BANKING ON SHAKY GROUND

AUSTRALIA'S BIG FOUR BANKS AND LAND GRABS

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Christophilda Milik, 19, stands in mangrove swamp near where a logging company loads logs to the barges in Turubu Bay village, East Sepik province, Papua New Guinea. "I used to catch fish in this swamp, but now almost all fish disappear because water was polluted by oil from machines. Sea water near our village is also polluted. It's difficult to catch fish nowadays." Cover: Goreti Kirua, 30, sits with her 3 year old son Sebilon on a rejected log. "Foreigners forced us to sign consent forms, then they destroyed our forest." Photos: Vlad Sokhin/OxfamAUS.

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Logging continues at Turubu Bay despite claims by local landowners that it is illegal. Photo: Vlad Sokhin/OxfamAUS.

Over the past 13 years, nearly 36 million hectares of land — an area almost the size of Germany — has been snapped up in large-scale land deals.[1] These deals have shifted land from local farmers, communities and forests to companies, largely driven by the international demand for agricultural commodities like sugar, palm oil, soy and timber.

As food prices have spiked,[2] commercial interest in land has grown, with large-scale land deals accelerating astonishingly; the bulk of these deals took place over the past five years.[3] Australia's doorstep — South-East Asia — leads the world as the target region for large-scale land deals.[4]

While land deals by foreign investors in Australia have been contentious domestically,[5] Australians may have missed the extent to which these deals have dominated headlines in developing countries, or how many of these deals have resulted in communities around the world being left hungry and homeless.

Stories abound of large-scale land deals failing to respect local land rights, violent community unrest and an investment rush that targets the poorest nations with weak land institutions.[6] A review by the World Bank found that many of these deals "… failed to live up to expectations and, instead of generating sustainable benefits, contributed to asset loss and left local people worse off than they would have been without the investment".[7]

There are reports of foreign land investors paying yearly "lease" fees from as little as seven cents per hectare.[8] Research from Oxfam, the United Nations and other organisations paints a concerning picture of investments failing to support sustainable development in host nations, leading many to dub the phenomenon a global "land grab".

For the first time, this report reveals worrying connections between all of Australia's big four banks — ANZ, Westpac, the National Australia Bank (NAB) and the Commonwealth Bank of Australia (CBA) — and allegations of land grabbing overseas.

THE BIG FOUR BANKS AND LAND GRABS

Westpac

Westpac has a 19-year-old banking relationship with a controversial logging company, "WTK Group", in Papua New Guinea (PNG). Only the Amazon and Congo basins rival PNG for its pristine tropical rainforest, and the PNG logging sector has long been the subject of allegations of illegality and unsustainability. WTK's particular logging operations in PNG were reviewed in 2003 by PNG's Department of National Planning and Monitoring and found to raise concerns regarding use of violence, sexual misconduct in relation to local women, and environmental damage.[9] Alarmingly, the review indicated that the logging operations may be operating illegally.[10] More recently, WTK in PNG has been embroiled in the controversial Special Agricultural and Business Lease (SABL) debacle, in which almost 5 million hectares of land passed from communities into the hands of companies, largely logging companies, on the pretext of "agricultural development".

Oxfam researchers documented the impacts of one of the SABLs linked to WTK on the Turubu community in PNG's East Sepik province. Community members had been told the SABL lease was a palm oil development, but five years later, the only significant operation is logging of old-growth forest.

A disturbing picture has emerged of flawed consent processes and impacts on the community including food insecurity, deforestation, water pollution, destruction of sacred sites and community conflicts.

A PNG Commission of Inquiry into the SABLs directly named WTK associates as involved in particular SABLs and delivered a scathing critique of the entire SABL system, finding that of the 42 SABLs reviewed, only four had met the requisite standard for community consent and a viable agricultural project. Oxfam's research and the findings of the Commission of Inquiry raise serious questions about the practices of WTK in PNG, and the exposure of Westpac to the risks associated with the actions of its longstanding client.

The Commonwealth Bank of Australia

The Commonwealth Bank owns shares to the value of $14.21 million in agribusiness company Bunge. Bunge owns a sugar mill that sources from 8,800 hectares of Brazilian land which has been declared by the Brazilian Government as being subject to the process of return to its rightful Indigenous owners. Given that the process was underway, Bunge and an adjacent sugar mill were requested by a Brazilian federal prosecutor to stop sourcing sugar cane from these Indigenous lands. The adjacent sugar mill complied, however Bunge has failed to do so. In addition to losing their land, at least 60 families from the Jatayvary community now find themselves living on the border of sugar plantations supplying Bunge, where they are exposed to pesticides and smoke from the burning of sugar cane straw, pollution of waterways and intense vehicle traffic that transports sugar cane.

Bunge has recently signaled plans to sell the company's Brazilian sugar milling business, citing losses, which raises further questions about the sustainability of Bunge's operations with the sugar mill in Jatayvary.

ANZ

ANZ Bank is financing Phnom Penh Sugar, a Cambodian sugar plantation that has been implicated in child labour, military-backed land grabs, forced evictions and food shortages for local families. It has been reported that at least 1000 families were evicted from their land to make way for the Phnom Penh Sugar plantation in Cambodia; with some given $100 to compensate for the loss of the land that had until then provided them with food and ongoing livelihoods. Many of these families say they were resettled on infertile land, making it impossible to farm enough food for their own families let alone to provide an income.

An audit carried out by the International Environmental Management Company last year revealed ANZ's client failed to ensure resettled families had adequate food supplies. The company had failed to implement environmental, health and social management programs required by ANZ to meet its ethical lending obligations.

Community members have informed Oxfam and its partners that they are seeking action so that their quality of life and livelihoods can be, at a minimum, sustainably restored. To date, the request of the community members has not been fulfilled, although negotiations are continuing. Community members are worried that they are vulnerable to a swift exit by an ANZ fearful of the reputational risk now clearly made public around this investment.

NAB

The NAB has lent more than $218 million to Singapore-listed Wilmar, the world's leading processor and trader of palm oil. The first NAB loan to Wilmar occurred during 2010, when the World Bank Group had suspended lending to Wilmar and the entire palm oil industry, following a complaint regarding Wilmar's operations. The subsequent 2013 NAB loan came after *Newsweek* had ranked Wilmar as the least sustainable company in the world in terms of environmental performance for two years running — in 2011 and 2012.[11] Yet the NAB, despite its stated commitment to environmental sustainability, has not made any public statements regarding the controversial palm oil industry, the issue of land grabs, nor its exposure to one of the industry's leading players. In multi-stakeholder initiatives like the Roundtable on Sustainable Palm Oil — set up to address environmental and social issues in the palm oil industry — and among the lists of Wilmar investors who have attempted to push the company towards better practice, the NAB is noticeably absent.

With Wilmar being one of the largest players in the palm oil industry, the sheer number of conflicts and controversies surrounding its operations and those of its many subsidiaries are virtually impossible to document. For example, since 2007, five complaints have been submitted to either the International Finance Corporation's Compliance Advisor Ombudsman (CAO) against Wilmar's operations in Indonesia or the Roundtable for Sustainable Palm Oil (RSPO) regarding Wilmar's operations in both Indonesia and Africa. The most recent and unresolved complaint was filed in 2013 with the RSPO against a Wilmar subsidiary operating in Indonesia. This complaint alleged the company failed to comply with all relevant local, national and ratified international laws and regulations, did not mitigate the environmental impacts of the development, encroached into areas classified as High Conservation Value Forests and breached parts of the RSPO Code of Conduct.

In December last year, after years of pressure from NGOs, open letters from investors, and complaints to the RSPO and International Finance Corporation, Wilmar took the enormous step of committing to a "No Deforestation, No Peat, No Exploitation Policy" which also addressed land grabbing in its supply chain. In doing so, they took a strong step, highlighting even further the silence and seeming lack of action on these issues from Wilmar's own lender, the NAB.

In addition to these four case studies outlined in-depth in this report, Oxfam also outlines an additional list of clients of the big four banks, and the public allegations of land grabbing and associated conduct in relation to these clients. Further investigation by Oxfam and other NGOs is underway in relation to these and other allegations. There is no doubt that this report merely the scratches the surface of the big four banks' exposure to land grabbing.

The exposure of the banks

The big four banks are agricultural powerhouses, investing strongly in the agricultural commodities industry overseas. According to their 2013 annual reports, and information provided to Oxfam, they face a collective exposure of billions to this industry. It is unlikely that exposure to this industry will lessen, particularly as all the big four banks are investing across Asia and the Pacific, and have trumpeted the region as the focus of growth strategies.

As stated by ANZ CEO in 2013, "We believe a bank connecting across the Asia–Pacific region will achieve superior growth and returns over the longer term." Oxfam supports this contention, and wants to see continuing investment in these markets. However, as the CEO goes onto say, " … integral to achieving this is our ability to manage social and environmental risks." This report provides evidence to show that despite the intention expressed by ANZ's CEO, all four of the banks are exposed to the endemic social and environmental risks of land grabbing in the agricultural commodities industry in emerging markets. It is important to get growth strategies in new markets right. This report illustrates that failing to do so risks horrendous impacts on communities, financial losses to bank clients and a corresponding impact on each bank.[12]

The Impact on Australia

Australia's big four banks often assert that they are largely owned by ordinary Australians, either directly or indirectly. Certainly, sitting in the big four banks is $522 billion worth of Australian household deposits, equivalent to almost one-third of Australia's GDP.[13] Regardless of whether you bank with a Big Four Bank or not, their practices are therefore integral to the stability and reliability of Australia's entire economy, and impact all Australians. In the words of the now-Australian Federal Treasurer, Joe Hockey, in 2011, "…the four major banks have largely become the Australian financial system." It is in Australia's interest that the big four banks have thorough and systematic due diligence processes to address risks, even in their overseas operations. The banks' actions also impact the international reputation of Australian business. Under all Australian federal governments over the past decade, the Asia–Pacific is touted as being the region most key to Australia's economic future. It is essential that Australian business in the region model best practice, supporting long-term and sustainable investment, and build a reliable reputation that can endure political and social upheaval.

EXECUTIVE SUMMARY

Due diligence

Given the focus on the Asia–Pacific region as an engine of growth for the big four banks, and their existing exposure to the agricultural commodities industry overseas, it would be reasonable to assume that the banks have in place a thorough, systematic due diligence framework to avoid the risk of associations with land grabs. All of the big four banks have made some form of commitment to international responsible investment and human rights principles. However,there has been no commitment to specific approaches which would prevent involvement in land grabs, such as the adoption of Free, Prior and Informed Consent of communities, and transparency around their investments which would allow affected communities and investors to alert banks to allegations of bad practice and attendant exposure.

What the banks must do

Land grabs have exposed poor people to hunger, violence, homelessness and the threat of a lifetime of inescapable poverty. This report raises credible and disturbing questions about the links between our big four banks and land grabbing.

The big four banks state they take their human rights and sustainability responsibilities seriously. They are all well-decorated sustainability award recipients, with Westpac recently ranked the most sustainable company in the world at the World Economic Forum, and ANZ ranked the most sustainable bank globally in the Dow Jones Sustainability Index five times in the last seven years. The NAB was awarded for its Sustainability Leadership by the United Nations Association of Australia in 2011, and the CBA was rated third in the global financial industry for Carbon Disclosure in 2011.

Yet, for all the awards, the gaping hole in the banks' due diligence policies towards land grabbing, and the allegations of bad practice in this report leaves ANZ, CBA, NAB and Westpac far behind the decisive response taken by other global companies to this issue. Big players in the agricultural commodities industry in developing countries, including the Coca-Cola Company, PepsiCo and international financial institutions like the International Finance Corporation (IFC), have at least attempted to reduce risk of their involvement through the introduction of strong policies addressing land grabbing.[14]

Oxfam believes the big four banks must swiftly adopt the following policies and practices to address their risk of involvement in land grabs in the agricultural commodities industry in emerging economies:

1. **Know and Show their exposure to land risk**
   Uncover the risks and impacts to communities, and disclose the bank's exposure to the agricultural commodities industry in emerging economies.

2. **Commit to a Zero Tolerance for Land Grabs policy**
   Provide clear and public policy guidance for Bank staff and investors as to the Bank's due diligence approach to the risk of land grabbing.

3. **Advocate for responsible financing**
   Lead the way for responsible financing practices towards the issue of land grabs in emerging economies.

4. **Ensure justice for affected communities**
   Ensure justice for the communities whose cases are outlined in this report, addressing concerns and providing full and fair remediation. Such remediation must be agreed to by communities and could include ensuring communities rights to food, shelter and a sustainable livelihood are restored following the loss of their homes and lands.

The dire situation of the communities covered in detail in this report, and the material risk to the bank's operations, demand urgent action by our banks to address land grabbing in the agricultural commodities industry in some of the world's poorest communities, and publically demonstrate their Zero Tolerance towards land grabs.

Guarani Kaiow Jatayvary Indigenous Land, Ponta Porã. Mato Grosso State, Brazil. Photo: Tatiana Cardeal/Oxfam.

2 INTRODUCTION

Oxfam has been responding to food crises for nearly 50 years — from Biafra in 1969, Ethiopia in 1984, Niger in 2005 and the Horn of Africa in 2011, plus countless other silent disasters that play out beyond the gaze of global media. All have been entirely avoidable.

Prevention is better than cure. Oxfam therefore began its global GROW campaign in 2011 to target the causes of food crises and hunger and address the central absurdity in the global food system: that we produce enough food to feed every person on the planet,[15] yet 1 in 8 of us go hungry every night.

The main concern of the GROW campaign has been to address the 80%of the world's hungry who are directly involved in food production themselves.[16] They tend animals. They cultivate crops on their own small plots of land, or on land rented from others. They often supplement their diet with food from forests, rivers and seas. The hungry are small-scale food producers — farmers and fisher people. Paradoxically, they are surrounded by the means to produce and collect food, yet they miss out. Why?

Oxfam's research and that of others,[17] has established that the reason small-scale food producers often go hungry is that they have been sidelined by governments and companies for decades, and they face emerging threats. This report deals with a key threat to the future of small-scale food producers across the world — the rise of land grabs.

Oxfam has conducted a solid body of work addressing this modern day gold rush. This report is not the first time we have spoken out publically on the issue of land grabs:

1. In September 2011, Oxfam released a global briefing paper, *Land and Power*[18] which directly addressed the growing scandal surrounding agricultural investments. It documented that small-scale food producers were regularly losing out to powerful elites and investors in the scramble for land. The report presented a global picture as well as examined five land grabs in detail — in Uganda, Indonesia, Guatemala, Honduras, and South Sudan — and made specific recommendations outlining how governments and investors could prevent involvement in land grabbing.
2. In June 2012, Oxfam Australia released *Food, Land and Water: Considerations for Australian Responsible Investors*[19] a report specifically directed to Australian investors outlining the risks for investors and company operations from land grabs and proposing clear recommendations for action. Oxfam also hosted briefings with investors and the United Nations Special Rapporteur on the Right to Food, Professor Olivier De Schutter, in an attempt to alert the Australian investment community to the practice of land grabbing — particularly in the Asia–Pacific region.
3. In October 2012, increasingly concerned at the scale and speed of land grabbing, Oxfam released another report, *Our Land, Our Lives — Time out on the Global Land Rush*[20] directed at the World Bank. The report urged the Bank to take action as an influential investor to halt the worldwide rush for land that was rendering the most vulnerable homeless and hungry. The World Bank engaged with Oxfam on this issue and as a result of pressure from many other communities, NGOs, activists and academics across the world, President Kim of the World Bank made a high-profile public statement on land rights, highlighting the risks which come with big land deals, and the World Bank committed itself to a new UN standard on how land is governed.[21]
4. In October 2013, Oxfam released its latest report, *Sugar Rush — Land Rights and the supply chains of the biggest food and beverage companies* on land grabbing, specifically targeting the sugar industry and calling on Coca-Cola, Pepsi; and Associated British Foods to take action to prevent land grabbing in their supply chains. To date, both Coca-Cola and PepsiCo responded, adopting Zero Tolerance Policies to prevent land grabbing, and undertaking to reveal sugar supply chains to allow for independent verification and transparency for affected communities.[22]

Behind the scenes, Oxfam has for decades supported networks of NGO allies and communities affected by land grabs across the world. It is important to note that Oxfam is not the only organisation seeking to bring the issue of land grabs to the world's attention. Countless other organisations, the UN, investors, academics and most impressively, the communities who have the most to lose in speaking out, have joined forces to address the issue. We have engaged governments from a local level all the way to the United Nations. We have briefed the Australian Government on the issues of land grabbing and we have met with Australian business. But, Oxfam was met with one question at every level of engagement in Australia, and that was: can you give us an example of how this is a problem for Australian business?

This report is Oxfam's response to that question. Almost a year of research has revealed significant connections between Australia's big four banks and allegations of land grabbing across the world. In this report Oxfam has chosen to highlight four cases in particular, each involving a different one of Australia's big four banks — ANZ, Commonwealth Bank of Australia (CBA), Westpac and the National Australia Bank (NAB). Oxfam's research was built on the complaints of communities, many of whom were stymied by the lack of transparency around land deals. Although communities were frequently able to name the company alleged to have grabbed land at the local level, it has taken Oxfam and its partners almost a year to painstakingly track the investors involved in each case through investigation of the financing chain.

