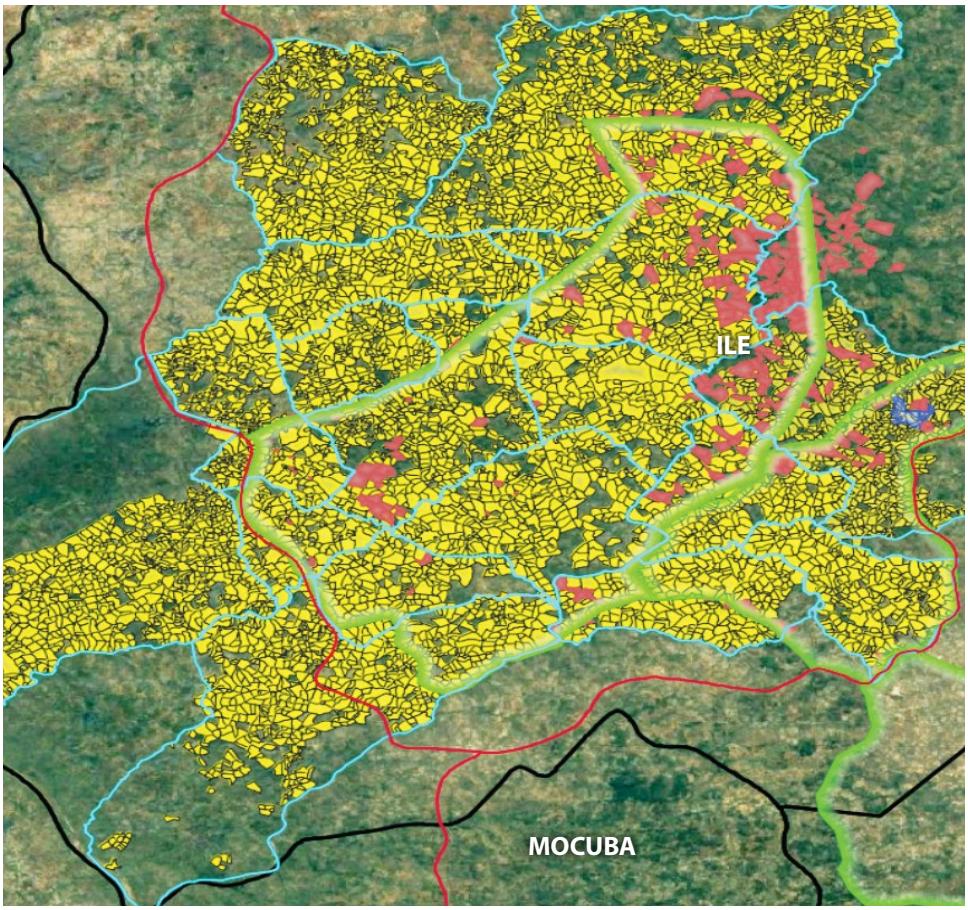


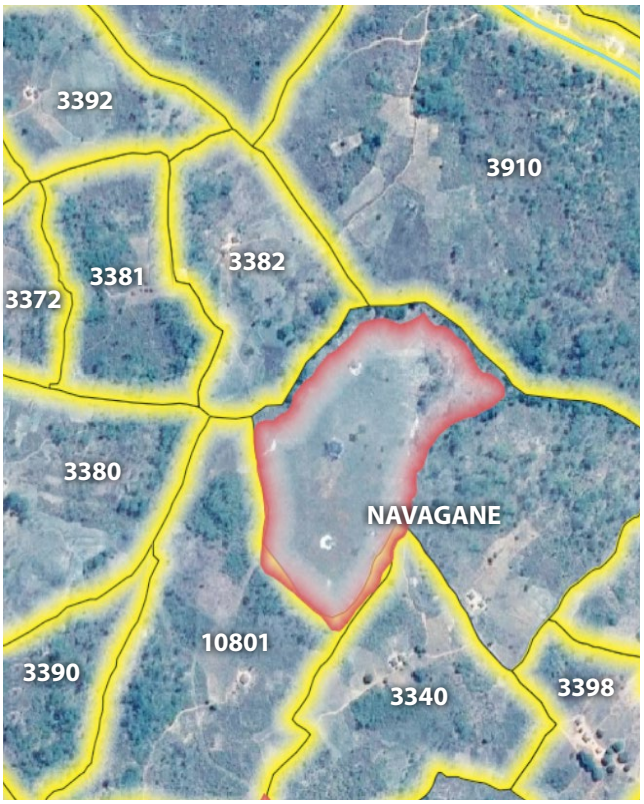
Fig. 2. Overlap of Portucel concessions and land parcels planted by the company with village community land areas and family land parcels mapped by ORAM and with certificates issued by Village Land Associations.

- Portucel concession boundaries
- Land parcels planted by the company
- Village community boundaries
- Family land parcels

Fig.3. This map shows the relationship of parcels released to Portucel, and individual family land holdings, within one village community, Navagane, bisected north to south west by a road, bounded by light green lines and by a river to the east. All land parcels within the community fall within one of Portucel's land concessions. The darker gaps between yellow and brown parcels showing natural land cover only are parcels not mapped and certified by LEGEND due to absence or reluctance of the rights holders at the time the map was produced (September 2019).

