

STILL BANKING ON LAND GRABS

AUSTRALIA'S BIG FOUR BANKS
AND LAND GRABS



OXFAM
Australia

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"I WANT THE BANK TO GIVE ME THEIR PROFITS BECAUSE THE BANK GAVE THE LOAN TO [THE SUGAR COMPANY] ... THE BANK HAS TO GIVE US THEIR PROFITS BACK AS COMPENSATION. I'VE BEEN TO PROTEST OUTSIDE THE BANK TWICE." "VICHEKA", 58, KAMPONG SPEU, CAMBODIA (SEE P. 32-43)³

Cover photo: Kampong Speu Cambodia: As occurs in many land grabs cases, after losing their land and livelihoods some people in Kampong Speu seek out work on the very plantation that evicted them. Photo: Thomas Cristofolletti/Ruom/OxfamAUS.

This page: Near Dourados, Mato Grosso do Sul, Brazil: Local people seeking to return to recognised indigenous land claim that farmers obstructing the return of their land use chemicals and pesticides that pollute the water, causing diarrhoea and skin diseases. Photo: Eduardo Martino/Oxfam.

“THE INDIGENOUS PEOPLE WOULD REALLY LIKE TO THANK THOSE PEOPLE WHO ARE WRITING TO THE BANK TO PUT PRESSURE ON THEM [THE AGRIBUSINESS COMPANY], AS THEY’RE REALLY HELPING US.”

ROBSON DUARTE, 22, FROM THE GUARANI-KAIOWÁ INDIGENOUS GROUP IN MATO GROSSO DO SUL, BRAZIL, OCTOBER 2014 (SEE P. 14-15)¹



“I ASK ANZ BANK TO PLEASE HELP ME AND PROVIDE ME WITH JUSTICE. I HAVE TEN PEOPLE IN MY FAMILY, EIGHT CHILDREN. WE NOW DON’T HAVE ENOUGH TO EAT, TO SUPPORT THE FAMILY. WE DO NOT HAVE ANYTHING LEFT.”

“MAKARA”, 49, KAMPONG SPEU, CAMBODIA (SEE P. 32-43)²

EXECUTIVE SUMMARY

LAND GRABS DESTROY LIVES AND LOCAL ENVIRONMENTS

“I HAD DOCUMENTS FROM THE LOCAL AUTHORITY PROVING THAT I WAS THE LANDOWNER ... THE COMPANY THEN HIRED PEOPLE WHO DROVE TO MY HOUSE, DESTROYED MY HOUSE AND PUT MY BELONGINGS IN THE CAR TO TAKE TO THE RESETTLEMENT SITE ... I JUST WANT ADEQUATE COMPENSATION TO SUPPORT MY KIDS AND MY FAMILY.”

“THIDA”, 55, KAMPONG SPEU, CAMBODIA⁴

Despite efforts by Australia’s four biggest banks to avoid comments like Thida’s getting to their shareholders and customers, stories like hers are slowly coming to light. Australians are increasingly calling on their banks to commit to respecting land rights across all their operations.

Land grabs — often involving forced evictions — are still taking place in some of the world’s poorest countries. This is having devastating impacts on the lives of vulnerable rural communities. Over the last 15 years, 40 million hectares have changed hands through large-scale land acquisitions — much of which is linked to agriculture and timber land grabs.

The impact of this is enormous. Land grabs are linked to falling living standards, increased homelessness and hunger, and the break-up of communities. Land grabs prevent many indigenous people from practising their culture. Predictably, women and girls are often disproportionately affected and experience the worst of these impacts.

Across the world, communities are standing up for their land rights. Access to land provides a key social safety net and helps to improve food security. What Thida and other community representatives object to are practices that displace them from their land with inadequate consultation, little or no compensation, and which frequently lead to devastating environmental impacts including polluted waterways and large-scale deforestation. Invariably women like Thida and their families and communities are left worse off.

In April 2014, Oxfam released a report that revealed how Australia’s big four banks — the Australia and New Zealand Banking Group (ANZ), the Commonwealth Bank (CBA), the National Australia Bank (NAB) and Westpac — were backing companies connected to land grabs, forcing people off their

land without adequate consent or compensation.

Scandalously, almost two years after the release of this report, *Banking on Shaky Ground*, little has changed.

TWO YEARS ON, WE REVEAL THAT AUSTRALIA’S BIG BANKS ARE STILL EXPOSED

Australians want more from the organisations they do business with. Under pressure from increasingly concerned customers and investors, the big four banks have claimed progress towards respecting land rights in their operations. While NAB and Westpac appear to be taking their exposure to land grabbing as a serious risk to their businesses, each developing new policies on land-related issues, CBA and ANZ have done little.

It is clear that none of the banks are doing nearly enough. Each continues to avoid working directly with communities to provide meaningful redress, and each continues to place communities, and Australians’ money, at risk. This report reveals new links between the big four banks and three of the initial case studies in *Banking on Shaky Ground*. It also provides evidence that, even after Oxfam first alerted the banks to their exposure to land grabs, all four banks committed tens of millions of dollars in loan facilities to the agribusiness firm Cargill.⁵ A former subsidiary of Cargill acquired large tracts of land in Colombia’s Altillanura region that had been set aside by law for family farming. In 2013, Oxfam noted that this concentration of land “exacerbates social inequality and conflict and worsens the country’s existing problem of concentrated land ownership”.⁶

Significantly, none of the banks included discussion of this additional exposure to allegations of land grabs in their 2014 and 2015 sustainability reports. This raises another important question: how reliably are banks reporting land-related risks to their shareholders and the wider public?

CBA

Two years ago, Oxfam revealed that CBA had invested in agribusiness giant Bunge. Bunge owns a Brazilian sugar mill that, at the time, was sourcing sugarcane from five farms in the Jatayvary area of Ponte Porã, Mato Grosso do Sul state. These farms are on land that the federal agency for indigenous affairs recognises as belonging to a local indigenous community.

Before Bunge’s investment in the mill, indigenous people were forced from their homelands and sugarcane plantations were established. The indigenous community reports additional human rights impacts such as violence, threats and increased health issues, which they attribute to fertilisers from sugarcane

farms running into the local water.

Bunge did not renew its Jatayvary contracts in 2015. While this is a positive step, it came only after years of the company sourcing from the farms against community wishes and years after a federal prosecutor requested Bunge to stop in 2011.

Today, despite Bunge allowing its contracts to expire, the community is still not able to return to their land. When Bunge invested in the new mill in 2008, and when CBA and Australia's other big four banks invested or loaned money to Bunge, they assumed responsibility for the company's suppliers' impacts on the community, including the social implications of their sourcing. Bunge and its investors have a responsibility to address their role in connection to the land conflict from 2008 to 2014.

So far CBA has not reported on how it has responded to its connection to five other land cases raised in *Banking on Shaky Ground*.⁷ Nor has it reported on its financing of Wilmar — another company profiled in the report.

WESTPAC

In Papua New Guinea (PNG), Westpac was linked to a timber company that was logging pristine rainforest. PNG's Commission of Inquiry into Special Agricultural and Business Leases found that the company WTK was connected to land leases that were invalid and should be revoked. As described in 2014 in *Banking on Shaky Ground*, public records and Oxfam's research showed that Westpac had a long standing financing relationship with the controversial logging company WTK Group in PNG, most likely including a line of credit or loan relationship.

Tracking back through a complex web of companies, Oxfam found that it was likely that WTK was linked to logging in the Turubu community in PNG's East Sepik province. Many local people were not adequately informed about the lease of their land, showing that adequate consent could not have been achieved. Since logging started in Turubu there have been food shortages, health problems, water pollution, the destruction of sacred sites and increased community conflicts.

Two months after the Oxfam report was released, the National Court of PNG ruled the Turubu land lease to be invalid.

In November 2014, Westpac presented new documents and a public statement on its relationship with the WTK Group in PNG, and stated that it has not had a relationship with one of WTK's subsidiaries, WTK Realty Ltd, since 2000. However, at the time, Westpac did not deny a relationship with a second subsidiary, Vanimo Forest Products Ltd. If true, Westpac's claims contradict other documents on the public record at the time that *Banking on Shaky Ground* was published. This points to one example of the importance of banks taking a proactive

approach to showing who they will and won't do business with. It also raises questions as to Westpac's relationship with WTK through its subsidiary company.

In November 2014, Westpac announced that it would commit to only lending to agribusiness companies that support the full free, prior and informed consent of local and indigenous communities through its new Financing Agribusiness policy. This commitment is significant and shows that the bank is taking concerns about land grabs seriously. However, Westpac continues to issue multi-million dollar loans to companies such as Bunge and Wilmar which are linked to disturbing human rights and environmental practices. How Westpac addresses these issues will be a key test of its new policy.

Meanwhile, logging continues in Turubu.

ANZ

Oxfam revealed in *Banking on Shaky Ground* that ANZ was linked to ten companies connected to credible allegations of land grabs, as well as the already public ANZ-Phnom Penh Sugar (PPS) case in Cambodia.

Since 2011, the ANZ bank had been part-financing a sugar plantation that was linked to child labour, military-backed land grabs, forced evictions and food shortages. The loan was made through its majority-owned Cambodian subsidiary, ANZ Royal Bank.

In July 2014, ANZ — without warning to the affected communities or the non-government organisations (NGOs) that support them — severed its ties with PPS after the company suddenly repaid its entire loan. Affected communities have called for ANZ to take a stand against human rights abuses and to return its profits from the deal to local people to help them rebuild their lives. While ANZ has emphasised its willingness to speak to communities, over the last two years this hasn't resulted in ANZ taking any meaningful action to improve the lives of people living in affected communities who have lost their land.

ANZ has not responded to detailed evidence presented by Oxfam of ANZ's links from 2009 to 2013 to companies connected to improper land acquisitions. ANZ's response on land grabs also casts real doubt over whether customers and investors can rely on ANZ to give an accurate appraisal of its exposure to land-related risk and associated human rights violations.

Of Oxfam's *Banking on Shaky Ground* report, ANZ claimed that "almost half the companies raised with us are not customers ... [and] of those that are customers, the claims ... have in several cases been previously publicly examined and resolved by our customers". Despite its apparent confidence in its operations, ANZ has declined to give any information to verify these claims.

In addition, ANZ has never reported to shareholders on how it has responded to concerning claims raised in PNG in a 2013 government inquiry into improper land leases. Despite this credible risk, ANZ still has no policy on agriculture or land issues. ANZ is also yet to substantially respond to Oxfam's 2014 report, *Banking on Shaky Ground*.

The bank has stated that it addresses land cases through its sensitive sector policy, yet it has no sensitive sector policy on land or agriculture and no process for redress. ANZ has also tried to distance itself from the PPS land grab and suggested that PPS has given "compensation", despite clearly documented reports that there was no systematic process of payments and that some people had received as little as \$50 or nothing at all.

Meanwhile, affected communities continue to call for redress.

New evidence reveals that ANZ is linked to all but one of the companies profiled in this report.

NAB

Banking on Shaky Ground revealed that since 2011 NAB had issued two major loans to Asian palm oil giant Wilmar, which has been linked to land grab allegations in Indonesia, Malaysia, Uganda and Nigeria. NAB has lent more than \$218 million to Wilmar, the world's leading processor and trader of palm oil. NAB loans came after Newsweek had ranked Wilmar as the least sustainable company in the world for its environmental performance for two years running (2011 and 2012).

After sustained pressure from communities and NGOs, Wilmar announced in December 2013 it would implement a policy on land grabs and improve its practices, thus putting it in front of its lender on this issue.

Over the past two years, Wilmar has made genuine efforts to enact its policy — for example, publishing a list of more than 800 mills from which it sources its palm oil. However, complaints about the company's operations and its supply chain continue. Several of these reference the company operating without the free, prior and informed consent of local communities. This report includes a new case study about Wilmar's connection to improper land acquisitions in Sumatra, Indonesia.

In June 2014, NAB became the first of the big four banks to commit to taking policy action on land grabs, releasing a new policy on improper land acquisitions. Drawing on the bank's pre-existing human rights commitments, the policy states how these apply to land and outlines what NAB will do to safeguard land rights across its lending and procurement practices. NAB has become the first bank to state that it will investigate opportunities to extend its disclosure in relation to its lending.

However, NAB has not matched Westpac's commitment on free, prior and informed consent. Despite its progress, NAB is yet to undertake any significant action to support justice for affected communities. It also did not report its additional connections to Bunge.

THE CASE OF COLOMBIA

Land distribution is extremely unequal in Colombia, with concentration of land ownership among the highest in the world. This inequality has been both a cause and consequence of internal armed conflict that has ravaged the country for more than half a century. Much-needed reforms have included the awarding of public land (*baldíos*) to small-scale family farmers to improve the incomes and quality of life of poor rural people.

However, a former subsidiary of Cargill — one of the world's largest agricultural commodity traders — managed to acquire a large area of land set aside for small-scale farming under national law through the use of 36 shell companies. This occurred in the face of significant social protest about land inequality.

All the big four Australian banks extended loan facilities to Cargill after the land accumulation in Colombia had been reported globally through two separate Oxfam reports in 2013 and 2014 and in Colombia's national press.

At a minimum, the banks should call for Cargill to enact a robust land rights policy to prevent these events from reoccurring and to prevent, mitigate and address similar land-related risks and impacts.

ONGOING RISKS

Both consumers and international initiatives that banks have committed to have made clear the expectation that companies should take responsibility for what happens in their operations, wherever they may be in the world.

Banks' reputations and market share are on the line when consumers learn of wrongdoing in the banks' networks of operations. Oxfam's investigations show that land grabs give rise to serious risks such as displacement, conflict, violence and loss of life. Association with companies connected to any of these is — rightly — incredibly damaging to a bank's reputation.

There is immense opportunity for companies that "invest ahead of the curve" to meet the growing demand for more ethical business.

KPMG notes "investing in projects that strengthen social license-to-operate" creates benefits "not only through reduced risk but also through strengthened brand value and increased

customer and employee loyalty”.

In simple terms, acting on land grabs is imperative to the banks reducing financial and reputational risks and to the new ways of doing business in the 21st century.

EMERGING FINANCIAL CITIZENSHIP IS DEMANDING RESPONSIBLE INVESTMENT

More and more Australians are realising their power to shape the future of finance and its social and environmental impacts. Collectively, Australians hold \$612 billion in their household bank accounts with the big four. This shows the extent of their consumer power.

Since the release of *Banking on Shaky Ground*, the response from Australians has been emphatic. Over the last two years, 20,000 Australians have called for the banks to take action on land grabs. In 2015, the Responsible Investment Association of Australasia (RIAA) described “a year of surging interest in responsible investment, with consumer apathy over investments rapidly dissolving and a growing focus on environmental, social and governance risks”. This is part of a growing national movement calling for more responsible finance, with everyday Australians becoming more educated and active on the impacts of finance

on human rights and the environment.

WHAT THE BANKS MUST DO

1. Know and Show their exposure to land risk. Uncover the risks and impacts to communities, and disclose their exposure to the agricultural commodities industry in emerging economies.
2. Commit to a Zero Tolerance for Land Grabs policy. This should include clear and public policy guidance for bank staff and investors as to their due diligence approach to the risk of land grabbing.
3. Advocate for responsible financing in emerging economies.
4. Ensure justice for affected communities whose cases are outlined in this report, including addressing community concerns and supporting fair redress.

WHERE THE BANKS STAND ON LAND GRABS	WESTPAC	NAB	CBA	ANZ
Respects communities’ rights to know who is financing or seeking to profit from their land and forests	No	No	No	No
A full commitment to free, prior and informed consent for indigenous and local communities	For loans, but not group-wide	No	No	No
A demonstrated commitment to work with communities to support redress	No	No	No	No
A detailed land rights commitment	Yes	Yes	No	No

BANK REPORTING ON CONNECTIONS TO COMPANIES FACING CREDIBLE ALLEGATIONS OF IMPROPER LAND ACQUISITIONS, AS RAISED BY OXFAM*	WESTPAC	NAB	CBA	ANZ
Bunge	No	No	Yes	No
Cargill†	No	No	No	No
Phnom Penh Sugar	-	-	-	Yes
Wilmar	No	Yes	No	-
WTK	Yes	-	-	No
Credible allegations of land grabbing from 2009-2013 made by other groups and referenced in <i>Banking on Shaky Ground</i>	No (2 companies)	-	No (5 companies)	No (10 companies)

* Based on bank reporting in 2014 and 2015.

† In 2013, Oxfam first reported Cargill’s land acquisitions in Colombia. This report is the first to publicly name the Australian banks and their links to Cargill.

1. STILL BANKING ON SHAKY GROUND

“CONSUMERS IN EVER GREATER NUMBERS ARE AWAKENING TO THE FACT THAT YOU CAN INVEST PRUDENTLY AND PROFITABLY WITHOUT COMPROMISING YOUR VALUES WHICH IS RESULTING IN THE GROWING RETAIL INTEREST IN RESPONSIBLE INVESTMENT.”

RESPONSIBLE INVESTMENT ASSOCIATION OF AUSTRALASIA, 2015⁸

Almost two years ago, thousands of Australians became aware for the first time that their money could be backing socially and environmentally destructive land grabs in vulnerable communities. Drawing on almost 12 months of research into the secretive world of finance, Oxfam’s *Banking on Shaky Ground* report revealed that each of Australia’s big four banks — the Australia and New Zealand Banking Group (ANZ), the Commonwealth Bank of Australia (CBA), the National Australia Bank (NAB) and Westpac — had concerning connections to agriculture and timber companies linked to improper land acquisitions overseas.

As Oxfam has often seen, lands grabs plunge whole communities into poverty — a phenomena sometimes described as “development in reverse”. For many rural and remote communities far from social services or infrastructure, land is their social safety net.

Revelations in recent years that some of the world’s largest agriculture and timber corporations are doing business in ways that tacitly, if not explicitly, include the improper acquisition of the land on which small-scale farmers and subsistence producers depend for survival are disturbing. That our big four banks could be using Australians’ money to back companies facing allegations of land grabs is deeply shocking. That a company could be connected to land grabs and human rights in any of its operations group-wide, should raise concerns and heightened due diligence in how the bank approaches any relationship with subsidiary or parent companies.

In response, tens of thousands of Australians have taken action and called for the big four banks to adopt a “Zero Tolerance for Land Grabs” approach.

Faced with thousands of letters of concern from customers and investors, and a surge of social and traditional media interest, each of the banks have claimed to act on land grabs. Each bank has discussed the issues with Oxfam. However discussion alone does not equate with meaningful engagement. Real engagement requires meaningful, concrete and visible change that contributes to significant outcomes for communities.

