



**LEGEND**

*Land: Enhancing Governance  
for Economic Development*



**Solidaridad**

# LEARNING REPORT

## APPLICATION OF THE NEW ALLIANCE DUE DILIGENCE TOOL: LESSONS FROM GREEN FIELD OIL PALM INVESTMENT IN SIERRA LEONE



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Solidaridad Sierra Leone

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## **Annex I: Table on Application of New Alliance Due Diligence Tool on Theme I: Tenure Rights**

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# **APPLICATION OF NEW ALLIANCE DUE DILIGENCE TOOL: Documenting experiences for green field oil palm investment by Natural Habitats Ltd and Solidaridad in Makpele Chiefdom, Sierra Leone.**

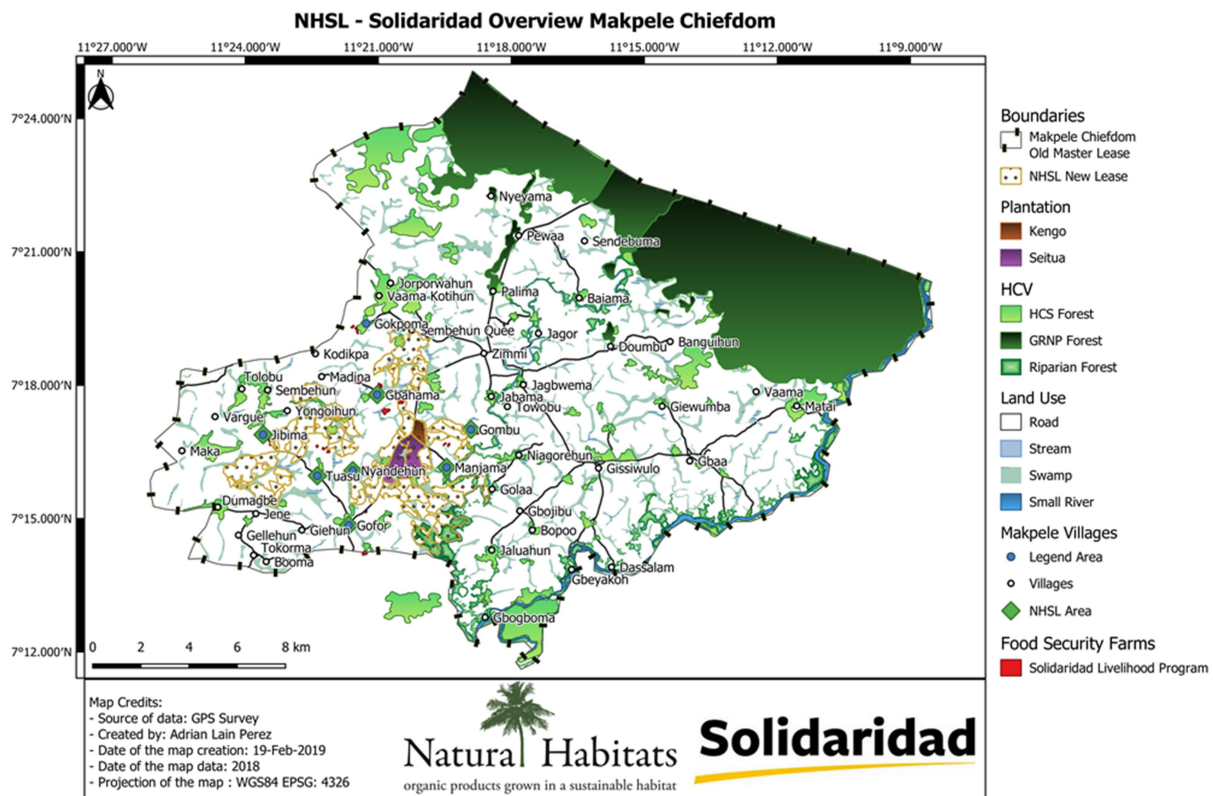
## **1. SUMMARY AND BACKGROUND**

In Sierra Leone Solidaridad implemented a project which is part of the LEGEND programme funded by DFID (2016-1019). The private sector partner in this project is the Natural Habitats Sierra Leone, which currently operates in two oil palm production areas, located around Yele and Zimmi in the Gbonkolenken district of Northern Sierra and Pujehun district of Southern Sierra Leone respectively.

The project focused on reducing and formalizing the original concession size in the Zimmi area of Makpele Chiefdom in Pujehun District from the actual size of 30,700 HA to maximum 10,000HA destined for oil palm production. NHSL inherited the lease from the erstwhile West Africa Agriculture #2 (WAA2) who acquired the land in 2012 through a few elites and with no respect to the Free Prior and Informed Consent (FPIC) of legitimate land owners. To comply with the RSPO New Planting Procedure a HCV assessment and impact assessment were required. In addition, NHSL recognizes all right holders living on the land, therefore active community sensitization and outreach was ongoing before the LEGEND project started. By informing communities about the activities of NHSL and the opportunity to lease land to the company, the NHSL community outreach team initiated a process of documenting land rights with GIS mapping with the aim of formalizing land lease agreements between landowners and NHSL.

This project aimed at capturing replicable lessons on responsible land-based investment from the NHSL experience. Topics of specific interest include: how to approach community engagement, how to raise awareness on land rights and negotiate the terms of the lease with support from paralegal organization (NAMATI) and how to implement an inclusive and transparent Free Prior and Informed Consent (FPIC) process towards documented land lease agreements.

The map below shows the Makpele Chiefdom. The original concession as inherited by NHSL covered the entire Chiefdom and needed to be replaced by a bottom up combination of individual land lease agreements, negotiated and agreed by the landowning families directly. The green triangles on the map shows the communities where NHSL and the LEGEND project have focused their engagement and interventions.



## Implementing Partners

**Solidaridad West Africa (SWA):** Solidaridad is a not-for-profit organization that works globally towards the sustainable production of commodities. In Sierra Leone, three projects have been implemented to promote inclusive and sustainable developments in cocoa and oil palm.

**Natural Habitats Sierra Leone (NHSL):** Dutch organic and sustainable oil palm company, private partner in programme, investing in greenfield plantation in Zimmi, Makpele Chiefdom. Nedoil; subsidiary of Natural Habitats, active in Gbonkolenken, Valunia, Niawa Lenga and Bargbe Chiefdom.