We are very conscious that the evidence we present in this report is the tip of the iceberg. Behind corporate walls of client confidentiality, companies registered in secrecy jurisdictions, and expensive paywalled databases lies more information, but we simply cannot access it. There may be other connections between Australian business and land grabs, but Oxfam was overwhelmed with complaints relating to the NAB, ANZ, CBA and Westpac and has not as yet investigated further afield. What we have compiled rings an alarm bell across Australia's financing sector, and provides a warning to all investors including banks, superannuation funds and the Australian Government. All of us have an interest in stable and ethical financial relationships between Australia and the globe, particularly the Asia–Pacific region. Investors and all Australians who have a connection to our big four banks are dependent upon these banks for effective policies ensuring sustainable lending practices. The evidence presented in this report demonstrates significant gaps in both these policies and the practices of ANZ, CBA, NAB and Westpac on the ground.

In the words of a leading Asian agribusiness company, "in the face of imminent global crises such as climate change, environmental degradation, depleting resources, widening rich–poor divide and so on … sustainable development is the only way forward."[23] Oxfam firmly supports this premise. This report outlines how investors and our big four banks, in particular, need to chart a better pathway towards that future or risk creating scores of homeless and hungry people in their wake.

THE ISSUE — AGRICULTURAL COMMODITIES AND LAND GRABS

Sugarcane plantation, Mato Grosso do Sul, Brazil.
The community says the deforestation and pollution caused by the farms has led to the death of fish, animals and traditional medicinal plants, making it much harder for them to survive. Photo: Tatiana Cardeal/Oxfam.

3 THE ISSUE — AGRICULTURAL COMMODITIES AND LAND GRABS

Box 1: What is a land grab?

Large-scale land acquisitions

A large-scale land acquisition can be defined as the acquisition of any tract of land larger than 200 hectares (ha), or twice the median land-holding, according to the national context. The 200 hectares figure comes from the International Land Coalition's definition of "large scale." Not only is 200 hectares ten times the size of a typical small farm,[24] but according to the latest Food and Agricultural Organisation-led World Agricultural Census, it is also larger than the average land holding in all but three developing countries.[25]

Large-scale land acquisitions become land grabs when they do one or more of the following:

- Violate human rights, particularly those of women;
- Flout the principle of free, prior, and informed consent;
- Take place without or disregard a thorough assessment of social, economic, and environmental impacts;
- Avoid transparent contracts with clear and binding commitments on employment and benefit sharing;
- Eschew democratic planning, independent oversight, and meaningful participation.[26]

3.1 LAND GRABS

Since 2000, nearly 938 large-scale land deals covering 35.6 million hectares globally — an area the size of Germany — have been recorded.[27] Owing to the lack of transparency around land acquisitions, the real number could be much higher. A World Bank report in 2010 nominated a larger figure, stating that, "45 million hectares worth of large-scale farmland deals were announced even before the end of 2009."[28] This land has shifted from small farmers, local community use, or the provision of important ecosystem services (such as carbon sinks), to commercial use, driven in vast majority by the need for agricultural commodities like sugar, palm oil, soy and timber.[29] This may come as a surprise to many who might associate conflicts over land use primarily with industries like mining[30] or large scale infrastructure projects like roads or railways.[31] It appears however that agricultural commodities are the new frontier.

To understand why investment in large-scale agricultural commodity production is booming, it's necessary to look at the global context for food security. The 2008 boom in food prices is widely recognized as having triggered a surge in investor interest in agriculture: from mid-2008 to 2009 the number of reported land deals increased dramatically by around 200%.[32] The food price boom was an indication of the significant challenges the global community will face to feed itself by 2050.[33] An exploding middle class in Asia, population growth and changing diets are predicted to boost global demand for food.[34] Meanwhile, our production capacity will be increasingly constrained by declining availability of water, land, agricultural inputs and deteriorating climatic conditions in key agricultural regions of the world.[35] The rush for land and an impending global food security crunch[36] are intimately connected: as food security concerns are heightened, competition inevitably increases for control of the key essential building block of agricultural commodity production — land.

Investment in agriculture, however, is desperately needed. Agriculture is vital for food security and is the crucial "growth spark" for many developing economies.[37] Private investment can contribute to inclusive growth, environmental sustainability, and poverty reduction. However, the type of investment is significant. Through large-scale land acquisitions, investors[38] have rapidly expanded large-scale crop production. Small-scale food producers are sidelined as the market offers companies huge rewards for exploiting their land. Too often land investments have led to human rights violations, loss of livelihoods, alienation of people's spiritual and cultural ties to land, and sometimes violence and destruction of property and crops. Oxfam has called this "development in reverse".[39] Women living in poverty are at particular risk,[40] since they are less likely than men to have land titles or a say in decisions affecting their access to land.[41] For poor communities and small farmers, loss of land is disastrous for livelihoods and food security. This worsens a situation where almost 842 million people[42] already go hungry every night — the large majority of them small farmers, fisher-people and others dependent on food gathering.

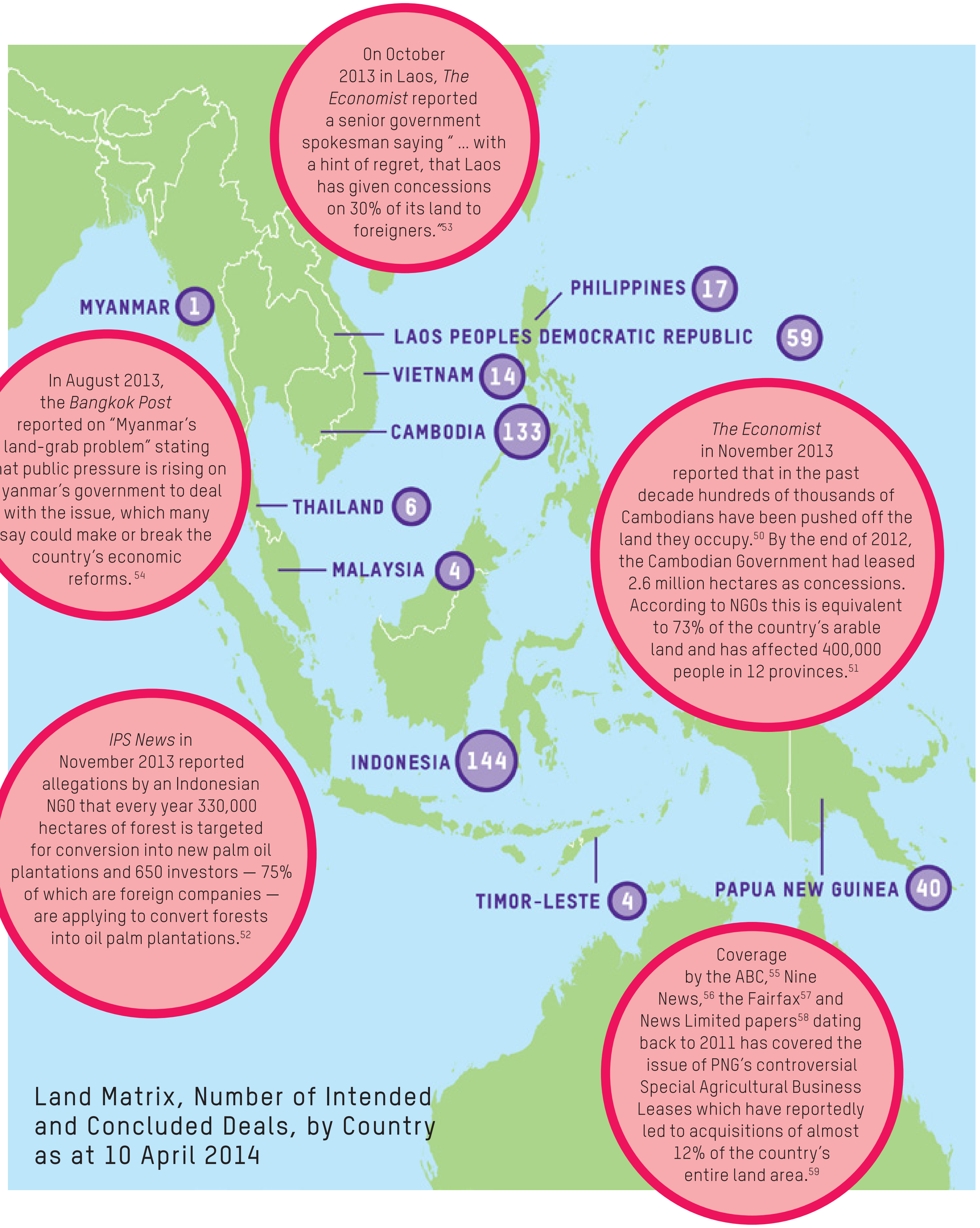
"YOU DON'T NEED GUNS TO KILL PEOPLE. WHEN YOU TAKE FOOD FROM A VILLAGE BY DESTROYING FARM LANDS AND CASH CROPS, YOU ARE STARVING ITS PEOPLE … THESE THINGS MUST STOP. OUR PEOPLE DESERVE THE RIGHT TO SURVIVE. THEY SHOULDN'T BE DENIED THEIR LAND." Alfred Brownell, Green Advocates, Liberia.[43]

3.2 THE ASIA–PACIFIC AND LAND GRABS

Disquiet over large-scale land acquisitions in the agricultural commodities industry is a global phenomenon. However, according to The Land Matrix, a global land monitoring initiative which seeks to collate and keep track of data on large-scale land acquisitions, South-East Asia is the leading region in the world for large-scale land acquisitions,[44] and the Asia–Pacific region is home to the top two countries for large-scale land acquisitions in the world: Indonesia and Papua New Guinea.[45]

Even in Australia where there is a relatively clear system of land rights, the notion of large-scale land acquisitions, particularly by foreign investors, causes controversy.[46] However, what distinguishes the Asia–Pacific region from Australia is that rural and indigenous communities in these areas often use and control lands through long-term tenure arrangements which are seldom recognised and protected in legal frameworks. In fact, the poorer the protection of land rights, the more likely it is that investors will try to acquire land. The World Bank has found that the main link between countries and a greater likelihood of large-scale land deals is poor protection of rural land rights.[47]

Further complexities exist specifically in the Pacific region. Three systems of land tenure co-exist in the Pacific: customary, public and freehold.[48] The majority of land (almost 80% of the total land area)[49] in the region is under customary authority and therefore under the explicit control of local communities. Therefore, land related projects across the Pacific region commonly take place on land subject to customary authority, which raises the real likelihood of conflict if companies violate the rights of customary owners.



Land Matrix, Number of Intended and Concluded Deals, by Country as at 10 April 2014

Box 2: What are Agricultural Commodities?

Agricultural commodities, as outlined by the Australian Government's Department of Agriculture,[60] include grains and oilseeds, livestock, food, wool, horticulture, forestry and fisheries products. In banking circles, the industrial classifications can often be broken down further, into "forestry", "agriculture" or "fisheries", or collectively termed "soft commodities".[61]

3.3 AGRICULTURAL COMMODITIES AND LAND GRABS

As noted previously, the scale and speed of large-scale land acquisitions globally is driven in vast majority by the need for agricultural commodities.[62] Many of these commodities don't go straight into our food system but are used to produce energy such as biofuels and materials like rubber tyres and paper. The growth in production of these commodities has not been without controversy. While protests regarding logging are common in Australia, many might be surprised to find the humble soybean has been accused of the destruction of extensive natural areas in South American countries.[63] Controversy has also dogged sugar,[64] rubber,[65] and palm oil production.[66]

"PALM OIL HAS BECOME THE EDIBLE OIL OF CHOICE, IF YOU WILL, FOR MUCH OF THE WORLD … MORE LAND WILL HAVE TO COME INTO LINE TO MEET THAT DEMAND." Michael Shean, a global crop analyst with the United States Department of Agriculture (USDA).[67]

The growth in these commodities and their association with land grabs has also resulted in a proliferation of attempts to regulate and prevent land grabbing and other abuses in the agricultural commodities industry.[68] These multi-stakeholder sustainable development initiatives have had mixed results[69] and should not replace the actions of individual companies to address their own responsibilities. However, they are avenues through which better practices can be tried and promulgated.

TABLE 1: OVERVIEW OF AGRICULTURAL COMMODITIES, CONTROVERSIES AND SUSTAINABLE DEVELOPMENT INITIATIVES

AGRICULTURAL COMMODITY	DETAILS	CONTROVERSIES	SUSTAINABLE DEVELOPMENT INITIATIVES
Sugar	Sugar is produced on 31 million hectares of land globally,[70] with at least 4 million hectares linked to 100 large-scale land deals since 2000.[71]	Oxfam's 2013 report *Sugar Rush — Land rights and the supply chains of the biggest food and beverage companies*, outlines how sugar has been driving large-scale land acquisitions and land conflicts at the expense of small-scale food producers and their families.	Bonsucro,[72] Fairtrade,[73] and Rainforest Alliance[74]
Palm Oil	Palm oil is a globally traded agricultural commodity found in roughly half of all packaged food products on Australian supermarket shelves.[75] The area used for oil palm cultivation has increased nearly eightfold over the last 20 years to an estimated 7.8 million hectares in 2010 and is expected to double again by 2020.[76]	While international concern has focused on the environmental impacts,[77] biodiversity loss,[78] and climate implications[79] caused by the rapid land-use change for palm oil, the serious social impacts are increasingly being recognised. Documented problems include: widespread land conflicts;[80] exploitative labour conditions including child labour;[81] pesticide poisoning in female sprayers'[82] land concentration;[83] food shortages;[84] the denial of the rights of indigenous peoples.[85]	Roundtable on Sustainable Palm Oil (RSPO)[86]
Timber	The scale of the timber industry is hard to calculate, as transparency is poor, and the industry is bedevilled by concerns regarding illegal logging.[87]	The Australian Government describes illegal logging as: " … a significant global issue. It degrades forest environments, contributes to greenhouse gas emissions, reduces biodiversity, results in a loss of government revenue and deprives local communities of ownership rights and opportunities to improve their quality of life."[88]	Forest Stewardship Council (FSC)[89]
Soy	Of palm oil, soy and sugar, soy is the biggest land user by far,[90] but just 16% of soy is used directly in food products with the majority used for animal feed.[91]	Soybeans are grown in complex ecosystems that have been greatly reduced and fragmented to make space for soy plantations. These include: the Cerrado in Brazil, the Chaco Region in Argentina, and the Atlantic Forest in Paraguay. Soy cultivation is even moving into the Amazon, the world's biggest rainforest and a major carbon sink.[92]	The Roundtable on Responsible Soy (RTRS)[93], The Basel Criteria for Responsible Soy Production[94] and the Proterra Foundation[95]

"THE MEN FLED TO THE MOUNTAINS, THE WOMEN HAD TO FIND A WAY TO LIVE. PEOPLE LOST EVERYTHING; THEY BECAME NOTHING BUT CHEAP LABOUR." Maria Josefa Macz, Guatemala Campesino Unity Committee, describing the impacts of a palm oil land grab in the Polochic Valley.[96]

CASE STUDY 1 — WESTPAC AND WTK

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HOW IS WESTPAC INVOLVED?

Oxfam's research has revealed that documents filed with PNG's Investment Promotion Authority[97] indicate the Westpac Bank of PNG has had a 19 year relationship with the Papua New Guinean operations of controversial Malaysian logging company WTK Group. Since 1995, two companies in PNG openly related to Malaysian WTK Group[98] — WTK Realty Ltd and Vanimo Forest Products Ltd — have had floating charges registered for the benefit of Westpac for "advances and accommodation as be made available from time to time", secured by an equitable mortgage in favour of the Westpac Bank in PNG.[99] WTK Realty appears to be the "parent" company of WTK in PNG, with other WTK companies naming it as the eventual shareholder.[100] In layperson's terms these charges indicate a 19 year financing relationship between the Westpac Bank and WTK in PNG, most likely including a line of credit or loan relationship between WTK and Westpac. As security for this lending, Westpac has an interest in the WTK-related companies themselves, leaving the bank exposed to any loss in value of the companies' assets or property, goodwill, capital or shares.[101]

WTK — A MALAYSIAN LOGGING GIANT

For a bank that prides itself on its sustainability credentials, and which was lauded for being the "most sustainable firm in the world" at the World Economic Forum in January 2014, the discovery of Westpac's link to controversial Malaysian logger WTK Group was surprising. WTK is the oldest of the big five Sarawak-based Malaysian timber companies, and since its founding in 1940 has grown to be one of the forestry industry's leading players, owning and managing millions of hectares of forest concessions around the world, primarily in emerging economies.[102]

Significant controversy has accompanied WTK's forest concessions, from allegations of corruption and bribery stemming from long-standing operations in Sarawak,[103] to fines by the Brazilian Environment Agency (IBAMA) to a subsidiary for possessing illegal logs.[104] In 2012, after NGO pressure,[105] WTK's investor, the Norwegian Government Pension Fund, excluded WTK's Malaysian parent company — WTK Holdings Berhard, from its investment holdings "because of an unacceptable risk that the company is responsible for severe environmental damage through its logging operations".[106] The damning report by the Norwegian investor investigated WTK's practices in Malaysia, where most of WTK's license areas overlap with The Heart of Borneo and The Sundaland Biodiversity Hotspot, which are considered to be among the most biodiverse ecosystems on earth.[107]

Among numerous other findings, the report bluntly stated that WTK's practices "seem to breach normal requirements and are therefore assumed to be illegal",[108] and took a dim view of WTK's response, noting that "the company's unwillingness to provide information strengthens the assessment that the practice will continue."[109]

WTK IN PAPUA NEW GUINEA

Only the Amazon and Congo basins rival Papua New Guinea for its pristine tropical rainforest,[110] and WTK's logging operations in PNG mirror the controversy which has dogged its Malaysian parent. As government, academic and NGO reports demonstrate, governance failings have been a noticeable characteristic of the PNG forest sector for the last 30 years.[111] During much of that time, WTK and its related operations have been significant players in PNG's forestry sector.[112] In 1989, the year before WTK purchased its biggest stake in the PNG forestry industry, Australian Justice Barnett handed down his well-known *"PNG Commission of Inquiry into Aspects of the Timber Industry"* report — starkly describing the forestry sector in PNG as "out of control" and concluding that foreign logging companies were "roaming the countryside with the self assurance of robber barons; bribing politicians and leaders, creating social disharmony and ignoring laws in order to gain access to, rip out, and export the last remnants of … valuable timber."[113] Six years later in 1995, the year that Westpac entered into its relationship with WTK in PNG, Jerry Nalau, then PNG's Labour and Employment Minister, stated in his resignation speech that "Logging companies are the worst offenders for corruption. Some of the managing directors of these companies have a direct line to our national leaders, while I as a senior Minister had problems reaching them".[114] Seven years later again, despite much effort, and hopes for progress, the PNG Government's Review of Disputed Forest Allocations in 2003 concluded despairingly "the robber barons are now as active as they ever were. They are not only free to roam, but are in fact encouraged to do so by persons whose proper role is to exercise control over them".[115]

The specific WTK companies in PNG supported by Westpac have also been the subject of a review in 2003 by PNG's Department of National Planning and Monitoring.[116] This review found serious concerns including allegations that the company frequently uses police to threaten villagers with guns to address issues that could easily be resolved through normal dialogue; that women are employed as domestic servants and are expected to provide sexual favours to the expatriates in the logging camps; and that the logging operation caused the river systems to dry up.[117] Going straight to the heart of the question of land grabbing, the review found that the timber permit granted to WTK's Vanimo Forest Products by the Minister for Forests is void.[118] This conclusion was replicated across all the 14 logging projects reviewed, none of which could be defined as legal — with only one project managing to meet more than 50% of key criteria for a lawful logging operation.[119]

SABLS — A FIG-LEAF FOR THE PNG FORESTRY INDUSTRY?