But what exactly have they done?

This report examines where each of the big four banks stand on their response to improper land acquisitions. It points to some hopeful signs — with both NAB and Westpac taking some significant steps to improve their land-related policies, even as their competitors fail to act. However, no bank has gone far enough. This is most evident in looking at the situation of communities profiled in *Banking on Shaky Ground* two years on. For these communities in Cambodia, Brazil, Papua New Guinea (PNG), Indonesia and further afield, nothing has changed.

And the banks continue to be exposed. This report reveals new links between the big four banks and three of the initial case studies in *Banking on Shaky Ground* — links that none of the banks have proactively commented on. It revisits cases that reveal some key themes concerning land-related risks for investors. It also details an additional case where, after Oxfam first alerted the banks to their exposure to land grabs, all four banks committed tens of millions of dollars in loan facilities in 2014 and 2015 to the agribusiness firm Cargill.⁹ As reported by Oxfam in 2013, a subsidiary of Cargill acquired large tracts of land in Colombia’s Altillanura region that had been destined by law for family farming. Oxfam noted that this concentration of land “exacerbates social inequality and conflict and worsens the country’s existing problem of concentrated land ownership.”¹⁰

While just a few years ago the banks could have relied on evading scrutiny, today we are witnessing the birth of a new movement of everyday Australians calling for responsible investment that gives a fair go to communities and doesn’t destroy the planet. In the coming years, the banks can be leaders or laggards in this move to more accountable, visible and responsible investment — but they cannot stem the tide.

Lunjuk village, Bengkulu, Indonesia: “Ahmad” works as a labourer after his family were pressured to give up their land. He had to leave school and has been unable to return. “If I want to survive I have to work and help my father” Photo: Kemal Jufri/Panos/Oxfam.



WHAT IS A LAND GRAB?

Since 2000, 40 million hectares of land — an area the size of Germany — have been snapped up in large-scale land deals.¹¹ According to the International Land Coalition, a large-scale land acquisition can be defined as the acquisition of any tract of land larger than 200 hectares or twice the average national land-holding.¹² These large-scale land deals have shifted land from local farmers, communities and forests to companies, largely driven by the international demand for timber and agricultural commodities such as sugar, palm oil and soy. Stories abound of large-scale land deals failing to respect local land rights, resulting in communities around the world being left hungry and homeless.¹³

A large-scale land acquisition becomes a land grab when it does one or more of the following:

- violates human rights, particularly those of women;
- flouts the principle of free, prior and informed consent (FPIC);
- takes place without a thorough assessment of the social, economic and environmental impacts;
- avoids transparent contracts with clear and binding commitments on employment and benefit sharing; and/or
- eschews democratic planning, independent oversight and meaningful participation of affected communities.¹⁴



Photo: Eduardo Martino/Oxfam

ANGELA AND ROBSON'S STORY

"We want our land back. Then we will have peace, land where everyone can grow everything ... This is what I want. If I have to wait another 15 years I may not make it. I'm old. I want it to happen soon."¹⁵

Angela Martins is part of the Guarani-Kaiowá Indigenous group who are recognised as the rightful occupants of the Jatayvary land in Ponta Porã, Mato Grosso do Sul state, Brazil. Large-scale farmers cashing in on Brazil's sugar and soy boom have resisted the process of land return to Angela's community (see P. 14-15).¹⁶ Angela's son, Robson Duarte, adds: "If we had our land, we would be more comfortable, relaxed, without threats, we would be secure and safe ... Many of us don't have jobs. We live off hunting, trap animals, that's how we live. The farmers threaten us with violence."¹⁷

From 2008 to 2014, a mill owned by the agribusiness company Bunge exacerbated the land conflict by buying sugarcane from these farms. *Banking on Shaky Ground* revealed that CBA managed \$14 million in shares in Bunge. This report reveals that, not only CBA, but all of Australia's big four banks have backed the company. Angela and Robson's community still cannot return to their land, their local waters are polluted and they experience food shortages.

MORE AUSTRALIANS ARE FLEXING THEIR FINANCIAL POWER

“ACTIONS TAKEN BY STAKEHOLDERS SUCH AS WORKERS, COMMUNITIES, NGOS [NON-GOVERNMENT ORGANISATIONS] AND CONSUMERS OVER NEGATIVE CORPORATE EXTERNALITIES [SUCH AS HUMAN RIGHTS VIOLATIONS] ARE ALSO BECOMING MORE FREQUENT, HIGH PROFILE AND IMPACTFUL.”

KPMG INTERNATIONAL¹⁸

Australians’ action on agriculture and timber land grabs:



18,860

letters to the banks



21,500

social media actions taken



20,043

people who have signed the petition

In 2015, the Responsible Investment Association of Australasia (RIAA) described “a year of surging interest in responsible investment, with consumer apathy over investments rapidly dissolving and a growing focus on ESG [Environmental, Social and Governance] risks”.¹⁹

In 2016, Australians hold at least \$755 billion in household bank accounts and \$2 trillion in superannuation.²⁰ Together, this is equivalent to more than a third of the entire national debt of all developing countries combined.²¹ When viewed collectively, everyday Australians hold a huge, and very direct, stake in the financial sector’s choices in how it uses our money — at home and overseas.

While big business is often seen as the bread and butter of large commercial banks, the statistics reveal the banks’ dependence on individuals and households. In 2016, 80% of Australia’s household bank deposits were held with the big four banks alone (\$612 billion)²². Bank-owned asset management companies — such as MLC (NAB), Colonial First State Global Asset Management (CBA), One Path (ANZ) and BT Investment Management (Westpac) — manage hundreds of billions of dollars of the savings of everyday Australians, and are eyeing a greater share of the ever-growing pool of superannuation. Sixty per cent of all loans issued by the banks are housing mortgages, meaning that anything likely to influence a consumer’s choice of mortgage provider and brand association is significant.²³ In contrast to the commonly presented view that ethics are anathema to profit, the latest RIAA research finds that “core” responsible investment funds — those that screen for environmental and social factors, sustainability themed investing and impact investing strategies — have doubled in size in just two years.²⁴ In 2014, these investments outstripped the performance of non-ethical investments in most 1-, 3-, 5- and 10-year categories.²⁵

Australians have not only taken action on financial backing on land grabs, but have also joined global movements on fossil fuel divestment, tax justice, fair working conditions and against the abuse of detainees, including refugees. Increasingly, this groundswell of action by hundreds of thousands of Australians points to the birth of a new movement. Although still in its infancy, what appears to be emerging is a new financial citizenship where a growing number of Australians are no longer content to be kept in the dark as to how their savings are being used. Australians expect to have a say in the governance and use of their own money.



Photo: Thomas Cristofolletti/Ruom/OxfamAUS.

2. THE ISSUE — TIMBER AND AGRICULTURE LAND GRABS

“THEY DID NOT GIVE US ANY WARNING AHEAD OF TIME, THEY JUST CAME AND CLEARED THE LAND ... PEOPLE TRIED TO STOP THE BULLDOZER.”

MAKARA, 49, KAMPONG SPEU, CAMBODIA²⁶

Over the course of a decade and a half, 40 million hectares have been acquired in large-scale land acquisitions, largely driven by the international demand for timber and agricultural commodities such as sugar, palm oil and soy.²⁷ This has raised global concerns about the impact of this wave of land acquisitions and the extent to which they have shifted land from local farmers, communities and wildlife habitat to companies.

In 2015, the United Nations Sustainable Development Goals emphasised the importance of land rights to ending poverty. This includes a target to “ensure that all men and women, in particular the poor and vulnerable, have equal rights to economic resources, as well as access to ... and control of land”.²⁸

Large-scale land acquisitions that take place without community consent can bring devastating change to the day-to-day lives of local people, impacting their access to food, water and housing. The violence and trauma of land grabs can also have enduring impacts across generations and many communities have yet to recover from previous eras of unethical expansion of plantations and logging on grabbed land.

As world food prices spiked between 2007 and 2012, commercial interest in land grew, with large-scale land deals accelerating dramatically. According to available data, the bulk of these deals took place over the past six years.²⁹ Between September 2014 and 2015, at least 1.6 million hectares changed hands through large-scale land acquisitions.³⁰

There are reports of foreign land investors paying yearly “lease” fees as little as seven cents per hectare.³¹ Research by 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”. In 2015, the International Consortium of Investigative Journalists found that, over the last decade, projects funded by the World Bank “have physically or economically displaced an estimated 3.4 million people — forcing them from their homes, taking their land or damaging their livelihoods”. This gives a shocking insight into the scale of potential

exposure of global finance to forced evictions and improper land acquisitions.³² *Banking on Shaky Ground* identified the gaping hole in the banks’ due diligence on land-related risks by revealing that all of Australia’s big four banks are exposed to agriculture and timber land grabs. The status of four cases is summarised below and explored in further detail, along with a new case study, in this report.

THE BIG FOUR BANKS AND LAND GRABS PROFILED IN *BANKING ON SHAKY GROUND*

ANZ

“I HAD DOCUMENTS FROM THE LOCAL AUTHORITY PROVING THAT I WAS THE LANDOWNER ... THE COMPANY THEN HIRED PEOPLE WHO DROVE TO MY HOUSE, DESTROYED MY HOUSE AND PUT MY BELONGINGS IN THE CAR TO TAKE TO THE RESETTLEMENT SITE ... I JUST WANT ADEQUATE COMPENSATION TO SUPPORT MY KIDS AND MY FAMILY.”

“THIDA”, 55, KAMPONG SPEU, CAMBODIA³³

In January 2014, Fairfax journalists revealed that ANZ was part-financing the Phnom Penh Sugar (PPS) sugar plantation complex in Kampong Speu, Cambodia.³⁴ PPS has been implicated in child labour, food shortages and forced evictions of hundreds of families. The loan, issued by ANZ in April 2011, took place amid what could be described as a land rights crisis in Cambodia, with the NGO Human Rights Watch recently noting: “The ill-effects of often illegal land acquisitions, by politically powerful individuals and their business partners, and forced evictions, continues to mount. The number of people affected by state-involved land conflicts since 2000 passed the half-million mark in March 2014, according to calculations by the local non-governmental organisation LICADHO.”³⁵ Based on household assessments, two NGOs assess community losses in Kampong Speu at USD \$11 million (about AUD \$15 million).³⁶

In July 2014, ANZ revealed in an interview with *The Australian* newspaper that it had ended the relationship with PPS. ANZ had ample warning over the three years prior that the company was implicated in human rights violations. Further,

before issuing the loan, an ANZ-commissioned assessment raised several land-related concerns, and the involvement of a senior politician in PPS should have triggered heightened due diligence in line with anti-corruption practices. ANZ now claims that in 2014 it attempted to work with PPS to improve its practices. (However this has not resulted in meaningful change for people forcibly evicted from the land.) ANZ has insisted on keeping its profit from the deal, despite the company being so closely linked to human rights abuses. Affected communities are calling for ANZ to return these profits to them, pointing to the bank's due diligence failure in financing a mill built on, and sourcing from, improperly acquired land.

CBA

CBA currently manages shares to the value of \$16.98 million in agribusiness company Bunge.³⁷ Bunge owns a sugar mill that from 2008 sourced sugarcane from more than 700 hectares of Brazilian land, which the government had begun to formally designate as belonging to a group of Guarani-Kaiowá indigenous people. Given that this process was underway, a Brazilian federal prosecutor requested that Bunge and an adjacent mill stop sourcing sugarcane from these indigenous lands. The adjacent sugar mill complied but Bunge continued sourcing sugarcane from the farmers until 2013-2014.

Rather than calling for Bunge to break its contracts — which would send a clear statement that it was not prepared to do business involving grabbed land — CBA signaled its support for Bunge's approach to wait for the contracts to expire. Bunge and its investors still have a responsibility to address their role in the land conflict from 2008 to 2014.

This case is profiled in more detail on page 14-15.

“WHAT WAS THE COMMONWEALTH BANK THINKING WHEN IT DECIDED THAT IT WAS GOOD BUSINESS TO INVEST IN A COMPANY 15,000 KILOMETRES AWAY THAT KEEPS THE PEOPLE OF THIS BRAZILIAN VILLAGE DIRT POOR?”

60 MINUTES³⁸

NAB

Banking on Shaky Ground revealed NAB's financing of palm oil giant Wilmar during a period in which the company faced a range of complaints about its links to concerning social and environmental practices. While these have been contested by the company, Wilmar has taken on the significant task of

cleaning up its supply chain, committing to a “No Deforestation, No Peat, No Exploitation” policy.³⁹ Noting that the policy was too new to assess its compliance, Oxfam pointed out in *Banking on Shaky Ground* that while Wilmar was seeking to address the material and reputational risks linked to allegations connected to land grabbing, its own financier was not.

Over the last two years, Wilmar has made genuine efforts to enact its own policy. In January 2015, Wilmar took the unusual step of publishing a list of more than 800 mills from which it sources its palm oil. This increased traceability of its supply chain makes it easier for communities to raise concerns directly with the company. Despite these commendable efforts to improve, complaints and allegations involving the company and its supply chain continue. Several of these reference the company operating without the free, prior and informed consent of local communities — showing that simply referencing compliance to local laws in contexts with high levels of land-related corruption and poor rule of law does not guarantee a social license to operate.

This case is profiled in more detail on page 26-30.

Westpac

In April 2014, Oxfam reported a long standing financing relationship between Westpac and the WTK Group in Papua New Guinea (PNG). WTK has been linked to various allegations of unethical or illegal logging connected to PNG's controversial Special Agriculture and Business Lease (SABL) scheme. Drawing on six months of painstaking research and documents on the public record, Oxfam revealed a likely link between WTK and land grabs in Turubu, East Sepik Province. However, this relationship is far from direct as the beneficial owner who is keeping the profits from Turubu's land grab is obscured by a complex web of shell companies, including those operating in secrecy jurisdictions such as the British Virgin Islands. In July 2014, the National Court of PNG ruled the Turubu land lease to be invalid.

In November 2014, Westpac presented new documents and a public statement on its relationship with WTK in PNG. This shows that greater disclosure by the bank is not only possible, but also desirable. Westpac now states that it has not had a relationship with one of WTK's subsidiaries, WTK Realty Ltd, since 2000. However, the bank did not deny a relationship with a second subsidiary, Vanimo Forest Products Ltd.

Westpac's relationship with WTK in PNG is profiled in more detail on page 32-34.

“ACCESS TO LAND AND SECURITY OF TENURE ARE ESSENTIAL TO ENSURE THE ENJOYMENT OF NOT ONLY THE RIGHT TO FOOD, BUT ALSO OTHER HUMAN RIGHTS.”

OLIVIER DE SCHUTTER, FORMER UN SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD⁴⁰

Fair access to and control over land is deeply embedded within human rights. In rural areas, land is often essential to the realisation of the right to food and without addressing land issues the rights of women and indigenous people cannot be achieved. The 2007 UN Declaration on the Rights of Indigenous Peoples states “the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use”.⁴¹ The Convention on the Elimination of All Forms of Discrimination Against Women refers to women having equal rights to land under the law.⁴² In practice, this should ensure that women are equal participants in discussions regarding free, prior and informed consent in land deals. Land is also central to the realisation of rights articulated under the International Covenant on Economic, Social and Cultural Rights. This includes the provision of local livelihoods and the right to property. It is an important component on the right to adequate housing, including protection against forced evictions as well as the right to water.

Other human rights protect against undue violence as communities seek to defend their land. The right of freedom of expression entitles people to speak out about land injustices including land-related corruption. Human

rights conventions and laws also cover protection against forced evictions and protection from cruel, inhuman or degrading treatment or punishment, including torture of land-rights activists.

While human rights frameworks focus primarily on the responsibility of the state to uphold and advance human rights, they also stipulate that business has an obligation to respect human rights. At heart, this principle states that a business cannot absolve itself of its responsibility to uphold human rights. For example, in contexts where a state directly undermines the human rights of its citizens, business cannot be complicit in these violations. Nor can business externalise blame for its own poor record on human rights by, for example, referring to poor enforcement by the state. This is, at minimum, a responsibility to “do no harm”.

Within the human rights and business community there is increasing recognition of an accountability gap for business adherence to this obligation. In 2015, the Institute of Human Rights and Business featured “ensuring corporate use or acquisition of land does not undermine the rights of small farmers and local communities” as the sixth most important issue on its annual list of the top ten business and human rights issues.⁴³ In 2011, the UN Guiding Principles on Business and Human Rights, often referred to as the Ruggie Principles, outlined voluntary guidelines for business. However, in December 2014, the NGO BankTrack pointed out that three and a half years on, none of the bank signatories to the Ruggie Principles were meeting their accountability requirements.⁴⁴ In June 2014, the UN Human Rights Council decided to initiate a process to “elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises”.⁴⁵



International Institute for Environment and Development & Inclusive Development International

New resources are emerging to help communities confront the lack of accountability in agricultural investments. This diagram assists local people to learn to “follow the money” from “upstream” lenders and investors, to “midstream” activities on their land, to “downstream” companies that buy agricultural products.⁴⁶

3. CASE STUDY: LEAVING WITHOUT REDRESS

“WITH THIS ONGOING PROCESS THE INDIANS FIND THEMSELVES IN A SITUATION OF GREAT DESPAIR ... AND THEY HAVE VERY FEW ALLIES ... THERE’S NO DOUBT [THAT THEY HAVE A RIGHT TO THEIR LAND], THEY HAVE BEEN HERE AT LEAST THOUSANDS AND THOUSANDS OF YEARS.”

MARCOS HOMEIRO, ANTHROPOLOGIST ADVISING THE LOCAL PROSECUTOR

Brazil’s state of Mato Grosso do Sul has become ground zero in the country’s land and sugar-related conflict. The demand for land is being driven by a rapid rise in international markets for sugar for food, beverages and ethanol as motor fuel.⁴⁸ Indigenous peoples are particularly targeted in land conflicts – in 2012 all but four of 58 conflicts in the state involved indigenous communities.⁴⁹

Since the 1960s, a community of Indigenous Guarani-Kaiowá people in the Jatayvary area of Ponte Porã municipality has been seeking to formalise rights to their lands. During their land rights struggle the community has faced violence, threats and forced removal. The community achieved a significant victory in 2004 when the Brazilian agency for indigenous affairs, FUNAI, recognised Jatayvary as belonging to indigenous peoples. This is a critical step toward formalising the community’s land rights. Local farmers, however, have used their political influence and intimidation to disrupt the next step towards returning land to the community – the demarcation of land boundaries.