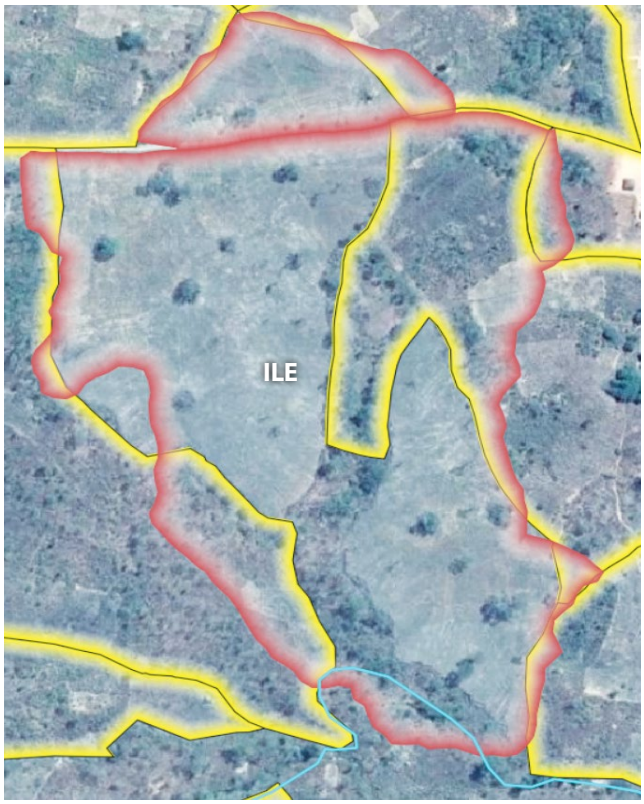
- Parcels released to Portucel
- Individual family land holdings
- Road
- River
- Navagane District boundaries

Fig. 4 (below left) and Fig. 5 (below right): Parcels that have been released for planting by the company may or may not overlap with individual family parcels, as the maps below show. In the first case, Fig. 4, a company parcel is surrounded by family parcels, with no apparent conflicts – one neighbouring parcel has not been mapped and registered but is likely to belong to a single family.



Parcels released to Portucel

Individual family land holdings



Parcels released to Portucel

Individual family land holdings

The second case (Fig. 5 above) shows the partial overlaps of a parcel mapped for planting by Portucel with a group of family land parcels subsequently delimited by ORAM. In such cases, the company acknowledges the land claims of local families so the willingness of the families to release the land and the precise boundaries would need to be verified with them before planting begins.

These maps demonstrate the power of using the platform that ORAM and Terra Firma developed combined with open data sources and software tools and participatory mapping processes, and the capacity to map large numbers of parcels in a relatively short space of time and at relatively low cost. They also show how the concession areas are already occupied and used by small-scale farming families and the need for caution and potential for land use conflict in determining what land, if any, can be made available to the company.

On the basis of the household-level land delimitations carried out by ORAM in the communities where LEGEND worked, it will be possible for the company to engage with the established rights holders of specific households who now know precisely where their boundaries lie and who their neighbours are. At the same time, the maps also illustrate the difficulties faced by the company in assembling land for large-scale plantation blocks to meet its original business plans, given the extent of legitimate community land occupation and use. Had detailed land rights mapping been carried out in advance, the company might have sought land elsewhere instead, or embarked on a less ambitious project, based in smaller-scale production units and designed from the beginning to accommodate community land use.

2. Land tenure and land use planning assessments in forest land investment areas where extended landholding families have customary ownership: LEGEND projects in Sierra Leone

Two LEGEND pilots working with agribusiness companies in Sierra Leone provided instructive experiences and lessons, in a context where customary land holding families are legally recognised as the landowners, but there is no system for survey and registration of land rights applicable to rural areas. However, a colonial deeds registration system exists whereby land transactions involving customary landowners can be registered.

Land is still managed and used collectively under customary rules and according to generally unwritten agreements. The areas owned by families – extended kin groups and lineages and the political jurisdictions of traditional chiefs are generally unmapped and the type of land rights held by specific households and individuals are generally undocumented and easily misunderstood, and are frequently distinct for men and women, younger farmers and for native and incomers. Shifting cultivation for annual crop production is still practiced on degraded natural forest land, and although farmers retain residual rights to access and use fallow land, they have stronger rights over perennial tree crops. With significant geographical and cultural variations, these types of tenure systems are characteristic of rural areas in forest environments of west and central Africa which continue to be targets for commercial investment in high value commodities such as oil palm, cocoa and rubber.

In the first case, Solidaridad, working with Natural Habitats Sierra Leone (NHSL) undertook a joint mapping process following initial consultations in villages that fell into the NHSL oil palm concession. This was part of a process, described in Case Study No. 1, [LINK] – the readjustment of a 41,281 ha concession originally granted without having identified or engaged with the customary land owners, to ensure that the oil palm investment complied with the principles of the globally agreed 'Voluntary Guidelines on the Responsible Governance of Tenure' (VGGT) in terms of respect for legitimate land rights, and for Sierra Leone's National Land Policy which limits concessions to 5,000 ha.