Since 2003, PNG has experienced a significant rise in a different form of controversial development — the Special Agricultural and Business Lease (SABL) scheme.[120] The vast majority of land in PNG is held in customary land ownership — sometimes asserted to be 97% of the country.[121] However, since 2003, an estimated 12% of customary land in PNG,[122] more than 5 million hectares, has passed into the hands of companies under the SABL scheme.

Ostensibly, the SABL scheme was designed to encourage agricultural development (not logging). But as found by Chief Commissioner John Numapo in PNG's 2013 Commission of Inquiry into the SABL scheme, the SABL process is being used to subvert the requirements of PNG's strict Forestry laws (enacted after the long controversy regarding the Forestry industry), and allow for permissive logging operations under the lax oversight of the SABL process.[123] As reported by Radio Australia, in 2011, PNG exported 3.5 million cubic metres of logs — making PNG the second-largest exporter of tropical hardwood logs in the world. The Swiss testing and verification company SGS says it was logging on SABLs that pushed these exports into record territory.[124]

" … OPPORTUNISTIC LOGGERS MASQUERADING AS AGRO-FORESTRY DEVELOPERS ARE PROWLING OUR COUNTRYSIDE, SCOPING OPPORTUNITIES TO TAKE ADVANTAGE OF GULLIBLE LANDOWNERS AND DESPERATE-FOR-CASH CLAN LEADERS."[125] Chief Commissioner John Numapo, PNG Commission of Inquiry into the SABL Scheme, 2013.

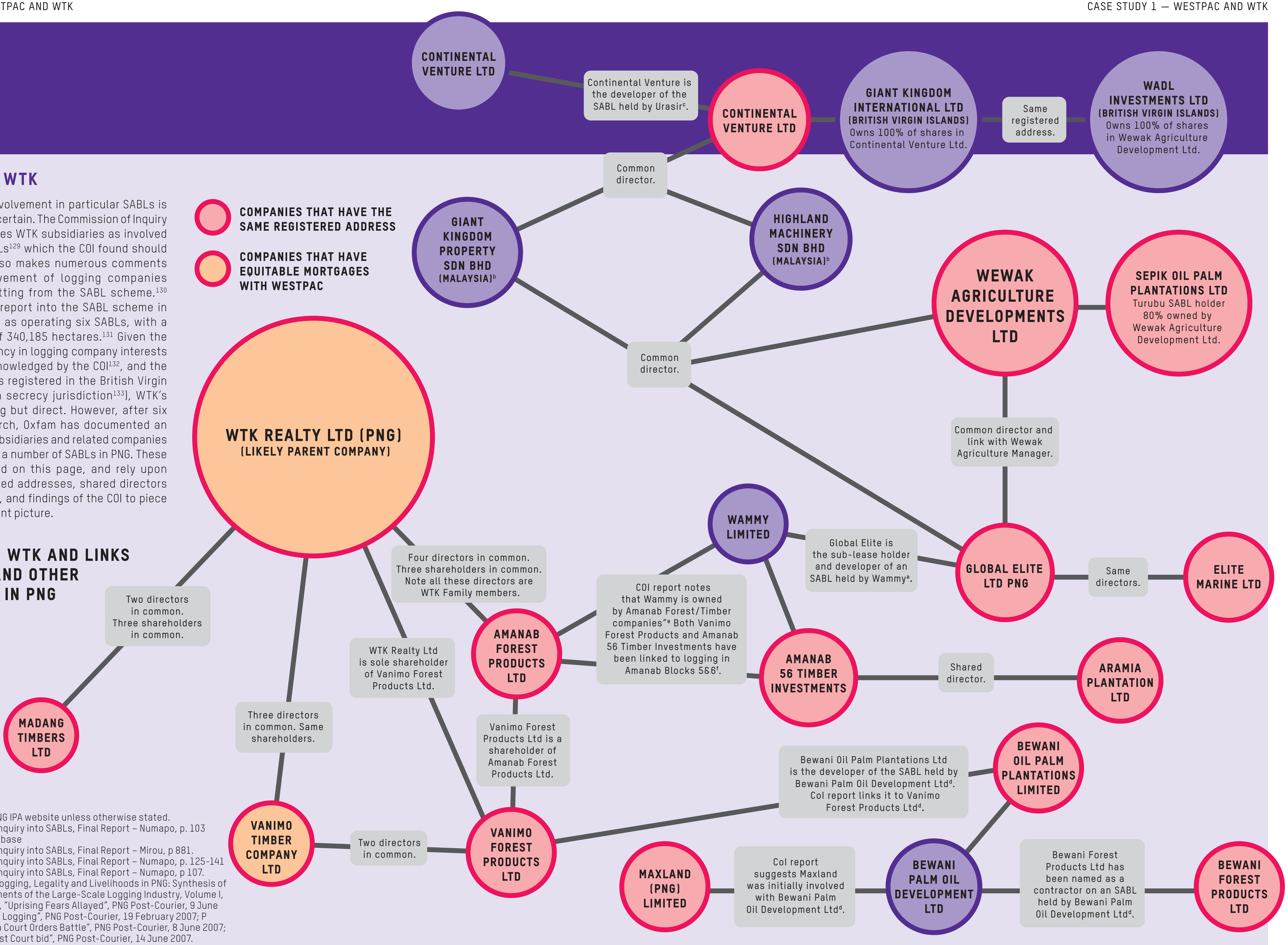
The controversy regarding SABLs has created a din heard all the way to the top of the PNG Government. In September 2013, the Commission of Inquiry into the SABLs was presented to Parliament. Its results were damning, recommending the revocation of the vast majority of the 42 SABLs reviewed, and finding that "only in four leases were there bona fides landowner consent and a commercially viable agricultural project being undertaken."[126] Following the handing down of the Commission of Inquiry (COI) report, the Prime Minister of PNG, Peter O'Neill, stated that "We will no longer watch on as foreign owned companies come in and con our landowners, chop down our forests and then take the proceeds offshore."[127] However, it is not clear exactly when the recommendations of the COI will be implemented. Companies and communities alike are living in a state of limbo, although allegations of logging on SABLs are continuing.[128]

CASE STUDY 1 — WESTPAC AND WTK

SABLS AND WTK

WTK's specific involvement in particular SABLs is challenging to ascertain. The Commission of Inquiry (COI) directly names WTK subsidiaries as involved in particular SABLs[129] which the COI found should be revoked. It also makes numerous comments as to the involvement of logging companies generally benefitting from the SABL scheme.[130] An investigative report into the SABL scheme in 2012 named WTK as operating six SABLs, with a combined area of 340,185 hectares.[131] Given the lack of transparency in logging company interests in SABLs, as acknowledged by the COI[132], and the use of companies registered in the British Virgin Islands (a known secrecy jurisdiction[133]), WTK's links are anything but direct. However, after six months of research, Oxfam has documented an opaque web of subsidiaries and related companies which link WTK to a number of SABLs in PNG. These links are outlined on this page, and rely upon identical registered addresses, shared directors and shareholders, and findings of the COI to piece together a coherent picture.

DIAGRAM 1: WTK AND LINKS TO SABLS AND OTHER COMPANIES IN PNG



All data taken from PNG IPA website unless otherwise stated.

a Commission of Inquiry into SABLs, Final Report – Numapo, p. 103
b MINT Global database
c Commission of Inquiry into SABLs, Final Report – Mirou, p 881.
d Commission of Inquiry into SABLs, Final Report – Numapo, p. 125-141
e Commission of Inquiry into SABLs, Final Report – Numapo, p 107.
f Forest Trends, Logging, Legality and Livelihoods in PNG: Synthesis of Official Assessments of the Large-Scale Logging Industry, Volume I, 2006; E Tapakau, "Uprising Fears Allayed", PNG Post-Courier, 9 June 2006; "History in Logging", PNG Post-Courier, 19 February 2007; P Kolo, "Logging in Court Orders Battle", PNG Post-Courier, 8 June 2007; "Police go against Court bid", PNG Post-Courier, 14 June 2007.

Mundawin village, Turubu Bay. Photo: Vlad Sokhin/The Global Mail.

WTK AND THE TURUBU SABL

One of the SABLs linked to WTK, affect an area in the East Sepik Province of PNG, and includes communities Oxfam has been supporting since 2008. Oxfam has been working to inform these communities of their rights to Free Prior and Informed Consent, and supporting local organisations seeking to address land and human rights. In 2013, at the request of community members, Oxfam researchers travelled to this area to conduct an assessment of the impacts of the SABL. Together with the evidence gathered through the COI, a disturbing picture has emerged of the consent processes and impacts of the SABL community. This demands immediate action from Westpac, given its 19 year relationship with WTK in PNG.

TURUBU COMMUNITY FINDINGS

Turubu is located in PNG's East Sepik province, on the north coast of the island, and includes coastal areas as well as forests and grasslands. Besides gardening and growing their own food, the indigenous people in Turubu also use the land to grow cash crops, such as cocoa, sago and coconut.[134] Many community members spoke of the fish in Turubu's bay and streams, and animals in the forest, as important food sources,[135] referring to Turubu's forests as "like supermarkets" for the local population.[136] The land also plays an important cultural and spiritual part in the lives of the community, containing sacred sites and ancestral burial grounds. One man described Turubu Bay, on which his community lives, as their "heart", while another said that "man with no land is no man."[137]

The SABL covering the Turubu area was officially granted on 2 September 2008 to Sepik Oil Palm Plantation Limited.[138] The lease was for a period of 99 years, and covers a vast area of 116,840 hectares known as Portion 144C,[139] which involves more than 50 different groups of landowning communities.

THE LEGALITY OF THE TURUBU SABL

Oxfam's investigations gave rise to serious questions regarding the legality of the consent process used to enact the SABL in Turubu. The PNG Land Act 1996 requires the consent of local landowners to an SABL, however as the COI demonstrated, rural communities with little access to education services, information, legal advice and resources are at a huge disadvantage when negotiating with potential SABL companies or other powerful groups. In these cases, the process of giving consent can be manipulated or abused. The Turubu case illustrates these issues are complicated by the undoubted existence of some community members affiliated to the SABL-related companies, and the existence of some documents consenting to the SABL signed by some landowners.

However, for others, consent was not so clear cut. One woman summarised the process in Turubu as this:

"Before the development came, they came and conducted their awareness. They did not conduct feasibility studies. They just come in with force, brought in their consent forms. They visited individual households, themselves appointed company directors and committees for this company. Then they formed the landowner company on top of this and brought in the company. Then they went to every household and family unit, forced them to write their names down on the forms and signed the papers and brought them back to the company. Only one week given and they did it by force."[140]

These concerns were echoed by other community members Oxfam spoke to, who signed forms without knowing that duration of the lease was 99 years,[141] or believing that they were only signing forms allowing unloading of machinery, only later to find that their land had subsequently been included in the SABL.[142] The COI's findings echoed that of Oxfam's, and despite the existence of some community consent, found serious deficiencies in the way the SABL had been granted overall, including with regard to landowner consent and the conduct of government processes necessary for the granting of an SABL. The Commissioner recommended that the SABL grant over the Turubu area be revoked.[143]

LOGGING OR OIL PALM IN TURUBU

According to the Land Investigation report completed by the Department of Lands and Physical Planning, the proposed use of the SABL lease in Turubu was palm oil development.[144] Many community members expressed their shock to Oxfam that they were instead watching logging operations, with one man in a coastal village stating, " ... they trick us, 'this is an oil palm project it's an agriculture project' but really they were smart enough they were bypassing, fast track by using the forestry."[145] The evidence presented in the COI report also raises questions about the relationship between the logging in Turubu and the palm oil development. For example, the COI found a document suggesting that the SABL developer "is eager to clear some 8,472 hectares of forested area however [is] only willing to plant in grassland areas constituting 4,044 hectares."[146]

The logging operations being undertaken on the SABL area in Turubu are considerable — tracked shipments out of Turubu in 2012 alone were valued at almost US$6.5 million, according to SGS, the Swiss company which monitors logging exports for the PNG Government.[147]

Preparation towards any agricultural development seems cursory at best. After the COI site visit, the Commissioner concluded: "Our assessment was that it [the palm oil seedling site] was only recently planted and that there was no existing infrastructure to satisfy the COI that work was progressing since the SABL was issued on April 2008." In the words of one community member Oxfam asked about any agricultural development, "... it's almost five years now and nothing has materialised ... And they still logging".[148]

Children play in the waters of Turubu Bay, near timber that is being prepared for export. Photo: Vlad Sokhin/The Global Mail.

DAMAGE TO THE TURUBU COMMUNITY

Oxfam's team heard worrying accounts of detrimental environmental and social impacts of the SABL on the community, with concerns including food insecurity, deforestation, health problems, water pollution, destruction of sacred sites and community conflicts. These comments painted a picture very different to the hopes and aspirations of communities across PNG who looked to the SABLs as a source of much-needed investment, infrastructure and jobs.[149]

Community members described the situation as one of "development in reverse," citing destruction not only of traditional hunting and food gathering grounds and waters, but of cash crops, a significant source of food and income for local populations.[150] Some women commented that they would sell these crops, "... at the market to get money for children's school fee. We have no more hope after the destruction by the company."[151]

The COI also noted "ominous signs of environmental damage" and further stated that "there was no strict adherence and policing ... on the environmental damage."[152]

COMPENSATION FOR THE TURUBU SABL CREATION AND OPERATIONS

Without seeing the full SABL documentation, it is impossible to estimate what landowners are entitled to be receiving as compensation. A 2012 affidavit filed by a representative of the SABL developer indicated that the daily revenue from logging operations is estimated at 120 000 Kina per day and that company had paid the PNG Forestry Authority 1.2 million Kina in royalties.[153] However, this document does not state what money was or will be paid to landowners in the SABL area. Oxfam's investigations revealed mixed responses in relation to compensation with a handful of people reporting financial benefits while others had received nothing. Certainly those who had received benefits, seemed to have minimal amounts in proportion to the value of the logging shipments out of Turubu in 2012 alone, which have been estimated at almost USD$6.5 million.[154] For instance, a man from a coastal village mentioned that each of the three clans in that village had been given 10 000 Kina (approx USD$3,500) in 2009 as compensation money.[155]

The overall picture is of a lack of information and transparency regarding payments to community members, and significant questions as to whether the appropriate compensation processes were followed.

CASE STUDY 1 — WESTPAC AND WTK

THE FUTURE FOR TURUBU

Community members in Turubu have already taken a range of actions to make their concerns known. A number of people submitted petitions and reports to the COI,[156] describing how their "disputes and grievances were ignored."[157] A group of landowners from the area have also initiated a suit in the National Court of PNG seeking to have the SABL revoked and returned to the landowners as well as an interim restraining order and reparation for environmental damage and cash crops.[158] This case is still underway.

The finding of the COI that the SABL grant over the area should be revoked,[159] while validating the concerns of many Turubu community members has not as yet resulted in certainty regarding their future. Oxfam found many community members remain fearful for the future with one man stating that "this is our concern that in the past the land was ours but now lost ... We are no longer having the rights to the land."[160]

It is important to note that despite opposition to logging, some community members expressed optimism to Oxfam about the possible benefits of any palm oil operations that could occur.[161] However, others stated that they "would like to have my land back. Because land is my life, it's my life. I can develop it in the way that I can, the best way to develop the land."[162] Regardless of any further developments, it is clear there are significant issues in relation to legality and compensation due to damage that need to be addressed by any company benefiting from the SABL, including WTK.