In 2008, Bunge, one of the world’s largest grain traders, purchased a majority stake (60%) in the Monteverde sugar mill. The mill was still under construction and later began operations in 2009, with Bunge acquiring full ownership in 2011.⁵⁰ It was later reported by Oxfam and others that the Monteverde mill was sourcing sugarcane from five farms operating on the Jatayvary lands.⁵¹ Together these farms operate on 712 hectares of Jatayvary land (this is equivalent in size to 383 Sydney Cricket Grounds).⁵²

In 2011, a federal and a state prosecutor called for Bunge and another mill in the area to stop sourcing from the Jatayvary lands. The other mill complied. However, Bunge continued to source from the farms, stating that it would not renew the contracts when they expired, beginning in 2013. The company asserted that the mill’s previous owners had agreed the contracts and that they should be honoured.⁵³

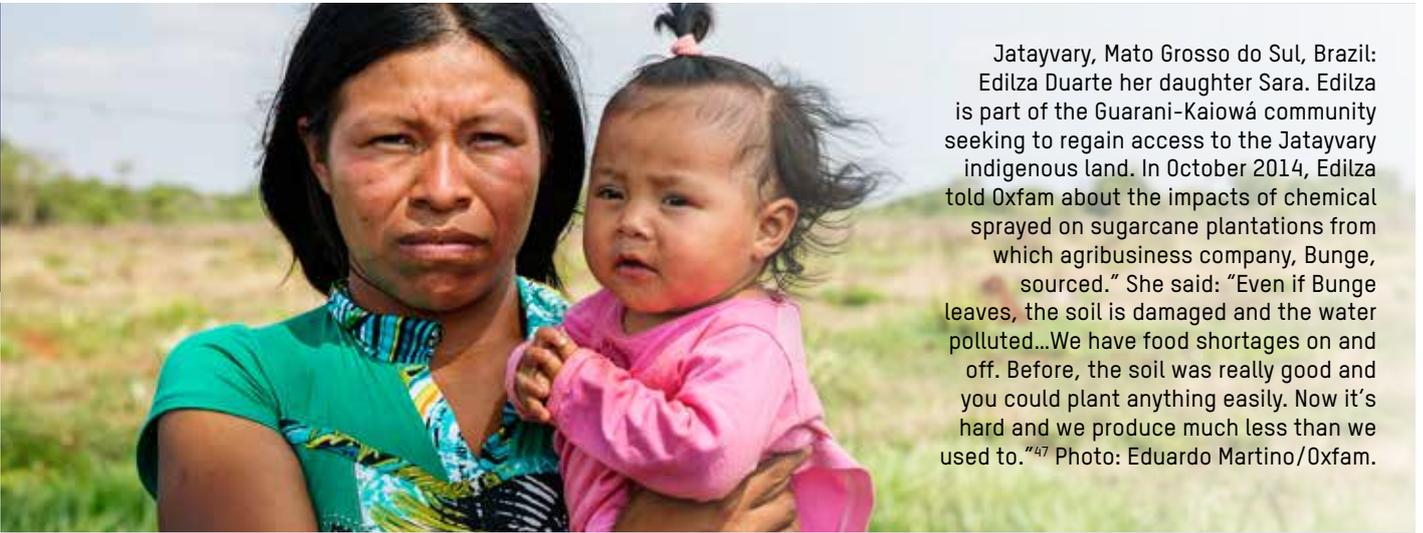
However, Bunge has been the majority or full owner of the mill since before it began operations in 2009, and it should have identified the land conflict in its initial due diligence on the mill.⁵⁴ Bunge did state that it would cancel the contracts if the Brazilian Government completed the four-step process for returning land to the indigenous community (see below).⁵⁵ This response likely added to farmers’ incentives to continue to prevent government efforts to demarcate the land.

TIMELINE OF THE JATAYVARY CASE

2004	The Brazilian agency for indigenous affairs (FUNAI) recognises the Jatayvary lands as belonging to indigenous peoples. This is the first step in returning the land to the local Guarani-Kaiowá people.
2008	Bunge purchases a majority stake in the Monteverde mill, which is still under construction. According to Bunge the mill had existing contracts with farmers growing sugarcane on more than 700 hectares of contested lands in Jatayvary.
2011	The Minister of Justice formally declares 8,800 hectares of land in Jatayvary as “indigenous”, the next step in the land return process.
2011	FUNAI and the federal police attempt to formalise the boundaries of the land. This would enable the next and final step in the land return process – a decree issued by the President. However, sugarcane farmers prevent demarcation through political pressure and threats.
2011	The State Prosecutor’s office, the Federal Prosecutor’s office and the Federal Labour Prosecutor’s office ask two local mills to stop sourcing from farmers on land recognised as belonging to the Guarani-Kaiowá people. One mill complies with the request, but Bunge states the Monteverde mill will continue to source sugarcane from the lands until its contracts expire in 2013 and 2014 or the government completes the land demarcation process. This likely adds to incentives for farmers to continue to resist land demarcation.
2014	Bunge does not renew its contracts with farms on the Jatayvary lands for 2015. However, Bunge and its investors have a responsibility to support community members to receive redress, given the company’s connection to the conflict from 2008 to 2014.
2016	The community continues to call for the return of their grabbed lands.

WHAT ARE THE BANKS’ RELATIONSHIPS TO BUNGE?

According to share ownership records viewed in February 2016, CBA managed shareholdings of \$16.98 million in the company.⁵⁶ Yet CBA is not the only bank exposed. According to the Thomson One database, ANZ contributed \$30 million to a five-year syndicated loan to Bunge Limited Finance Corp in November 2014, after Oxfam published *Banking on Shaky Ground*. Bunge owns 100% of Bunge Limited Finance Corp., one of its finance subsidiaries.⁵⁷ In August 2015, ANZ contributed \$54 million to a syndicated loan to Bunge Finance Europe, with NAB contributing \$43 million and Westpac \$25 million.⁵⁸



Jatayvary, Mato Grosso do Sul, Brazil: Edilza Duarte her daughter Sara. Edilza is part of the Guarani-Kaiowá community seeking to regain access to the Jatayvary indigenous land. In October 2014, Edilza told Oxfam about the impacts of chemical sprayed on sugarcane plantations from which agribusiness company, Bunge, sourced." She said: "Even if Bunge leaves, the soil is damaged and the water polluted...We have food shortages on and off. Before, the soil was really good and you could plant anything easily. Now it's hard and we produce much less than we used to."⁴⁷ Photo: Eduardo Martino/Oxfam.

WHAT HAS HAPPENED SINCE BANKING ON SHAKY GROUND?

The Guarani-Kaiowá community continues to deal with multiple forms of marginalisation as a result of losing access to their lands in Jatayvary. As well as the physical burden of impacts to housing, pollution of water supplies and reduced access to food, the loss of land has also deeply affected people's spiritual wellbeing. A local health worker has observed a recent spate of suicides and an increase in alcohol abuse connected to the displacement.⁵⁹ This compounds the challenges of the land rights struggle. In 2015, new data showed escalating rates of severe violence against indigenous people in Mato Grosso do Sul, with land rights defenders particularly targeted.⁶⁰

Consistent with Bunge's and CBA's previous statements about not renewing the Jatayvary contracts, in 2015 FUNAI investigators found that farmers were no longer growing sugarcane on the Jatayvary lands.⁶¹ However, the community is still unable to return to their lands and it is not clear who is buying the farmers' alternative crops such as soy. This is one example of the entrenched nature of land grabs, and highlights the importance of supporting remedy and redress for communities.

Bunge not renewing its contracts to source from the Jatayvary lands is a positive step. However, Bunge and its investors also have a responsibility to address their role in connection to the conflict from 2008 to 2014. As a start, the Australian banks should work with Bunge to identify how they can provide meaningful support to the demarcation process and help the community to achieve the remedy that it seeks.

THE BANKS' RESPONSES

In 2014, Chief Arlindo Kaiowá appealed to CBA: "They [the bank] have to stop sending money to Bunge, because Bunge is occupying our land." His comments reflect the community's concern and perception of the agribusiness company's role in the land conflict.⁶²

CBA's response to this case, matched by a lack of preventive policy action, reveals a deep disconnect between the bank's claims of improving its reputation on responsible investing and its unwillingness to confront the day-to-day challenges faced

by communities. CBA subsidiary Colonial First State Global Asset Management (CFSGAM) notes that it will "now be asking at-risk companies if they have any indigenous (or other) claims on lands they own or source from, prior to investment".⁶³ However, CFSGAM has not outlined any course of action that it would take to verify or otherwise act on this information. In a statement to the television current affairs program *60 Minutes*, CFSGAM noted that, as of 17 November 2014, its exposure to Bunge was \$9 million, which comprised a 0.07% stake in the \$13 billion dollar company.⁶⁴ In doing this, CFSGAM appears to be signaling an inability to influence the company due to the small size of its holding. Although CFSGAM has noted that it met with Bunge and discussed the issue. Just months later it wrote "the approach we have taken with Bunge is a good example of how we practically engage with our stakeholders"⁶⁵ (In February 2016 CFSGAM advised that its current exposure to Bunge is \$4.48 million).

The extension of this logic is that CFSGAM could potentially argue it is unable to influence any of the companies it invests in. This approach appears out of step with the CFSGAM group boasting \$202 billion in funds under management as of June 2015.⁶⁶ It also contradicts CFSGAM's highly visible activities in coordinating the financial sector's response to other issues such as climate change through its Head of Responsible Investment Asia-Pacific serving as chair to the RIAA board. The CBA ESG Lending Commitment states the bank will "not knowingly supporting clients or their activities that ... are complicit in the abuse of human rights".⁶⁷ In its recent Human Rights Position Statement CBA did not extend this same commitment group-wide, which would include CFSGAM.

Concerningly, ANZ, Westpac and NAB have loaned tens of millions of dollars to Bunge's financial service subsidiaries since the publication of *Banking on Shaky Ground* but have not publicly referred to any efforts to engage with the company on the issue.

"WE BELIEVE A FAILURE BY COMPANIES TO MANAGE [ESG] ISSUES CAN NOT ONLY RESULT IN THE DESTRUCTION OF SHAREHOLDER VALUE BUT ALSO PRODUCE UNACCEPTABLE SOCIAL AND ENVIRONMENTAL OUTCOMES."^{CBA⁶⁸}

4. HOW TO ACHIEVE CHANGE ON LAND RIGHTS

RESPONSIBLE INVESTMENT INVOLVES A MUTUALLY REINFORCING TRIANGLE OF COMMITMENTS, TRANSPARENCY AND ACCOUNTABILITY — WHAT OXFAM TERMS “THE RESPONSIBILITY TRIANGLE”. IF POLICIES DO NOT ADDRESS EACH OF THE THREE ELEMENTS OF THE TRIANGLE, COMPANIES WILL REMAIN EXPOSED TO LAND-RELATED RISKS.



In the last two-and-a-half years, multinational companies in the agriculture and timber sectors have rapidly expanded their publicly available social and environmental commitments in response to Oxfam’s and others’ public campaigning. At best this shows that ethical concerns are reverberating across the commodity chain — from end users, to suppliers, to financiers. At a minimum it shows that international companies are lowering their appetite for risk in the face of falling soft commodity prices.

THE EXPLOSION OF SOFT COMMODITY LAND RIGHTS COMMITMENTS

Since November 2013, global food and beverage companies such as Coca-Cola, PepsiCo, Nestlé and Unilever have all committed to a Zero Tolerance for Land Grabs approach, as has Africa’s largest sugar producer Illovo.⁶⁹ After palm oil giant Wilmar committed to its December 2013 “No Deforestation, No Peat, No Exploitation” policy, much of the world’s palm oil supply has since come under similar policies that include new requirements on free, prior and informed consent (FPIC).⁷⁰ These developments signal how new standards are reverberating across the agricultural commodity chain.⁷¹

While new company commitments are an important start, alone they are not enough.

Responsible investment involves a mutually reinforcing triangle of commitments, transparency and accountability — what Oxfam terms “The Responsibility Triangle”.

The Responsibility Triangle is a useful framework for revealing why so many private sector human rights policies fail to protect communities or safeguard against material and financial risks for companies. If human rights frameworks and environmental policies do not address all three areas, companies will remain exposed to land-related risks and stymie the effectiveness of genuine efforts for change.

More fundamentally, Oxfam believes that communities have a right to know who is funding, or seeking to profit from, activities on their land and forests. Similarly, Australians should be able to find out how their money is invested and what companies and industries it is supporting.

If communities cannot find out which bank is involved in the investment chain for activities on their land, they cannot access and exercise their rights under the bank’s own human rights and environmental policies. This exposes the banks to the material and financial risks that these policies seek to mitigate.

Unlike other industries — such as tobacco, gambling, cluster munitions or even fossil fuels — that bear risks intrinsic to their product, it is not inherently obvious if an agriculture or timber product is connected to damaging social and environmental practices. This renders banks and other investors more reliant on communities for accurate

information on the local land tenure context and conditions where companies operate.

Currently, a culture of undue secrecy prevents communities and customers from knowing who is seeking to profit from their resources. To date, the banks are either not aware of, or not forthcoming in acknowledging, existing ad hoc practices in the Australian financial sector on which they could build a more comprehensive and systematic approach to disclosure. Rather than looking to existing options for promoting client consent for disclosure — including the positive image this can denote of a transparent and open company — the banks merely repeat a need for “client confidentiality”. Yet privacy and transparency are not diametrically opposed and can be mutually achieved. As explored in Oxfam’s August 2015 *No Excuse* investor briefing, there are diverse, although ad hoc, ways that disclosure already occurs within the sector (see P. 36–39). Some forms of disclosure also have no impact on privacy, such as listing the companies in which their asset management funds invests.

Banks also need to adopt specific and actionable commitments on land-related issues, not just state general support for human rights. The principle of free, prior and informed consent (FPIC) is one evolving example of a framework that can be acted on and monitored. FPIC requires that indigenous peoples and local communities are adequately informed about activities taking place on their land, and must be given the opportunity to approve (or reject) activities before they start and also at certain stages during development.⁷² This includes participation in setting the terms and conditions that address the economic, social and environmental impacts of all phases of the project.

Even in the event that communities can find out which bank is facilitating or funding a company facing allegations of land grabs, bank policies do not include any concrete commitment to support redress. Making commitments without consequences for breaking them is a recipe for failure. Robust grievance mechanisms are required to ensure that affected communities can raise concerns directly with the bank and together reach a process of redress that is mutually considered fair. As described in this report, bank efforts to “cut and run” are ultimately unlikely to reassure investors and customers that the bank has sufficiently mitigated reputational risk and that its practices reflect its policies. Cutting and running provides no benefits for affected communities (see P. 45).



Minggir Sari, Bengkulu, Indonesia: A cemetery at Minggir Sari. As a community enclaved by PT SIL’s estate, Minggir Sari is uniquely affected by PT SIL’s land acquisitions. The villagers worry that PT SIL will slowly take over the cemetery land to turn it into palm oil plantation. Photo: Kemal Jufri/Panos/Oxfam.

5. CASE STUDY: CONCENTRATING LAND AND POWER

“THE PREVAILING TREND IN THE DISCUSSION [ABOUT AGRICULTURE IN ALTILLANURA] STRONGLY INDICATES THAT THE LAND IN THE ALTILLANURA WAS ACQUIRED CONTRARY TO COLOMBIAN LAW AND THAT IT MUST BE RECONSTITUTED TO ITS ORIGINAL OWNERS.”⁷³

UNITED STATES DEPARTMENT OF AGRICULTURE

Land distribution in Colombia is extremely unequal, with concentration of land ownership among the highest in the world. According to a recent census, about 46% of productive land in Colombia is in the hands of just 0.4% of the population.⁷⁴ This inequality has been both a cause and consequence of internal armed conflict that has ravaged the country for more than half a century. The violence and forced displacement of almost five million people have left an estimated eight million hectares of land dispossessed, more than the area currently devoted to agriculture across the country.⁷⁵ The democratisation of access to land has been agreed as part of peace talks between the government and the FARC guerrillas.

Unable to facilitate a fairer distribution of private land, state land, often of poor quality or in remote areas, has been provided to landless families in an effort to support land reform. Public land (*baldíos*) is awarded for small-scale family farming as part of the state’s constitutional mandate and current law (specifically, Law 160) to promote access to land to improve the income and quality of life for poor people living in rural areas.⁷⁶

No individual or entity is permitted to acquire *baldíos* larger than the size deemed necessary for a family farm to support a decent livelihood — referred to as a “family agriculture unit” (FAU). This size limit is to ensure that, while *baldíos* can be bought and sold among small-scale farmers, they cannot be concentrated into large parcels that make the land inaccessible to poor rural farmers and small-scale producers. Government officials are responsible for monitoring land transactions to ensure that this size limit is not exceeded.

Despite a constitutional commitment to supporting more democratic land access, in recent years the Colombian Government has promoted some rural regions of Colombia as a last agricultural frontier to attract large-scale private investment — yet much of this land has already been awarded as *baldíos* to small-scale farmers.

CARGILL’S ACTIVITIES IN ALTILLANURA REGION

Cargill is one of the world’s largest agricultural commodity traders and one of the largest privately owned businesses. In 2003 it established Black River Asset Management LLC, an independently managed, wholly owned subsidiary whose portfolio includes targeted agricultural investments. (According to Cargill, in 2016 three businesses of Black River Asset Management have spun out to become three independent, employee-owned firms. The private equity business, which holds the fund that raised capital and invested in Colombia, is one of the businesses that has exited Black River. Cargill has no ownership interests in the three new firms, and Black River is being closed.)⁷⁷ Black River began making purchases in the Altillanura region in 2010, establishing a management company, Colombia Agro, to manage the production of corn, soybeans and other crops.⁷⁸

Altillanura is a remote savannah region bordering Venezuela and Brazil. It has some of the country’s highest poverty rates, weak public infrastructure and a record of serious human rights violations due to the presence of armed groups and illegal trafficking of drugs and arms. The region also has a large population of indigenous peoples. In 2013, Oxfam published a report documenting how, between 2010 and 2012, Cargill used 36 different shell companies to purchase 39 tracts of land that had been awarded as *baldíos* in the Altillanura region.⁷⁹ Oxfam wrote that “together, Cargill’s properties comprise at least 52,576 hectares”, an area of land equivalent to six times the size of Manhattan.⁸⁰ Yet the law forbids the accumulation of any tracts of land awarded as *baldíos* larger than the established FAU. Cargill’s holding is more than 30 times larger than the maximum size of an FAU in the area.⁸¹

Cargill responded to Oxfam’s report on its website. It explained its use of multiple companies for land purchases, noting “this kind of structure is a standard way of doing business in the real estate industry around the world, because it provides the flexibility to sell off smaller parcels at a later date.”⁸² It has also referenced that corporate agriculture is well placed to realise the region’s “great agricultural potential”, noting that, in its view, small-scale farmers lack the necessary resources to address large-scale environmental challenges in the area, such as poor soils.⁸³

While this response is useful to understand Cargill's position, Oxfam's central concerns remain: Firstly, that Cargill acquired a large area of *baldíos* exceeding the set limit for a single owner. This has concentrated ownership of *baldíos* out of the reach of family farmers and exceeded the allowable limit (stated under Law 160) for a single land-owner by 30 times. Secondly, Cargill's use of a large number of shell companies, almost one per transaction, made it much more difficult for government officials to track this concentrated purchase of *baldíos*. Thirdly, as a result of these two actions, Cargill has contributed to deepening land inequality in this already impoverished region.