## Collaborators

**Ministry of Lands, Housing and Environment, Sierra Leone:** Government Department in charge of developing and implementing the country's land policies. This ministry currently houses the Voluntary Guidelines on Responsible Governance of Tenure (VGGT) of land, forestry and fisheries Secretariat.

**Ministry of Agriculture and Forestry, Sierra Leone:** Government Department in charge of developing and implementing the country's Agricultural Policies.

**United Nations Food and Agriculture Organization (UNFAO):** The FAO provides technical support to ensure VGGT sensitive implementation of the National Land Policy in Sierra Leone. This places specific focus on strengthening land administration and capacities for effective land use management throughout the country.

**NAMATI:** Paralegal organization which provides local communities with legal support regarding land rights. NAMATI provided legal support, including the review of NHSL concession lease agreement, grievance redress mechanism and legal empowerment training.

**Green Scenery:** A national advocacy organization. Solidaridad collaborated with Green Scenery to conduct advocacy training for women.

**Women’s Forum for Human Rights and Democracy Sierra Leone (WOFHRAD-SL)** – advocates for gender equality in land rights. WOFHRAD-SL led the Gender-Sensitive land tenure training and engagement with traditional authorities to allow women access and control of land to improve their livelihood.

## 2. INTRODUCTION

This document provides a summary of lessons learnt regarding the testing of the Analytical Framework for Land Based Investments in African Agriculture gathered from the LEGEND project implemented by Solidaridad in Sierra Leone. While there was an intention from the start to do a step by step review of the due diligence tool, this changed towards a focus on documenting experiences through 1) learning stories (part of reporting), 2) reflection meetings with implementing partners and 3) discussion groups and interviews with stakeholders involved. In July 2019, as a final activity to further discuss and disseminate lessons learnt, Solidaridad hosted a round table discussion at the LANDac Conference in The Netherlands on the dynamics of due diligence and specifically on the role of the private sector.

The following learning stories were produced during the LEGEND project:

- 1) History of the lease
- 2) Community engagement and FPIC
- 3) Usefulness of New Alliance tool for land Due Diligence tool
- 4) Reduction of original concession to new master lease
- 5) Role of Media
- 6) Participatory Mapping

Other supporting material used to draw up a summary learning report are meeting reports, communication products and guidance material developed before and during implementation of activities, such as the guidelines on participatory mapping from NHSL and the land acquisition steps developed by the community themselves.

This learning report highlights key findings and lessons based on the project experiences, building directly on the material generated throughout the project. Section 3 discusses the New Alliance Tool, section 4 shares a summary of lessons learnt and section 5 provides recommendations for companies, civil society, government and communities. Section 4 and section 5 draw on findings from stakeholder discussions held during the National Learning Event in Freetown, Sierra Leone, in February 2019 as well as the Round Table discussion hosted during LANDac conference in July 2019. Given the wealth of material and the diversity of perspectives of the different actors involved, this document does not aim to present conclusive findings. If possible, the available documentation should be subject to further research and analysis.



### 3. NEW ALLIANCE TOOL

The New Alliance tool for land Due Diligence (NADD) is structured around 5 themes: 1) Tenure Rights, 2) Participation, Consultation and Negotiations, 3) Grievance Mechanism – Dispute Resolution, 4) Transparency and Corruption, 5) Food Security, Human Rights, Environmental Sustainability and Local Capacity Building. On each theme there are recommendations and actions stated to guide decisions and priorities of investors, or in our case the project implementing partners (Solidaridad and NHSL). Also there are red lines, which indicate when the planned investment should not proceed. The initial review of the NA DD Tool at the start of the project showed that the project design and approach taken so far by NHSL on the ground was very much in line with the desired actions prescribed by the guidelines.<sup>1</sup>

Key points which exemplified the alignment of project design with the NA DD Tool are:

- **Reduction of concession size:** The aim of the project was to replace the original concession (which covered the entire Makpele Chiefdom) by a lease agreement between NHSL and the landowning families directly.
- **Recognizing all rights holders and active community engagement:** NHSL recognizes all rights holders living on this land. Therefore, active community sensitization and outreach is required and ongoing. NHSL already started early 2016 engaging with communities around Zimmi, informing people about the project activities, about their rights and about the potential to lease land to NHSL or opt out.
- **Recording and formalizing land rights and lease agreements:** The process of mapping the land with GIS and formalizing the land leases with contracts.

#### 3.1 Red lines review: at the start

Special attention in this initial review of the NA DD Tool went out to the “red lines”, which are reasons to cancel the investment project: “In addition to practical guidance on what to do, the framework includes red lines that indicate in which situations investment projects should be cancelled if no benign alternatives can be found. This is generally the case, whenever a project will cause or contribute to forced evictions or any other adverse human rights impacts. The Framework also clearly rejects the transfer of land rights to investors involving tracts of land that exceed the amount reasonably required for the true purpose of immediately using the land for agricultural activities.” (Source: NA DD Tool, p. 4)

The following red lines (reasons to cancel the project) are stated in the NA DD Tool:

- If resolving existing conflicts is not possible
- Lack of reliable mapping of all legitimate land rights, impact assessments and ESIA
- If the impacts on legitimate local land rights cannot be mitigated
- If involuntary displacement through expropriation cannot be avoided.
- If existing land tenure conflicts or violence in the area worsens as a result of the project
- If stakeholders have not been and cannot be consulted properly
- If those who signed the contract are not the legal or legitimate representatives of the local land rights holders

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<sup>1</sup> Full name of NA DD Tool: Analytical Framework for Land-Based Investments in African Agriculture, Due Diligence and Risk management for Land-Based Investments in Agriculture.

- If FPIC has not been obtained from indigenous peoples
- If the affected persons, and the community at large do not support the project as reflected in the final contract. Where national law or regional agreements require FPIC from all affected groups, this needs to be respected.
- If no monitoring mechanism is in place and/or no remedies clause is included in the contract
- If no complaint mechanism has been agreed upon and/or is not functioning effectively
- If corruption risks cannot be excluded or corruption is already observed in project context
- If the project will create or exacerbate local or national food insecurity.
- If infringements of human rights cannot be avoided.
- If there are serious risks of irreversible environmental damage (pollution of ground or surface water, soil erosion, destruction of wetland areas of ecological interest, proliferation of invasive species, etc.)