WTK has so far made no public comment in relation to this or any other SABL. The companies involved in this particular SABL have also been contacted by Oxfam, but we have received no response to date. The community remains in a state of limbo as the logging continues.

Mary Sagi Sori, a leader of the resident Rikumbu clan, says the damage extends under the sea. Coastal women — like the women on the nearby rivers — are catching far fewer fish. She suspects that the fragile fringing reef on which the fish breed and feed was devastated when the logging pontoon twice broke away from its mooring in storms and travelled across the bay, crashing through the coral. Photo: Vlad Sokhin/The Global Mail.

THE ROLE FOR INVESTORS — RESPONSIBLE INVESTMENT IN THE AGRICULTURAL COMMODITIES INDUSTRY

Martha Wokma, 49, with her nephew stand near the collapsed logging bridge. "We can't take this road anymore, we can't visit our relatives in friends in other villages. The logging company made big damage to our village and environment and they never paid any compensation". Photo: Vlad Sokhin/OxfamAUS.

4 THE ROLE FOR INVESTORS — RESPONSIBLE INVESTMENT IN THE AGRICULTURAL COMMODITIES INDUSTRY

Oxfam wants to see all investors, including our big four banks, taking land grabbing seriously, and moving to both understand and prevent involvement in the practice.

4.1 OXFAM'S PERSPECTIVE ON RESPONSIBLE INVESTMENT

Oxfam backs greater investment in agriculture and increased support to small-scale food producers. Responsible investment and support is vital and poor countries desperately need it. Indeed Oxfam's calculations suggest that the land acquired between 2000 and 2010 has the potential to feed one billion people, which is more than the number of people who currently go to bed hungry each night.[163] But the sad fact is that very few, if any, of these large-scale land acquisitions have demonstrated benefits to local people or help to fight hunger.

"MANY INVESTMENTS … FAILED TO LIVE UP TO EXPECTATIONS AND, INSTEAD OF GENERATING SUSTAINABLE BENEFITS, CONTRIBUTED TO ASSET LOSS AND LEFT LOCAL PEOPLE WORSE OFF THAN THEY WOULD HAVE BEEN WITHOUT THE INVESTMENT. IN FACT, EVEN THOUGH AN EFFORT WAS MADE TO COVER A WIDE SPECTRUM OF SITUATIONS, CASE STUDIES CONFIRM THAT IN MANY CASES BENEFITS WERE LOWER THAN ANTICIPATED OR DID NOT MATERIALIZE AT ALL"
WORLD BANK[164]

4.2 THE HUMAN RIGHTS VIOLATIONS

As the four case studies outlined in detail in this report demonstrate, the impacts upon communities from land grabbing are devastating: crops lost, houses demolished, entire communities — including children — working as cheap labour. Violence and the presence of politically-connected economic elites characterise many of the stories, as does worsening hunger and poverty. Compensation, where provided, is hardly adequate. And these examples barely scratch the surface; many locals were unwilling to participate in this report due to their fear of reprisal.

The UN's Guiding Principles on Business and Human Rights[165] are clear in this situation. Business enterprises such as the big four banks have responsibilities across their entire supply or financing chain, and should adopt policies and processes to identify and manage risks, engage with relevant clients and government bodies, and establish mechanisms for redress.

4.3 THE CLIMATE CHANGE IMPACTS

The impact of land grabbing doesn't just extend to immediate communities; it causes global harm through its contribution to climate change. Deforestation, largely from expansion of agricultural commodity production[166] has caused significant carbon dioxide releases and destroyed critically important carbon sinks, contributing substantially to greenhouse gas emissions and fuelling the climate crisis. In September 2013 the Intergovernmental Panel on Climate Change's fifth assessment report (AR5) confirmed that land use change — predominantly tropical deforestation — contributes significantly to global greenhouse gas emissions.[167] Indeed, research suggests it accounts for some 10%–15% of global carbon dioxide emissions — equivalent to the entire transport sector.[168]

CASE STUDY 2 — CBA AND BUNGE

CASE STUDY 2 — CBA AND BUNGE

WHY IS LAND CONFLICT AN ISSUE IN BRAZIL?

Land conflicts have long been a problem in Brazil, caused by the lack of state presence in many areas of this vast country; uncertainty over land ownership; the power of agribusinesses; and poor management of clashes between indigenous communities and farmers. Landless people and smallholders with no documented proof that they own their land are the main victims. Indigenous people and *Quilombolas* (descendants of slaves who escaped and established communities in the countryside centuries ago) represent more than a quarter of all people in Brazil affected by land conflicts.[169]

For decades, indigenous peoples have been fighting to reclaim their ancestral lands, while agribusiness expansion has seen much of the land converted to soy, cattle, corn, and sugar cane farms. The number of land conflicts has increased over recent years. In 2012, 36 people were killed as a result of land conflicts — a 24% increase over the previous year.[170] Nevertheless, Brazil is attempting to make progress; indigenous territories are going through the formal recognition and demarcation process required to give indigenous communities legal rights over their land. Many other communities are also waiting to have their territories recognised. However, these processes are being impeded as a result of political pressure from agribusinesses.

SUGAR PRODUCTION IN BRAZIL AND MATO GROSSO DO SUL

Sugar production doubled in Brazil between 2000 and 2010, driven by rising international sugar prices and domestic demand for ethanol, which is widely used in motor vehicles. In order to deliver these huge leaps in production, the area of land planted with sugar cane has expanded rapidly. Between 2000 and 2010, sugar cane land occupation in the six main states — Mato Grosso do Sul, Goiás, Minas Gerais, São Paulo, Paraná and Mato Grosso — expanded by 4.2 million hectares to around 7.6 million hectares.[171]

The state of Mato Grosso do Sul is ground zero in the land and sugar related conflict. The state has seen a huge expansion in sugar farming in recent years — the area of land planted with sugar cane tripled in just seven years from 160 thousand hectares in 2007 to 570 thousand hectares between in 2012.[172]

According to the Ministry of Agriculture, 39 of the 79 municipalities of Mato Grosso do Sul have at least one sugar cane mill. The state also has the highest rate of violence against indigenous peoples[173] — 37 of the 60 indigenous people murdered in Brazil in 2012 were killed in this State and 567 of the 1067 cases of violence against indigenous people also occurred there. There are clear links between agribusiness expansion and the extraordinary level of violence against indigenous people in the State.

WHO IS BUNGE AND WHAT ARE THEY DOING IN BRAZIL?

Bunge bills itself as 'a leading agribusiness and food company with integrated operations that circle the globe, stretching from the farm field to the retail shelf'.[174] Bunge is a powerful actor in Brazil, where it is one of the top three sugar cane millers in Brazil and a top-three sugar merchant globally.[175]

WHAT IS THE CBA'S CONNECTION TO BUNGE?

The CBA has a direct investment in Bunge's operations, holding $14.21 million in the company, according to share ownership records reviewed in December 2013.[176] This ownership obviously leaves the CBA exposed to the financial value and operations of the company.

BUNGE AND SUGAR MILLS IN JATAYVARY, MATO GROSSO DO SUL

In the 1960s, the indigenous Guarani-Kaiowá communities in Jatayvary started trying to formalize their rights to the land. Despite suffering violence, being moved off the land for four years in the mid-1990s, and facing intimidation by farmers on their return,[177] in 2004 they succeeded in having Jatayvary recognized as indigenous land by the relevant federal agency, FUNAI. However in 2008, two new sugar mills[178] started up including Monteverde — now owned by Bunge. A number of farms then started producing sugar cane to supply the mills, including in the area in Jatayvary area claimed by indigenous communities. Bunge's Monteverde mill buys sugar cane from five farms located in Jatayvary.[179]

Edilza Duarte, 24, with daughter Stephanie Duarte and son Jason Duarte. Guarani Kaiowá people at Jatayvary Indigenous Land. Ponta Porã, Mato Grosso do Sul State. Brazil. She says that the sugar plantations have put an end to her culture by clearing the forest and spreading "poison" (the chemicals sprayed on the sugar plantations). Photo: Tatiana Cardeal/Oxfam.

Meanwhile the Indigenous communities had started the four-step administrative process of land demarcation. In 2011, the second step was completed when 8,800 hectares of land was "declared" by the Minister of Justice, setting the boundaries and recognising the Guarani-Kaiowá's rights.[180] While the next step in the process would have been actual demarcation of the land through physical identification of the boundaries, an attempt by FUNAI and the Federal Police to proceed resulted in the sugar suppliers preventing them from doing so.[181]

Given that the demarcation process was underway, Bunge was requested by a federal prosecutor to stop sourcing sugar cane from Jatayvary. After pressure from the State Prosecution Office (MPE), the Federal Prosecution Office (MPF), and the Federal Labour Prosecution Office (MPT), the other mill sourcing from the Jatayvary land, San Fernando, signed a commitment promising not to purchase or promote the planting of sugar cane in land traditionally occupied by Indigenous peoples.[182] However, Bunge has insisted[183] that it will only consider breaking its contracts once the land is fully demarcated, and officially signed by the President.

IMPACTS ON JATAYVARY COMMUNITY

Living so close to the sugar plantations has brought devastating social and environmental impacts for 60 families. These include exposure to pesticides and to smoke from the burning of sugar cane straw, pollution of waterways, and pollution and risks from the intense vehicle traffic that transports sugar cane.[184]

Edilza Duarte (pictured above) and her family live in the indigenous land of Jatayvary. They grow potatoes, manioc (cassava), corn, bananas and mangos around their house. Edilza stated, "They began spreading the fertilisers on the land. After, they plant the sugarcane and spread the poison again, even on top of us, even close to our house … When it rained, the water flowed down towards the river where we bathe and get drinking water. Children got ill with diarrhoea and skin infections and other illnesses." Silvano, Edilza's husband, was also interviewed. He stated he had to travel further away to hunt these days as so much forest has been cleared for farms. "The sugar company has always refused to employ us — because they have taken our land feel they should not hire people from here."

Bunge has asserted that the sourcing contracts for sugar from the Jatayvary area were entered into by the previous owners of the Monteverde mill and should be honoured. Although the company indicated that it would not renew contracts as they expired in 2013, it has subsequently indicated that it will be 2014 before the contracts run out;[185] although at March 2014, there was no public indication that the situation has changed.

CASE STUDY 2 — CBA AND BUNGE

Keila Snard, Jatayvary Indigenous Land, Ponta Porã, Mato Grosso do Sul. Keila (46) is a widow and a mother of five. She lives in Jatayvary (Ponta Porã). She says her ancestors lived in the area but when she was very young her family was evicted. Her community occupied the land where she now lives 16 years ago. "The sugar company needs to resolve the land problem so that we can start planting crops because we are very poor. My concern is to get our land back. I don't feel anger; I just want our land returned." Photo: Tatiana Cardeal/Oxfam.

WHAT DOES THE FUTURE HOLD FOR JATAYVARY'S PEOPLE, BUNGE AND THE CBA?

Oxfam first published this case study of Bunge and the sugar mill in October 2013 as a part of its report into the sugar suppliers for global food and beverage companies.[186] After the report was published, both the Coca-Cola Company[187] and PepsiCo[188] took steps to adopt strict Zero Tolerance to Land Grabbing policies to prevent land conflicts in their supply chains. They also made commitments to undertake third-party social, environmental and human rights assessments and sustainable sourcing policies specifically in relation to sugar in Brazil. However, since this case study was published, Bunge has signalled plans to shed the company's Brazilian sugar milling business, citing losses,[189] which raises further questions about the sustainability of Bunge's operations with the sugar mill in Jatayvary. The only public commitment Bunge has made in regards to its sugar mills in Brazil is to hire financial services firm Morgan Stanley as an adviser to review its future in Brazil.[190] The CBA has not made any public comment on the allegations Oxfam has put forward regarding either its connection to Bunge, or the company's operations canvassed in this report.

LAND GRABBING — A MATERIAL RISK FOR INVESTORS

5 LAND GRABBING — A MATERIAL RISK FOR INVESTORS

According to the investors and banks own explanations of risk assessment,[191] the unaddressed issue of land grabbing in the agricultural commodities industry overseas represents a concentration of a number of risk factors including, credit, compliance, operational, sovereign and reputational risk. This section assists all investors, including ANZ, Westpac, NAB and CBA, to understand the way in which land grabs pose a material risk to their business.

5.1 FAILURE OF SITUATIONAL ANALYSIS

"SOUND GOVERNANCE AND ROBUST RISK MANAGEMENT POLICIES AND PROCEDURES ARE A FOUNDATION FOR ACHIEVING OUR STRATEGY. TOGETHER WITH APPLICATION OF OUR VALUES, THEY UNDERPIN RESPONSIBLE, ETHICAL AND SUSTAINABLE DECISIONS AND ACTIONS." ANZ[192]

Any entrants into a new market, such as our banks into emerging markets in the Asia–Pacific region and elsewhere, must undertake a comprehensive situational analysis to ensure risks are understood and addressed. Certainly, there are many differences to take into account — for instance the various aspects of land tenure in these regions, including customary tenure, present a very different context for an investor used to Australian, primarily Torrens,[193] systems for land ownership. A common scenario in the Pacific region, for instance, is where an individual or small group purports to have authority to execute a lease or agreement with an investor on their customary land, and do so, without any adherence to community consent procedures outlined by law which safeguard against precisely such an action.[194] Case Study 1 in this report dealing with Westpac and WTK's operations in PNG illustrates the pitfalls for investors in this scenario.

As such, Australian investors involved with land-related projects in the Asia–Pacific region and other emerging markets, face a significant gap in knowledge and experience that necessitates a precautionary approach and a thorough situational analysis.

Furthermore, the agricultural commodities industry itself requires a medium-long term outlook for the simple reason that crops require time to grow. For instance, palm oil takes 4–9 years to reach maturity. Almost 10 years is a significant time period, through which governments and supportive officials can come and go. A short-term analysis of such an investment which doesn't account for particularity of this industry would serve little purpose in understanding the prospect of returns when harvest time finally arrives a decade down the track.

"WE LOOK TO … STAY ONE STEP AHEAD OF THE ISSUES WE BELIEVE WILL AFFECT THE SUSTAINABILITY OF COMMUNITIES AND, THEREFORE, OUR OPERATIONS." Westpac[195]


Children run to play in the rice paddy, central Cambodia. Photo: Abbie Trayler-Smith/Oxfam.

5.2 CREDIT RISK — ASSET WRITE-DOWNS AND UNCERTAINTY[196]

All the case studies in this report demonstrate significant risk deriving from uncertainty over the true ownership of the land–related asset connected to a bank's client. Often this land–related asset would be used as direct security in lending, or be included in an assessment of value of the client company. As the World Bank found, the poorer the protection of land rights, the more likely it is that investors will try to acquire land.[197] The IMF says that it found 33% more investment projects involving large-scale land acquisitions in countries ranked at the bottom of the World Governance Indicators than in middle-ranked countries.[198] In such a context, adequate due diligence requires precautionary measures to ensure land assets have been appropriately and legally acquired, with appropriate payment for value. To not do so leaves a bank vulnerable to a client becoming a credit risk and failing to perform fully the terms of a loan or contract, an issue demonstrated by Case Study 1 — Westpac and WTK. In that scenario, how likely is Westpac's client to comply with a financing agreement if ownership of its land-based assets through SABLS have been found by the PNG Commission of Inquiry as being invalid?

"WE BELIEVE ESG ISSUES CAN POTENTIALLY IMPACT LONG-TERM INVESTMENT PERFORMANCE."
Commonwealth Bank of Australia[199]

5.3 OPERATIONAL RISK — CONFLICTS

A Global Witness report in 2012[200] sought to highlight the human cost of the intensifying competition for land and forests. That report found that an average of one killing per week was reported in circumstances where people were defending their human rights or the human rights of others related to land and forests. Of these, 106 people were killed in 2011 — nearly twice the death toll in 2009 — indicating the increasing incidence of conflict over land and forests. The stark violence illustrated by these figures is demonstrated in Case Study 2 — CBA and Bunge, which discloses alarming levels of violence linked to sugar-related land conflict in Brazil.

Conflicts are often long-lasting and can seriously affect the operations of companies that directly source commodities — leading to operational risks for their financiers. The mining sector, for example, has been plagued by land-related conflicts that can threaten investments.[201] The agricultural commodities industry faces similar threats, which can ultimately affect a company's financial stability as a result of losses and uncertainty arising from delayed operations and forced withdrawals.[202] This in turn poses a risk to a companies' security of supply, given that supply chains are extremely vulnerable to disruption and discontinuity, with events in one part of the chain often having unpredictable knock-on effects.