- 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 LEGEND project brochure.**

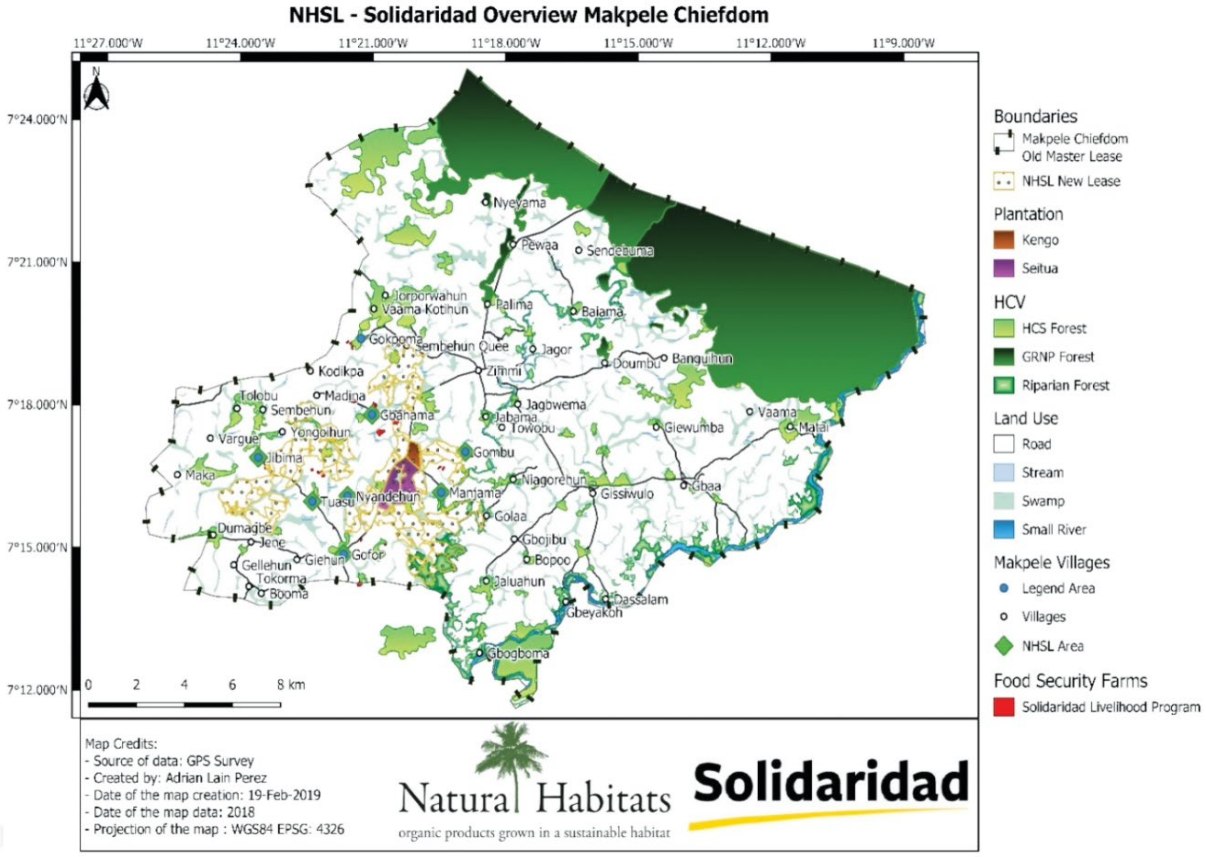


Fig. 6. The original extent of the oil palm concession coinciding with the entire Makpele Chiefdom also showing its principle geographical and land cover features and the final extent of the NHSL concession (the plots indicated in light brown in the western portion of the map), as agreed with land owing families.

The mapping exercise was part of an extended due diligence process (as described in **Case Study 1**) and negotiations through the multi stakeholder platform established by Solidaridad and NHSL. This led to revised agreements with individual land holding families reflecting the land they agreed to release, a major reduction in the size of the oil palm concession and a renegotiated land lease, based on agreements made.

The aim of the mapping was to identify land use rights and claims in areas that the elders of land-holding families had initially set out for leasing to the company to develop an oil palm plantation, and to confirm and validate the land parcels earlier pledged to the company by the elders.

Solidaridad sought to map different land parcels utilised by women and men for food and cash crop production, all other areas important for food security or other community uses, and to enable landowning families to assess the likely impacts of releasing all the land targeted by the company and to determine which areas could feasibly be released in practice. This would have involved extending the time frame to map entire village land areas, including a wider range of team members of men and women knowledgeable about the full range of land claims and uses.