In addition, document analysis reveals that Black River's land acquisitions correlated with a rapid increase in local land prices. Data recorded in the Superintendence of Notary and Registry Offices show how, in successive transactions, there were huge price increases and a large disparity in prices per hectare among different properties. Between 2010 and 2012, the Black River shell companies bought land at prices ranging between 370,000 Colombian pesos (USD \$195) and 3.7 million Colombian pesos (about USD \$2,000) per hectare.⁸⁴ On average, the Cargill companies paid approximately 1.5 million Colombian pesos (USD \$800) per hectare.⁸⁵ These figures contrast with the average purchase price prior to 2006 before Black River began seeking properties, which was 45,500 Colombian pesos (USD \$24) per hectare.⁸⁶ The average price had multiplied by 33 times. As this land was bought and sold through middlemen, the profits largely did not accrue to farmers selling the land.⁸⁷ This has contributed to family farmers being priced out of land markets due to a dramatic increase in the individual price per hectare and the likelihood that land is concentrated into larger parcels. This is in direct opposition to the initial objective of Law 160 of awarding *baldíos* to support small-scale farmers.

Even the United States Department of Agriculture (USDA), whose remit includes advising US agricultural companies overseas, has acknowledged that such large-scale purchases of *baldíos* appear problematic. In a recent report discussing one such case, USDA noted: "The land ownership of other agricultural projects in the Altillanura has recently been nullified by Colombian courts under similar circumstances. The prevailing trend in the discussion strongly indicates that the land in the Altillanura was acquired contrary to Colombian law and that it must be reconstituted to its original owners."⁸⁸

As of 2015, new legislation was passed by Colombia's parliament that would legalise future land use that involves the concentration of *baldíos*. After five attempts over three years, the legislation was pushed through, despite widespread concerns about existing levels of land concentration in Colombia. Rather than alleviating objections to Black River's activities, this deepens concern that Black River or other companies may continue to acquire access to land that had been intended for small-scale farmers.

Passing a law will not guarantee social acceptance of accumulation of *baldíos*. In fact, this potentially destabilises companies' social license to operate: the law's constitutionality is being challenged and pressure is likely to continue against any efforts to legalise the concentration of *baldíos*.

This public pressure also takes place against a background of significant social protest about land inequality. In 2013 and 2014, national agrarian strikes mobilised tens of thousands of small farmers, Afro-Colombian people, indigenous peoples and urban dwellers who were demanding structural reforms in rural areas. Such pressure is likely to continue, given that the conclusion of a final peace accord is anticipated in 2016, which would likely trigger implementation of the agreement on democratisation of access to land.

WHAT ARE THE BANKS' CONNECTIONS TO CARGILL?

Australian banks have extended several “loan facilities” to Cargill.⁸⁹ In layperson’s terms, this is a form of loan that operates in a similar way to a line of credit, allowing a company to withdraw or repay a loan in full or in part throughout its duration. According to the Thomson One database, in October 2014, ANZ committed USD \$100 million to a syndicated five-year loan facility to Cargill for “general corporate purposes”. This followed a similar commitment in March 2014 for a one-year syndicated loan facility of USD \$40 million.⁹⁰ NAB committed USD \$50 million to the October 2014 loan facility. CBA and Westpac each committed USD \$33.5 million to the March 2014 12-month loan facility, and ANZ and Westpac each committed USD \$52.63 million a year later in March 2015.⁹¹ In October 2015, ANZ committed \$25 million and \$75 million to 364-day and five-year credit facilities and NAB committed \$12.5 million and \$37.5 million to 364-day and a five year credit facilities to Cargill Inc. These loan facilities were issued after the actions of Black River Asset Management were globally reported through two separate Oxfam reports in 2013 and 2014, and Cargill featured a response on its website.⁹² (All four banks had committed tens of millions in loan facilities to Cargill in 2011 as the land acquisitions occurred.)⁹³ This raises the question of whether the banks knew about this case and failed to act on this land-related risk or if their due diligence was inadequate to uncover this widely reported case.

WHAT SHOULD THE BANKS DO?

At a minimum, the banks should call for Cargill to enact a robust land rights policy to prevent a recurrence of these events and to prevent, mitigate and address similar land-related risks and impacts throughout its supply chain.⁹⁴ A robust land rights policy should include, among other elements, a “Zero Tolerance for Land Grabs” commitment that applies group-wide, including to all subsidiaries, and a commitment to respect communities’ free, prior and informed consent (FPIC) for all land acquisitions. Currently, Cargill has committed to respect FPIC only in its palm oil production and sourcing.⁹⁵

Since participating in a syndicated loan facility to Cargill in 2014, Westpac has made some commendable progress in its policy approach to land issues. It remains to be seen how Westpac will consider its new commitments on free, prior and informed consent in relation to Cargill. NAB participated in a loan facility after issuing its new policy. CBA and ANZ have yet to act. The banks will be best placed to ensure that their clients adopt strong land policies when they themselves model a comprehensive approach to land grabs.

TRANSFERRING LAND THAT WAS ONCE DISTRIBUTED TO SMALL-SCALE FARMERS AND AGRICULTURAL WORKERS INTO THE HANDS OF LARGE NATIONAL AND INTERNATIONAL COMPANIES WOULD CONSTITUTE A COMPLETE TURNAROUND IN A REDISTRIBUTIVE PROCESS THAT HAS COST A GREAT DEAL OF EFFORT TO ACHIEVE.⁹⁶



Near Trin Village, Turubu, PNG: Timber being prepared for export stored in a logging compound, 2014. Photo: Vlad Sokhin/Oxfam.

6. WHAT ACTION HAVE THE BANKS TAKEN?

No bank has gone far enough on land grabs. This report has revealed that each of the banks has failed to publicly reveal their links to companies connected to land grabs profiled in *Banking on Shaky Ground*. So far no bank has worked with affected communities to support meaningful redress. NAB and Westpac have taken the risk of land grabs to their business seriously, with each developing new policies on land-related issues. This places them clearly in front of CBA and ANZ that have so far failed to act and appear to have a greater exposure to land-related risk.

WESTPAC

"IN LINE WITH THE BANKING INDUSTRY'S RESPONSIBILITY TO SUPPORT THE REGION'S SOFT AGRICULTURAL COMMODITIES SECTOR, WHILE BEING MINDFUL OF THE IMPLICATION FOR LOCAL COMMUNITIES, WE HAVE BEEN ADDRESSING THE ISSUE OF LAND GRABBING."

WESTPAC⁹⁷

Westpac has invested heavily in its reputation on thoughtful engagement with environmental and social issues. In November 2014, Westpac committed to doing business with agribusiness companies that do not violate the rights of communities, including the full free, prior and informed consent of local and indigenous communities. This includes downstream operators, such as processors using raw commodities.⁹⁸ In May 2015, it broadened this commitment to other lending. Westpac will also not lend to agriculture and timber operations operating on High Conservation Value forests or Ramsar wetlands.⁹⁹

This shows that Westpac clearly sees the business benefits of FPIC as a human rights and due diligence standard, and places Westpac ahead of its competitors on this issue.

However, as detailed in this report, Westpac continues to issue multi-million dollar loans to companies linked to concerning human rights and environmental practices (see P. 14, 20 & 28). While it is to be expected that there will be a phase-in period for its new policy commitments, in light of this exposure, customers and investors will be eager to see how Westpac's new policy applies.

Westpac prides itself as being at the forefront of social and environmental responsibility for Australia's big four commercial

banks, and has a significant stake in its ethical reputation. However, it appears that the bank has yet to grasp the full significance of the growing movement on financial transparency — in doing so, this could significantly guide Westpac's response to environmental, social and governance (ESG) issues. While Westpac's new commitment on FPIC is commendable, its reach will be limited if communities cannot find out if Westpac is backing companies operating on their land.

NAB

"THIS YEAR, WE EXPERIENCED INCREASED INTEREST IN THE MATTER OF CLIMATE CHANGE, THE IMPACTS OF PORT INFRASTRUCTURE DEVELOPMENT ON THE GREAT BARRIER REEF AND LAND ACQUISITION PRACTICES THAT MAY IMPACT ON THE LAND RIGHTS AND OTHER HUMAN RIGHTS OF PEOPLE, INCLUDING INDIGENOUS PEOPLE, PARTICULARLY IN DEVELOPING COUNTRIES."

NAB¹⁰⁰

In June 2014, NAB became the first of the big four banks to commit to taking policy action on land grabs.¹⁰¹ In November 2014, it released a new policy on improper land acquisitions.¹⁰² Drawing on the bank's pre-existing human rights commitments, the policy states how these apply to land and outlines what NAB will do to safeguard land rights across its lending and procurement practices.

Should it choose to seize the opportunity, NAB has the potential to take leadership on appropriate disclosure of land-related risks. Its early move towards disaggregated reporting on project finance lending is a positive start and its new policy on improper land acquisition states that it will explore disclosure further.¹⁰³ However, what appears to be some progress on its lending is undermined by NAB's wealth management subsidiary MLC having a low bar on disclosure. NAB makes the claim that because MLC uses third-party fund managers for its investments it cannot control decisions on disclosure. Yet this overlooks that the bank itself chooses the third-party funds and managers it engages as well as MLC's considerable market power as a company that boasts \$136.7 billion in funds under management.¹⁰⁴ MLC could, for example, adopt a policy

Minggir Sari hamlet (dusun), Bengkulu, Indonesia: Children play outside their school. Minggir Sari was officially established in 2001. Since the arrival of PT SIL in 2011, Minggir Sari has seen its population reduce by approximately 50%. Photo: Kemal Jufri/Panos/Oxfam.



that states its preference for fund managers that list their international and Australian shareholdings for which they hold a significant stake.

Like the other banks, NAB has yet to undertake significant action to support justice for affected communities. While Wilmar has made some considerable progress in its “No Deforestation, No Peat, No Exploitation” policy and its increased disclosure of its value chain, it continues to face complaints and concerns from communities where it operates. This is highlighted in the case study on page 26-30. While the company often contests these complaints, NAB has yet to seek out an independent third-party environmental, social and human rights impact assessment that would allow it to hear directly from communities.

In 2016, NAB is reviewing its Human Rights policy – an overarching document that underpins the core values and principles of its approach to social responsibility and its license to operate in sensitive sectors. The question remains as to whether this will move beyond the bank’s limited commitment on key issues such as FPIC, which currently only applies to indigenous communities affected by project finance. Project finance comprised only 1-2% of the bank’s corporate lending.¹⁰⁵ In 2016, NAB will review its policy statement on Improper Land Acquisitions. This will be a key moment in signaling the bank’s approach to two key issues: FPIC and disclosure.

CBA

“THE PEOPLE IN THE ROOM ARE NOT ONLY PASSIVE INVESTORS BUT OWNERS, AND SHOULD BEHAVE LIKE OWNERS, BEARING RESPONSIBILITY FOR THE IMPACTS OF COMPANIES THEY OWN.”

HEAD OF RESPONSIBLE INVESTMENT ASIA-PACIFIC, COLONIAL FIRST STATE GLOBAL ASSET MANAGEMENT (CFSGAM)¹⁰⁶

CBA has long lagged behind its competitors in its approach to environmental, social and governance (ESG) policy issues. CBA has taken some recent steps to decrease the gap, adopting a framework on ESG Lending Commitments and signing onto the Equator Principles risk-management frameworks. While these signal some steps to improve its reputation on managing ESG-associated risks, it is concerning that CBA excluded several of its existing human rights commitments in its new core ESG Lending Commitments and 2015 Human Rights statement.¹⁰⁷

In *Banking on Shaky Ground*, CBA was linked to six companies

facing credible and detailed allegations of land grabbing between 2009 and 2013. To date, the CBA Group, including its subsidiary Colonial First State Global Asset Management (CFSGAM), has only issued statements about one of these cases. This case involves the agribusiness company Bunge and while CBA has publicly noted that it has raised the issue with the company, it has not engaged with affected communities or sought independent research into the Jatayvary land case in Brazil (see page see P. 14-15).¹⁰⁸ Despite its pride in its responsible investment credentials, CFSGAM has taken little action to manage land-related risk. In its 2015 *Responsible Investment and Stewardship Annual Report*, CFSGAM notes that ESG risk committee meetings included “considering” “best practice approaches for responsible investment decision-making” in response to several issues, including *Banking on Shaky Ground*.¹⁰⁹ There is no reference to this “consideration” translating into any concrete commitments.

In 2014, CBA developed its ESG Lending Commitments, which it frequently refers to as guiding its approach to responsible investment. However, these lending commitments fail to integrate CBA’s existing human rights commitments. For example in Commitment 3, the ESG Lending Commitments refer to ensuring that its ESG “assessment processes” are consistent with the UN Global Compact and the UN Principles on Business and Human Rights. Yet the ESG Lending Commitments do not address accountability – a key pillar of its commitments to the UN Guiding Principles on Business and Human Rights. Similarly, Commitment 4 refers to using the risk categorisation process under the Equator Principles but does not refer to measurable commitments on reporting.¹¹⁰

This raises questions about how thoroughly CBA is implementing its existing human rights and ESG commitments. In its 2015 Human Rights Position Statement, CBA notes: “Given our scale and diversity we are always at risk of indirect exposure to human rights impacts, particularly via our investment and procurement activities where more than one party may stand between us and the rights holders affected.” In classifying this as “indirect exposure”, the bank appears to be absolving itself of responsibility to act in connection to land grabs such as those described in this report. In discussing complex supply chains, the Guiding Principles note: “Questions of complicity may arise when a business enterprise contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties ... business enterprises may be perceived as being ‘complicit’ in the acts of another party where, for example, they are seen to benefit from an abuse committed by that party.”¹¹¹

ANZ

“WE ARE COMMITTED TO ENGAGING WITH STAKEHOLDERS AND PROVIDING THEM WITH OPEN, TRANSPARENT AND TIMELY DISCLOSURE OF THE MATERIAL, ECONOMIC, SOCIAL AND ENVIRONMENTAL ISSUES RELATING TO OUR BUSINESS.”

FORMER CEO, ANZ¹¹²

ANZ’s response on land grabs casts doubt over whether customers and investors can rely on ANZ to give an accurate appraisal of its exposure to land-related risk and associated human rights violations.

Banking on Shaky Ground revealed that from 2009 to 2013, ANZ was linked to ten companies connected to credible allegations of land grabs, in addition to the already public ANZ–Phnom Penh Sugar (PPS) case in Cambodia. This included detailed references to source materials for these cases. In response, ANZ has issued a media release and claimed that “almost half the companies raised with us are not customers ... of those that are customers, the claims ... have in several cases been previously publicly examined and resolved by our customers. However, we asked our customers for updates and we are satisfied with their responses”.¹¹³ Despite its apparent confidence in its operations, ANZ has declined to give any information publicly or privately — not even company names — to verify these claims. Oxfam has raised this twice in formal correspondence with ANZ, letters to which ANZ has never replied.¹¹⁴ In December 2015, Oxfam found that comments of concern about land grabs to ANZ’s Facebook page were hidden from view, raising questions about the bank’s commitment to “value every voice [and] bring the customer’s view to ANZ”.¹¹⁵ ANZ’s media response to concerns about land grabs is carefully worded: it only refers to “customers” despite several of the claims in *Banking on Shaky Ground* relating to companies in which ANZ and its subsidiaries have invested, not just bank clients. ANZ refers to being “satisfied with their [the company] responses” but the bank falls short of saying that it has independently verified if its clients, and the companies in which it invests, are complying with human rights standards and local laws.¹¹⁶

The bank has also responded to customer and investor concerns about land grabs by noting “ANZ’s ‘sensitive sector’ policies ensure social and environmental considerations are incorporated into our financing and lending decisions”.¹¹⁷ As

yet, ANZ has no policy on agriculture or land issues. The case study on page 42–45 represents one example of how these policy and implementation gaps can unfold in practice.

ANZ has announced that by 2017 it seeks to achieve 25% to 30% of its profits from the Asia-Pacific.¹¹⁸ This increases its exposure to countries with complex tenure histories. ANZ has fully controlled or majority controlled banking operations in four countries that feature in the bottom 50 countries on Transparency International’s 2014 Corruption Perception Index.¹¹⁹ Three of these countries — PNG, Cambodia and Myanmar — have widely reported issues in the agriculture and timber sectors.¹²⁰

It appears that ANZ has not adopted any new measures to address land-related risk nor has it contributed to any meaningful improvement to the day-to-day life of communities affected by land grabs connected to the companies that it backs. Yet the bank has carefully constructed its replies so as to suggest that it is either not exposed to land-related risk or has undertaken a response leading to changes on the ground, without providing evidence of either and by referencing processes that are either irrelevant or significantly contested (see the case study on page 42–45). This casts doubts on the extent that communities, customers and investors can trust ANZ’s analysis and response to its exposure to land-related investments.

7. CASE STUDY: FREE, PRIOR AND INFORMED CONSENT CENTRAL TO RESPONSIBLE LAND ACCESS

Over the last two years, palm oil giant Wilmar International has sought to improve its supply chain following years of criticism for its devastating impacts on bio-diverse forests and local communities. While Wilmar has taken some important strides to improve the transparency of its operations, it has yet to address all three elements of “The Responsibility Triangle” (see p. 16-17) and continues to face criticism that it is failing to respect community rights to free, prior and informed consent (FPIC) for activities on their land. This case shows the centrality of FPIC in preventing and addressing credible allegations of improper land acquisitions.

WHO IS WILMAR?