"LAND IS OUR SOURCE OF LIFE … WE'LL DIE TO DEFEND IT."
Vietnamese villager Tran Van Sang[203]

5.4 COMPLIANCE RISK[204]

The complications associated with an unfamiliar and sometimes uncertain system of land tenure, combined with failures in the rule of law, also leave banks open to a compliance risk in relation to local laws. This is highlighted best by the issue of fair payment for land. According to the World Bank, land is often not being sold or leased for its full value. There are reports of foreign land investors paying lease fees from as little as seven cents per hectare, per year.[205] The World Bank also notes that this variation has nothing to do with the quality of the land and everything to do with a lack of enforcement of the law.[206] These issues are illustrated in both Case Study 3 — ANZ and Phnom Penh Sugar in Cambodia, and Case Study 1 — Westpac Bank and WTK in PNG. This is hardly surprising; in both of these countries risks exist for land tenure violations according to the six governance indicators provided by the World Bank.[207] Even the Australian Government acknowledges such issues on its public websites set up to provide Australian companies with useful information on investing outside Australia. One such comment states: "A key disincentive to Foreign Direct Investment (FDI) has been the lack of an effective judicial and legal system and a poor corporate governance environment."[208]

In addition to compliance risks in relation to local laws, Australia's big four banks also have to comply with Australian laws governing corruption or bribery in overseas dealings, provisions that have tripped up even experienced Australian businesses investing overseas[209]. Land acquisitions are unfortunately prone to corruption. According to a survey led by the World Bank, ordinary Vietnamese citizens view land administration as their country's second-most corrupt sector of public life, just behind traffic police.[210] Land investments have also been plagued by secrecy, with associated deals often made without the knowledge or consent of affected communities, who are thus unable to hold governments or investors to account.[211] This fosters an environment where corruption becomes the norm, especially in countries where rule of law is weak — a manifestation of deteriorating governance previously experienced as the "resource curse" in oil, gas and mining sectors.[212] In this context, any Australian investor, who is now subject to strict Australian regulations in relation to corruption and money-laundering overseas, is particularly vulnerable.

Box 3: Free, Prior and Informed Consent (FPIC)[213]

FPIC requires that indigenous peoples and local communities are adequately informed[214] about projects taking place on their land, and must be given the opportunity to approve (or reject) projects before they start and also at certain stages during project development. This includes participation in setting the terms and conditions that address the economic, social, and environmental impacts of all phases of the project.

To date, international law has only recognised the right to FPIC for indigenous peoples. However, it represents best practice in sustainable development and should therefore guide company practice when consulting and negotiating with all affected communities.

Women, of course, have equal rights, including to participate in community decision-making processes, to benefit from development, and to be safe from the potentially negative impacts of land acquisitions.[215]

5.5 SOVEREIGN OR EXPROPRIATION RISK

There is no doubt that many governments in emerging markets are currently openly in favour of large-scale land acquisitions. However, companies and banks cannot rely on this continuing in the face of community unrest and opposition. All governments, no matter how powerful, must eventually respond to public concern, leaving investments exposed to sovereign risk in the form of expropriation. There have been recent examples of this — in May 2012, after the killing of a local activist and a wave of public protests, Cambodian Premier Hun Sen halted new land concessions in order to "ensure equity" and demanded that decisions "do not jeopardize people's means of livelihood, so that economic concessions can bring real benefits to the nation and its people."[216] A month later, Lao PDR announced a similar freeze on mining and rubber concessions, citing social and environmental concerns. Lao PDR Minister of Planning and Investment Somdy Duangdy told the *Vientiane Times*, "We approved large plots of land without looking into the details, like what land belonged to the state and which belonged to local people."[217] In PNG, following controversy over the Special Agricultural Business Leases, the government also instituted a moratorium on the granting of further leases.[218] In all three countries, there have been reports that the granting of land concessions and leases continued despite the moratoriums. But for an investor, this is hardly a promising situation. If anything, the acquisition of an interest during a period of supposed moratorium further heightens the uncertainty of the acquisition and the risk of expropriation of this asset at a later date.

As found by the mining industry, the winds of goodwill on the part of a government can shift rapidly. According to a Deloitte report, "many governments appear to be riding a wave of mounting hostility toward the [mining] industry. As in previous years, this is manifesting as resource nationalism, which has begun to emerge even in traditionally mining friendly regions."[219] This can have direct consequences for assets. In September 2013, Papua New Guinea assumed 100% ownership of the controversial Ok Tedi gold and copper mine, in the process removing a 12-year-old immunity deal that had been protecting the mine's former owner from litigation over environmental damage.[220] One of the suggested strategies to combat sovereign risk resulting in expropriation is to "Get citizens on side",[221] a wise dictum that addresses risk as much in the agricultural commodities industry as it does in the mining industry.

5.6 REPUTATIONAL RISK

"BEING A RESPONSIBLE BUSINESS ENHANCES AND PROTECTS OUR REPUTATION, ONE OF OUR FOUR STRATEGIC PRIORITIES." NAB[222]

Managing reputational risk is critical for a bank, as Case Study 3 — ANZ and Phnom Penh Sugar demonstrates. ANZ itself expressly reports on reputational risk in its Annual Report, and states that it "has established decision-making frameworks and policies to ensure our business decisions are guided by sound social and environmental standards and take into account reputation risk".[223] Both consumers and international standards initiatives that the banks have committed to, such as the Equator Principles, have made plain the expectation that companies should take responsibility for what happens in their operations, wherever they may be in the world. Bank reputations and market share are on the line when consumers learn of wrongdoing along the supply chain,[224] with as much as two-thirds of a company's market value being attributable to its public reputation.[225] Taking the lead from the banks themselves, reputational risks are a guiding factor in business decisions in the Asia–Pacific region — something ANZ CEO made clear this year when he was reported as stating that partial stakes in Asian banks could be problematic because ANZ received only a proportion of profits but had 100% of its reputation invested in the holdings.[226] Oxfam's investigations show that land grabs give rise to serious risks such as displacement, conflict, violence, and loss of life, and an association with any of these is — rightly — incredibly damaging to a bank's reputation.

Deloitte's report tracking the trends for Mining Companies in 2014 placed strong emphasis on the intensification of local community demands as being a significant impacting factor upon the likely performance of companies. Many of their comments are applicable to the agricultural commodity sector. For instance, they note that "Social media has elevated these activities to new levels, enabling the instantaneous and global dissemination of negative press in real time. As a result, corporate reputations, access rights to new discoveries and market valuations are all at risk like never before."[227] Certainly from the perspective of Oxfam, gaining information about corporate misconduct, and supporting communities to release this information publically, while still a difficult process, has been made considerably easier thanks to the growth of social media, and increasingly mobile and active communities.

CASE STUDY 3 — ANZ AND PHNOM PENH SUGAR

On the 23 January 2014, Australia's *The Age* newspaper published an article headlined "ANZ bankrolls child labour sugar cane plantation." This extract is an identical copy of that article by journalists Richard Baker and Nick McKenzie, reproduced with the permission of *The Age* newspaper.

"Banking giant ANZ is financing a Cambodian sugar plantation that has involved child labour, military-backed land grabs, forced evictions and food shortages. ANZ's support of the Phnom Penh Sugar Company's plantation is disclosed in confidential audits that reveal the project is beset by a series of social and environmental problems.

"The revelation raises serious questions over the bank's due diligence process and its compliance with a global ethical banking code it is a signatory to, as well as its own policies.

"Senior ANZ executives this week met representatives of the more than 1000 families forcibly removed from their homes in 2010 to make way for the sugar crop owned by Ly Yong Phat, one of Cambodia's richest men and a senator from the country's ruling political party. The executives were told of a former Khmer Rouge battalion's involvement in the evictions and how families got $100 compensation for land that once provided them with food and a livelihood. The executives were also told of food shortages because resettlement sites were located on infertile land and of the destruction of community forests and crops. They heard how school-aged children were working in the cane fields to help their families earn money instead of attending class.

"The audits, prepared for ANZ and PP Sugar, reveal Senator Phat's company has failed to ensure resettled families have adequate food supplies. Nor has the company implemented environmental, health and social management programs required by ANZ to meet its ethical lending obligations.

"While ANZ would not disclose the amount it has loaned PP Sugar since 2010, it is believed to be tens of millions of dollars through its Cambodian subsidiary, ANZ Royal Bank. The Royal group of companies is owned by another Cambodian tycoon, Kith Meng. Mr Meng and Senator Phat are close associates of Cambodia's Prime Minister Hun Sen.

"An ANZ spokesman said on Wednesday the bank was monitoring the situation in Cambodia and had this week requested PP Sugar to engage with affected communities in order to resolve problems. He said the bank would review PP Sugar's social and environmental impact assessments — which have yet to be done properly — and the company's plans to mitigate the project's negative impacts. Asked if ANZ would withdraw its financial support if the situation did not improve, the spokesman said: ''Where we have found that a client does not meet our environmental and social standards and they are not willing to adapt their practices, ANZ has declined funding or exited the relationship.''

"The Cambodian government gave Senator Phat's company a concession to establish two sugar plantations on about 20,000 hectares of farmland in Cambodia's Kampong Speu province, the country's most impoverished region. An investigation by non-government organisations, Equitable Cambodia and Inclusive Development International, last year discovered a considerable number of school-aged children working in the sugar plantation in potential breach of the international convention on child labour. When photographs of young children working in the cane fields were made public last year, PP Sugar stated that it was unaware of the practice, blamed contractors for hiring the children and introduced a policy to fine or sack any contractors found using underage children.

"The community representatives who met ANZ executives this week maintained that children were still working at the plantation instead of attending school because their families' forced relocation from their farms had deprived their parents of a means to earn an income. But a September 2013 audit done by Bangkok-based International Environmental Management Company at the request of PP Sugar plays down the matter of child labour, saying only 10 of 100 villagers surveyed said it remained a big issue. However, the audit noted young children were still on the plantation while their parents worked.

"The 2013 audit reveals PP Sugar has not carried out any checks to determine if resettled families had enough food. One community was assessed as having a ''potential food security risk''.

"The audit also found PP Sugar had not implemented any of the environmental, health and social management plans it was recommended to establish in a 2010 audit commissioned by ANZ Royal. Nor had the company established worker health and safety policies.

"The November 2010 audit, also by International Environmental Management, stressed ANZ's need to understand the social and environmental implications of the project before it made a ''potentially sensitive transaction''.

"The 2010 audit was necessary for ANZ to comply with its obligations as a signatory to the Equator Principles, a voluntary code adopted by 78 financial institutions around the world that have agreed to only fund projects that adhere to "sound social and environmental standards".

"The 58-page 2010 audit concluded that PP Sugar had provided or had plans for adequate housing, food, education

CASE STUDY 3 — ANZ AND PHNOM PENH SUGAR

View of the sugar cane plantation of Omlaing that covers more than 19,000 hectares.
Omlaing commune, Kompong Speu Province, Cambodia. Photo: Nicolas Axelrod/Ruom ©.

and employment for affected families. However, it appears that the audit team failed to visit the majority of resettlement sites and talked to only a handful of villagers before making its conclusion.

"David Pred, the managing associate of Inclusive Development International, said ANZ should explain to its shareholders why it financed Senator Phat's company, especially when the English-language Cambodian press had regularly reported on its links to the army and role in forced evictions.

"This case seriously calls into question the credibility of ANZ's due diligence process. Since ANZ does not disclose any of the corporate loans it makes, its shareholders are only left with its good word that it actually upholds the rigorous standards that it purports to apply to its corporate lending operations," Mr Pred said. PP Sugar and International Environmental Management did not respond to questions."

WHAT NOW FOR THE COMMUNITIES?

Since this report was published by *The Age* newspaper on 23 January 2014, further meetings have been held between affected community members and ANZ Bank. Community members have informed Oxfam and its partners that they are seeking remedial action so that their quality of life and livelihoods can be, at a minimum, sustainably restored. Further, they are seeking corrective actions to avoid future negative impacts on their lives by the operations of the sugar plantation. To date, the request of the community members has not been fulfilled, although negotiations are continuing.

Community members are worried that they are vulnerable to a swift exit by an ANZ fearful of the reputational risk now clearly made public around this investment. These worries looked realised on the 25 March 2014 as Australia's *The Australian* newspaper[228] reported that ANZ Group could exit its majority-owned joint venture bank with Cambodia's Royal Group (ANZ Royal). Other media reported similarly with some quoting ANZ CEO stating partial stakes in Asian banks could be problematic because ANZ received only a proportion of profits but had 100% of its reputation invested in the holdings.[229] ANZ has since stated that its comments regarding the Cambodian partnership were taken out of context, and rather than exiting the partnership, instead ANZ was looking to get 100% ownership of the business.[230] Regardless of any future changes at the ANZ Royal Bank in Cambodia, Oxfam wants to see ANZ remain committed to acting responsibly in relation to the community still affected by this case.

"ANZ'S LICENSE TO OPERATE ACTIVITIES INCLUDE COMMITMENTS TO ENSURING THAT ANZ'S CUSTOMERS, PEOPLE AND SUPPLIERS, AND THE COMMUNITIES AND ENVIRONMENT IN WHICH IT OPERATES, ARE TREATED IN A MANNER BEFITTING A RESPONSIBLE CORPORATE CITIZEN." ANZ[231]

Families were evicted to make way for a sugar crop in Kampong Speu, Cambodia. Photo: Nicolas Axelrod/Ruom ©.

THE PROBLEM FOR OUR BANKS — EXPOSURE TO RISK AND NO CREDIBLE APPROACH TO COUNTER IT

6 THE PROBLEM FOR OUR BANKS — EXPOSURE TO RISK AND NO CREDIBLE APPROACH TO COUNTER IT

While Oxfam would like to see better practices by all Australian investors in relation to land grabs, this report undoubtedly illustrates that the most immediate problem is presented by our big four banks. NAB, ANZ, Westpac and CBA need to answer for the cases put forward in detail in this report. And, as the following section demonstrates, it is our big four banks that both have a significant level of exposure to the risk of land grabbing, and seemingly fail to have policies or practices in place that address this risk, and give guidance to their attendant obligations should risks materialise.

This first question that needs answering in relation to the big four banks and land grabs is — why and how is their exposure to land grabbing such that research by an NGO can result allegations regarding all four of the banks? Responding to this question is not an easy task. Information on banking portfolios, clients, even proportionate exposure by industry sector, is exceedingly difficult to come by. Nevertheless, it is clear that the big four banks are particularly exposed for a few significant reasons.

A boy washes his face near the logging bridge, that collapsed shortly after the logging company stopped using the road. The bridge blocked the river stream and water become dirty. The water was previously used by locals to wash sago. Turubu inland, near Manwara village. Photo: Vlad Sokhin/OxfamAUS.

Box 4: Growth and Asia — it's a big deal for the big four

"Given the economic future of Australia and New Zealand is now completely linked to Asia, the world's fastest-growing region, the logic [of ANZ's strategy] is compelling and ANZ is the only Australian bank positioned to fully benefit from this shift." ANZ CEO, 2013.[232]

"The [NAB] Group [is] focused on continuing to enhance its proposition for its Asia active customers." NAB Annual Report 2013.

"[Westpac's] strategic priorities are … (b) grow in a targeted way including: deepen the capabilities of our Asian presence." Westpac Annual Report 2013.

"Commonwealth Bank of Australia has more than 20 years' experience operating financial, banking and insurance services across Asia and the Group is committed to looking for prudent opportunities to expand and enhance our presence." Commonwealth Bank of Australia, November 2013.[233]

6.1 THE BIG FOUR BANKS AND THE ASIA–PACIFIC REGION

ANZ, Westpac, NAB and CBA clearly see growth in the Asia–Pacific region as significant to future success. Many commentators have limited tolerance for such an expansion,[234] acutely aware of the risks of expanding into different geographies and different sectors.[235] Certainly there has been frank acknowledgment that our big four banks have a chequered history in overseas ventures, with the NAB CEO commenting in 2013 that most Australian banks' overseas ventures have tended to ''destroy shareholder value''.[236] However, such scepticism is balanced by the desire to focus on growth in emerging markets, with ANZ CEO recently reported as stating "You wonder at times: what else do they bloody want?" and going on to provide a vehement defence of ANZ's Asia-focused, super-regional strategy.[237]

ANZ has explicitly set growth targets for expansion into the Asia–Pacific region. The first page of its 2013 Annual Report states that its " … aspiration is to have 25 to 30% of ANZ Group profit after tax (including network revenues) sourced from Asia Pacific, Europe and America, by 2017." At present, all the big four banks have investments in Asian companies and Asian banks, while in the Pacific, ANZ and Westpac are among two of the biggest banks in the region. In other words, the big four banks are operating and investing in the Asia Pacific region now and are very clear about their intention to expand that engagement.