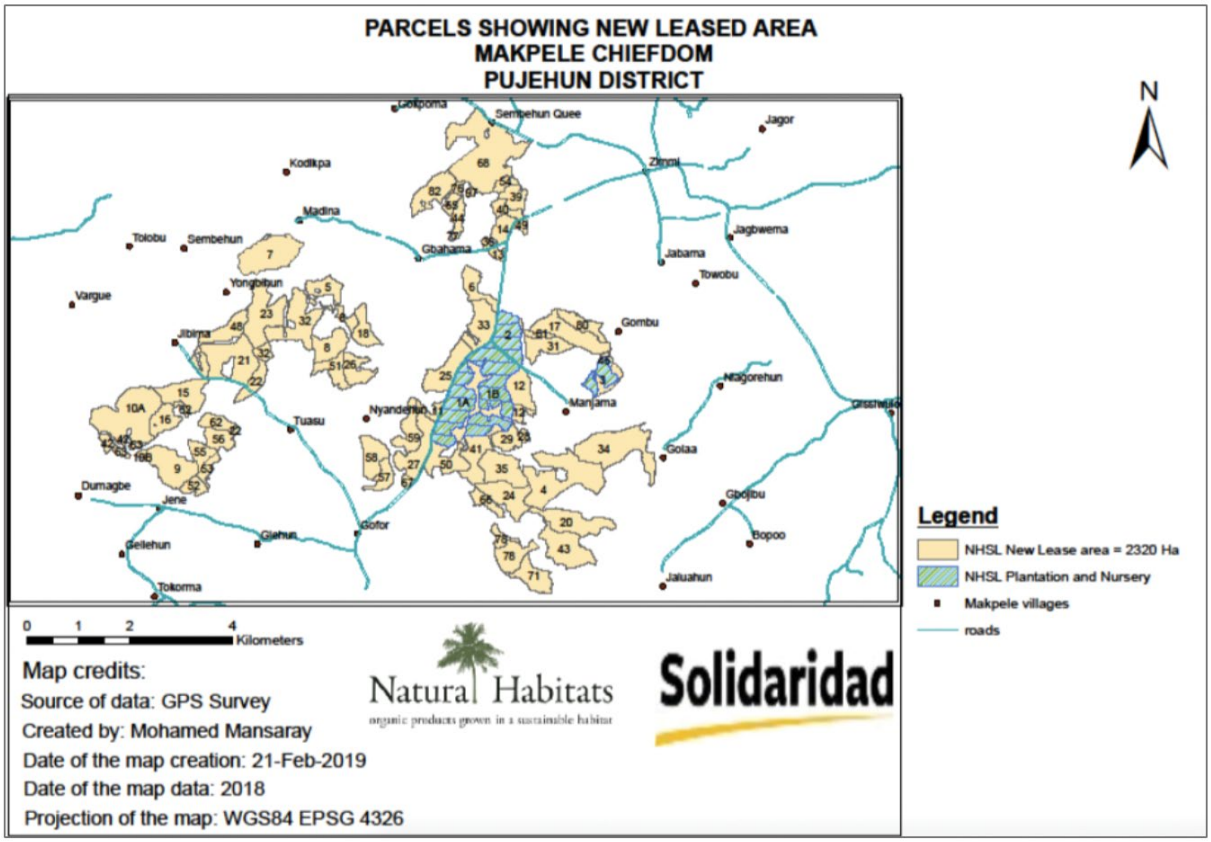


Fig. 7. Exploded view of the individual land areas which land owning families agreed to release to NHSL for the oil palm plantation.

In practice however, NHSL provided the GIS equipment, GPS devices and the digital mapping expertise for the exercise. The company was focused on the objective of identifying the land that the communities were willing to release, and the process served primarily the companies' own needs. Nevertheless, the revised maps and parcel boundaries for the reduced-size oil palm concession were produced jointly by the company and Solidaridad and then validated and finalised in consultation with land-holding families and community members. As a result, the company gained better understanding of the negative impacts that developing larger areas would cause for local livelihoods and food security. Although this met the primary objectives of Solidaridad and the landowning families, it did not enable them to establish a full picture of the existing tenure rights within village community land as a basis for effective land use planning and management, or to confirm the rights of individual households and land users.

- For a discussion of lessons learned from the joint mapping exercise with the company, see **Solidaridad's learning story** on the experience.

In a second case in Sierra Leone, the NGO Welthungerhilfe (WHH) supported development of a community-based cocoa production and export enterprise, which involved developing and testing a methodology for a land tenure and participatory land use planning (PLUP) assessment.

Participatory sketch mapping was undertaken in 3 out of 12 targeted beneficiary communities in Kailahun District, engaging with traditional leaders, landowning families, the wider community, and local government stakeholders. The documentation of customary land use rules and recognition of practical boundaries between different zones conferred greater clarity and security of rights for

local residents, including women (see Fig. 3) and 'stranger' or tenant farmers from other regions, and the process served to confirm the availability of land areas identified for release to the business partner –a social enterprise incubation and management support company named Lizard Earth, established by WHH when the original partner, a national cocoa trader, withdrew.

The assessment went on to discuss the planning implications of the participatory sketch mapping undertaken with each village community, including the relevant landowning families and different stakeholder groups of land users. Accurate digital maps of the land areas held by landowning families and the different land uses were prepared, also identifying areas that village communities expected to reserve for future expansion of settlement and food production, areas of high conservation value and areas that landowners agreed could be released for investment to expand commercial crop production.

Men's land use in Pewana

- Community Boundary
- Logging Site
- Land Ownership
- Tree Crop Plantations
- Fields for Food
- Swamps

Women's land use in Pewana

- Community Boundary
- Land Ownership Site
- Mixed Garden
- Tree Crop Plantations

Note that women's mixed gardens overlap with the tree crop plantations illustrated in the map above.