Wilmar, headquartered in Singapore, states it is Asia’s leading agribusiness group, with a market capitalisation in July 2015 of 21 billion Singapore dollars (roughly equivalent to the Australian dollar).¹²¹ 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.¹²² 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.¹²³

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. The palm oil industry 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. India, China and the European Union (EU) are the largest consumers of palm oil globally.¹²⁴ Palm oil is also a key feedstock for industrial biofuels. While biofuels remain hotly contested, evidence points to their impact on food prices and diverting land and water resources from food production.¹²⁵

A significant driver of the increasing global palm oil demand is the European Union’s renewable energy policy. EU governments committed to sourcing 10% of transport energy from renewable sources by 2020. This target will be almost exclusively met using biofuels made from food crops. Because much more diesel is used in the EU than petrol, EU biofuel mandates mostly drive an increase in demand for crops used to make biodiesel, including palm oil. As a result, from 2006 to 2012 the EU biofuels industry increased its use of palm oil by 365%, from 0.4 to 1.9 million tonnes per year.¹²⁶ Calls by Oxfam and others to end EU biofuel mandates because of their role in driving deforestation and impacts on food systems have recently led the EU to limit the share of biofuels made from food crops.¹²⁷ There is increasing pressure exerted on the palm oil industry.

There are also concerns about the impacts on the human rights of local communities and labourers. The NGO GRAIN recently expressed concern that palm oil companies that have recently pledged to stay out of primary forests have shifted their focus to exerting pressure for their right to other lands in use by communities.¹²⁸ It has critiqued company references to “degraded” or “marginal” land, pointing out that this language underplays the significance that these lands have for local people, and the enduring importance of obtaining free, prior and informed consent for any land use.

Increasingly, concerns about the global palm oil trade are permeating into the analysis of the commercial financial sector. This correlates with a steady downturn in international palm oil markets. In August 2015, prices hit a six-and-a-half-year low.¹²⁹ In the last two-and-a-half years, palm oil has featured in risk assessment reports by financial research firms RepRisk, Profundo, Chain Reaction Research and Sustanalytics as well as in publications by NGOs closely tracked by the banking sector: the Carbon Disclosure Project, BankTrack, Facing Finance and Business and Human Rights.¹³⁰

West Kalimantan, Indonesia: View of an old oil palm plantation after it has been burned by farmers to plant new oil palm trees. In 2015 fires linked to deforestation and the palm oil industry were seen as major contributors to South-East Asia’s haze crisis. Hazardous pollution and poor air quality sparked health and climate concerns, particularly in Indonesia, Malaysia and Singapore. The Association of Banks in Singapore responded by issuing new responsible financing recommendations to its 158 members, which include Australia’s big four banks. Photo: Kemal Jufri/Oxfam.



WHAT ARE THE BANKS' CONNECTIONS TO WILMAR?

In *Banking on Shaky Ground*, Oxfam showed that NAB had issued two separate loans to Wilmar in 2010 and 2013. In 2010, NAB issued a \$112.59 million loan at the same time as the World Bank had suspended financing to Wilmar following complaints to the International Finance Corporation (IFC) about Wilmar's operations.¹³¹ A subsequent 2013 loan of \$106.35 million to Wilmar subsidiary Wii Pte came after *Newsweek* had ranked Wilmar as the least sustainable company in the world in terms of environmental performance for two years running (2011 and 2012).¹³²

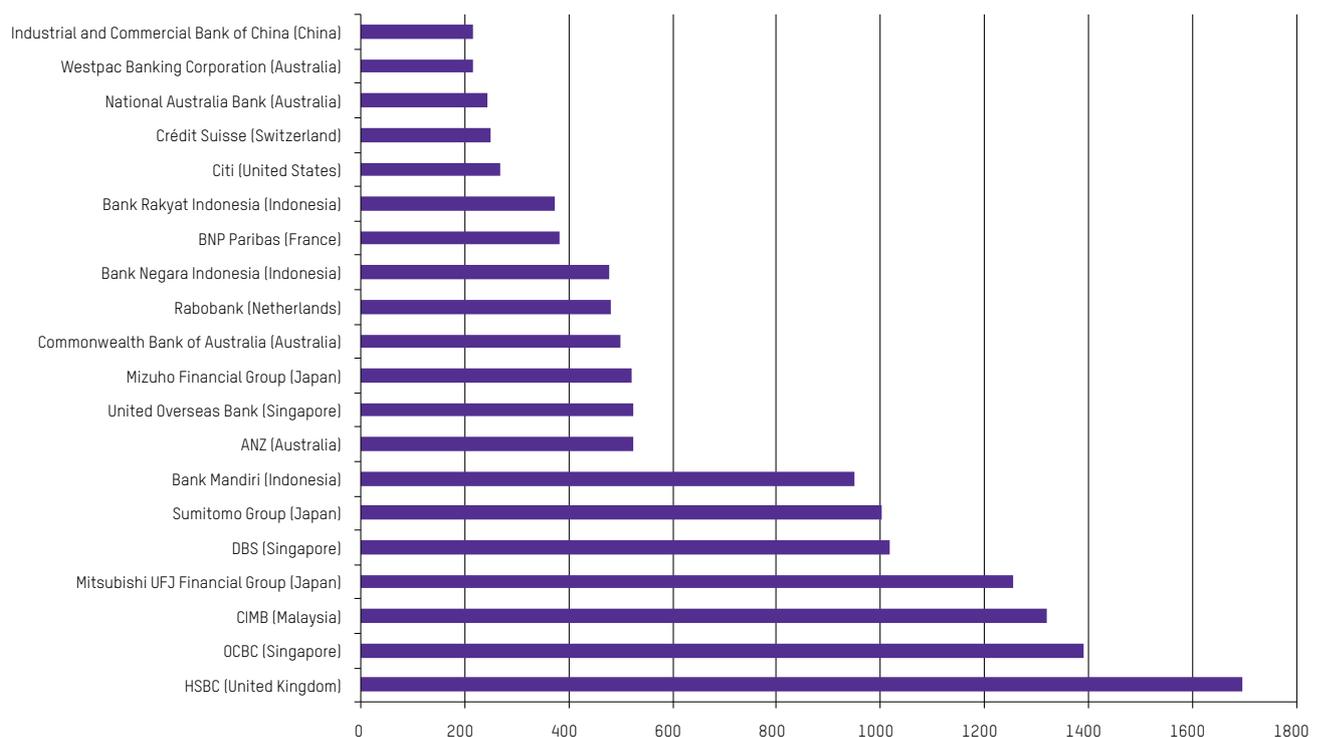
In July 2015, a Friends of the Earth report detailing concerns about Wilmar's operations in Nigeria revealed that Westpac and CBA are among the company's largest lenders.¹³³ According to the Thomson One database, in January 2014, CBA contributed USD \$50 million and Westpac USD \$200 million to a five-year syndicated loan to Wii Pte Ltd to finance "general corporate and working capital requirements, and refinancing purposes".¹³⁴

In its 2015 annual reporting, NAB noted that it had raised its policy statement on Improper Land Acquisition policy with Wilmar.¹³⁵ Neither CBA nor Westpac mentioned in their annual reporting that in 2015 the banks had been publicly named as key Wilmar financiers and that the company continues to face allegations of poor environmental and social practices.

"WE WILL BE THE ETHICAL BANK, THE BANK OTHERS LOOK UP TO FOR HONESTY, TRANSPARENCY, DECENCY, GOOD MANAGEMENT, OPENNESS."¹³⁶

CBA CHAIRMAN

Total loans to 20 "palm oil tycoon" companies: 2009-2013 (USD\$ million)



By Tuk Indonesia/Profundo

WHAT HAS WILMAR DONE TO ADDRESS PROBLEMS IN ITS SUPPLY CHAIN?

In December 2013, Wilmar initiated its “No Deforestation, No Peat, No Exploitation” policy, setting itself a two-year deadline for implementation. To date the company has shown significant commitment to realising its policy including hiring an independent firm, The Forest Trust, to support its implementation. The Forest Trust has created an “online dashboard”, a website which charts the company’s progress. In January 2015, Wilmar took the significant step of publishing a list of more than 800 mills from which it sources, dramatically increasing the traceability of its supply chain. The dashboard also registers a list of current complaints against the company.

ONGOING COMPLAINTS INVOLVING WILMAR’S RECORD ON FREE, PRIOR AND INFORMED CONSENT

Despite these significant steps, Wilmar continues to face complaints regarding its operations. Several complaints against the company in Nigeria, Uganda, Liberia and Indonesia raise allegations that Wilmar, and its suppliers, failed to gain FPIC of local communities before acquiring plantation land.¹³⁸ These complaints involve complex local tenure histories, as well as overlapping and competing land claims — including customary land tenure, long-term land users and formally recognised rights holders.

While Wilmar’s policy prioritises gaining FPIC for all new plantations, the company has yet to commit to revisiting FPIC for plantations it or its supply chain have acquired before December 2013. While complaints have been contested by the company, they do appear to point to the enduring nature of problems that can arise when companies fail to gain adequate FPIC before acquiring land as the FPIC process can alert companies to local conflicts and associated risks beforehand. This is evident, for example, in an ongoing exchange between Wilmar and Friends of the Earth regarding the company’s plantations in Cross River State in Nigeria. This includes community members presenting, and revoking, complaints against the company, highlighting the complexity of understanding local dynamics in resolving such cases and indicating that FPIC has not been achieved.¹³⁹

While Wilmar has made a significant effort to improve its social and environmental record, the ongoing concerns show the centrality of FPIC to addressing a range of land-related risks for agribusiness firms. This problem has also been reported in significant depth in the supply chain of other large palm oil companies.¹⁴⁰

Growing attention on Australian banks and palm oil

In February 2015, the NGO Tuk Indonesia calculated the relative exposure of global banks to what Tuk Indonesia described as Indonesia’s top 25 “palm oil tycoon” companies.¹³⁷ The NGO alleges that combined, these 25 companies control up to 3.1 million hectares of land planted with oil palm. TUK Indonesia also states that the companies control an additional unplanted land bank of two million hectares — an area equivalent to the size of Fiji. Complaints against individual tycoon companies include human rights abuses, deforestation of high conservation value forests and billions of dollars in tax evasion.

The relative exposure of the Australian banks to the tycoon companies between 2009 and 2013 as reported by Tuk Indonesia appears to inversely correlate with each bank’s recent policy action on improper land acquisitions — with ANZ the most exposed, but having done the least, and Westpac, the least exposed, making the most significant new commitments.

THE CASE OF PT SIL IN SELUMA DISTRICT, BENGKULU, INDONESIA

One case where FPIC has not been achieved involves a Wilmar supplier, PT Sandabi Indah Lestari (PT SIL), in Indonesia. In 2011, the company bought an agricultural land concession (under a Hak Guna Usaha – HGU– agricultural lease) to access 2,812 hectares in Seluma district, in Bengkulu province in Sumatra. The lease had previously been issued to a different company, PT Way Sebayur (PT WS) in 1987, but had been revoked in 2005. In acquiring the HGU permit, PT SIL also inherited a history of unresolved land disputes that had existed between local landholders and PT WS. This included an area of 1,000 hectares, which the local government had re-allocated from the PT WS concession for use by local residents. On acquiring the new concession area, PT SIL immediately began to occupy it rather than taking steps to positively engage the local people. This includes the land of the Indigenous Serawai people as well as that of more recently established communities that rely on the land for their food and livelihoods.

In addition to issues surrounding the land acquisition, there is concern that PT SIL has been granted a cultivation permit without fulfilling the necessary requirements such as completing an environmental impact assessment. In February 2015, Indonesian NGO Walhi Bengkulu made a formal request to the office of the National Land Agency (Badan Pertanahan Nasional) in Bengkulu to publicly release information pertaining to the land leases and concession maps of PT SIL and two other companies. In 2015, the local Bengkulu provisional information commission also urged the National Land Agency to release information pertaining to PT SIL's land leases and concessions.

There are disturbing reports of the company using force, threats and property destruction in order to establish its claim to the concession land. Community members describe PT SIL bulldozing and burning residents' land holdings and watering plants with kerosene. "Damar", a local resident, noted "we haven't planted rice since 2011 because the land has dried out". Armed guards are placed along the road, blocking access to residents' smallholdings. According to the local community, PT SIL workers urge people to "sell" their land, promising jobs or compensation and threatening forceful eviction if residents do not comply. The destruction of crops and trees has impacted the food security and income of small-hold farming families who rely on rubber, small-scale oil palm and food crops for their livelihoods.

"AFTER PT SIL ARRIVED, THEY ENCLOSED OUR LAND BEHIND BARBED WIRE, AND ON THAT THURSDAY DEMOLISHED IT ENTIRELY."

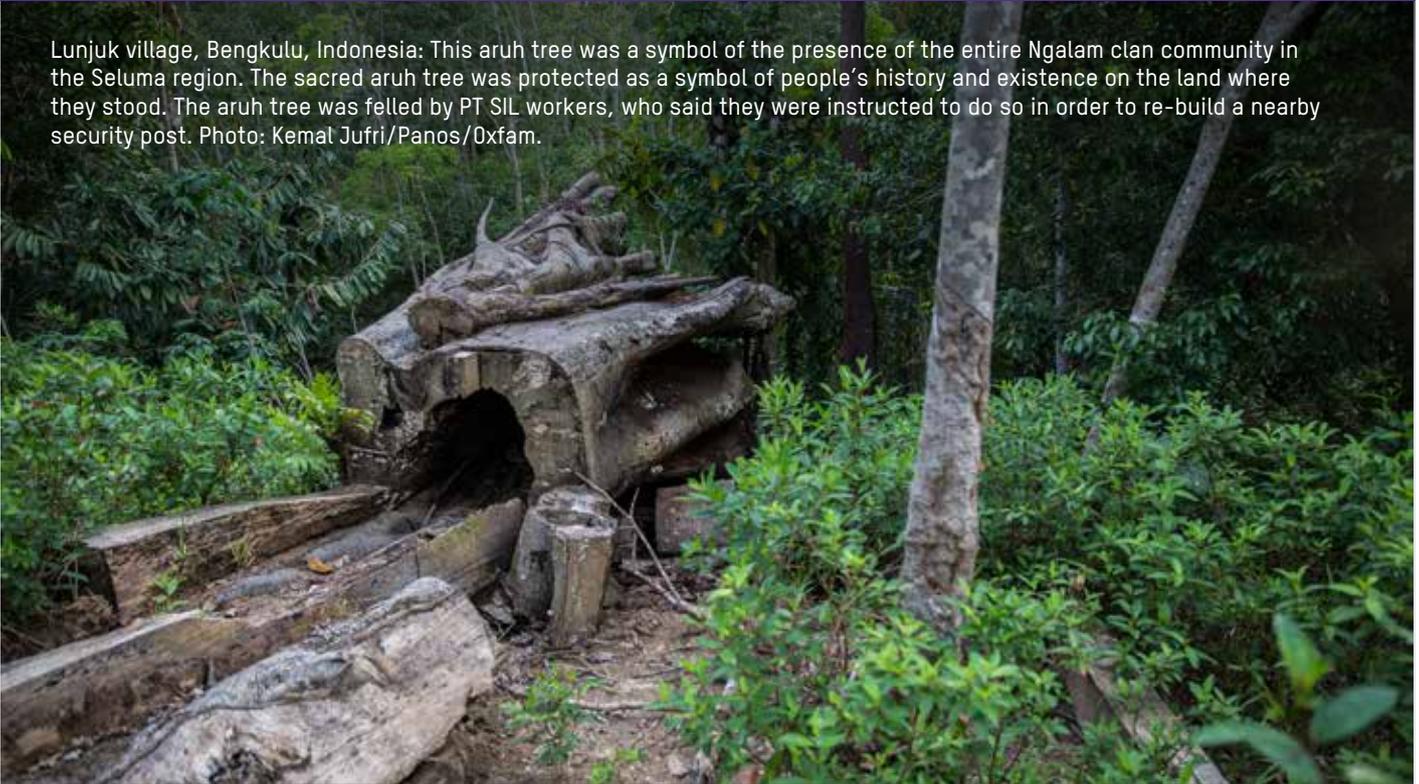
"ASIH", LUNJUK VILLAGE

Land conflict also erodes the social structure of community life, evident in how PT SIL's actions impact trust and a sense of security in affected villages. Several people describe having to keep a constant vigil over their land for fear that their crops and trees would be destroyed if they left. "Suluh" from Lunjuk village told Oxfam: "When PT SIL arrived in 2011 we were pressured to sell the land but we did not want to ... If we don't stand guard then our food gardens are vandalised or seized by PT SIL." She added: "One of the company's usual tactics for evicting us is to wait until a day community members are not working in the fields, for example a market day, holiday or other ceremony." This imbues a current of fear into what should be times of celebration and central events in community life.

Community members described the company rewarding those who relinquish their land with jobs. This includes work as "security guards" to persuade or force others in the community to leave their land. "Asih" from Lunjuk village recounts this challenge in her own family: "My cousin sold his land and was then promoted as a company security guard. He is asked to entice others to sell their holdings or else inform them that they will be forcibly evicted." She prefaces this story by a reflection on how the company impacted her community, noting "our opponents are our own brothers and sisters". Asih described how she felt after her husband was arrested for "theft" for harvesting fruits from his own garden. "Within the community I feel embarrassed. People who know the situation, they understand. But [not] those who don't know the truth." Asih's story speaks to the psychological stress, not just the physical stress, of being forced off the land.

In August 2014, PT SIL workers cut down a sacred aruh tree in an ancient burial ground. They had been instructed to do so by the company in order to re-build a security post. The tree was a symbol of the presence of the entire Ngalam clan community in the Seluma region, a place of great importance and pilgrimage. The tree was protected as a signpost of the burial ground and as a symbol of people's traditions, identity and history on the land. The felling of the tree has deep spiritual impacts for the local Indigenous community.¹⁴¹

Lunjuk village, Bengkulu, Indonesia: This aruh tree was a symbol of the presence of the entire Ngalam clan community in the Seluma region. The sacred aruh tree was protected as a symbol of people's history and existence on the land where they stood. The aruh tree was felled by PT SIL workers, who said they were instructed to do so in order to re-build a nearby security post. Photo: Kemal Jufri/Panos/Oxfam.



Nine questions to ask when talking to your bank about land grabs

Since April 2014, 20,000 concerned customers, investors and members of the broader public have written to their bank about land grabs. Many more shareholders and institutional investors have asked questions behind closed doors. The banks' responses typically refer to a range of general standards, policies, frameworks and voluntary guidelines. They may also refer to specific aspects of cases concerning allegations of land grabs.