"WE BELIEVE THAT A BANK CONNECTING ACROSS THE ASIA PACIFIC REGION WILL ACHIEVE SUPERIOR GROWTH AND RETURNS OVER THE LONGER TERM. INTEGRAL TO ACHIEVING THIS IS OUR ABILITY TO MANAGE SOCIAL AND ENVIRONMENTAL RISKS." ANZ CEO, 2013[238]

6.2 EXPOSURE TO THE AGRICULTURAL COMMODITIES INDUSTRY

The paucity of financial information available in the public domain makes it highly unlikely that the allegations regarding specific cases and clients in this report present the full picture of the big four bank's exposure to land grabbing overseas. Given that Australia's banks are operating across the Asia–Pacific region and globally, Oxfam therefore sought to clarify their exposure to the specific agricultural commodities industry overseas — to understand the extent to which this industry itself was significant for our banks. Even receiving an answer to this basic question was exceedingly difficult. Oxfam began with the 2013 annual reports of the big four banks. Our findings were startling and revealed that, according to their Annual Reports filed in 2013, the big four banks face a collective exposure of $21.7 billion to the agricultural commodities industry outside of Australia.[239] However, Oxfam also sought further clarification from the banks to establish if these figures reflected their exposure to only the agricultural commodities industry, across all bank operations (from asset management to loans), in emerging markets. Our request for clarification met with mixed results. ANZ noted that its figure of $8,733 million was the correct figure, but could not break this figure down to exclude mining operations overseas. The CBA noted its belief that its listed figure of $6,480 million for gross loans, bills discounted and other receivables for the agricultural industry overseas is in majority attributable to its New Zealand based ASB Bank Limited, but was unable to provide finalized figures. Westpac outlined that its figure of $6,506 million was correct, but undertook to explore further opportunities to provide increased reporting in relation to its business lending profile to itemise this figure further. Finally, the NAB's contribution to this total is $12 million, substantially smaller than the other banks as while its concentration of Geographic Assets in Asia is $7,221 million, the only specific figure in relation to the agricultural commodities industry was provided in NAB's Supplementary Reports 2013 as being $12 million in loans and advances to the agricultural industry in Asia — which obviously excludes asset management and other exposure. Despite the lack of clarity about precise figures, one thing is clear and undisputed by the banks themselves, the big four banks are agricultural powerhouses, investing strongly in the agricultural commodities industry in Australia and, increasingly, overseas. Partly this is a function of a globalised world, the lines between what is "Australian" agribusiness and "Asian" agribusiness are increasingly blurred as multinational agribusiness companies have operations in both Asia and Australia. Partly this is also an acknowledgement that the agricultural commodities industry in emerging markets, like Asia, is booming, and many actors are looking to expand their investment in Asia. Even Australian politicians talk hopefully of Australia being the "food bowl" of Asia, an acknowledgment of the industry's prospects for growth. Our banks are often seen as having a key focus in financing the mining industries overseas or the domestic mortgage market. However, they have billions invested in the agricultural commodities industry overseas, which leaves the big four banks vulnerable to any issues endemic to this industry that their risk and due diligence processes have failed to identify — such as the phenomenon of land grabbing.

"WESTPAC PACIFIC'S VISION IS TO HELP CUSTOMERS, COMMUNITIES AND PEOPLE TO PROSPER AND GROW AS THE PACIFIC'S UNDISPUTED NUMBER ONE LOCAL BANK" Westpac[240]

6.3 ADDITIONAL ALLEGATIONS OF LAND GRABBING

It is important to note that this report outlines four in-depth case studies of the big four banks' exposure to land grabbing. However, Oxfam's research also revealed additional allegations of land grabs involving companies linked to our banks. A myriad of reasons necessitated the selection of four case studies only in this report including: community fear of publicity; an inability to resource the independent verification required for report publication; and the sheer length of the list of allegations. The following table sets out information from credible sources available in the public domain alleging additional instances of land disputes in the supply chain of other clients of our banks. This is not an exhaustive list. The difficulty in establishing financing links makes it highly unlikely that Oxfam has established all the financing links between our banks and clients alleged to be involved in land grabbing. Further narrowing the field, we have chosen to only canvass additional allegations where information is available publically, thus providing transparency for readers who are welcome to read the full reports and formal complaint documentation on which they are based. Finally, the small summaries outlined in the following table obviously don't cover the entirety of each allegation (let alone all allegations in relation to a particular company), or developments outside the public domain including any company responses. We provide this list simply to illustrate that the four case studies in this report are by no means the end of the story of our big four banks and their exposure to land grabbing.

THE PROBLEM FOR OUR BANKS — EXPOSURE TO RISK AND NO CREDIBLE APPROACH TO COUNTER IT

TABLE 2: ADDITIONAL ALLEGATIONS OF LAND GRABBING

COMPANY	COMMODITY	SUMMARY OF RECENT PUBLIC ALLEGATIONS	LINKED TO WHICH BANK?
Bumitama Agri	Palm Oil	In November 2013, Friends of the Earth and other NGOs published a report *Commodity Crimes*[241], outlining the activities of Bumitama Agri Ltd — one of the largest and fastest growing owners of palm oil plantations in Indonesia. This report alleges that Bumitama gained control over thousands of hectares of unpermitted plantation landbank, and that Bumitama's investors, purchased shares in a 2012 IPO while being clearly informed via the company's prospectus that it was operating without required licenses.[242] Bumitama has also been the subject of three complaints to the Roundtable on Sustainable Palm Oil[243] in 2013 alone, regarding operations of its subsidiaries in Indonesia. The complaints variously allege clearing of High Conservation Value forests and which is the habitat of various endemic animals including orangutan, and violation of Indonesian laws regarding plantations in National Parks, coastal reserves and riparian land. The complaints are currently in various stages within the RSPO complaints system, with the company engaging in all three complaints.	CBA[244], ANZ[245]
Genting	Palm Oil	Genting Plantations Berhard is one of the fastest-growing plantation companies listed on the Malaysian Stock Exchange.[246] In 2013 two complaints were submitted to the Roundtable on Sustainable Palm Oil (RSPO) regarding Genting's activities.[247] One complaint relates to a subsidiary of Genting, Tanjung Bahagia Sdn Bhd,[248] and alleges multiple violations of the RSPO's Principles and Criteria, including failing to address the community's concerns on land acquisition, pollution, conservation, transparent communication and consultation and failing to have a dispute resolution mechanism. The other complaint[249] is regarding Genting Plantations Berhard itself and alleges the company engaged in 22,000 hectares of new plantation expansion without appropriate notification and that Genting only plans to start implementing the RSPO certification process for its plantations and mills 10 years after joining the RSPO. On 15 April 2014, the RSPO Board of Governors took the unusual step of writing to Genting, suspending Genting's membership of the RSPO.[250]	Westpac[251], ANZ[252]
Golden Agri-Resources	Palm Oil	In January 2014 the Forest Peoples Programme and TUK Indonesia published a report reviewing the social impacts of Singapore-listed Golden-Agri Resources forest conservation policy in Indonesia.[253] The report details how, as a result of a targeted campaign by Greenpeace, GAR adopted a Forest Conservation Policy which it is piloting in Indonesia. The report presents a startling review of what should be a good-news story. It states that the company "omitted land tenure studies or participatory mapping of customary lands. Communities were not free to choose their own representative institutions. Nugatory compensation was paid to community members while getting them to permanently surrender their lands, through an unclear process which gave them the false impression that they could get their lands back after 30 years. Not a single one of the hundreds of farmers who unwittingly sold their lands to [the company] has a copy of the contract."[254] The report goes onto state that, "Ever since 2007 when the concession was first announced, there have been protests and demonstrations against these perceived injustices and these have continued right up to 2013. The company has paid the police to disperse protesters."[255] The report does make acknowledgement of the company's efforts to make commitments to stop clearing forests and resolve the land conflicts and other grievances while the report was being completed, despite the company being slow to take remedial action upon initial complaints by the authors in July 2013.	CBA[256], ANZ[257]
HAGL Joint Stock Company	Rubber	In May 2013, Global Witness released a report, *Rubber Barons: How Vietnamese companies and international financiers are driving a land grabbing crisis in Cambodia and Laos.*[258] The report outlines how one of Vietnam's largest Groups, Hoang Anh Gia Lai (HAGL) has leased 81,919 hectares of land for rubber plantation in Cambodia and Laos. Of this, 47,370 hectares are in Cambodia, which has a legal limit of only 10,000 hectares per company, Global Witness states that corporate secrecy has been a critical factor in HAGL apparently exceeding this legal limit.[259] Consequences of land clearing on the concessions and beyond their boundaries have been disastrous for local community livelihoods and the environment. The report details that Indigenous ethnic minorities have disproportionally borne the brunt of these impacts, despite their rights to land and resources given special protection under international law. Of note for investors, the report outlines that HAGL publicly admitted that their operations in both Cambodia and Laos are not in line with the law.[260] In February 2014, households in the Ratanakiri province of Cambodia submitted a complaint to the International Finance Corporation's Compliance Advisor Ombudsman[261] stating that they have suffered serious harm as a result of the activities of HAGL's activities in Cambodia. The complaint is currently under consideration.	CBA[262]
Indofood Agri Resources	Palm Oil	Indofood Agri Resources is a vertically integrated palm oil agribusiness company registered in Singapore. In February 2013, a complaint against PT Salim Ivomas Pratama Tbk (a subsidiary of Indofood Agri Resources Ltd) was submitted to the Roundtable on Sustainable Palm Oil (RSPO).[263] The complaint alleged that clearing of High Conservation Value areas took place involving Orangutan habitats. The RSPO website details that Indofood Agri met the complainants on 19 March 2013 and made certain commitments relating to halting land clearing and evaluation.[264] However following a letter from the RSPO on 14 May 2013, which made a preliminary finding that there was merit in the complaint,[265] Indofood Agri sent an email to the RSPO on 21 June 2013 stating that it did not have any interest in the subsidiary directly responsible for the complaint.[266]	ANZ[267]
Kuala Lumpur Kepong	Palm Oil	Kuala Lumpur Kepong (KLK) is one of Malaysia's largest multinational Palm Oil Producers. It has been the subject of allegations in PNG, Indonesia and Liberia, according to a report released by Rainforest Action Network in April 2014.[268] The report details those allegations as being KLK's involvement in violations of land rights of Indigenous peoples and rural communities, tropical deforestation and the use of child and forced labor. The specific PNG case study in that report was also the subject of a complaint to the Roundtable on Sustainable Palm Oil in April 2013.[269] That complaint states that the acquisition of land in Collingwood Bay, PNG by KLK/it's subsidiary was is in breach of the national laws of Papua New Guinea "as the land in question has been alleged to be the property of the Collingwood Bay communities, who are claiming customary ownership of the said land".[270] Since the matter has also been referred to PNG's courts, the RSPO confirmed via letter on 24 March 2014 that as all activities on the concession in question had been halted pending the outcome of the court's decision, it would also await the outcome of the court's decision before making any determination.[271]	CBA[272]
Olam International	Palm Oil Coffee	Olam is a leading global player in the agricultural commodities industry, based in Singapore. In 2012, a Greenpeace report[273] undertook a case study of an Olam plantation in Gabon. The report states that in 2010 Olam was granted the right to develop nearly 88,000 hectares of land as part of a planned wider development that could eventually total 300,000 hectares of oil palm and rubber plantations.[274] The report acknowledges that the company has demonstrated its willingness to adhere to RSPO New Planting Procedures, but cited studies to show there is still a threat the project could result in significant deforestation and provoke conflicts over land rights.[275]	ANZ[276]
Rimbunan Hijau group	Timber, Palm Oil	A 2012 Greenpeace report *Up for Grabs* states the Malaysian logging outfit Rimbunan Hijau (or RH) Group is one of the main beneficiaries of the Special Agricultural and Business Leases (SABLs) in PNG, with 11 SABLs covering 138,441 hectares.[277] The report details allegations that Rimbunan Hijau, through its subsidiaries, secured sublease arrangements for up to 90 years, including financial compensation in case of lease termination up to approximately USD$5 billion; and without landowners being able to access independent legal advice.[278] The report goes onto state that Rimbunan Hijau financed and transported PNG police into one of their areas of operation, who engaged in a violent crackdown on local protesters.[279]	ANZ[280], CBA[281]
Samling Group of Companies	Timber	In 2010 a Council on Ethics Report recommended the exclusion of Samling Global Limited (the then parent company of the Samling Group of Companies) from the investment universe of the Norwegian Government Pension Fund Global.[282] The Council's report outlined that Samling is a Malaysian logging conglomerate with logging concessions, plantations and freehold land in Malaysia, Guyana, New Zealand and China. The Council carried out its own investigations of the company's forestry activities in Sarawak, Malaysia and Guyana, as a result of there being "little information available on how Samling Global runs its operations".[283] According to the Council's report in all of the six concession areas that they examined, Samling repeatedly breached licence requirements and regulations, with very serious transgressions, including logging outside the concession area or in a protected area. The report further states that "Other violations which, seen in isolation, may appear less serious are aggravated because they seem to be a systematic part of the company's logging operations. Moreover, the Council attaches importance to the fact that the Malaysian Auditor-General has documented illegal logging in another two of Samling Global's concessions and that Samling Global's subsidiary Barama has been fined several times for irregularities related to logging operations in Guyana."[284] The report concluded using the strong language that "the Council finds reason to believe that there is an unacceptable risk that the company's illegal and destructive forestry operations will continue in the future."[285]	ANZ[286]
Sime Darby	Palm Oil	In 2012, a report produced by Colombia University's Center for International Conflict Resolution[287] covered a 63-year agreement between Sime Darby, a Malaysian-based palm oil multinational, and the Liberian government, to develop 220,000 hectares of Liberian land for palm oil. The report alleges that this land was taken without Free Prior and Informed Consent (FPIC) from communities in Grape Cape Mount County who had been cultivating the land for generations. Affected community members reported heightened food scarcity resulting from the clear-cutting of forests that were traditionally used for agriculture and small-waterway fishing.[288] The report also included consideration of three other foreign investment projects in Liberia, and found that that while lack of consultation on all the investment projects had resulted in "high tension" among communities, the Sime Darby project was "by far the most controversial."[289]	ANZ[290], Westpac[291]
Ta Ann Holdings	Timber	In 2012 a Council on Ethics Report recommended the exclusion of Ta Ann Berhad Holdings from the investment universe of the Norwegian Government Pension Fund Global.[292] The Pension Fund owned almost USD$3.15 million in Ta Ann, but nevertheless acted on the Council's recommendation in 2013 and divested from and excluded Ta Ann Holdings from its investment universe.[293] The Council's report outlined that Ta Ann is a Malaysian conglomerate involved in the logging and conversion of tropical forest into oil palm and timber plantations. The report went on to detail that one third of its licence areas overlap with 100,000 hectares of tropical rainforest in Sundaland Biodiversity Hotspot — one of the most biodiverse regions on earth.[294] In the Council's view, there was no doubt that the destruction of more than 100,000 hectares of tropical rainforest in one of the world's most biodiverse regions would have serious, irreversible consequences for biodiversity and the ecosystem services delivered by the forest.[295] The Council also outlined that Ta Ann's re-entry logging licences did not have Environmental Impact Assessments (EIAs), whereas these requirements have existed in Sarawak law since 2005.[296] The Council noted claims by the Penan people that Ta Ann, in some of its licence areas, is operating in territories belonging to this Indigenous group without having obtained their informed consent, but did not consider this issue, limiting its scope to only environmental damage.	ANZ[297]
Triputra Agro Persada	Palm Oil	In November 2013, the Environmental Investigation Agency released a report entitled *Banking on Extinction*,[298] which reviewed palm oil company Triputra Agro Persada's operations in Indonesia. The report outlined that the company, despite being an RSPO member, had failed to comply with RSPO mandatory new plantation notifications provisions since 2010, during which time its planted landbank had swelled from 82,000 hectares to in excess of 134,000ha.[299] The report goes onto to cover that the Triputra had secured a USD$470 million loan in 2013, more than half of which would be used to finance a massive programme of land expansion.[300] In September 2013, EIA investigators visited one of the concessions that would be targeted by this expansion program, and found that " … until 2012, the concession was covered in closed-canopy forests holding rare species of flora and fauna including ulin, or ironwood, and gibbons. Over the past year, Triputra has begun clearing the forest."[301]	ANZ[302]

6.4 THE GAPING HOLE — THE BIG FOUR BANKS AND DUE DILIGENCE ON LAND

An overarching concern arises from ANZ, CBA, NAB and Westpac's growth strategies in the Asia–Pacific region, and their investments in the agricultural commodities industry. That is to what extent are our big four banks equipped and ready to address this exposure? How are they accommodating for the differences in doing business in this industry within the Asia–Pacific region? Have they catered for differences in relation to the rule of law? Are they addressing particular risks in relation to human rights and social and environmental outcomes? Has a billion dollar exposure to the agricultural commodities industry overseas been made with sufficient understanding of the complexity of that sector and the risk of land disputes? What policies and practices have the banks put in place to verify that their investments are protected and in accordance with their ethical obligations? How can the big four banks answer the specific credit, operational, compliance, reputational and sovereign risks Oxfam has detailed in this report which are raised in the context of a land grab?

It would be reasonable to assume that the big four banks have in place a thorough and systematic due diligence framework to avoid the risk of associations with land grabs. Such an assumption of adequate due diligence in the agricultural commodities industry is put clearly by the UN-PRI and UN Global Compact, which released a joint report in 2011 on investing responsibly in the agricultural commodities industry stating that "Given the complexity of commodities markets and of the interplay with the "real" economy and our natural environment, it is crucial that trustees and investment managers devote time to these issues and truly understand underlying mechanisms leading to undesired impacts."[303]

6.5 THE BANKS' RESPONSIBILITIES — AN INTERNATIONAL PERSPECTIVE

Who said banks should be responsible for their clients' actions anyway? They did.

"OUR MOST SIGNIFICANT SOCIAL AND ENVIRONMENTAL IMPACTS ARE GENERATED BY THE CUSTOMERS THAT WE SUPPORT." ANZ[304]

Firstly, it may be worth explaining why a bank has responsibility for the consequences of its financing decisions, and the social, environmental and human rights implications of its client's actions.