There was no case of expropriation, unresolved conflict and other serious violation of human rights. However, some of the abovementioned red lines did apply in the context of the project area, since the original lease was not based on proper consultation and engagement with local rights holders and conflict had started to emerge between community groups opposing the investment. Since the aim of the LEGEND project was in fact to deal with these issues and grievances, it was concluded that the project should proceed. Moreover, NHSL initiated the design of the project which shows that the company had the ambition and intention to resolve the issues around the contested lease.

The LEGEND project from the start was set out to: 1) acknowledge rights holders, 2) carry out an ongoing process of community sensitization and engagement, 3) offer transparent land lease agreements based on voluntary participation of land owners, 4) facilitate mapping of land rights and reduce the concession size, 5) informing and training stakeholders about land rights, 6) mitigate negative impact on natural resources and 7) contribute to improved food security through training in agricultural practices.

### **3.2 Red lines review: Looking back**

In the list below for each red line there is a brief reflection on how it was addressed. On the following two topics there is additional supporting narrative to explain in more detail what was done and how it worked out in the project: 1) Community engagement and the diversity of stakeholder groups, 2) Grievance and dispute resolution mechanisms.

- **If resolving existing conflicts is not possible**

The MSP Platform enabled communication and engagement among stakeholders. This helped to address and defuse conflict between community groups. Sensitization on land rights and on the National Land Policy combined with transparent information about NHSL and the process moving forward built trust and enabled dialogue. In addition, a diversity of grievance and dispute resolution mechanisms are in place to prevent and resolve conflicts. (see Case 2, p.10)

- **Lack of reliable mapping of all legitimate land rights, impact assessments and ESIA**

The participatory mapping and direct lease agreements with the landowning families (based on GPS demarcated areas) have filled the gap of reliable mapping. However, lack of land administration systems at the level of local authorities means that such process is figured out by private sector and civil society. By setting up community land committees and by engaging traditional and district authorities, the result

of mapping is embedded within local institutions but this requires more attention and support to develop institutional capacity and land administration system which aligns the local, district and national level.

- **If the impacts on legitimate local land rights cannot be mitigated**

The approach towards lease agreements fully takes into account the rights of landowning families. However, the impact on land users - who are affected by changes on land use but do not have the power to decide - proved a specific challenge. NAMATI was contracted to lead in the negotiation of the terms of the lease to ensure sufficient crop compensation. As a result, the crop compensation was increased from 35 USD to 88 USD, but a full assessment of actual crops on the ground was lacking and compensation payments were directed to landowners with the risk of actual land users not receiving any compensation.

- **If involuntary displacement through expropriation cannot be avoided**

Not applicable

- **If existing land tenure conflicts or violence in the area worsens as a result of the project**

Existing tensions were resolved through the MSP, however conflict within households of landowning families did occur which was cause for NHSL to not enter into a lease agreement with some families. Secondly, one community did not agree to the participatory mapping, which also caused for NHSL to disengage from that area. Lastly, looking towards the future, it is critical to monitor how oil palm development in the area affects inequalities within and between communities. Understanding how different groups benefit or not is key to address a potential new source of conflict resulting from rising inequality.

- **If stakeholders have not been and cannot be consulted properly**

Community outreach and sensitization, the MSP platform and participatory mapping are examples of different phases of consultation. However, there is a clear challenge with diversity of stakeholder groups and the efforts a company should make in dealing with these different groups, depending on the direct relationship with the company. (See Case 1, p. 10)

- **If those who signed the contract are not the legal or legitimate representatives of the local land rights holders**

That was the case with the original concession, which was signed by the former Paramount Chief. This is the prime reason for dissolving the original agreement and replacing it with a bottom up lease where landowning families signed directly.

- **If FPIC has not been obtained from indigenous peoples**

The lease agreement with landowning families is the formal consent at the end of an intensive process of sensitization, engagement, mapping and negotiation on the terms of the lease, with support from NAMATI.



- If the affected persons, and the community at large do not support the project as reflected in the final contract. Where national law or regional agreements require FPIC from all affected groups, this needs to be respected.

See above.

- If no monitoring mechanism is in place and/or no remedies clause is included in the contract

Delivering on the actual lease agreement requires monitoring over time, since there are key clauses in the lease which should benefit landowners and communities, such as community development and profit sharing as well as the outgrower scheme. For every 10 hectares, 1 hectare is cleared for the landowners to take part in the outgrower scheme. Since NHSL is not yet in full operations, close monitoring is required throughout the process to ensure the company delivers on the lease agreement.

- If no complaint mechanism has been agreed upon and/or is not functioning effectively

Complaint mechanisms have been agreed upon, but this has to be monitored over time to see if it is effective. (See Case 2, p.10)

- If corruption risks cannot be excluded or corruption is already observed in project context

Not applicable

- If the project will create or exacerbate local or national food insecurity.

Food security interventions have been initiated under the LEGEND project to mitigate this risk and to create a positive impact by supporting agricultural production on food crops such as groundnut, cassava and rice. It is recommended that NHSL continues with this support and monitors the food security situation in and around their operational area.

- If infringements of human rights cannot be avoided.

Not applicable

- If there are serious risks of irreversible environmental damage (pollution of ground or surface water, soil erosion, destruction of wetland areas of ecological interest, proliferation of invasive species, etc.)

Environmental conditions and requirements are included in the lease which ensures that this is legally binding and the company can be held accountable through law. This is important since the Environmental Protection Agency (EPA) in Sierra Leone has limited capacity, and therefore having this strong environmental protection clause in the lease puts the community in a strong position to take the company directly to court, without working through the EPA.