Fig. 8. & 9. Participatory sketch maps illustrating contrasting land used by women and men in Pewama, one of 12 villages targeted in WHH's cocoa enterprise development project in Sierra Leone. Women have access rights to multiple dispersed plots for food production that could be lost if only men were consulted on land areas to be released for developing new cocoa plantations.

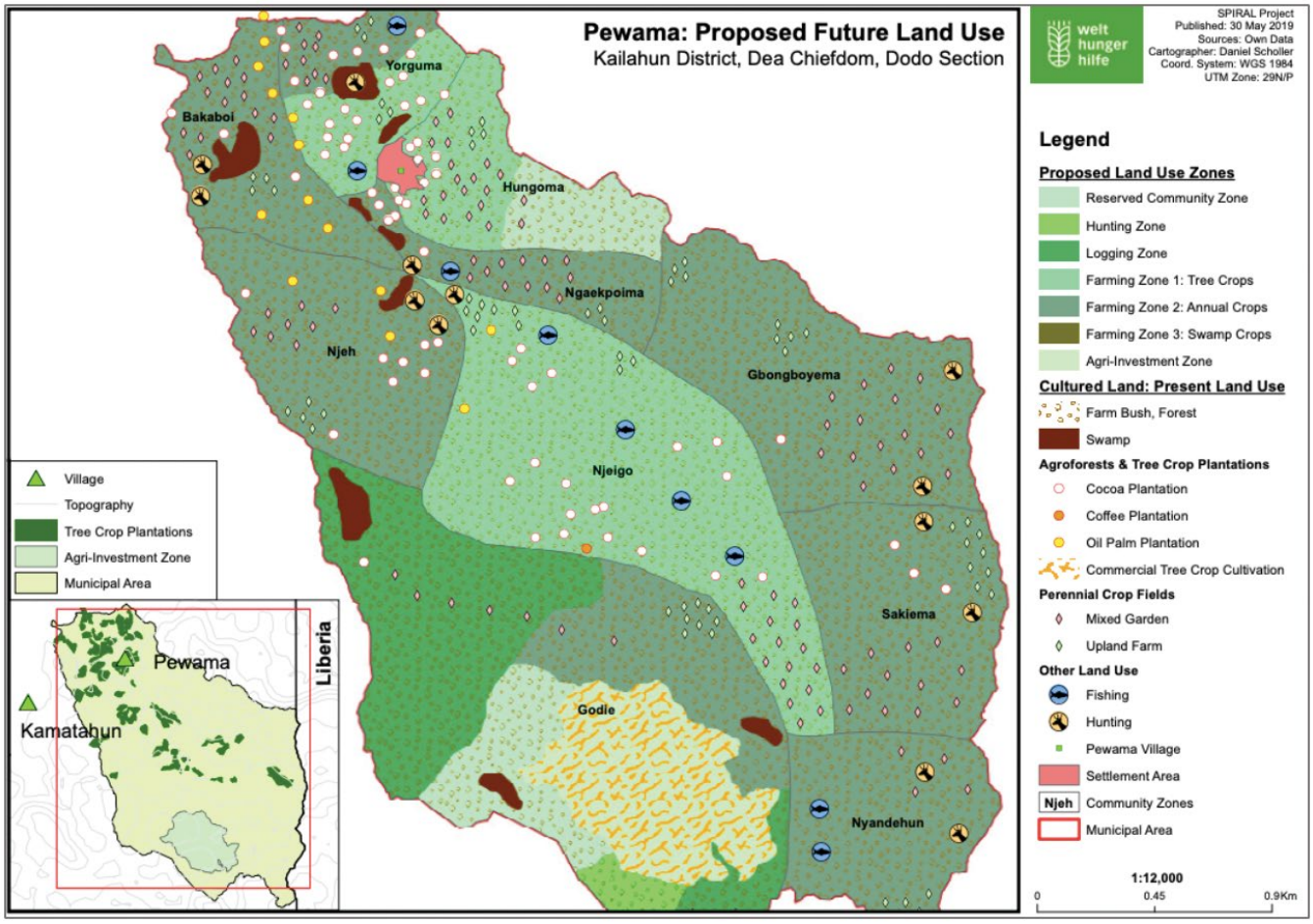


Fig. 10. Proposed future land uses for Pewama village. In this case a specific area (hatched yellow to the south of the municipality) pertaining to a specific landowning family was identified as suitable for the cocoa investment project, in which members of all village families would participate.

- For a full account of the Land Tenure and Participatory Land Use Planning assessment conducted by WHH, see their full report and guide: **Land, Livelihoods and Long-term Visions: Community-led Land Tenure Assessment and Land Use Planning in Eastern Sierra Leone**. This includes step-by-step guidance based on lessons learned, that other agencies and companies could follow and adapt when conducting mapping and planning processes with local communities, in order to reach agreement on land that can be released for investment purposes in similar environments elsewhere in Sierra Leone and potentially in the wider region.