On 16 June 2011, the UN Human Rights Council endorsed the 'UN Guiding Principles on Business and Human Rights' proposed by UN Special Representative John Ruggie.[305] This Framework is now the authoritative global reference point for business and human rights.[306] The Framework rests on three pillars, the second of which is "the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved."[307] This corporate responsibility clearly extends to banks through the actions of their clients, with Professor Ruggie stating in his April 2008 report that, "Risks are to be managed by all parties to a project: not only by the company that is at the 'front line', operating a project, but also by financiers and insurers which provide the means for project companies to operate."[308]

TABLE 3: BANK SUSTAINABILITY COMMITMENTS

INTERNATIONAL SIGNATORY TO	ANZ	CBA	NAB	WESTPAC
Universal Declaration on Human Rights (UDHR)[309]	✓[310]		✓[311]	✓[312]
United Nations Principles for Responsible Investment (UN PRI)[313]		✓[314]		✓[315]
United Nations Global Compact[316]	✓[317]	✓[318] (since 2009)	✓[319] (since 2010)	✓[320] (founding signatory)
Equator Principles[321]	✓[322] (since 2007)		✓[323] (since 2007)	✓[324] (founding signatory)
OECD Guidelines for Multinational Enterprises[325]	✓[326]		✓[327]	✓[328]
UN Guiding Principles on Business and Human Rights[329]	✓[330]			

However, the UN Guiding Principles on Business and Human Rights, in some senses, summarised the prevailing thinking on the responsibilities of corporations. As such, prior to 2011, the big four banks had already made important public commitments to international responsible investment and human rights principles and processes, in acknowledgement of their responsibilities.

"ALL OF OUR ASSETS ARE MANAGED ACCORDING TO ROBUST ESG PRINCIPLES." The National Australia Bank[331]

6.6 THE GAPING HOLE FOR EACH

ANZ

ANZ set out its approach to human rights in a paper entitled, "Respecting People and Communities" in 2012.[332] This paper helpfully outlines each specific commitment ANZ has made in relation to human rights, and that these commitments apply to ANZ's operations globally. It specifically states that ANZ will "take measures to ensure we do not become associated with or inadvertently support human rights violations by the organisations or projects we support." It also refers to a willingness to conduct social and environmental screenings of customers including their human rights performance. ANZ has formulated an approach of applying social and environmental criteria for lending especially in sectors it deems "sensitive" — which are the sectors of energy, extractive, forests and forestry, hydropower and water.[333] However, it does not specify an approach to the agricultural commodities industry. Nor does it demonstrate a clear commitment to land rights in any of its publically available materials. It appears to have thus far not deemed the agricultural commodities industry, or the issue of "land" as a sensitive sector, despite a focus on water. This is despite ANZ being a member of the Roundtable on Sustainable Palm Oil, and therefore having knowledge on the land-related problems of the palm oil industry specifically. On its publically available policies, despite a strong overarching commitment to human rights, Oxfam believes ANZ does not particularise nor address the specific issues which would allow it to predict and respond to the risk of land grabbing.

Additionally, as Case Study 2 — ANZ and Phnom Penh Sugar demonstrates, there appears to be a gap between ANZ's strong commitments and its practices in this instance. In that case, ANZ appears to have conducted an audit in 2010, which signalled significant social, human rights and environmental issues with the company and operation outlined in the case study, yet ANZ invested after this point. Was this because ANZ had established that the issues outlined in the 2010 audit didn't meet the criteria of human rights violations that would prevent ANZ financing this client? Or had its internal policies not been followed in this instance? Did ANZ make any requirements of its client that were supposed to resolve the issues addressed in its own audit? ANZ has not clarified this issue publically. What is clear is that the communities affected by this situation have been attempting to find resolution since 2010 — yet they did not approach ANZ bank. Why? Because they were not aware that a bank which has a clear commitment to human rights, and aspirations to be the "most respected bank across the Asia Pacific region"[334] was invested in the operation. Because, despite ANZ's manifold commitments, disclosure of projects financed, and the accountability that creates, is not one of them.

Westpac

As Table 3 demonstrates, Westpac has thought deeply about its responsibilities as a bank, and committed to many of the available human rights and responsibilities principles and processes, although none related specifically to land rights. It set out its approach in a document in 2011 entitled, "Our Principles for Doing Business". There it outlines its belief that Westpac must respect basic human rights in everything it does.[335] Westpac also has an overarching Environmental, Social and Governance (ESG) Risk Management Framework which articulates its approach to managing ESG risks in all aspects of its operations, including lending and investment.[336] Westpac identifies some particular sectors of risk, strictly outlining that it will not provide finance for tobacco production or manufacturing, and curtailing aspects of its investment in the defence sector. However, despite stating in its "Approach to Sustainable Finance" that its ESG Risk Management Framework specifies environmentally and socially sensitive sectors, Westpac has not publically disclosed any specific sensitive sector policy in relation to the agricultural commodities industry or land risks. During engagement with Oxfam prior to publication of this report, Westpac did announce on 2 April 2014 that it had become a founding signatory to the Banking Environment Initiative's Soft Commodities Compact to address issues in the soft commodities industry (known as the agricultural commodities industry outside banking circles).[337] As a part of this Compact, Westpac also announced a commitment to achieve zero net deforestation by 2020. Laudable as these commitments are, they do not provide the clear internal guidance that, for instance, a sensitive sector policy does, and nor does a commitment to zero deforestation on its own address the fundamental social risks relating to land grabbing as outlined in this report. This is a particularly glaring absence for Westpac given that it has a 2013–2017 Sustainability Strategy which places at its centre a focus on "anticipating and shaping the most pressing emerging societal issues."[338]

Furthermore, as Case Study 1 — Westpac and WTK demonstrates, Westpac has had a 19 year relationship with a client (WTK), and in an industry — forestry in PNG — that should have triggered any credible ESG Risk Management Framework years ago. Oxfam notes particularly the section of Westpac's ESG Framework which states that "Credit proposals are only approved on the basis that (in addition to our usual credit criteria) ESG risks have been analysed and evaluated against sector and country strategies, risk appetite and environmental and sector policies." While Westpac may argue that it exempts certain clients or categories of relationships from its ESG framework or human rights obligations, that is certainly not the language it uses in its public policies which refer to "managing ESG risks in all aspects of our operations,"[339] and its belief in respecting basic human rights in everything it does.[340] Furthermore, it doesn't appear that Westpac takes such a piecemeal approach in practicality — it even took the unusual step of shutting down transactional accounts of logging clients in the Solomon Islands following concerns regarding the sustainability of the logging operations.[341]

CBA

As is made obvious in Table 3, the CBA noticeably lags behind its competitor banks in recognising its human rights responsibilities and developing guidelines for responding to ESG risk (although it has signed the UN Global Compact, and some within the CBA Group have signed onto the UN-PRI). In fact, Oxfam could not find any public formulations for how the CBA as a Group interprets and applies its human rights responsibilities and defines and manages ESG risk. Our review found one reference in 2012 to the CBA Group developing a policy to improve the assessment of the environmental, social and governance risks for project financing in the natural resources sectors of energy and utilities, oil and gas and metals and mining — but could find no evidence of such a policy.[342]

The CBA has put in place a variety of sustainable and responsible approaches aimed at its Australian operations. But despite its Indonesian subsidiary and looking for "prudent opportunities to expand and enhance our presence (in Asia),"[343] it does not appear to have in place any procedures responding to the specific risks of doing so. CBA made no mention of land issues, or the agricultural commodities industry, and indeed was the only one of the big four banks to have failed to integrate or reference the OECD Guidelines for Multinational Companies which allow communities affected by its actions an opportunity of sorts for redress. In short, in Case Study 2 CBA and Bunge, the affected community has little guidance to what recourse the CBA could offer — a marked difference to the other banks.

NAB

The NAB has committed itself to many of the key human rights and responsibilities principles and processes available to banking institutions. However, while it states that "all of our assets are managed according to robust ESG principles"[344] Oxfam could find no public disclosure of what ESG framework the NAB specifically applied across its business (unlike ANZ and Westpac who both publically reference a specific guiding document). This is notwithstanding that the NAB engaged constructively with Oxfam and reformulated its website[345] prior to this report's publication to better acknowledge that its assessment process, which has historically been called an environmental credit risk process, does also include social risk assessment. It also placed guidance on its website to further details on the process. The NAB has definitely charted a particularly environmental course which is somewhat different to its competitor banks, demonstrated by its acknowledgement and incorporation of "Natural Capital"[346] in an attempt to understand and cater for the value of natural ecosystems. Continuing on the environmental theme — the NAB also formulated a specific and relatively comprehensive approach to addressing environmental risk across all its lending (not just project finance obligations mandated under the Equator Principles).[347] This is what makes the NAB Case Study in this report so peculiar. As outlined in Case Study 4 — NAB and Wilmar, the NAB financed Wilmar at the time at which it was one of the most environmentally contentious businesses in the world — a fact not unknown given that Wilmar was ranked by *Newsweek* as the least sustainable company in the world in terms of environmental performance for two years running — in 2011 and 2012.[348] While a host of others including Wilmar customers and investors placed pressure on Wilmar to clean up its act, the NAB seemingly wasn't a party to the dramatic upgrade in Wilmar's approach to its environmental and social obligations, which took place in December 2013. Certainly, the NAB hasn't publically outlined any specific internal commitments or approaches particular to land issues or the agricultural commodities industry, but nevertheless it appears that Wilmar should have triggered the NAB's environmental risk process on those narrow grounds alone.

In conclusion, despite their difference in approach to human rights and ESG risks, none of the big four banks has made public a clear due diligence approach to the threat of land grabbing across their operations. Our banks are inexplicably silent in response to the movements of other banks and companies on issues relating to land, who have adopted specific policies to guide internal practice and due diligence processes in relation to land.[349] In their existing sensitive sector policies, there is no specific commitment to approaches which would prevent involvement in land grabs, such as an adoption of Free, Prior and Informed Consent. On the information available, it appears that our banks have a significant commitment of billions of dollars to the agricultural commodities industry overseas, yet have not sufficiently turned their attention to the risks, due diligence and situational analysis this industry demands.

Box 5: The farce of Client Confidentiality — the case for Disclosure

In undertaking the research in this report, Oxfam obtained access to a number of databases used by the banking and finance world, including Thomson One's Investment Banking Database and Bloomberg. These databases sit behind significant paywalls and are accessed primarily by the global banking and finance sector as well as its advisors, clients, market research institutions and even academics. The databases contain an extraordinary amount of information that seems to fly in the face of assertions of "client confidentiality" from banks. To quote the databases themselves, the information includes:

- global equity, fixed income, syndicated lending and project finance information;[350]
- for syndicated loans — the content includes hundreds of data elements, including borrower profile (industry, location-headquarters), deal structure, principal amount, currency, maturity, pricing, bookrunners, agents, lenders, pricing, interest and fee information, use of proceeds, guarantors, and IFR magazine articles;[351]
- for project finance – the content includes hundreds of data elements, including project profile (industry, location, output etc), deal structure, principal amount, currency, maturity, pricing, bookrunners, agents, lenders, pricing, interest and fee information, project synopsis, IFR and PFI magazine articles.[352]

For those unfamiliar with these terms, to put it simply, access to these databases will tell you about a particular bank's loan, shareholding or project financing to a particular client. Not only will it provide you with the client's name, but it can provide you a whole host of other content about the transaction. On the face of it, this seems a clear breach of client confidentiality for the banks and their clients. Knowing this, Oxfam investigated further and queried with these databases how they managed to access such confidential information. We were told the information was obtained through, "direct deal submissions from global dealmakers."[352] When we sought further clarification, staff informed us that "global dealmakers" meant in situations of a project finance or syndicated loan transaction, "the bankers themselves provide us information through submission forms."[354] Investigating further, it appears that this is normal practice. Banks frequently disclose this seemingly highly confidential information, essentially for marketing purposes, seeking to be considered for awards and league tables about who closes the biggest deals, or who has the biggest lending portfolio.[355]

This was startling news. During Oxfam's engagement with all of the big four banks prior to publication of this report, one clear area of contention between Oxfam and the banks was the issue of disclosure. Banks consistently held the line that they were bound by client confidentiality requirements and could not even confirm or deny that they financed (or didn't finance) particular clients. This blanket requirement for client confidentiality was variously referred to as a "legal" requirement, or longstanding bank practice. Oxfam was at a loss to understand how it was possible for banks to argue client confidentiality to NGOs and affected communities, but release such confidential information in excruciating detail to databases shared with all their competitors, and indeed anyone who pays the fees (estimated between $30,000–50,000 per annum) for a database licence. Client confidentiality loses its rationale if the information has essentially been released to 'paywalled' public domain. In fact, the only people guaranteed (through poverty) to not be able to access these details are the communities most at risk from irresponsible financing behaviour, and the very people whose human rights the banks have solemnly vowed to respect.

As discussions progressed with the banks, there appeared to be further peculiar exceptions to client confidentiality requirements – for instance the NAB denied certain client links, and the CBA's Colonial First State Global Asset Management arm provided Oxfam with a list of holdings in particular companies.

In Oxfam's view it is an impossible situation for the banks to make sustainability and human rights commitments and then fail to provide the information necessary for these commitments to be assessed in practice by investors or NGOs alike. Even those of the big four that have signed the disclosure-requiring Equator Principles do not publically release the names of their clients or the projects they have financed — despite such information being available on paywalled databases. Equator Principles disclosure documents and Bank Sustainability reports therefore read like fascinating assessments of a potentially unreal world — there is no way in which external verification of the statements are possible as no client or project is named. An article on this issue published by the American Bar Association in 2006, stated, "[Equator Principle Banks'] lack of transparency regarding implementation not only makes independent evaluation impossible, they are adopting environmental rhetoric with little commitment to changing their performance."[356]

Our banks say that client confidentiality prevents them from disclosing any information. Perhaps what they are really saying, is that when they negotiated transactions, they failed to make their financing conditional upon retaining the right to disclose even basic details to affected communities or investors concerned about social and environmental practices. They did, however, remember to make their financing conditional on disclosing considerable details of the financed activities to the entire banking sector and third party databases for their own marketing purposes.

This is not the first time Oxfam and other NGOs have come up against a stonewall of "client confidentiality". We received the same initial response from the sportswear industry, the food and beverage industry, and the retail industry. However, all these industries have started disclosing their supply chains, acknowledging the usefulness of transparency both for affected communities and investors. This is also partly an acknowledgment of a changing world — one in which NGOs like Oxfam start to access industry-specific databases in greater and greater numbers giving rise to a greater likelihood that attempts to keep information hidden from public view are doomed to fail. It would be far better for both true accountability of a bank's commitments to responsible financing, and for investors understanding of ESG risks to start down the long road towards true disclosure.

6.7 THE COST OF INACTION — BEING LEFT BEHIND

As Case Study 4 — NAB and Wilmar demonstrates, signs of leadership are already emerging as companies in the agricultural commodities industry recognise the risk that land conflicts and land rights violations represent to their operations and reputations. As Mark Bowman, managing director of brewing company SAB Miller Africa, one of Coca-Cola's largest bottlers, put it, "Land purchases which ignore the interests of local communities and the local landscapes are both morally wrong and commercially short-sighted."Bowman argues that clear-cut cases of land grabbing "fuel opposition to all outside investment".[357]

Box 6: Food and beverage giants announce Zero Tolerance for Land Grabbing

In October 2013, Oxfam released a paper, *'Sugar Rush: Land Rights and the supply chains of the biggest food and beverage companies'*[358] on land grabbing, specifically targeting the sugar industry and calling on Coca-Cola, PepsiCo and Associated British Foods to take action to prevent land grabbing in their supply chains.

To date, both Coca-Cola and PepsiCo responded, adopting Zero Tolerance Policies to prevent land grabbing, and immediately revealing sugar supply chains to allow for independent verification and transparency for affected communities.[359] Even companies not mentioned in the paper, such as Nestle, took action to enact commitments regarding the Free, Prior and Informed Consent of communities across their entire agricultural commodity supply chain (including palm oil and soy).[360] The swift and comprehensive response of these giant global multinationals indicates the seriousness of land grabbing and the extent to which agricultural commodity industry leaders are taking it seriously. The recent commitments made by Coca-Cola and PepsiCo to Zero Tolerance for Land Grabbing are very similar to the commitments Oxfam wants to see our banks make (see Section 7 of this report).

Such leadership is impacting the industry more broadly — the 2013 Carbon Disclosure Program's (CDP) Global Forests Report 2013[361] reviewed 139 companies, with market capitalisation in excess of USD $3 trillion, which responded to CDP's request for information on management of deforestation risk in their operations and supply chains. Of these companies, 43% of responses on palm oil set a target to reach 100% third party certified material within two years. This is starting to look less like leadership and more like a sectoral move towards sustainability. ANZ, NAB, Westpac and CBA therefore are in danger of supporting the laggards, given their due diligence doesn't account for these developments and isn't positioning them to recruit clients who are market leaders. Labelling and consumer-focused initiatives like the RSPO and Australia's Illegal Timber Act are also cutting off the market for products that cannot demonstrate their sustainable credentials. This begs the question — are Australia's big four investing in a shrinking market for unsustainable agricultural commodities?

6.8 WE ALL RELY ON THE BIG FOUR BANKS

The big four banks' failure to address the issue of land grabbing, despite statements adhering to the concept of a social licence to operate is not only "their" issue. Australia's big four banks often assert that they are largely owned by ordinary Australians, either directly or indirectly. Certainly, sitting in the big four banks is $522 billion worth of Australian household deposits, equivalent to almost one-third of Australia's GDP.[362] Regardless of whether you bank with the big four or not, their practices are therefore integral to the stability and reliability of Australia's entire economy, and impact all Australians. In the words of the now-Australian Federal Treasurer, Joe Hockey, in 2011, "...the four major banks have largely become the Australian financial system."[363] It is in Australia's interest that the big four banks have thorough and systematic due diligence processes to address risks, even in their overseas operations. A collective failure by the big four banks to address risks like land grabbing impacts both individual Australians and our banking system as a whole.