Oxfam has prepared nine questions that can be used by customers, investors and others concerned by land grabs to help analyse and understand what exactly their bank is saying on land grabs.

1. Can the bank direct you to resources that allow communities to find out which agriculture and timber companies it finances, or otherwise supports, in Australia and overseas?
2. Does the bank tackle the issue of land grabs systematically — for example, through addressing cases and policies?
3. Is the bank taking direct responsibility for its proportional role in legitimising, backing and seeking to profit from land-based investments?
4. Can the bank provide you a copy of a policy that clearly explains its specific commitments on land rights?
5. Does this policy apply to all its operations?
6. Can the bank show any examples of overseas communities accessing the bank's grievance mechanism and achieving an outcome that improves their day-to-day lives?
7. Can the bank show you examples of independent research, such as third-party environmental, social and human-rights impact assessments, that inform its response to allegations of connections to companies linked to land grabs?
8. Can the bank show how it is addressing the issue of land grabs through measures that include transparency, commitments and accountability?
9. Does the bank have a roadmap or plan outlining how it will continue to improve on its response to land grabs in future?

8. CASE STUDY: BE OPEN ABOUT WHO YOU DO BUSINESS WITH

This case study revisits the evidence showing Westpac's connection to the WTK Group (WTK) in PNG, providing updated information on new documents presented by the bank in November 2014. It also details ANZ's exposure to WTK and controversial land leases in PNG. WTK is the oldest of the big five Sarawak-based Malaysian logging companies, and significant controversy has accompanied the company's forest concessions, including concerning allegations of land grabs.¹⁴²

In response to considerable negative media coverage on its connection to WTK following the publication of *Banking on Shaky Ground*, Westpac has sought to clarify its relationship with WTK Group in PNG.¹⁴³ While questions remain over Westpac's relationship with one WTK subsidiary in PNG, Vanimo Forest Products Ltd, the bank has clearly stated that it has not had a relationship with another, WTK Realty Ltd, since 2000.

In contrast with often-argued views on disclosure, Westpac's actions show in this case that not only is greater transparency possible, it is desirable. Being on the record about who the bank will and won't do business with is one of the easiest ways for it to reassure its customers and investors about how it is approaching industries with extensively reported land-related risks.

SPECIAL AGRICULTURE AND BUSINESS LEASES AND LAND GRABS IN PNG

The vast majority of land in PNG is held in customary land ownership, sometimes asserted to be 97% of the country. However, since 2003, an estimated 12% of customary land in PNG — more than five million hectares — has passed into the hands of companies under the controversial Special Agriculture and Business Leases (SABL) scheme.¹⁴⁴ Ostensibly, this scheme was designed to encourage agricultural development. However, as Chief Commissioner John Numapo found in PNG's 2013 Commission of Inquiry, lax oversight of the SABL scheme has subverted the more stringent requirements of PNG's forestry industry and allowed for permissive logging operations.¹⁴⁵ In addition to this inquiry, numerous NGO, media and academic reports and persistent and ongoing calls from communities in recent years, all point to a widespread problem in enforcing the rules defining SABLs.¹⁴⁶

While WTK's specific involvement in particular SABLs is challenging to ascertain, the Commission of Inquiry directly names WTK subsidiaries as involved in SABLs that it recommends should be revoked.¹⁴⁷ WTK itself has publicly denied any connection to SABLs.¹⁴⁸ An investigative report

into the SABL scheme in 2012 named WTK as operating six SABLs, with a combined area of 340,185 hectares.¹⁴⁹ Noting that WTK's links are anything but direct, Oxfam documented an opaque web of subsidiaries and related companies that link WTK to a number of SABLs in PNG. It also suggested likely connections between the WTK companies and a land grab in Turubu in PNG's East Sepik Province. This land grab has significantly impacted on the lives of local communities with women and men reporting worrying accounts of polluted water, reduced access to food, health problems, the destruction of sacred sites and community conflict. As one man put it: "They trick us. [The company said] 'this is an oil palm project, it's an agriculture project' but really ... [they were] using the forestry."¹⁵⁰

EVIDENCE OF A WESTPAC-WTK LINK

At the time of publication of *Banking on Shaky Ground*, documents filed with PNG's Investment Promotion Authority (IPA) indicated that the Westpac Bank of PNG had a 19-year relationship with WTK Group.¹⁵¹ According to these documents, two companies in PNG, which are subsidiaries of WTK — WTK Realty Ltd and Vanimo Forest Products Ltd — 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. (This does not preclude WTK from having other types of relationships with the bank, for example through Westpac's transactional banking operations in PNG.) On expiry of this equitable mortgage the IPA requires a company to submit a new form — a "Notice of Partial or Total Satisfaction of Charge" (Form 31).¹⁵² At the time of publication of *Banking on Shaky Ground*, no Form 31 had been lodged for either WTK Realty Ltd or Vanimo Forest Products Ltd.

Oxfam first provided Westpac with information about its possible connection with companies accused of land grabbing on 5 March 2014. Oxfam engaged with Westpac several more times and invited the bank to respond before our report was finalised. At that time Westpac chose not to confirm or deny its relationship with WTK Realty Ltd or Vanimo Forest Products, noting "Westpac is bound by customer confidentiality, and is unable to comment on particular allegations made by Oxfam".¹⁵³

After the publication of *Banking on Shaky Ground*, Oxfam and Westpac continued to engage on the issue of land grabs and the development of Westpac's Financing Agribusiness policy.

NEW EVIDENCE ON THE WESTPAC AND WTK RELATIONSHIP IN PNG

WESTPAC AND WTK	
1995	WTK Realty Ltd and Vanimo Forest Products Ltd, both wholly owned by WTK, obtain “floating charges” with Westpac. ¹⁵⁴ This is likely to be, in layperson’s terms, a line of credit. This is secured by an equitable mortgage.
June 2011	Vanimo Forest Products Ltd submits its annual 2010 company filing. This still lists registered charges (for example a line of credit) with Westpac, although it notes no amount owing at the time of filing its return.
2012	WTK Realty Ltd annual company filing still lists registered charges with Westpac, although it notes no amount owing at the time of filing its return.
2013	The PNG Commission of Inquiry into SABLs reports links between WTK and SABLs that it recommends should be revoked.
5 March 2014	Oxfam first raises with Westpac its links to WTK in PNG.
28 April 2014	<i>Banking on Shaky Ground</i> is published.
4 July 2014	The National Court of PNG rules the Turubu SABL to be invalid.
18 November 2014	A Form 31 for both Vanimo Forest Products Ltd and WTK Realty Ltd is submitted to the PNG Investment Promotion Authority. These state that the “charge” (such as a line of credit) ended in 2000.
19 November 2014	Westpac formerly discharges the equitable mortgage (the security for the line of credit or “charge”) for both WTK Realty Ltd and Vanimo Forest Products Ltd.
25 November 2014	Westpac releases its new Financing Agribusiness policy.
30 November 2014	Further to its new documents about its lending relationship with WTK in PNG, a Westpac media release notes that the bank has not had a relationship with WTK Realty Ltd since 2000. In the media release the bank does not explicitly deny a relationship with Vanimo Forest Products Ltd.

In November 2014, Westpac alerted Oxfam that it had submitted new documents to the IPA. On review of the IPA database, Oxfam found that Westpac had submitted documents that discharged the equitable mortgage – the security provided for the credit issued by the bank – for both WTK companies as of that date, 19 November 2014. Two Form 31s – that signify the end of the line of credit – were dated 18 November 2014. The 18 November 2014 forms state that the charges ended in October 2000. However, both Vanimo Forest Products Ltd and WTK Realty Ltd list charges as registered to Westpac in annual company filings submitted since 2000.

On 30 November 2014, Westpac issued a media release directed to the producers of the television current affairs program 60 Minutes that states that WTK Realty Ltd (which it then refers to as “WTK”) has not been a customer of the bank since 2000. It notes that “Contrary to Oxfam’s report released in April, WTK Realty Ltd (“WTK”) is not a Westpac customer.¹⁵⁵ Westpac does not have a relationship with WTK, nor do we have any investments in or with WTK. A five year banking relationship with WTK ended 14 years ago.”¹⁵⁶ Whereas Oxfam used the term “WTK” to refer to both WTK Realty Ltd and Vanimo Forest Products Ltd in its report, Westpac only references WTK Realty Ltd. This raises the question as to whether Westpac has an ongoing relationship with Vanimo Forest Products in PNG. (Note – As this report went to print in February 2016 Westpac provided Oxfam with a copy of letters it has recently issued to a PNG accountant representing the WTK companies, as well as the IPA. In the letter Westpac requested the companies update their filings. Any documents resulting from this exchange will be reported on Oxfam’s website.)

LOGGING CONTINUES IN TURUBU

Both Oxfam's investigations as well as that of the Commission of Inquiry raised serious doubts of the legality of consent processes surrounding the Turubu SABL. The lease, granted to Sepik Oil Palm Plantation Limited in 2008 for a period of 99 years, covers 116,840 hectares known as Portion 144C which involves more than 50 different groups of landowning communities.¹⁵⁷ Oxfam's investigations revealed mixed responses in relation to compensation for landowner communities with logging on their land, with a handful of people reporting financial benefits while others had received nothing.

These concerns were further validated on 4 July 2014 when Justice Gavara-Nanu of the National Court of PNG determined the SABL granted to Sepik Oil Palm Plantation Limited to be "null and void". He noted "all the deals on and in relation to the said area of land described as Portion 144C East Sepik Province, Papua New Guinea, including logging and planting of oil palm are illegal".¹⁵⁸

This was a landmark decision for the people of Turubu and to the ongoing public debate on SABLs. However, community members protesting ongoing logging were then informed that the company involved had been issued a stay, allowing it to continue logging until its appeal was heard in the Supreme Court. The case has yet to be heard.

ANZ'S EXPOSURE TO WTK AND OTHER CONTROVERSIAL LAND LEASES IN PNG

Westpac is not the only bank reportedly exposed to WTK. ANZ bank is the single largest shareholder in the Malaysian banking AMMB group, with a 24% stake in the company.¹⁵⁹ ANZ and AMMB have close ties — until late 2015 ANZ's new CEO was a director at AMMB group, and several senior AMMB positions, including a former CEO, were filled by long-term ANZ staff.¹⁶⁰ *Banking on Shaky Ground* reported AMMB group having connections with several companies facing credible allegations of land grabs.¹⁶¹ As noted on page 25, ANZ has yet to substantially respond to these reports. According to the Thomson One database, in March 2015, a fund of AMMB Group, Amlslamic Fund Management, held 2,018,500 shares in the WTK Group — an approximate value of \$640,000 (two million Malaysian ringgit).¹⁶² In line with ANZ's unwillingness to take action on land grabs in its fully owned holdings, it is not surprising that it appears not to have acted on land-related risks through its broader investment chain.

This is not the only link connecting ANZ to companies facing allegations of land grabbing in PNG. In a rare example of bank exposure to land grabs through transactional banking, in PNG the Commission of Inquiry (COI) viewed evidence that in 2011 a company fraudulently claimed to represent land interests relevant to approximately 30,000 land owners and then received a 1 million kina payment (approximately AUD \$475,000) into its ANZ account.¹⁶³ In a separate case, ANZ issued a bank guarantee in 2010 of 595,000 kina (AUD \$240,000) to Queensland-led company Independent Timbers & Stevedoring Ltd (IT&S) for operations in PNG. The COI found that IT&S fraudulently claimed to have consent to operate on two million hectares that belongs to tens of thousands of people, and obscured its real intentions of undertaking logging.¹⁶⁴ Even in a context with so many problematic SABLs, the IT&S operation appears to have been such an egregious abuse of due process that it has been halted before any logging could take place. To date, there has been no follow-up investigation or action into IT&S or ANZ from either Australian or PNG investigators. ANZ has not identified these risks in its 2013, 2014 or 2015 reporting.

"GOVERNMENTS, REGULATORS AND COMMUNITIES ACROSS THE 33 COUNTRIES WHERE WE OPERATE EXPECT RESPONSIBLE, ETHICAL AND SUSTAINABLE DECISIONS AND ACTIONS FROM US."

FORMER CEO, ANZ¹⁶⁵

Logged land rear Trin village, Turubu, PNG. Photo: Vlad Sokhin/Oxfam.



9. NO EXCUSE NOT TO ACT ON LAND GRABS

In August 2015, Oxfam released a briefing paper for the Australian financial sector — *No Excuse: How Australia's big four banks can better respond to land grabs*. The paper outlines in extensive detail how the banks can construct a Zero Tolerance for Land Grabs approach, drawing on practices and policies already in use by the Australian financial sector. In showing what the big four banks can and must do, Oxfam also put the banks on notice. As this report shows, all four banks continue to be exposed to agriculture and timber land grabs. There is no excuse for a failure to act.

Below is a summary of key concepts explored in the paper and which informs our recommendations for what the banks must do (page 46-47).

SYSTEMATISE DISCLOSURE

Just a few years ago, the global financial system was virtually impenetrable to outsiders. Today, NGOs, media and people's movements are learning how to uncover bank links to a host of environmental and social issues. In the 21st century, banks can choose to disclose systematically or risk third-party disclosure with attendant negative headlines.

While Oxfam understands the importance of privacy in banking, it believes it is critical for banks to adopt greater transparency in dealings that are exposed to land-related risks due to the dire consequences of land grabs and human rights violations. Often banks dismiss the issue of transparency by appealing to a general principle of privacy. Instead, banks should approach the issue of disclosure by considering the diversity of bank operations, their specific legal and commercial contexts, and the forms of disclosure that already exist. There is a vast difference between an asset management fund listing the names of companies in which it holds shares — which has no impact on client privacy — and the privacy needs in transactional banking.

At times the financial world appears attached to an increasingly outdated notion of secrecy that does not acknowledge the disclosure already occurring within the sector. This culture of secrecy can be so entrenched that some banks, such as ANZ, refuse to publish any substantial information about policies supposedly intended to increase accountability.¹⁶⁶ This raises the question of whether genuine concerns about privacy, legal compliance and commercial competitiveness are being conflated with efforts to avoid reasonable levels of scrutiny by bank customers, investors and the general public, including communities affected by bank operations. For example, banks regularly include a clause

on disclosure in loan agreements or as part of a bundle of documents to be signed in connection with taking a loan.¹⁶⁷ When negotiating transactions, banks prioritise obtaining consent for detailed disclosure that serves their marketing interests.¹⁶⁸

However, banks have yet to place the same priority on securing disclosure of basic, high-level information relevant to their environmental, social and governance (ESG) commitments and which contributes to safeguarding the rights of affected communities. (Oxfam also contends that a company's connection to land grabs and human rights in any of its operations group-wide, should raise concerns and heightened due diligence in how the bank approaches any relationship with subsidiary or parent companies). Even an initiative driven by the banking sector itself — the Equator Principles III (EP III) — requires that banks publicly name projects that they finance.¹⁶⁹ So far, only NAB has published on this commitment. This is a precedent that its key Australian competitors have yet to exceed or match. In 2014, NAB named 10 projects out of the 23 under the EP III initiative, and 27 projects in total that it closed or refinanced in the preceding year.¹⁷⁰ In December 2015, NAB reported that it had closed 18 new project finance transactions and refinanced 11 existing deals, however, only eight deals were subject to Equator Principles requirements. NAB named the eight projects under the EP III initiative, of a total of 29 project finance deals. While NAB's increased disclosure is a positive start, this highlights the limited scope of voluntary transparency initiatives.¹⁷¹ While there are some outstanding questions in specific areas about how to disclose, tools to increase transparency already exist. Transparency is also a key part of ensuring that risk-management measures are effective. For example, while banks have adopted social and environmental impact assessments (SEIAs) to manage risks in their loan portfolios, a lack of transparency undermines the accuracy and efficacy of SEIAs. Local people who have the most knowledge about existing land use and who have the biggest stake in new projects rarely contribute to SEIAs.¹⁷² As a result there are many examples of SEIAs failing to capture land-related issues such as non-compliance with local laws and human rights law, likelihood of forced resettlement, companies' prior land rights records and the impact on women's rights. Without appropriate transparency, the ability of SEIAs in identifying risks — their core function — is unreliable.



Pis village, Kampong Speu, Cambodia: After losing their homes and farming land to Phnom Penh Sugar, some villagers from Pis village now seek work on the nearby plantation. During the raining season, workers are paid less than USD \$3 a day to clean and fertilise the sugarcane. Photo: Thomas Cristofolletti/Ruom/Oxfam.

COMMIT TO STRONGER DUE DILIGENCE AND OTHER POLICIES TO RESPECT HUMAN RIGHTS

As detailed in *Banking on Shaky Ground*, an inability to understand the local land rights context exposes banks to operational, expropriation, credit and reputational risks. More broadly, financial consultancy The Munden Project notes that investors are so distanced from the local land context where they invest that they are unlikely to understand it.¹⁷³ The Munden Project also points out that proxies for assessing land risk are often inaccurate and that common tools for managing operational risk, such as political risk insurance, are unlikely to protect land-related investments.¹⁷⁴ Case studies continue to emerge that reveal gaps in the banks' due diligence to identify land-related risks.

Unlike other tools in use by the financial sector, only an FPIC-based approach can pre-emptively identify land issues. For example, the limitation of media monitoring or reputational databases used by some banks, such as RepRisk, is that even in a best-case scenario they can only identify problems after they occur. Good due diligence requires the banks to understand the extent to which legitimate land rights may not be recognised, or protected, through judicial frameworks, particularly in emerging markets. An FPIC-based approach ensures that banks safeguard not only against legal and sovereign risks, but also against the operational and compliance risks that occur if land conflict disrupts a company's operations. A company's connection to land grabs and human rights in any of its operations group-wide should raise concerns and heightened due diligence in how the bank approaches any relationship with subsidiary or parent companies. An FPIC-based approach also assists banks to meet their anti-money laundering commitments under Australian law. Environmental standards that prohibit investment in current, or recently cleared, high conservation value forests, peatlands, wetlands on the Ramsar list and UNESCO World Heritage Sites are also critical, but limited in their geographic application and social scope.