### **3.3 Usefulness of the New Alliance Tool**

Halfway through the implementation of the project, we came to a preliminary conclusion regarding the usefulness of the New Alliance Tool. The guidelines are a static document which functions as a reference point, but the actual challenge is to make it operational in a messy reality where dynamics change and ad

hoc responses are required. We concluded that a clear timeline, division of roles and quality requirements for evidence are lacking in the current New Alliance Tool. We are not suggesting to adapt and develop the tool further, but rather see a need to clarify the limitations of the checklist format and emphasize the importance of looking at due diligence as an ongoing process which entails: 1) working in partnerships 2) understanding of different roles and responsibilities in these partnerships (for example from the perspective of the company, the investor, local and national government, various CSOs, community representation etc.) and 3) identification of project phases or “markers” on a project timeline in which plans, progress to date, feedback etc. are clearly communicated and shared with partners and stakeholders. On this timeline, some activities are one-off and can be ticked as done, while others - such as stakeholder engagement - are a continuous process and need to be planned and communicated clearly in advance to ensure continued transparency and trust among partners/stakeholders involved.<sup>2</sup> Below cases are provided to illustrate the dynamic situation of the project reality.

### **Case 1: Community engagement and the diversity of stakeholder groups**

Community engagement was started by NHSL before the start of the LEGEND project. This process had resulted in the formation of two opposing groups in the community, **the Makpele Individual Land Owners Association (MILA) and Makpele Land Owners and Users Association (MAKLOUA)**. MILA members were in favour of the planned investment and had already agreed to lease a portion of their land. MAKLOUA was opposing the lease because they did not agree with the original illegitimate concession. Before the LEGEND project, NHSL maintained communication with MILA but not with MAKLOUA. The MSP enabled inclusion of the different groups and representatives from the communities and MAKLOUA became part of the dialogue. This was important for dissolving conflicts and clearing misinformation between the factions of the community.

This background and the changes over time in the composition of stakeholder groups show that an adaptive approach is required when it comes to community engagement. There are two layers to differentiate: First, the company approach to community engagement, which was focused on the information process and negotiation of the lease agreement. Secondly, the LEGEND project activities such as sensitization of communities on the National Land Policy and food security interventions which targeted the communities as a whole in NHSL operational areas. The LEGEND project also invited relevant government and CSO representatives from the district, regional and national levels to participate in the quarterly MSP meetings.

This distinction is important because it touches on the scope and reach of a company’s responsibility on who to engage with and how. The LEGEND project expanded the scope and reach of community engagement. In addition, over time – depending on what land owners decided regarding cooperating with NHSL or not - the targeted community is no longer homogenous. Within communities, there are now families who decided to lease and families who decided not to lease land to NHSL. Meaning that within communities, people maintain a different relation with NHSL from that moment on and therefore they experience the interaction and communication with NHSL differently. Moreover, depending on the amount of land available, the amount of land leased, land tenure arrangements and the food security situation in communities will play out differently. Only over time it will be possible to see who are

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<sup>2</sup> Solidaridad LEGEND Learning Story Q4: Learning theme i: Application, development, adaptation and usefulness of New Alliance tool for land Due Diligence tool (and similar tools that reflect VGGT principles).

benefitting and who are affected negatively by the NHSL investments. Some measures to mitigate risks for negative effects have been the participatory mapping, which allowed setting aside of land for food production, the food security interventions and the economic empowerment through Village Savings and Loans Associations.

## **Case 2: Grievance and dispute resolution mechanisms**

In collaboration with NAMATI, a quick scoping was done on the existence and functioning of conflict resolution mechanism. It showed that conflict was dealt with through mediation of traditional authorities. A variety of grievance redress mechanisms were needed to deal with issues and complaints, because not all cases fall within the mandate or scope of the company to address. For example the lease payments from NHSL to landowning families were a cause for internal family conflict, since the person who cashed the check would sometimes return with part of the money missing. Then the family would complain to NHSL, but the company cannot be held accountable for someone in the family walking away with the money. These cases are now diverted to senior chief or grievance committee, while at the start they were addressed by the company.

Nonetheless, there are specific issues which are between NHSL and communities: if a machine enters someone's land or NHSL causes pollution, or a vehicle damages property or a person/animal, those cases have to be addressed by NHSL directly. The complaints mechanism for such issues is user friendly and fitting for the context. Somebody with a complaint goes to the NHSL office in Zimmi or they can file a complaint with the community relations officer or use the various channels (complaint boxes) in the communities established through this project to register their grievances.

The example of money going missing after collection of lease payments was successfully resolved by working together with chieftom authorities and NHSL. The solution presented was that four, instead of two people now collect the money and keep other family members well informed. There are some practicalities to the payment: the check has to be in one persons name and people have to travel to Zimmi to pick up the check. By making the collection of the payment a shared responsibility of four family members, the issue has been significantly resolved. Furthermore, if a family wants to appoint a different person, then they inform NHSL to change it in their administration. This example shows how the variety of grievance redress mechanisms can help find solutions.

## **4. SUMMARY OF LESSONS**

The lessons listed below speak to 1) the dynamic process of due diligence, 2) the complexity to navigate judicial frameworks, sustainability standards and due diligence guidelines and 3) the application of tools and methods (such as FPIC, participatory mapping)

**1. Throughout the process of due diligence, stakeholder groups within affected communities and their stake in relation to the investment changes. This requires adaptive management from the company involved to ensure respective stakeholder groups are sufficiently and appropriately informed, engaged and supported.**

In the case of NHSL the situation changed multiple times. During the period of the original concessions there were two main stakeholder groups, MILA and MAKLOUA. MILA was in favor of the investment of the company while MAKLOUA opposed it. NHSL maintained close relations with MILA but was not in contact with MAKLOUA. During the LEGEND project the MSP platform created the space for open talk and communication with MAKLOUA resumed and tensions were defused. The LEGEND project, exposed all 8 communities in the NHSL operational area to sensitization on the National Land Policy, formation of farmer groups for food crops production and Village Savings and Loans Associations (VSLAs) which enhanced economic empowerment and food security by 45% compared to the baseline food security situation in 2017. This support was not restricted to landowning families leasing to NHSL. Hence, the LEGEND project created an additional layer of community engagement, beyond direct relationship with the company. To build sustainably on the achievements of the LEGEND project, the continuation of the MSP by the chiefdom stakeholders is critical, as well as clear management of expectations from NHSL on their role regarding community engagement beyond the landowning families who lease land. This depends on how the management views its responsibility, specifically on addressing food security, beyond the projects end.