The approaches adopted in Sierra Leone differ from those used in Mozambique, where policy promotes land rights registration at both community and household levels and a national system of land rights documentation exists. Land use patterns in much of the country are such that household-level land rights and resources held and used in common can be identified and recorded relatively easily through participatory mapping. By contrast, in Sierra Leone, there is no national system for land rights registration in place, land is owned and managed by extended land-holding families, and many households are reliant on shifting cultivation and on perennial crops planted over wide areas. Although family land boundaries can be mapped and adjudicated, the wide-range use of and access rights to land and natural resources held by different households and individuals are much more difficult to capture. Delivering rights that are formally secure is not feasible until suitable systems for administration of family lands can be put in place.

Despite these differences in context and approach, the key common objectives of land rights mapping in investment areas, which projects in both countries achieved, were to identify the legitimate land users who should be involved in negotiations, the specific land resources, income sources and livelihoods at stake, and to provide the basis for informed agreements between local communities and potential private investors on how to proceed.

3. Collective land registration and participatory land use planning for natural resource-based community business partnerships: LEGEND projects in Mozambique and Tanzania

Mapping and documentation of collective land rights is appropriate in cases where business investment and development take place on land areas utilised and managed on a communal basis by rural communities to use for grazing or harvesting wild resources, which are also subject to multiple uses, encroachment by outsiders or competition from different groups. Detailed inventories of household or individual rights are likely to be of little value in this sort of context, except in settlement or farming areas, but pilot projects found that participatory land use maps were an essential tool for land and natural resource use planning, and establishment of rules regulating natural resource access by different stakeholder groups. This is illustrated by other LEGEND pilot projects in Mozambique and Tanzania, where the registration of collective rights to land and natural resource use rights and negotiation of agreed land use plans for individual villages and wider landscapes also provided a basis for successful natural resource-based community–business partnerships for development of natural resource-based value chains and services that offer economic development opportunities for otherwise poor and marginalised local communities in remote areas:

- In a semi-arid region of the Zambezi valley in Mozambique, the NGO Micaia delimited the rights of 20 contiguous village communities to lands and land-based natural resources and then registered these community rights with the provincial government's cadastral department. Together, these village community land holdings comprise the inhabited portions of two entire districts, Guro and Tambara, now mainly composed of degraded savannah woodlands and subject to seasonal shifting cultivation for staple crops and widespread logging, both legal and illegal. Micaia compiled detailed forest inventories and facilitated participatory land use plans for each village. These plans identified areas rich in the baobab resource, and set rules on access and utilisation to provide a secure and sustainable foundation for community revenue generation and women's economic empowerment by commercialising baobab fruit products for processing and sale in domestic and export baobab value chains being developed by a partner company, Baobab Products Mozambique.

- For a discussion of the challenges and lessons involved in working across wide landscapes with multiple customary leaders and discrete yet inter-related communities to establish clear land and natural resource rights and a sustainable approach to management, see **MICAIA's report on land and natural resource governance in the project area**.

- In the Lake Eyasi valley in northern Tanzania, where tourism and conservation are major land uses, alongside pastoralism and subsistence farming practiced by local communities, LEGEND partners VSF-B (Veterinaires sans Frontieres Belgium) and UCRT (Ujamma Community Resource Team) demarcated the land areas pertaining to 13 local communities, made up of Datoga pastoralists and surviving groups of Hadza hunter-gatherers living alongside small-scale farmers migrating into the area to utilise its land and water resources for commercial maize and onion farming. The project partners undertook participatory land use planning (PLUP) in each village to identify land areas subject to different uses, and went on to secure and register the rights of pastoralist and hunter-gatherer groups to land they depend on for subsistence and their traditional livelihoods (see Fig. 11), and organise the issue of official group land titles, known in Tanzania as CCROs – Certificates of Customary Rights of Occupation).