BE ACCOUNTABLE TO COMMUNITIES AFFECTED BY THE BANK'S OPERATIONS

As the NGO SOMO has observed, company self-managed grievance processes are less robust than external mechanisms.¹⁷⁵ The third-party ESG processes that do apply to the banking sector, such as the Organisation for Economic Co-operation and Development (OECD) National Contact Point process under the OECD Guidelines for Multinational Enterprises, have little capacity for enforcement and even rarer facility for providing remedy.¹⁷⁶ In December 2014, BankTrack's report *Banking with Principles?* highlighted that ANZ, like other banks, was failing to meet measures articulated in the 2011 United Nations Guiding Principles on Business and Human Rights.¹⁷⁷ While all of the big four banks have commitments to the Guiding Principles, it appears that none have yet met these accountability requirements.¹⁷⁸

While previously banks could have relied on escaping external accountability for their role in the commodity chain, the situation is rapidly changing. In 2015, financial sector researchers, academics, journalists and NGOs are increasingly focused on the role of banks and other financial sector actors in supporting land grabs in the agriculture and timber sectors and working with affected communities to hold banks to account.¹⁷⁹ As this report has shown, none of the big four banks have worked with communities impacted by land grabs to support a meaningful change in their day-to-day lives. None of the banks have committed to ensuring Justice for Affected Communities profiled in *Banking on Shaky Ground* by undertaking the recommended action of commissioning independent third-party social, environmental and human rights impact assessments. Neither have the banks committed to remediation, mitigation and ongoing monitoring of cases to ensure human rights and legal abuses do not occur. Land rights violations typically take years to be addressed. Banks should not assume that community action will diminish over time but rather expect the media and financial sector profile of problematic cases to increase, and potential for reputational risk to deepen.

An ongoing challenge in financial sector accountability is that banks typically off-load responsibility onto their clients without acknowledging the proportional role that they play in enabling, legitimising and profiting from large-scale land deals. As the banks themselves recognise, they can make a meaningful impact on the sectors, companies and projects with which they deal by insisting on appropriate levels of social and environmental accountability and risk mitigation from their clients. Where a bank opts not to undertake appropriate due diligence, or fails to act on available information about land rights concerns, this falls within its direct sphere of influence.

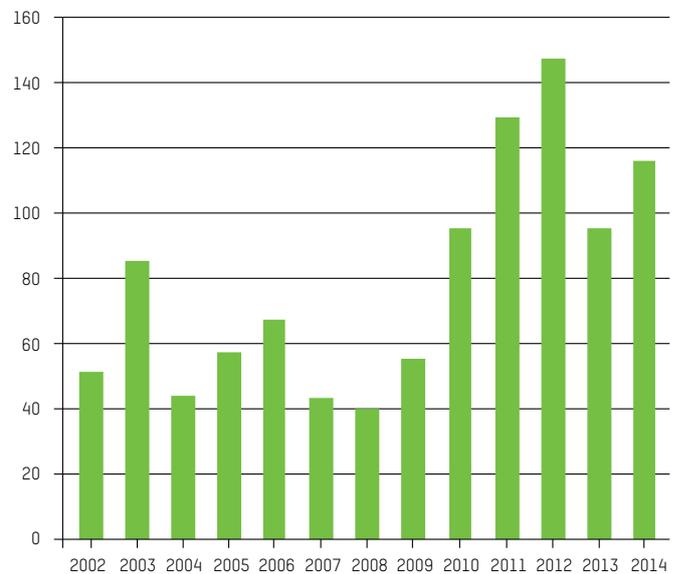
In cases where the bank has not upheld its commitments, and where it is unable to work with companies to support appropriate redress, the bank itself needs to assume some direct responsibility in facilitating a fair outcome for communities proportional to its role in the deal. In a recent poll of 1,000 Australians commissioned by Oxfam, 81% of those surveyed responded that if a bank's investments harm a community in some way the bank should provide some compensation (as opposed to no compensation).

As the big four banks expand their operations into industries and countries with poor independent oversight – for example, due to poor rule of law or high levels of corruption – they risk being seen as seeking to benefit from these conditions.

“ACTIVISTS AROUND THE WORLD ARE BEING KILLED IN RECORD NUMBERS TRYING TO DEFEND THEIR LAND AND PROTECT THE ENVIRONMENT IN THE FACE OF INCREASED COMPETITION OVER NATURAL RESOURCES ... IN 2014, WE FOUND 116 CASES OF KILLINGS OF LAND AND ENVIRONMENTAL DEFENDERS IN 17 COUNTRIES – ON AVERAGE MORE THAN TWO VICTIMS PER WEEK AND ALMOST DOUBLE THE NUMBER OF JOURNALISTS KILLED IN THE SAME YEAR ... AS WELL AS KILLINGS, ENVIRONMENTAL AND LAND DEFENDERS SUFFER ACUTELY FROM THREATS AND PHYSICAL VIOLENCE, CRIMINALISATION AND RESTRICTIONS ON THEIR FREEDOMS.”

GLOBAL WITNESS, 2015¹⁸⁰

Documented cases of killings of environmental and land defenders



From Global Witness¹⁸¹

Land-related risks and exposure

“INCREASINGLY, CUSTOMERS, SHAREHOLDERS AND OTHER STAKEHOLDERS WANT TO KNOW THAT THE ORGANISATIONS THEY DO BUSINESS WITH ARE ACTIVELY CONSIDERING THEIR ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) IMPACTS.”¹⁸²

CBA

Banking on Shaky Ground detailed how the unaddressed issue of land grabbing in the timber and agricultural industries overseas represents a concentration of a number of risk factors including credit, compliance, operational, sovereign and reputational risk.¹⁸³ These risks are summarised in this section, to assist all investors, including the big four banks, to understand the way in which land grabs pose a material risk to their business and the incentives to act.

Failure of situational analysis

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, systems for land ownership.¹⁸⁴ As such, Australian investors involved with land-related projects in emerging markets face a significant gap in knowledge and experience that necessitates a precautionary approach and a thorough situational analysis.

Credit risk: Asset write-downs and uncertainty¹⁸⁵

Often a 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.¹⁸⁶ The International Monetary Fund (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.¹⁸⁷ 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.

Operational risk

Failure to achieve a social license to operate leaves investors vulnerable to land-related conflict. Research by the Rights and Resources Initiative and The Munden Project reveals that large areas of land under community land tenure are not formally recognised by the state and that this land is incorporated into leases to companies without company or community knowledge.¹⁸⁸ Conflicts are often long lasting and can seriously affect the operations of companies that directly source commodities, leading to operational risks for their financiers. Conflict can ultimately affect a company's financial stability as a result of losses and uncertainty arising from delayed operations and forced withdrawals.¹⁸⁹ This in turn poses a risk to companies' security of supply, given that supply chains are extremely vulnerable to disruption and discontinuity. The Munden Project also reports that risk management tools, such as political risk insurance, are unlikely to cover the costs of operational risks connected to improper land acquisitions.¹⁹⁰ Increasingly ethical campaigns are targeting the group-wide operations of companies connected to human rights violations.

Compliance risk

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.¹⁹¹ Land acquisitions are unfortunately prone to corruption. Land investments have also been plagued by secrecy, with associated deals often made without the knowledge or consent of affected communities.¹⁹² This fosters an environment where corruption becomes the norm, especially in countries where rule of law is weak. In addition to compliance risks in relation to local laws, Australia's big four banks also have to comply with Australian laws governing corruption, bribery and money-laundering in overseas dealings.¹⁹³ This includes ensuring that they do not handle the proceeds of crime and that they undertake appropriate due diligence for business deals involving government officials.

Sovereign 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, with Cambodia, Laos and PNG all announcing a freeze on new land concessions in recent years. In all three countries, there have been reports that granting of land concessions and leases continued despite the moratoriums, but for an investor this is hardly a promising situation.

One suggested strategy to combat sovereign risk resulting in expropriation is to "get citizens on side".¹⁹⁴

Reputational risk

"BANKS ARE SUPPOSED TO BE HELD TO THE HIGHEST CORPORATE STANDARD AND THEY'RE NEVER SHY TO TELL US WHEN THEY'RE DOING THINGS RIGHT. BUT THERE'S A STORY THAT OUR BIG FOUR BANKS ARE NOT TELLING YOU. IT'S A STORY OF ALLEGED FORCED EVICTIONS AND LAND ACQUISITIONS — FAMILIES LOSING THE HOMES THEY'VE HELD FOR GENERATIONS."

60 MINUTES¹⁹⁵

Managing reputational risk is critical for a bank, and reputational risk can endure beyond the life of a loan if a bank fails to support adequate redress — as is seen in the case of ANZ and Phnom Penh Sugar in Cambodia on page 42-45. Both international standards that the banks have committed to, such as the Equator Principles, and consumers 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.¹⁹⁶ 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.

While the increased availability of information on social and environmental practices deepens the dynamics of reputational risk, this also creates new opportunities for companies that "invest ahead of the curve" to meet the growing demand for more ethical business.¹⁹⁷ KPMG notes "investing in projects that strengthen social license-to-operate" creates benefits "not only through reduced risk but also through strengthened brand value and increased customer and employee loyalty".¹⁹⁸ Acting on land grabs is not only imperative to the banks reducing material and reputational risks but to the new ways of doing business in the 21st century.

10. CASE STUDY: REPUTATIONAL RISK CAN BE ONGOING

“THE FACT THAT YOUR BANK HAS GRANTED A LOAN HAS MEANT YOU HAVE EARNED A GREAT DEAL OF PROFITS FROM PHNOM PENH SUGAR. ALTHOUGH THIS COMPANY HAS PAID OFF ITS DEBT AND IS NO LONGER A CUSTOMER OF ANZ ... WE INNOCENT PEOPLE SUFFER FROM SERIOUS CONSEQUENCES AS FOLLOWS: NO PLACE TO FARM CATTLE, NO PLACE TO GROW CROPS TO MAKE OUR LIVING, NEGATIVE EFFECTS ON OUR CHILDREN’S STUDY BECAUSE WITHOUT WORK WE CAN NO LONGER PAY ASSOCIATED COSTS, AND NO LAND FOR OUR CHILDREN ON WHICH TO LIVE AND WORK AFTER THEY MARRY.”

LETTER FROM REPRESENTATIVES OF EVICTED COMMUNITIES TO ANZ, 16 DECEMBER 2014.¹⁹⁹

In January 2014, Fairfax newspapers reported that ANZ was linked to a Cambodian sugar operation implicated in various human rights abuses including child labour, food shortages and forced evictions. Hundreds of people had been forced off their land for the development of a sugar plantation. This took place without recognition of existing community tenure and documentation. The journalists showed that ANZ Royal, in which ANZ has a controlling stake (55%), had issued a loan to Phnom Penh Sugar (PPS) — a company that oversees a sugarcane plantation complex on 23,000 hectares in Kampong Speu.²⁰⁰ Media and NGOs report that this includes protected forest land and the use of a shell company to sidestep the 10,000-hectare limit on government-issued Economic Land Concessions in Cambodia.²⁰¹ A powerful senator, Ly Yong Phat, owns the company. Based on household assessments, local NGOs now estimate community losses in Kampong Speu at USD \$11 million (about AUD \$15 million).²⁰² It has since been revealed that ANZ issued the loan in 2011.

Pis village, Kampong Speu, Cambodia: Mr Vaen Mak stands in front of his family’s house together with his wife Ms No Phon, one of their daughters and grandson. He is holding his land document. The family lost 3.5 hectares of land when they were evicted in order for the company Phnom Penh Sugar to build a sugar plantation complex. The family was relocated to a small plot (40x50m) which was full of rocks and difficult to farm. Photo: Thomas Cristofolletti/Ruom/Oxfam.





Several issues should have prompted ANZ to further investigate the deal. Prior to lending, ANZ hired a Thailand-based consultancy to conduct a site assessment, which local residents never saw. Although highly flawed, the 23 November 2010 assessment did raise concerns about land acquisitions.²⁰³ By this time local media and human rights groups had reported on the 2010–2011 Kampong Speu land seizures and earlier land grabs linked to a Ly Yong Phat company in Koh Kong.²⁰⁴ The business involvement of a senior politician should have escalated a decision on the loan to ANZ senior staff in line with Australian anti-corruption rules and the bank's policies.²⁰⁵ Despite these multiple risks, ANZ issued the company a loan for a mill, a central part of PPS's integrated plantation complex.

Affected communities were clear that they wanted ANZ to assist them to improve PPS's practices and to support meaningful redress. There is now a dispute between the community and ANZ about commitments that the bank subsequently made to facilitate an independent audit.²⁰⁶ Since mid-2014, ANZ has not supported any meaningful process of redress for affected communities despite its financing to Phnom Penh Sugar across three years.

Following widespread negative publicity in Australia and Cambodia, ANZ and PPS ended their relationship in July 2014. According to NGOs, 681 families in Thpong and Oral districts of Kampong Speu province now struggle to meet day-to-day needs such as access to adequate food, water and meaningful income as a direct result of land seizures. Instead of using profits from the deal to assist communities, ANZ has left people high and dry. It appears that ANZ is prepared to profit from what look to be egregious human rights abuses. The political connections in this case, and poor rule of law in Cambodia, seriously narrow affected people's options for legal avenues to pursue redress.

ANZ's response to substantive concerns raised by customers, investors and human rights advocates appears flippant and misleading. The bank has stated that it addresses these cases through its sensitive sector policy, yet it has no sensitive sector policy on land or agriculture and no process for redress. It has tried to distance itself from the PPS land grab by saying that it did not fund the acquisition of land, yet the very definition of a land grab is that land is taken at little or no cost.²⁰⁷ ANZ has suggested that PPS has given "compensation" despite clearly documented reports that there was no systematic process of payments and that some people received as little as USD \$50 or nothing at all.²⁰⁸

"WE ACCEPT THE ARGUMENT THAT IF ANZ HAD NOT LOANED THE FUNDS TO PHNOM PENH SUGAR, THE COMPANY WOULD HAVE GAINED FINANCE FROM ELSEWHERE, AS IT NOW HAS. HOWEVER THIS DOES NOT MEAN IT WAS ACCEPTABLE FOR THE ANZ TO HAVE MADE THE LOAN AND WE REGARD THE LOAN AS A BREACH OF THE BANK'S OWN HIGH STANDARDS ... WE DO NOT BELIEVE THE EFFORTS BY ANZ TO HAVE THE PROBLEMS ADDRESS BY PPS JUSTIFY THE ANZ HOLDING ONTO THE PROFITS IT MADE FROM THE LOAN. IT IS OUR VIEW THAT KEEPING THE PROFITS SENDS A SIGNAL ANZ BELIEVES IT MADE NO ERRORS IN PROVIDING THE LOAN. WE DO NOT BELIEVE THAT IS THE CASE."

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LETTER FROM THE UNITING CHURCH OF AUSTRALIA TO ANZ CEO

This failure to accurately assess concern in the PPS case is misjudged and negative exposure on the case continues to increase. Affected communities continue to send letters to the bank, protest outside the bank's Phnom Penh headquarters and keep the case in the media. Since July 2014, thousands of Oxfam supporters have written to the bank, the majority being ANZ customers. In October 2014, Cambodian NGOs filed a complaint under the OECD Guidelines on Multinational Enterprises on the communities' behalf and which the Australian National Contact Point has, belatedly, agreed to take up.²¹⁰ (ANZ and the NGOs working with affected communities did explore a mediation process brokered by the Australian OECD National Contact Point (NCP). The NGOs involved have advised Oxfam that this was not fruitful and they have now requested the NCP to undertake an independent investigation.) In November 2014, the Uniting Church in Australia launched a letter-writing campaign. In November 2014, 5% of the entire Australian population viewed a 60 Minutes story that focused on the bank's poor response to the case.²¹¹ The case was also included in a widely circulated April 2015 Business and Human Rights report.²¹²

The bank's case is further undermined by its broader approach to land issues. Unlike NAB or Westpac, ANZ has not taken any new policy action on land rights. The bank has denied further links to land grabs but has not responded to detailed evidence presented by Oxfam in April 2014 of ANZ's links from 2009 to 2013 to ten other companies connected to improper land acquisitions. In its May 2015 correspondence with the bank, Oxfam noted that "a lack of systemic action places ANZ at risk of being viewed as out of step with evolving social risk standards while your competitors investigate and develop substantial policies to mitigate land risk through enhanced due diligence".²¹³

The PPS case is now emblematic in showing that reputational risk from land grabs can be ongoing until land rights concerns are meaningfully addressed.

"I HAD DOCUMENTS FROM THE LOCAL AUTHORITY PROVING THAT I WAS THE LANDOWNER ... WHEN THEY SAID THE DOCUMENTS WEREN'T LEGITIMATE I ASKED, WHY DID THE LOCAL AUTHORITY PUT THEIR FORMAL STAMP ON THESE DOCUMENTS? ... I REFUSED TO ACCEPT [USD] \$300 COMPENSATION FOR THE LAND. THE COMPANY THEN HIRED PEOPLE WHO DROVE TO MY HOUSE, DESTROYED MY HOUSE AND THEN PUT MY BELONGINGS IN THE CAR TO TAKE TO THE RESETTLEMENT SITE ... \$300 IS NOT ENOUGH. I JUST WANT ADEQUATE COMPENSATION TO SUPPORT MY KIDS AND MY FAMILY. THE COMPANY ONLY GAVE ME A 40 X 50 METRE PLOT. BEFORE I HAD 13 HECTARES — INCLUDING LAND FOR A HOUSE, RICE AND OTHER CROPS."

"Thida", 55, Kampong Speu, Cambodia

What is "cutting and running"?

"Cutting and running" refers to the practice of a corporation or an institution divesting or otherwise distancing itself from newly publicised social or environmental concerns that are part of its commodity and investment chain, without supporting meaningful redress. By cutting and running, banks and their clients depend on their investors, customers and the media losing interest in the day-to-day hardship of local people affected by unethical practices. Cutting and running is frequently misrepresented as a company acting on human rights concerns, without consideration of whether the community has requested divestment or not. The reality on the ground is that companies are seen to either turn a blind eye, or fail to undertake sufficient due diligence to uncover violations of their own policies and local laws and then seek to evade scrutiny once these violations are exposed. This net result is that vulnerable communities bear the brunt of these violations without access to remedy to address them.

"THE ANZ HERE IN CAMBODIA IS NAVIGATING A DIFFERENT SET OF PROBLEMS WITH ITS CONTROVERSIAL INVESTMENT. RECENTLY IT CUT AND RAN ENDING ITS FINANCE OF THE SUGAR COMPANY AND TRYING TO DISTANCE ITSELF FROM LOCAL ISSUES, BUT THE BANK IS UNDER INCREASING PRESSURE TO NOW HELP FIX THE MESS IT LEFT BEHIND."