**2. Navigating the combination of national legal frameworks, market standards and additional due diligence guidance is complex and does not translate into a straightforward operational plan at company level. Especially since these rules and frameworks are also subject to change over time. Therefore, a company should make clear and transparent statements on its own standards and ambitions, on which it can be held accountable by partners and other stakeholders. In addition, a company should build local capacity and strong relationships with government institutions, civil society and ensure a good understanding of community dynamics to take a context sensitive approach.**

NHSL acquired (inherited) the original concession before the new National Land Policy in Sierra Leone came into being. Clearly a 30,700 hectare lease without community consultation and consent would not have been possible under the new land policy, as it stipulates a maximum amount of land for investment of 5000 hectares and protects the rights of landowning and land using families to decide on their land. For this reason, the proposed project target to reduce the lease to 10.000 hectares was further reduced to only a total of 2,320 hectares. However, from the start NHSL has been vocal about striving for the RSPO standard, which requires FPIC from landowning families as well as good community relations, mitigating and preventing negative impact from the proposed investment. In addition, it was NHSL who initiated the design of the LEGEND project, which shows their intention to dissolve the original concession and build a land lease agreement from the bottom up. Throughout the project, it has however been clear that this process could not have been carried out by the company alone. Solidaridad played a critical role as a neutral facilitator, setting up the MSP, sensitizing communities on the National Land Policy and bringing in NAMATI to provide training on grievance redress mechanisms and legal support on behalf of the community during negotiations on the terms of the lease. In the future, it is foreseen that SLIEPA (Sierra Leone Investment and Export Promotion Agency) provides for a central point of contact in which investors are informed and guided by the Agricultural Investment Approval Process, ensuring alignment with Sierra Leone National Policies.

Moreover, NAMATI stressed the relevance of international best practice such as RSPO into the discussion with SLIEPA. NAMATI sees it as a real added value when a company aims for this type of certification, since they behave themselves better and are held accountable at other levels as well.

Daniel Sesay from NAMATI stated that: *"RSPO helped a lot. A lot of things RSPO looks into helped to guide the process. The mapping guided by RSPO process, FPIC, participatory mapping, also issues around organizing communities were supported by RSPO processes. If a company cares about their RSPO certification, they will always worry about certification and want to get things right."*

*"(...) the RSPO process has helped a lot in these negotiations (between community and company), because there are best practices we can bring in as part of the discussion. (...) We are now trying to get companies and SLIEPA to bring in this level of certification. It is not compulsory, but we say "It will make it easier for you" (by following best practice)."*<sup>3</sup>

This statement from NAMATI shows that there are also benefits resulting from this complexity, leveraging the national policy framework with the market standards that push for corporate social responsibility.

### **3. Civil Society Organizations and Private Sector need to work in partnership, but each play a fundamentally different role. This understanding among staff members within both the NGO and company is key to deliver a trusted and accepted due diligence process.**

Being the lead implementing partner of the LEGEND project, Solidaridad played a role of broker and mediator between the company, community and other local and national stakeholders. Since the company originally applied for the LEGEND project, it was first of all necessary to clarify roles in the project between the company and Solidaridad. A second challenge was that at the start of the project Solidaridad was seen as one and the same as NHSL: *"Initially, it was a challenge to gain the trust of the local communities. They viewed Solidaridad as working for the big company and serving its interests, since we did not have our own office at the start and operated from the company's compound. We had to work hard to gain their trust. It helped when we took community representatives to the wider chieftom, provincial and even national level to meet other stakeholders, because they now realized that we were working on a larger, nationally embedded agenda to ensure responsible land-based investments. We slowly gained their trust, also by proximity and providing them valued support."* (Quote N. Jengre, ECDPM article). Throughout the project it remained a balancing act, how to work constructively as partners towards a shared goal, but sometimes with very different ideas on how to get there. By sharing perspectives but also at times setting clear boundaries and conditions, the partnership worked from both sides.

A similar situation unfolded in the partnership between NHSL and NAMATI, where the company did not fully understand that NAMATI serves the community. Daniel Sesay from NAMATI stated in an interview in preparation for the LANDac conference held in July 2019: "Some companies think that when CSOs are in there, they are there to play the middle role. To make sure the lease agreement goes on. That is what they misunderstand completely. They do not realize that CSOs like NAMATI are there for the communities. We are not any way in the middle. We do not come like arbitrators; we are actually on the community's side. Everything we say or do is on behalf of the community. Companies miss out on this. Although at times we do advise the company on the process. It took NHSL time to understand that NAMATI is on the community side. We are not coming in for mediation, we come in for negotiation and we are on the community side. They are the weaker one, they do not have the resources to pay for the lawyer, so we act as lawyer and we are not there to mediate."

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<sup>3</sup> Based on interview in preparation for the LANDac conference in July 2019 on the subject of "Dynamics of Due Diligence" held in Utrecht, The Netherlands.

**4. The approach of Participatory Mapping can easily be misused to serve specific objectives and interest. Timing, preparation and ownership of community stakeholders are critical factors for participatory mapping to be of value and true to the purpose of the approach.**

As part of the process building towards the new lease arrangement with Individual Landowners, a key requirement for Natural Habitats to fulfill was to conduct a participatory mapping exercise in which community representatives lead or take an active part in mapping the various land uses in their communities. The purpose for NHSL is to confirm the plots of land to be leased are not in use or of importance to community members, since this process of participatory mapping will allow for such issues to uncover. The aim was to use the participatory mapping as a validation exercise for the individual and family land plots identified to be leased and get a sign off on these maps.

However, in the process of planning and executing this participatory mapping, we discussed key criteria which affect the quality and ultimate purpose of the exercise. These criteria are:

- *Scope and timeline:*

There was significant time pressure to conduct the participatory mapping as quick as possible to be able to proceed with planting before the planting season ended. In the end the window for planting was lost, but the timing was still tight to allow for sensitization on purpose of the mapping and the actual mapping days in all communities.

- *Team composition:*

Natural Habitats took the lead and one team member each from Solidaridad and Namati were present for each mapping activity. We stressed the importance of having a neutral facilitator and not have the company take the lead, since they have a stake in the land. The thinking is that the company should not influence the dynamics of participatory mapping. However, considering the importance of getting the work done quickly and the guidance provided by RSPO, NHSL felt confident to take the lead. The team was trained according to guidance document developed by NHSL, inspired by RSPO and commented on by Solidaridad.