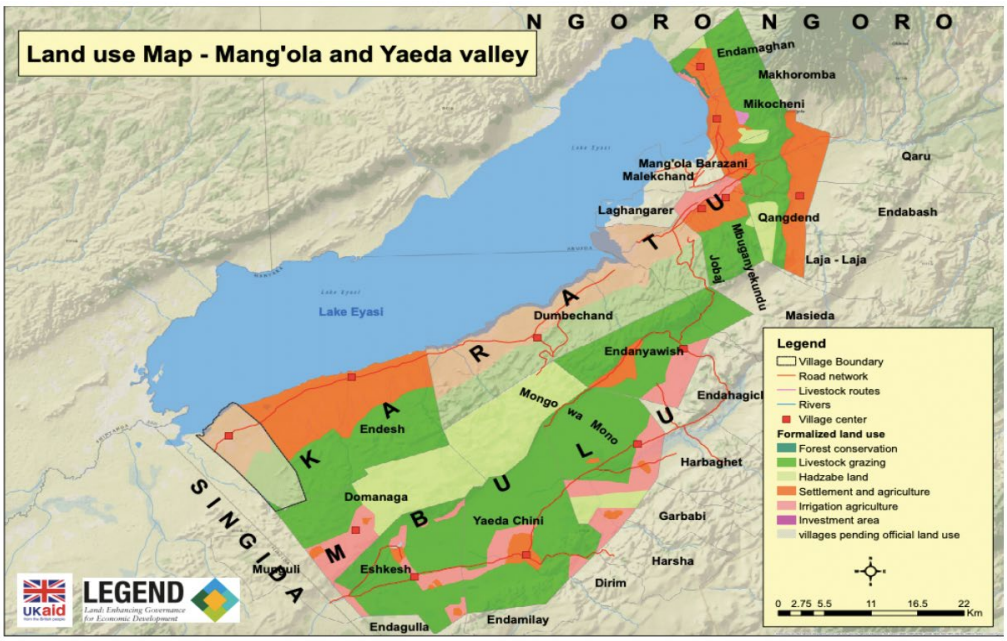


Fig. 11. Map of land use areas formalised by the LEGEND project in the Lake Eyasi area, including the grazing and hunting & gathering areas formally titled to the Datoga and Hadza, and showing the adjacent villages and administrative districts.

4. Direct support from agribusiness for the registration of smallholder and out-grower farmers' land rights

In addition to land rights mapping and documentation undertaken by CSOs in large-scale investment areas and to support community–business partnerships, some pilot projects have also involved direct assistance by agribusiness companies to the registration of farmers' rights. Solidaridad's partnership with NHSL in Sierra Leone provides one example, in which the company mapped farmers' plots at a second production site in Yele to the south of its main site at Zimmi, where the company had acquired an oil palm mill and had already established an out-grower scheme. NHSL issued land rights certificates that granted its out-grower farmers secure sub-leases to land parcels within the company's leasehold concession, for which the company maintained a small registry. This enabled the company to demonstrate compliance with new planting procedures and standards of the Roundtable on Sustainable Palm Oil (RSPO) which require that farmers in certified supply chains have tenure security.

Cases where companies are reliant on more extended smallholder supply chains, rather than production on land developed as plantations or for organised out-grower schemes, pose additional challenges. This is particularly in contexts where the evolution and interplay of customary tenure systems, informal land rentals and land administration efforts by government have led to situations in which land rights are unclear or overlapping and many farmers feel insecure. Cocoa production in Ghana, for example, is dominated by smallholder farms, many of which rely on old cocoa trees with low yields. Insecure customary rights to land prevent farmers from cutting and replanting old trees to rehabilitate farms, due to fears of losing rights and possible eviction by the customary landowners once the farm is cleared. However, replanting old farms with better quality trees to increase yields and farmer incomes while reducing pressure on forest resources to establish new farms would seem to be the obvious solution for the cocoa industry. In most cases, land rights are not mapped or registered in the name of the land-holding families, while settler farmers, the descendants of migrants who constitute a large proportion of cocoa producers, rely on informal, undocumented rental contracts with the landowners. Unclear tenure rights to shade trees on farmers' land (formally owned by the state, under national law) leads to their removal, reducing carbon stocks, biodiversity and the productive life of cocoa trees. Problems of tenure insecurity are compounded by a lack of access to finance and to technical guidance on replanting and land management.

In this context, a pilot project supported by USAID worked with the commodity trader ECOM, major cocoa buyer and chocolate manufacturer Hershey, and local NGO partners to map nearly 200 cocoa farms in one chieftaincy in Ghana's principal cocoa growing Western Region. These included farms settled by migrant farmers generations ago, and hundreds of small cocoa plots scattered across the area utilised by 187 farm households, 37% of which were found to be held and operated by women. The project partners also developed land adjudication and conflict resolution procedures, working with local chiefs to mediate disputes that occur between tenant farmers and landowning families when farmers rehabilitate their farms, as the planting of new cocoa trees tends to be perceived as asserting a claim to permanent rights.

ECOM and Hershey funded the rehabilitation of cocoa farms themselves, while USAID supported land rights mapping and registration undertaken by a private survey firm. The project made settler farmers' leasehold rights more secure by drawing up documents signed by the traditional chief, and encouraging farmers to register the documents formally at the Land Commission to ensure their rights were formally recognised by government, avoiding the need for the company itself to maintain and control land records. The storage and management of land rights records remains challenging, as the Ghana Lands Commission was initially unable to handle the data, for technical and legal reasons, though the business partnership enabled ECOM and Hershey to realise the importance of tenure security in their cocoa supply chains.

The pilot is now continuing into a 2nd phase, with a view to addressing these problems in formally registering the land rights while also building a stronger system for land rights management by the local stakeholders. If successful, the approach could be scaled out more widely across Western Ghana to assist government in achieving its dual goals of increasing cocoa productivity and reducing Greenhouse Gas emissions from the cocoa sector. For more information see:

- USAID's **Responsible Land-Based Investments Case Study Series**
- USAID's Tenure Governance and Climate Change (TGCC) **report on Land and NR Governance and Tenure for Enabling Sustainable Cocoa Cultivation in Ghana**
- **USAID's Q&A with project partners**

While assisting farmers with land registration is one way in which an agribusiness investor can act responsibly, focussing efforts on company land, and on farmers under contract to the company, does nothing to address wider problems of tenure insecurity or land use conflicts. Investments in new plantations and nucleus estates and plantations require more systematic efforts to map and document land rights to ensure that the legitimate land rights of communities as a whole are recognised and protected, as the cases of ORAM and Terra Firma's work in Portucel's forestry concessions in Mozambique, and Solidaridad's partnerships with NHSL to reconfigure its oil palm investment at Zimmi in Sierra Leone demonstrate.