Particularly in relation to investing in the Asia–Pacific, the big four banks also carry the responsibility of being corporate ambassadors for Australia. Under all Australian federal governments over the past decade, the Asia–Pacific is touted as being the region most key to Australia's economic future. It is essential that Australian business in the region model best practice, supporting long-term and sustainable investment, and build a reliable reputation that can endure political and social upheaval. This ambassadorial role is openly acknowledged, with ANZ clearly outlining its "vision to be the most respected bank in the Asia–Pacific region."[364] Exposure to the agricultural commodities industry without putting in place significant due diligence practices in relation to land grabs, and the associated risks of supporting conflict, corruption and undermining the rule of law, do not sit well with being respected partners in long-term growth within the Asia–Pacific region.

"WE RECOGNISE THAT AS ONE OF THE LARGEST COMPANIES IN OUR REGION WE HAVE A BROADER ROLE TO PLAY. FOR OUR BUSINESS TO PROSPER, SO TOO MUST THE COMMUNITIES IN WHICH WE OPERATE." Westpac[365]

CASE STUDY 4 — NAB AND WILMAR

WHO IS WILMAR?

Wilmar International, founded in 1991 and headquartered in Singapore, states it is Asia's leading agribusiness group.[366] The claim is plausible as Wilmar easily dwarfs competitors in the palm oil industry alone — owning vast palm oil plantations and taking first place as the world's leading processor and trader of palm oil.[367] Wilmar's leading role, however, also means it has been at the centre of the maelstrom of controversy that has engulfed the entire palm oil industry over the past decade.

WHAT IS PALM OIL AND WHY IS IT CONTROVERSIAL?

Palm oil is an edible vegetable oil derived from the fruit of oil palm trees, which can only grow in tropical regions. As those regions are home to emerging economies, the palm oil industry is particularly susceptible to the broader problems facing the agricultural commodities industry in emerging economies. The palm oil industry itself has attracted specific allegations from environmental organisations that it is responsible for large-scale deforestation, extensive carbon emissions and the critical endangerment of species such as the Sumatran orangutan, elephant and tiger. It is this aspect of the palm oil industry that has received the most attention in Australia, with independent Senator Nick Xenophon leading a campaign on the issue since 2008.[368] However, the environmental concerns regarding palm oil are more than matched by social issues, with allegations of land grabbing and human rights abuses across the industry.[369]

Investors, such as the World Bank were not the only corporations to act on social and environmental concerns in the palm oil industry. Such concerns led to a proliferation of attempts to transform the industry, of which the multi-stakeholder initiative, the Roundtable on Sustainable Palm Oil (RSPO), has been the most prominent.[374]

Box 7: Investors beware — The World Bank and the International Finance Corporation run into trouble with palm oil

In 2007, a complaint regarding Wilmar was submitted to the International Finance Corporation's (IFC) Compliance Advisor Ombudsman, kicking off an extraordinary chain of events at one of the world's most experienced lenders in emerging economies.[370] The 2007 complaint alleged adverse environmental and social impacts of Wilmar's palm oil operations in Indonesia, which had been financed with the support of the IFC.[371] The complaint led to an internal audit which scathingly concluded that the IFC had failed to apply its own standards and that its actions were counterproductive to its mission, mandate and its commitment to sustainable development.[372] With regard to IFC's Wilmar investments, the audit report found that commercial pressures were allowed to influence the scope and scale of IFC's environmental and social due diligence.[373] The fallout from this internal audit was astounding, with the World Bank Group President in 2009 instructing the IFC and entire World Bank Group to suspend financing of palm oil projects until a comprehensive and specific palm oil strategy had been developed. It took until 2011 for such a strategy to be developed and financing for palm oil to be restarted.

CASE STUDY 4 — NAB AND WILMAR

WHAT HAVE BEEN THE SPECIFIC CONCERNS IN RELATION TO WILMAR?

As noted by other NGOs,[375] as one of the largest players in the palm oil industry, the sheer number of conflicts and controversies surrounding Wilmar's operations and those of its many subsidiaries are virtually impossible to document.

Since 2007, three complaints[376] have been submitted to the IFC's Compliance Advisor Ombudsman (CAO) against Wilmar's operations in Indonesia alleging the company cleared land without appropriate community approvals, legally required permits, or completed Environmental Impact Assessment processes, in violation of national laws and RSPO principles. The most recent complaint, filed in 2011, alleged the company called on government forces to dismantle a community settlement on disputed land. In 2013, Wilmar sold its stake in the operation — the subject of the 2011 complaint — and the new management withdrew from the CAO's mediation process. In February 2013, a new complaint was filed with the RSPO[377] (of which Wilmar is a member) against a Wilmar subsidiary operating in Indonesia. The complaint alleged the company failed comply with all relevant local, national and ratified international laws and regulations; did not mitigate the environmental impacts of the development; encroached into areas classified as High Conservation Value Forests and breached parts of the RSPO Code of Conduct.[378] That complaint is now in bilateral negotiations.

Wilmar has also faced complaints to the RSPO for its operations outside of the Asia–Pacific region. In 2012, a complaint was filed with the RSPO regarding Wilmar's operations in Nigeria.[379] The complaint alleged that the company failed to reach an agreement with landlord communities, and disputed the legality of the concession agreement and the subsequent land acquisition in the concession area.[380] The RSPO appointed a prominent law firm from Nigeria to give a legal opinion on Wilmar's compliance with the applicable laws pertaining to the land development, and that case is listed by the RSPO as closed for monitoring.[381]

Wilmar has also faced the direct criticism of prominent environmental NGOs including Greenpeace[382] and Rainforest Action Network[383] who have released lengthy reports and campaigned vigorously in relation to Wilmar and its suppliers.[384] It is important to note that the allegations made against Wilmar have not gone uncontested by the company, it is clear that Wilmar has gone to considerable time and effort to counter allegations[385], and engage with complaints procedures at both the RSPO[386] and the IFC's CAO.[387]

WHAT IS THE NAB CONNECTION TO WILMAR?

The NAB has had a significant funding relationship with Wilmar, which, according to the ThomsonOne.com Investment Banking database, began in Nov 2010 when the NAB financed Wilmar to the tune of AUD $112.59 million.[388] A further loan of AUD $106.35 million from NAB was made in September 2013 to Wii Pte[389], a wholly-owned subsidiary of Wilmar International, which holds proprietary investments for the entire Wilmar Group.[390]

It is worthwhile noting that the first loan to Wilmar occurred during 2010, when the World Bank Group had suspended lending to Wilmar and the entire palm oil industry, following the complaint to the IFC regarding Wilmar's operations. The subsequent 2013 NAB loan came after *Newsweek* had ranked Wilmar as the least sustainable company in the world in terms of environmental performance for two years running — in 2011 and 2012.[391]

While many palm oil industry investors, and indeed other investors of Wilmar, joined the RSPO[392] over the last decade in an attempt to move the industry towards improving its social and environmental practices, the NAB did not. While many Palm Oil customers, such as Unilever, Kellogg's and even Australia's Woolworths have made commitments to source Certified Sustainable Palm Oil, the NAB has made no public comment or commitment whatsoever on palm oil, or its exposure to one of the palm oil industry's biggest players. This is despite the NAB making a laudable commitment to the Natural Capital Declaration,[393] and further public commitments to environmental sustainability,[394] that in Oxfam's opinion lead the way for the remaining big four banks.

Box 8: Wilmar's No Deforestation, No Peat, No Exploitation Policy

1. No Deforestation
- No development of High Carbon Stock (HCS) Forests
- No development of High Conservation Value (HCV) Areas
- No burning
- Progressively reduce greenhouse gas (GHG) emissions on existing plantations

2. No Development on Peat
- No development on peat regardless of depth
- Best Management Practices for existing plantations on peat
- Where feasible, explore options for peat restoration by working with expert stakeholders and communities

3. No Exploitation of People and Local Communities
- Respect and support the Universal Declaration of Human Rights
- Respect and recognize the rights of all workers including contract, temporary and migrant workers
- Facilitate the inclusion of smallholders into the supply chain
- Respect land tenure rights
- Respect the rights of indigenous and local communities to give or withhold their
- Free, Prior and Informed Consent (FPIC) to operations on lands to which they hold legal, communal or customary rights
- Resolve all complaints and conflicts through an open, transparent and consultative process.
- All provisions in this policy, with no exception, apply to all Wilmar operations worldwide, including those of its subsidiaries, any refinery, mill or plantation that we own, manage, or invest in, regardless of stake and all third-party suppliers from whom we purchase or with whom we have a trading relationship.

The policy also commits Wilmar to creating a transparent sourcing network with full traceability.

HOW WILMAR HAS MOVED BEYOND ITS OWN LENDER

What is extraordinary about the Wilmar story is that on 6 December 2013, following years of NGO campaigning, RSPO and IFC complaints and even open letters from investors[395], Wilmar moved comprehensively to answer its critics. It went further than its RSPO membership and adopted a broad and comprehensive commitment to a "No Deforestation, No Peat, No Exploitation Policy."[396] The policy opens with the honest and commendable statement that, "Wilmar International recognizes that while plantation development has contributed significantly to economic development, deforestation and other unsustainable practices have many negative consequences for people and the environment."[397] Wilmar states further that "In the face of imminent global crises such as climate change, environmental degradation, depleting resources, widening rich-poor divide and so on, Wilmar recognises that sustainable development is the only way forward."[398]

The comments from Kuok Khoon Hong, Wilmar's chair and chief executive, in launching the new policy are instructive. He stated, "We know from our customers and other stakeholders that there is a strong and rapidly growing demand for traceable, deforestation-free palm oil, and we intend to meet it as a core element of our growth strategy."[399] Clearly, Asia's leading agribusiness group has not only adopted an ethical position on its practices in relation to social and environmental concerns, it sees financial value in doing so. While Wilmar faces a significant task in cleaning up its supply chain, and ensuring compliance with the new policy across its vast operations, the commitment itself is laudable. The question is, how is its lender, the NAB, so silent, and so far behind its client on this one?

THE SOLUTION — ZERO TOLERANCE FOR LAND GRABS

7 THE SOLUTION — ZERO TOLERANCE FOR LAND GRABS

A SOCIAL LICENCE TO OPERATE AND INVEST

The perfect storm of credit, operational, compliance, sovereign and reputational risk that can arise in a situation like land grabbing in the agricultural commodities industry gives further impetus to the emerging notion of a "social licence to operate and invest". According to Deloitte, winning a social licence to operate now means more than simply following national and industry regulations; in many emerging markets, local community engagement has come to the fore as one of the most pressing issues facing operators, with particular emphasis on water and land access rights, environmental protection, local economic development and jobs.[400]

Such an approach can position companies to gain a local base of economic and political support for their projects, ultimately enabling them to bring projects on line more quickly, lower government penalties, reduce costs and mitigate the manifold risks that may usually attend such a project. This will allow companies to differentiate themselves as partners and move beyond zero-sum discussions regarding local and national content rules.[401]

Flowing from the social licence to operate is the "licence to invest" according to a recent UN-backed Principles for Responsible Investment and UN Global Compact joint paper[402] which went on to say that investors should therefore proactively implement measures aimed at managing environmental and social risks related to commodities investments. As such, investors which institute appropriate due diligence for land-related projects, and invest in companies which have obtained a social licence to operate, are in a stronger position to assess the risks in relation to particular projects, and withstand the ebbs and flows of a volatile governing context.

"WHERE WE HAVE FOUND THAT A CLIENT DOES NOT MEET OUR ENVIRONMENTAL AND SOCIAL STANDARDS AND THEY ARE NOT WILLING TO ADAPT THEIR PRACTICES, ANZ HAS DECLINED FUNDING OR EXITED THE RELATIONSHIP." ANZ[403]

Angela Martins shows cassava planted by her family with Janaína Locari (in pink hat). Jatayvary Indigenous Land, Ponta Porã, Mato Grosso do Sul. Indigenous communities are fighting the occupation of their land by sugar plantations supplying the Bunge Mill. The plantations have destroyed the forests that the people had relied upon for food. Photo: Tatiana Cardeal/Oxfam.

WHAT THE BANKS MUST DO

WHAT THE BANKS MUST DO

Oxfam is not seeking a boycott of the agricultural commodities industry or investment in the Asia–Pacific region. To the contrary — we want to see the big four banks act swiftly in response to this report and move to address land grabs in a manner befitting long-term and sustainable involvement in both the industry and the region.

Oxfam wants the big four banks to:

1. Know and Show their exposure to land risk in the agricultural commodities industry
2. Commit to a Zero Tolerance for Land Grabs policy
3. Advocate for responsible financing
4. Ensure justice for affected communities

7.1 KNOW AND SHOW

Uncover risks and impacts to communities involved in land issues in the agricultural commodities industry. Disclose the bank's exposure to land risk in the agricultural commodities industry, including the location and names of clients.

A Uncover Risks and Impacts

Uncover and disclose risks and impacts to communities for clients in the agricultural commodities industry with exposure to large-scale land assets, by conducting and communicating publicly in a form accessible to affected communities and undertaking independent third-party social, environmental and human rights assessments.

B Disclose Bank Exposure

Disclose relationships with clients involved in the agricultural commodities industry, with exposure to large-scale land assets in order to generate a bank-wide picture of land risks.

7.2 COMMIT

Commit to and make publically available a Zero Tolerance for Land Grabbing policy.

A Acknowledge Responsibility

Acknowledge that the provision of products and services exposes the bank to any land rights violations by its customers in the agricultural commodities industry, and that the bank has responsibility to respect human rights and ensure access to remedy in case of abuses.

B Commit to a policy

Commit, through a bank-wide policy, to protect and promote all land rights of communities impacted by the company and supplier operations of its clients. This should include precedent requirements before the provision of a product or service that clients must:

- Respect and promote human rights with special attention to land rights of communities impacted, or potentially impacted, by company and supplier operations;
- Ensure fair negotiations on land transfers and adherence to the principle of Free Prior and Informed Consent in company and supplier operations;
- Ensure contract transparency and disclosure to affected communities for any concession agreements/operation permits;
- Ensure fair resolution of any disputes involving land use or ownership rights, via company grievance mechanisms, third party ombudsmen or other processes agreed upon by all parties;
- Refrain from cooperating with any host governments' illegitimate use of eminent domain, in order to acquire farmland;
- Avoid production models which involve the transfer of land rights (including land under customary tenure) away from small-scale food producers;
- Refrain from converting UNESCO World Heritage Sites, Wetlands on the Ramsar list, High Conservation Value (HCV) forests or peatland into other uses. In the situation where a company or supplier's land assets were located on land formerly occupied by these , the clearing must have occurred more than 10 years ago and the client shall certify that it is not responsible, directly or indirectly for the clearing;
- As a minimum, comply with all applicable laws and regulations pertaining to land including social and environmental requirements, as well as with this policy. Should applicable laws and regulations be stronger than the requirements of this policy, they will take precedence;
- Apply this policy as a required code of conduct for all downstream business relationships with suppliers, and audit the policy accordingly.

C Policy disclosure

Publish the policy on the bank's website, and establish and maintain clear procedures to ensure that policies are implemented by all bank employees, agents and clients and monitor and evaluate implementation.

D Commit to sector specific standards

Commit to, as a means of improving policy and practice, joining relevant multi-stakeholder initiatives for products within the agricultural commodities industry, such as the Roundtable on Sustainable Palm Oil (RSPO).

7.3 ADVOCATE

Act as standard-setters in addressing land rights within the banking and finance sector, leading the way for responsible and respected financing practices in the Asia–Pacific region. Work with governments, other financiers and civil society to adhere to multi-stakeholder sector initiatives which drive better respect for land rights.

7.4 JUSTICE FOR AFFECTED COMMUNITIES

Commit to ensuring Justice for Affected Communities covered in Oxfam's report by undertaking independent third-party social, environmental and human rights impact assessments, and committing to remediation, mitigation and ongoing monitoring of the case to ensure human rights and legal abuses do not reoccur.

APPENDIX

8 APPENDIX

8.1 LIST OF BOXES, TABLES AND DIAGRAMS

8.2 LIST OF ACRONYMS

CFS UN Committee on World Food Security

CSO Civil Society Organisation

CSR Corporate Social Responsibility

EIA Environmental Impact Assessment

EITI Extractive Industry Transparency Initiative

EPFI Equator Principles Financial Institutions

FAO UN Food and Agriculture Organisation

FPIC Free, prior and informed consent

FSC Forest Stewardship Council

IFC International Finance Corporation

NGO Non-Government Organisation

OECD Organisation for Economic Cooperation and Development

RSPO Roundtable on Sustainable Palm Oil

UDHR Universal Declaration of Human Rights

WB World Bank

8.3 ENDNOTES

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293 See The Government Pension Fund website, 'Companies Excluded from the Investment Universe' <http://www.regjeringen.no/en/dep/fin/Selected-topics/the-government-pension-fund/responsible-investments/companies-excluded-from-the-investment-u.html?id=447122>

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Oxfam Australia
132 Leicester Street
Carlton Victoria 3053
Australia
Tel: +61 3 9289 9444
Fax: +61 3 9347 1983
www.oxfam.org.au

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For further information on the issues raised in this paper please e-mail shenn@oxfam.org.au

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Gefrey Swindu extracting core from sago palm to make a traditional "sak sak" meal. Geffrey stated that many sago palm trees died after the logging company started working near his village of Koptui. Photo: Vlad Sokhin/OxfamAUS.


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