- *Sensitization and training*

The purpose and approach of the mapping was explained in each community to get their consent and participation for the mapping to take place. However, considering the devised approach beforehand, the exercise did not allow for a participatory process in defining the variety of land uses, values and functions of the land. This is actually a critical part of the process to take into consideration the variety of dependencies on the land within the community from diverse perspectives. The focus of the mapping was purely on delineating the plots with GPS receivers.

- Formation of village land use committees

Lastly, in line with the National Land Policy, village land use committees were formed to have a diverse and representative group who act as focal point regarding the maps and land use plans in the community. Although there are positive experiences based on the expertise of Namati regarding the value of such village land use committees, the process has been rushed and did not allow to build the necessary capacity of such committees.



The experience shared above shows the tension of fulfilling a requirement as a company versus the true purpose of participatory mapping - which should empower and enable communities to consider their land uses and develop a land use plan. Throughout the process of designing and implementation of the participatory mapping, dialogue was open with constructive discussions between NH, Solidaridad and Namati. Suggestions, critique and feedback were provided in all directions.

The exercise did achieve the narrow objective that was set out: to validate the boundaries of land leased to NHSL by family members. The strong aspect of this exercise was that "the participatory land mappings (...) included not only those who had agreed to lease their land but also those who had not agreed. This was an important aspect of the trust-building exercise: all relevant stakeholders were included, regardless of their views and positioning."<sup>4</sup> A second strong aspect was that community members were trained on using the GPS receivers for the actual mapping, which further instilled trust and understanding of the process. Thirdly, MAKLOUA who until then opposed the lease finally joined the mapping exercise. This was a clear demonstration that they were satisfied with the process leading to a new lease agreement.

Overall, another important result of the participatory mapping was the further reduction of land leased by landowners towards NHSL. Since the mapping activity informed them about the actual amount of land they have and this caused them to reconsider and reduce the amount they wanted to lease to the company. Availability of land for food production was the primary reason for landowners reducing the amount of land leased to the company. Thus, originally a total of 3,302 hectares was leased to NHSL but after the mapping exercise it was reduced to 2,320 hectares, meaning the sum of land leased reduced almost 1000 hectares as a result of conscious decision making by landowners to spare land for food cultivation.

**5. The MSP model is a critical tool to enable and ensure responsible land based investment: this dialogue space allows for participatory and open talk about land issues, land rights and planned investments. The platform proved to be vital for the necessary transparent communication and capacity building in the LEGEND project.**

This lesson relates back to lesson 1, on how to communicate and engage appropriately with different stakeholder groups. The MSP provides a format in which both direct stakeholders and more indirectly affected stakeholders can be equally represented and engaged. In the LEGEND project it was the MAKLOUA group who felt left out and not heard, while they in fact had serious grievances regarding the original concession. The women and youth in the chiefdom also felt left out since traditionally land deals are handled by matured men only. The MSP allowed for a space where the MAKLOUA group, women and the youth could voice their concerns and be heard.

An MSP requires a neutral facilitator without a stake or interest in the proposed investment. The MSP model is an inclusive and participatory approach to build capacity and raise awareness, and can provide for open and transparent information about the context, different perspectives and planned interventions. The MSP model can be seen as a critical tool to enable and ensure responsible land based investment.

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<sup>4</sup> Quote Nicholas Jengre, Country Manager Solidaridad Sierra Leone in ECDPM Great Insights (Volume 8, Issue 1 2018/2019 <https://ecdpm.org/great-insights/civil-society-business-same-direction/>).

**6. The source of funding and availability of financial support for capacity building on land rights, land use planning and dealing with investors is lacking at the level of communities and local authorities.**

The LEGEND funding enabled the partnerships between Solidaridad, NHSL and NAMATI as well as with key local and national stakeholders, including traditional authorities and relevant ministries. The project allowed for a range of activities to be organized and facilitated a process towards responsible land based investment in a context where capacity in overall systems of land administration falls short; human capacity as well as institutional capacity. However, donor funding is not readily available to provide this kind of support to companies in every investment situation. In the context of Sierra Leone, NAMATI is pushing for a Justice Fund to which every company or investor has to contribute, to ensure there is a neutral fund available to support community sensitization, capacity building, land use planning and legal support during negotiation of the lease agreement.

**7. In addition to guidelines for investors on due diligence, there is a need for guidelines on how communities and local authorities can become investment ready.**

People need to know their rights and the value of land to understand their options and negotiate. Building on the capacity challenge raised above, local communities might not be aware of their individual or communal rights or lack the power and voice to stand up for these rights when confronted with investors' interest in their land. The question of who should provide them support is a delicate one, since this work is structurally underfunded and sometimes the company steps into this void – while at the same time having a clear interest in the investment going ahead. This point also strongly relates to the business model considered for investment: to what extent are local landowners and users part of the planned investment through outgrower models or shareholding? And how are these considerations taken on board in the due diligence process? Instead of having to consider this when the investor has already entered the stage with its own plans, communities need to organize themselves and prepare before investors enter the stage. This kind of "readiness" can not only ease the process when investors step in, but communities might be able to attract the kind of investment they would like to see in their area.

## **5. RECOMMENDATIONS**

### **5.1 For companies and investors:**

**1. Know the land, the history of the land and deal with the right people**

Between and within communities, even within land owning families, views and interests diverge. Companies require a thorough understanding of interests and rights related to the land to ensure inclusive and participatory engagement. In addition, it can be difficult to know who to deal with when it comes to local and national authorities, especially when state and customary authorities operate in the same space.

## **2. Timing matters: don't rush the process, it will only take you longer**

When the state arranges the land deal before a company comes in, community engagement or possibly even displacement might have happened already. Expectations are raised (i.e. improved infrastructure or other benefits promised) or conflict sparked, outside of the company's control but it now has to deal with the consequences. Secondly, during the process, there will be actors who are keen to rush (to see benefits in the short term) and there will be actors who are keen to go slow or stall the process. The key recommendation here is that it is better to go slow and do justice to rights holders, than go too fast and end up with conflict. Lastly, the question whether due diligence has an end point or is rather a continuous process sheds light on the fact that engagement with local stakeholders will be ongoing and monitoring on impact is required to track positive as well as negative outcomes of the investment to be able to steer towards more equitable development and benefit sharing over time.