Although private companies can undertake mapping and establish land registers, to avoid conflicts of interest, these actions need to be managed independently of companies that have a direct interest in the land acquisition, to ensure that the rights of women, tenant farmers, herders, people dependent on wild resources or other marginalised groups whose legitimate rights are less visible, are not ignored in favour of outside investors, local elites and more successful farmers. Fundamentally, land information and cadastral systems to identify and secure land rights and enable better planning are public goods. Although the private sector and civil society can contribute to these systems, and this is likely to be needed in the absence of a comprehensive national land registration system for public land or land that is legally owned by communities or landholding families, regulatory frameworks are needed so that land administration is conducted transparently under common rules and procedures, and with agreed data standards.

Conclusions

The methods and tools developed through pilot projects such as those discussed here illustrate processes that governments, donors and development finance agencies, as well as the private sector itself, should support at greater scale in order to ensure that land based investments are responsible and create real benefits for all stakeholders. The practical lessons of the work undertaken by CSOs working alongside and in partnership with private companies are:

- **It is always preferable to identify legitimate land rights holders before companies are granted government operating concessions and before they begin consultations with local communities** where land rights documentation is absent. Investors need to find ways of partnering with civil society groups and local service providers to ensure that mapping and documentation of land rights is done adequately.
- **Official government information on land rights is frequently absent in agricultural investment areas and needs to be supplemented by independent mapping and documentation efforts.** Where government mapping and land registration services are available, they may be relatively costly, with limited coverage; inaccuracies in capturing customary boundaries and documenting natural resources and land cover features important to local communities are frequently encountered.
- **Community members need to be involved in the production of accurate land parcel and community land resource maps: participatory mapping methods using low-cost technology tools and backed by independent spatial data platforms are available for communities to use.** With appropriate external technical support, this can be done rapidly and cheaply, providing a basis for compiling local land registers and a tool to involve different stakeholder groups in land use planning.
- **Participatory land rights mapping and documentation should be validated internally by community members and endorsed by all parties**, as this approach helps to address land-related disputes, conflicts and grievances arising in large-scale land acquisitions that have taken place without the full consultation of the local land rights holders and in the absence of accurate government land records.
- **The legal context, the practical options for formally registering or certifying land rights, and the nature of customary landholding and use in particular cases will all have an influence on the practical approaches to land rights mapping and documentation that should be adopted**. For example, in much of Mozambique, where government promotes land registration, and the law allows communities to certify their own rights, farm households' rights over discrete land parcels can be identified and mapped quite easily. By contrast in Sierra Leone, the much larger areas controlled by extended land-holding families can be mapped, but no system is yet in place to register these rights formally, and documentation of the variable sets of multiple and often complex sets of customary land use and access rights within these family lands relies on participatory sketch mapping, and inventories of existing rights and resources.
- **Although private sector companies frequently have technical capacity for land rights mapping, and documentation, community counterparties generally seek to identify, defend, and better manage their different land rights, for which independent support is needed**. Companies are primarily concerned with identifying land areas they seek to acquire and develop, assessing whether or not they face legal challenges by other claimants, assessing compliance with environmental standards such as maintaining high conservation value (HCV) and high carbon stock (HCS) areas, and to securing formal land rights for themselves or their immediate suppliers. The interests of local community members are generally to map and document land rights to help adjudicate local disputes, achieve greater security, protect their land and resources from expropriation and provide a solid basis for negotiating terms of land access with investors and other users.
- **Independent spatial data platforms provide faster and more effective services than formal government systems to meet communities' needs for land rights documentation and provide tools to help companies work in partnership**

with them. Accordingly, there is a need for common data standards and regulation of these systems to ensure they are transparent and accountability to local communities, enable land rights data can be imported into official land registries, and facilitate contributions by civil society and the private sector to contribute to sustainable national land administration efforts.

- **There is a need for partnership mechanisms to finance and mobilise capacity for land tenure assessments and land rights mapping at greater scale than presently possible and before companies make detailed investment plans**. Although systematic land rights mapping goes beyond the responsibilities and capacity of agribusiness companies themselves, the private sector is in a position to provide finance alongside support from donors and governments to enable systematic land rights documentation to take place at greater scale and make sure it is done in areas subject to investment and land use changes.

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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Other LEGEND publications are available at: **Landportal.org/partners/legend**

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Page 1: Cocoa pod: G Summers | Community members and ORAM staff in Napara identifying features on satellite images: provided by Terra Firma | Map showing overlap of Portucel plantation forestry concessions (green outlines) with confirmed village land areas (blue outlines) in Zambezia, Mozambique; also showing individual family land parcels (yellow outlines) and parcels managed and planted by Portucel (red blocks). Image provided by Dan Mullins, Terra Firma

Page 4: Community members and ORAM staff in Napara identifying features on satellite images: provided by Terra Firma

Page 5: Participatory mapping with smallholders supplying Illovo Sugar, Maragra, Mozambique: provided by Terra Firma