## **3. Companies need to look at the relationship with communities as a partnership: if they thrive and benefit from the investment, the company will benefit from their support.**

Corporate Social Responsibility should be community focused and not just focus on beneficiaries or landowners (also land users) in the Chiefdom. Economic empowerment of women through Village Savings and Loan Schemes as well as support on inputs for agricultural activities are examples of such interventions. Also, there is a need for open dialogue at all levels to ensure trust and transparency.

## **5.2 For government:**

### **1. Government should demonstrate commitment and coordinate alignment of government processes.**

Government should serve as a facilitator not as a lessor (of the land). There is an urgent need for roll out of the National Land Policy, as supported by FAO. This will also help coordination from national level down to community level and provide clarity on processes and systems to deal with land matters in a transparent and equitable way. Both communities and companies are at risk as a result of delay of taking action from the government and delays on the part of the government in approval and documentation.

### **2. The Agricultural Investment Approval Process (AIAP) can help increase inclusive and transparent decision making regarding investment deals**

It is the responsibility of the government to create an enabling environment for both the investor and communities, by providing policy and guidelines review and improve ease of business registration processes. Formalizing and rolling out the AIAP allows for a standardized system both at the local and national level. Existing investors can continue engagement, but have to review land lease agreement in line with both the NLP and AIAP. New investors can then follow the NLP and AIAP from the start. Relevant lessons from LEGEND to take on board in AIAP are the legal support in the lease renegotiation, the inclusion of women and youth in all land deals and the conflict redress mechanism.

### **3. Ministry of Agriculture should lead on the crop compensation procedure and make CSR binding in policy (preferably include this requirement in AIAP).**

Currently, there is a loose list of crops and compensation prices. This calls for a more comprehensive policy that can be turned into law, and where compensation prices are reviewed over time. The mechanics around crop compensation have to be more clear and consistent. Presently, land users are losing out because they depend on the land and they will not benefit from the lease. The policy has to

provide clarity on how to conduct the land use assessment and how to get compensation to the right people. As it stands, companies prefer to go the easy way: conducting an assessment of land uses is time consuming and increases costs, which companies are not willing to do. Secondly, there is one Agricultural Investments Incentive policy saying companies should do CSR but it is not binding. When the CSR become compulsory, it would further reinforce responsible conduct in alignment with AIAP and the National Land Policy.

## **5.3 For NGOs:**

### **1. NGOs should support communities to become investment ready**

Many NGOs focus on the conflicts around investment projects and then point to the role of the private sector in not doing the right thing. A recommendation towards NGOs is to build local capacity on rights and help set up structures for dialogue and planning to ensure communities have the skills to bring their own agenda to the table. Secondly, it is important that NGOs help the voice of the community to be heard, but sometimes NGOs speak on behalf of communities while they do not necessarily feel represented by them. It is important to build capacity of community representatives for them to be able to voice their own concerns and ideas for the future. NGOs are positioned to connect stakeholders and bring community voices to the table by inviting them or helping them to attend.

### **2. NGOs should actively partner with communities, private sector and government, to ensure there is long term sustainability of interventions**

NGOs can play the unique role of creating the enabling environment in which cooperation between communities, private sector and government institutions takes place. It is important to set up structures which last beyond the project intervention to facilitate this cooperation in the long term. The MSP is an example of such dialogue structure, but also the setting up of Community Land Committees or supporting the design and testing of the AIAP process coordinated by SLIEPA are examples of capacities and structures which will carry on after the project ends.

### **Concluding remark**

Apart from concluding the obvious: that due diligence is all but a straightforward process, highly context specific and requires deep local knowledge to organize meaningful engagement, from our experience working with private sector in the oil palm sector as well as in other agricultural commodity sectors it is clear that the subject needs more attention. It is important to open up space to share lessons and experiences – with private sector in the room, especially on a complex and sensitive subject as due diligence and responsible land-based investment. Companies can learn from each other and also from the vast body of knowledge generated through the LEGEND programme.

**Annex I: Table on Application of New Alliance Due Diligence Tool on Theme I: Tenure Rights**

	AFDD	Issue/situation	What was done to redress?	Policy implication	Lessons to apply in different context
I	<b>Land Tenure</b>				
I.1	Identify and recognize all legitimate land rights holders including those with customary, secondary, seasonal and other use rights	NHSL recognized all legitimate rightsholders from the start and initiated an active outreach approach to engage with communities that live in the concession area and could become (optional) part of the NHSL operation by leasing their land.	<b>Communicate intention:</b> Intention of NHSL to respect land rights was stated clearly and publicly from the start of the investment, supported by the fact that they aim for RSPO certification and applied for LEGEND funding for support.	SLIEPA has to inform companies actively about risks and expectations regarding responsible land based investment. Companies need to be aware that they have to recognize legitimate land rights holders and will be held accountable, bottom up and top down.	NHSL maintained relations with the communities who were in favor of the investment (MILA), but they did not manage to maintain relations with the communities who were opposing the investment. Companies need to be aware of the growing tension among communities in dealing with the company. The LEGEND project allowed for a neutral mediator (Solidaridad) who could set up transparent communication through inclusive engagement in MSP.
I.2	Consult with experts regarding national and local laws and customary practices relating to land.	Given the dual legal system of statutory law and customary law as well as an additional layer of international voluntary guidelines (VGGT, RSPO) provide for a complex web of legal and beyond legal requirements.	Bring in neutral facilitator to organize dialogue between stakeholders involved and ensure transparent and open communication to understand the grievances regarding the original lease and to explore the requirements and conditions to work towards a new lease.	Invest in sensitization of land owners and users on the NLP to know and protect their right to land. Train Chiefs and Local Authorities (village, district) on NLP and support district level land use mapping. Set up Legal Support Fund for direct support from paralegals to communities.	A company cannot act in isolation and attempt to understand the context objectively. There is not one legal truth. A company has to deal with multiple perspectives and requires a neutral convenor and a transparent process to manage expectations and enable participation. The community developed their own consultation procedure (poster), which signals they are aware of their rights and required procedures.
I.3	Check with government officials and review land records.	Original lease acquired by NH considered illegitimate under NLP; key points are: lack of inclusion of landowners and users in decisionmaking and the size of the deal exceeds maximum of 5000 HA indicated by NLP.	NHSL acknowledged the illegitimate status of the lease and took initiative to follow a process of engagement towards negotiating a new, legitimate lease from the bottom up - based on FPIC.	Align village, chiefdom, district and national level requirements for lease consultation procedures and administration of the lease agreement to provide clarity for companies and manage a central register of land lease contracts.	The misconception that a deal negotiated with government officials or PC is considered legal is a big risk for companies. Legitimate land rights holders should be consulted (FPIC) and the company is directly accountable to communities.
I.4	Consult with communities and do participatory mappings with them to identify legitimate land rights holders and uses.	NHSL started a process of engaging land owning families to agree or opt out of leasing land. This process resulted in acquisition of 3302 HA of land. However, set aside land for food production and conflict within landowning families was not addressed.	The LEGEND project facilitated a process of participatory mapping which helped identify the total area of land owned by family's willing to lease land, identifying # hectares to lease and # of hectares to set aside for food production. In addition, boundary disputes were addressed and families which did not agree internally were not included in the lease.	Include safeguards and provisions to set aside land for food production in guidance for investors and companies; support district land use planning and take into account food security needs and related land use needs (i.e. housing development, infrastructure) considering future developments in (expanding) communities.	Community legal support and participatory mapping exercises should be contracted independently of investors and operating companies to avoid the risk of bias.
I.5	Check historical process of land acquisition and identifying existing conflicts related to land rights	The original lease was acquired by NHSL from WAA2. WAA2 negotiated the lease agreement with the former PC and the lease covered the entire Chiefdom, including part of the Gola National Park (protected forest).	The history of the lease resulted in different factions in the communities, those in favor of the lease and those opposing the lease. Through neutral facilitation of dialogue (MSP) the conflict between the opposing groups and the company could be dealt with.	Lease agreements which date from before the NLP and are not in alignment with NLP require revision and amendments to prevent conflict arising from right holders who feel deprived from their land (example: Socfin case).	The company was not positioned to close the gap between opposing stakeholder groups, since the company is not neutral or objective. At the same time, it was lack of inclusion and lack of communication by the company with the opponents which fueled further discontent against the company. Dialogue and consistent, open and transparent engagement helped build positive relationships with all stakeholder groups.
I.6	Prior to starting negotiations, commission independent Environmental and Social Impact Assessment (ESIA) that includes a tenure assessment (transparent and participatory)	SEIA was conducted but with limited attention for the tenure situation.	The LEGEND project was initiated by NHSL to deal with the original lease and ensure the new lease would be conform FPIC. In that sense the process to redress the situation of the original illegitimate lease was initiated by the company.	Training of district authorities and PCs on the new land policy is required to ensure future land deals like the concession acquired by NHSL will not occur in the future.	Formal procedures like ESIA fall short when the responsible authorities are not aware or do not adhere to national policies regarding land rights or environmental protection. These procedures only fulfill their promise if there is sufficient human capacity, systematic administration and quality control to monitor and follow up.
I.7	Be sensitive to vulnerable groups.	Women are entitled to own land under the new land policy, but culturally this is not (yet) accepted. Also the voices of youth are not always taken into account. Furthermore, the position of land users requires specific attention, given their dependency on the land but lack of voice in decisionmaking on leasing or not.	Both in community engagement and outreach as well as in organizing the MSP dialogue, participatory mapping or setting up Community Land Committees representation of groups was considered and respected to have voices of women and youth heard. The training and sensitization also addressed equality, inclusion and participation.	Given the strong emphasis on gender equality in the NLP (inspired by VGGT), government has a role to play in ensuring implementation of the new land policy, with specific emphasis on the rights of women to own land and inclusion in decisionmaking about land.	Gender Sensitive Land Tenure training combined with targeted engagement of chiefdom authorities regarding womens rights proved a strong combination to change local customs and beliefs regarding role of women. Also the Village Savings and Loan Schemes enabled women empowerment through women groups committing to saving and supporting each other in setting up businesses. This was combined with gender sensitive training on household dynamics, looking at the household as economic entity, addressing shared responsibilities.
I.8	Focus on women's land rights	See above	See above	See above	See above
I.9	Consider how the land will be acquired (purchase vs. lease)?	The intent from the start was to lease the land. There is a division rate for the lease payment where landowning families receive 50% of the lease payment and Chiefdom and District authorities each receive 20% and National government receives 10%. So there are multiple actors who benefit from lease payments.	The duration of the lease is 44 years, the lease can be extended by 21 years. The lease rent is revised every 7 years. Apart from the 50-20-20-10 division of the lease payment, landowning families receive an additional amount of 5 USD per hectare per year.	The lease agreement has to be with legitimate rightsholders, the landowning families. In this case the original master lease has benefitted chiefdom authorities by receiving lease payment, while individual landowners did not benefit. This type of situation has to be addressed, since it shows misuse of power at the costs of both community and company.	The company had to navigate a complex situation transitioning from the old to new lease, which brought along multiple financial obligations. This required clear communication about when the last payment would be made for the original lease, before it could be dissolved. Then the future payments to land owning families who agreed to the new lease could commence.

I.10	Consider project models that do not involve the transfer of land or at least the minimum land needed.	A shareholding model could have been considered. Possible an outgrower scheme will be developed.	For every 10 hectares, 1 hectare will be cleared for the landowning family who can use it to plant oil palm or other crops	Some land policies in other countries have a requirement for this kind of shareholding business model (Namibia, South Africa), this could be a recommendation for Sierra Leone to ensure partnership between communities and companies.	This has not been considered in the business model.
I.11	Consider impact on legitimate local land rights.	Land owning families lack documentation of their land and landrights. This is a risk in protecting their rights and makes them vulnerable for land grabbing.	The project started a process of identifying right holders and mapping the parcels of land through participatory mapping. The process of mapping and sensitization on the land policy has improved and strengthened awareness on legitimate rights.	This process should happen irrespective of investor interest in the land, because it is a prerequisite for securing land rights and enabling people to plan and decide how to use their land.	Land users should be considered as a specific stakeholder group who risk being excluded when it comes to decisionmaking about leasing land. They will be directly affected and loose access to their source of livelihood. Adequate compensation is required.