60 MINUTES

11. WHAT THE BANKS MUST DO: ZERO TOLERANCE FOR LAND GRABS

In *Banking on Shaky Ground*, Oxfam outlined a set of measures that together comprised a Zero Tolerance for Land Grabs approach. The *No Excuse* briefing paper then identified specific financial sector tools and precedents that the banks could draw on in developing such an approach, with a focus on the links between commitments, transparency (through appropriate disclosure for land-related risks) and accountability. This report shows that all four banks remain exposed to land grabs and that to date, no bank has gone far enough to prevent backing companies connected to agriculture and timber land grabs. Until the banks do so, they will continue to put Australians' money, and communities, at risk.

Following is an example of measures that banks could adopt to chart a group-wide path to Zero Tolerance for Land Grabs.

KNOW AND SHOW

- Publish annual, disaggregated project-name reports as required under EP III, then expand this to all forms of project and project-related finance above a specified material threshold within three years. Make a time-bound commitment to systematically expand this high-level disclosure to other corporate loans.
- Publish an annual list of holdings in which funds have a significant stake. Apply this to all bank and subsidiary asset management products. This could be met, for example, by publishing a list of Australian-listed and overseas-listed companies through proxy voting records.
- Incorporate requests for client consent for high-level disclosure relevant to ESG commitments into all project finance and corporate loans.
- Develop a coherent approach for how the bank assesses and takes action on agriculture- and forestry-related land risks in its transactional banking and report on this approach. Priority should be placed on operations in countries with high reported levels of corruption.²¹⁴
- Share information on the bank's approach to land rights and its disclosure in a form accessible to at-risk communities.

COMMIT

- Commit through a group-wide policy to protect and promote all land rights of communities impacted by the company and supplier operations of its clients.
- The bank should also require, before the provision of a product or service, that the client 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 all company and supplier operations;
 - ensure contract transparency and disclosure to affected communities for any concession agreements/operation permits;
 - refrain from cooperating with any host government's illegitimate use of eminent domain in order to acquire farmland;
 - avoid exposure to production models that involve the transfer of land rights away from small-scale producers, and refrain from converting UNESCO World Heritage Sites, wetlands on the Ramsar list, high conservation value forests, peatlands or other critical habitats into other uses. In the situation where the company's 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;
 - at a minimum, comply with all applicable laws and regulations pertaining to land including social and environmental requirements, as well as with this stated policy; and
 - apply this policy as a required code of conduct for all downstream business relationships with suppliers, and audit the policy accordingly.

ADVOCATE

Lead the way for responsible and respected financing practices. Work with governments, other financiers and civil society to adhere to multi-stakeholder sector initiatives that drive better respect for land rights.

JUSTICE FOR AFFECTED COMMUNITIES

Commit to ensuring Justice for Affected Communities covered in this report and in Oxfam's earlier report *Banking on Shaky Ground* 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. Where a company has pulled out of the investment, work directly with communities to support meaningful redress proportional to the bank's role as a stakeholder.

12. GAINING AND MAINTAINING THE SOCIAL LICENSE TO OPERATE

“THE NOTION THAT AUSTRALIANS ARE DISENGAGED FROM THEIR SUPERANNUATION HAS STARTED ITS TERMINAL DECLINE AND WE ANTICIPATE THAT THIS WILL ONLY RESULT IN GREATER INTEREST IN RESPONSIBLE INVESTMENT. THOSE INVESTORS WHO ARE TAKING ACCOUNT OF ENVIRONMENTAL, SOCIAL AND ETHICAL ISSUES IN ADDITION TO FINANCIAL ISSUES ARE WELL POSITIONED TO CAPTURE THIS WAVE OF GROWING DEMAND.”

RESPONSIBLE INVESTMENT ASSOCIATION OF AUSTRALASIA, 2015 ²¹⁵

Almost two years ago, Oxfam revealed that Australia’s big four banks were all connected to companies facing credible allegations of land grabs, with devastating impacts on the food security, safety and health of affected communities.

This report has revealed that so far no bank has taken a Zero Tolerance for Land Grabs approach in line with Oxfam’s recommendations, and that nothing has changed in the day-to-day lives of the communities profited in *Banking on Shaky Ground*. It has also shown that since April 2014, all four banks have provided tens of millions of dollars in loan facilities to a company connected to improper land acquisitions in Colombia, a country with one of the highest levels of land inequality in the world. This not only impacts the day-to-day lives of landless poor people, but also undermines a long-term peace process to address the conflict that has been a key cause and consequence of ongoing land concentration.

While NAB’s and Westpac’s new policies signal that they are taking the issue seriously, both banks continue to be exposed to companies facing concerning allegations of land grabs. CBA and ANZ have failed to take any new policy action on land grabs or respond to the needs of communities.

Oxfam has also raised questions about the extent to which the big four banks act on, and communicate openly about, their exposure to land-related risk. ANZ in particular has communicated on its response to the issue of improper land acquisitions in a way that is, at best, unclear and it appears that its carefully chosen wording would be reasonably interpreted to suggest that the bank is less exposed, and doing more, than it actually is (see page 25). Bank customers and investors should be able to find out how their own money is used.

Revisiting the issue of land grabs two years on has also reiterated that a comprehensive approach to land grabs needs to address three key elements: strong commitments, appropriate transparency and clear accountability.

Most of all, communities deserve to know who is seeking to profit from their land and forests and banks should be accountable not only to their customers and investors, but to the communities whose land and timber resources they seek to benefit from.

Until the banks adopt a Zero Tolerance for Land Grabs approach, they will continue to put our money, and peoples’ lives, at risk.

As Oxfam has seen, time and time again, cases of land injustice can seem intractable. Yet the struggle for land is so fundamental to life that communities show incredible tenacity and ingenuity in seeking redress. Rural communities are increasingly seeking to learn about the investment chain and who is really doing business in their area.

Over the last two years, hundreds of thousands of everyday Australians have stood in solidarity with overseas communities by flexing their financial power on a range of issues, from land grabs to climate change. Everyday Australians are realising their collective power in the financial system, where they account for an estimated \$2.7 trillion in superannuation and bank account holdings alone. This is part of a global movement that is shaped by, and shaping, new understandings of risk and ethics in the 21st century financial system. One where, at absolute minimum, we expect the banks to uphold their human rights commitment to “do no harm”.



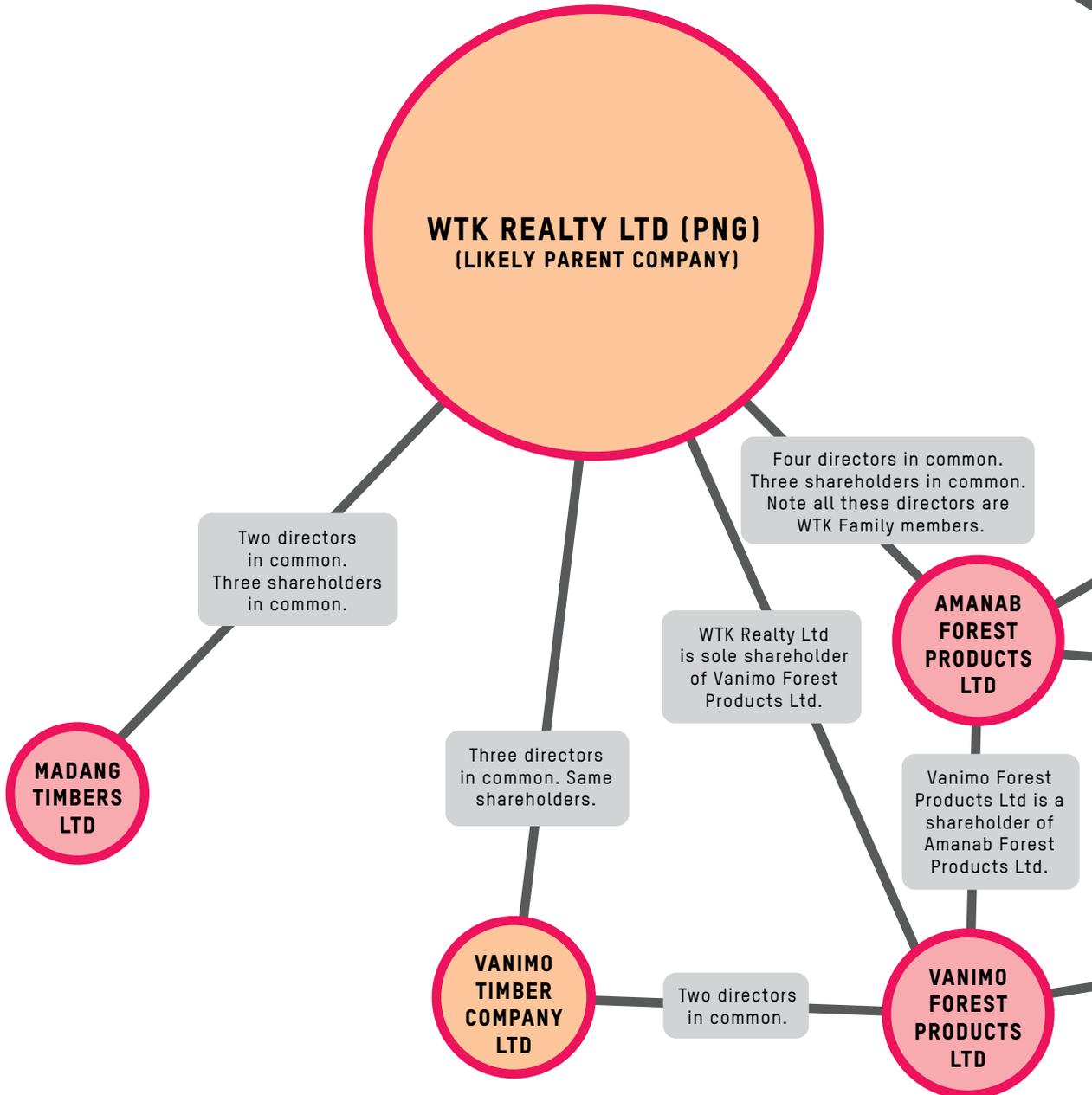
Minggir Sari, Bengkulu, Indonesia: A water well - the only remnant of land that used to be a villager's house. Many local people report intimidation to leave their land after the palm oil company PT SIL acquired a contested land lease in 2011. Photo: Kemal Jufri/Panos/Oxfam.

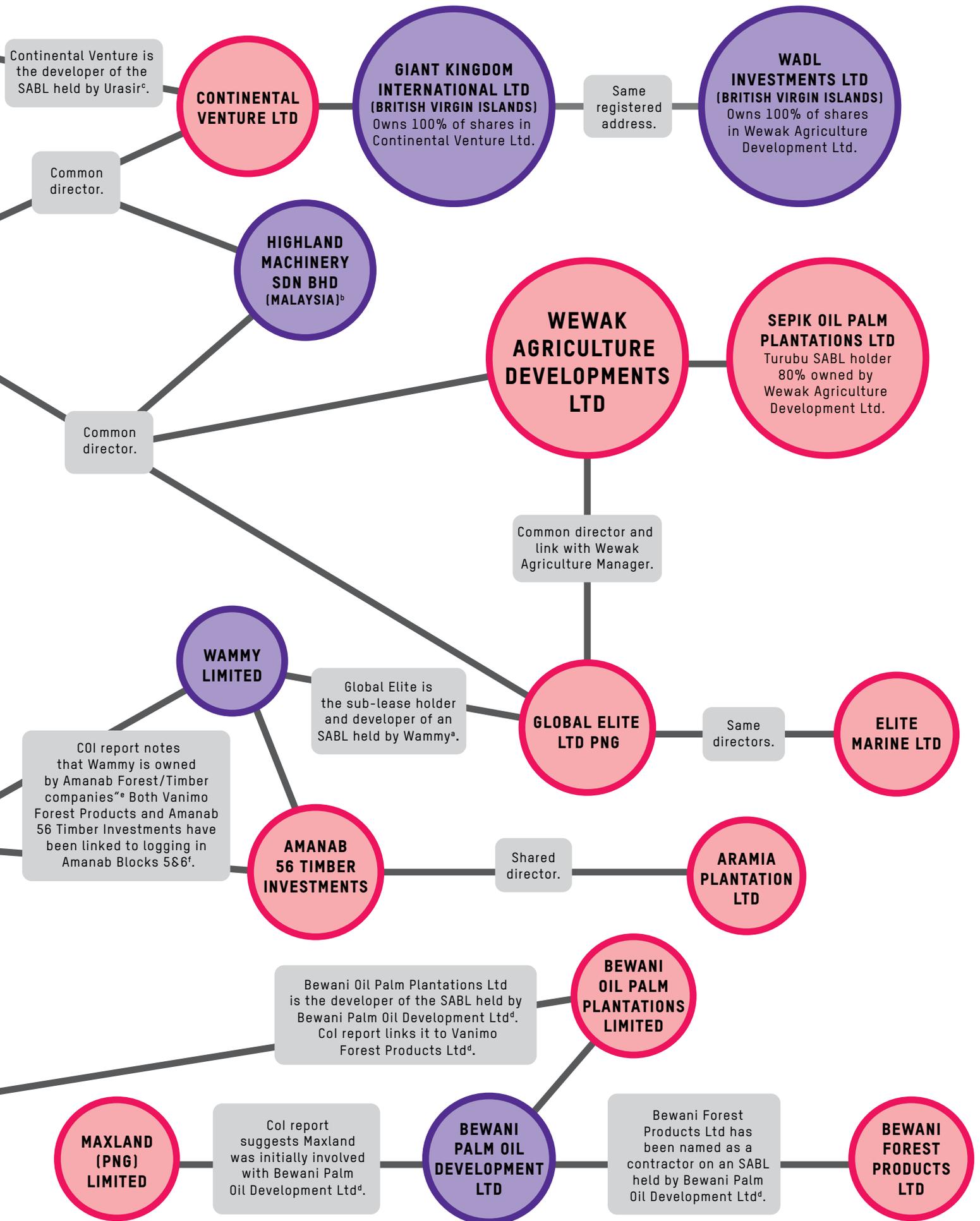
APPENDIX

WTK AND LINKS TO SABLS AND OTHER COMPANIES IN PNG.

From 2014 *Banking on Shaky Ground* Report.

- COMPANIES THAT HAVE THE SAME REGISTERED ADDRESS
- COMPANIES THAT HAVE EQUITABLE MORTGAGES WITH WESTPAC





ENDNOTES

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- 2 Interview with Oxfam, October 2014.
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- 185** As an example, ANZ defines "credit risk" as "the risk of financial loss resulting from the failure of ANZ's customers and counterparties to honour or perform fully the terms of a loan or contract. ANZ has a comprehensive framework to manage credit risk and support sound growth for appropriate returns. The framework is top down, being defined by credit principles and policies. The effectiveness of the credit risk management framework is assessed through various compliance and monitoring processes. These, together with portfolio selection, define and guide the credit process, organisation and staff". Cited in ANZ, 2013 Annual Report, ANZ, 2013, p. 26, <http://www.shareholder.anz.com/sites/default/files/event_files/2013%20Annual%20Report%20Final.pdf>.
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- imf.org/external/pubs/ft/wp/2011/wp11251.pdf >; see also World Governance Indicators — the countries that attract most land deals are those with the weakest land governance, not those with most available land. There has been 33% more land acquisition in countries ranked near the bottom of the Worldwide Governance Indicators (like Angola) than in countries ranked around the middle (like Brazil), even when controlled for other factors.
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- 190 *ibid.*
- 191 For example, ANZ defines compliance risk as “the probability and impact of an event that results in a failure to act in accordance with laws, regulations, industry standards and codes, internal policies and procedures and principles of good governance as applicable to ANZ’s businesses. Group Compliance is accountable for designing a compliance program that allows ANZ to meet its regulatory obligations. It also provides assurance to the Board that material risks are identified, assessed and managed by the business”. Cited in ANZ, 2013 Annual Report, ANZ, 2013, p. 27, <http://www.shareholder.anz.com/sites/default/files/event_files/2013%20Annual%20Report%20Final.pdf>.
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- 200 R Baker & N McKenzie, ‘ANZ bankrolls child labour sugar cane plantation’, *The Age*, 23 January 2014. Reprinted in *Banking on Shaky Ground*. p. 33.
- 201 The most extensive is the complaint filed against ANZ under the OECD Guidelines for Multinational Enterprises. See Specific instance under the OECD Guidelines for Multinational Enterprises submitted to the Australian National Contact Point (NCP) for the OECD Guidelines by: Inclusive Development International (IDI) and Equitable Cambodia (EC) Against Australia New Zealand Banking Group (ANZ), concerning financial services provided to Phnom Penh Sugar Company, 6 October 2014, <http://oecdwatch.org/cases/Case_343>.
- 202 *ibid.*
- 203 The assessment noted that the company had leased an adjacent concession from Kampong Speu Sugar Company. This suggests that the company was seeking to control a contiguous land area larger than 10,000 hectares — the maximum area for an Economic Land Concession (ELC) awarded after the 2001 Land Law. Further investigation would have revealed that Kampong Speu Sugar Company is owned by Ly Yong Phat’s wife Kim Heang and that both ELCs were awarded on the same day. This would have warranted further research into if Kampong Speu Sugar Company is a shell company set up purely to sidestep the 10,000 ELC hectare limit.
- 204 The problematic land acquisitions connected to Phnom Penh Sugar, including excessive use of military force, were featured in significant detail by Bridges Across Borders Cambodia, *Bittersweet: A Briefing Paper on Industrial Sugar Production, Trade and Human Rights in Cambodia*, September 2010, <<http://babcbombodia.org/developmentwatch/cleansugarcampaign/bittersweet.pdf>>. Licadho, a high-profile human rights NGO also raised issues on Ly Yong Phat concessions in a 2009 report, *Land Grabbing & Poverty in Cambodia: The Myth of Development*, May 2009. p. 17, <www.licadho-cambodia.org/reports/files/134LICADHOREportMythofDevelopment2009Eng.pdf>. For a media example, see *Irin News*, 13 September 2010, ‘Cambodia: Communities fight back against land grabbing’, which details the issue of land more generally, including the mention of communities in Kampong Speu displaced for PPS, <www.irinnews.org/report/90453/cambodia-communities-fight-back-against-land-grabbing>.
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- 206 The community maintains that ANZ did commit to an independent audit, while ANZ disputes this claim. Human rights assessments are frequently conducted by independent third-party organisations. They do not require access to, or permission from, companies involved and ANZ could commission independent research in this area even after it ended its relationship with PPS.
- 207 For example of this, ANZ has noted that “ANZ financed a portion of the development of the sugar factor in April 2011, 15 months after the land concession was granted to PPS ... ANZ did not finance the acquisition of concession land or finance the plantation itself”. The Phnom Penh Sugar mill is built on land acquired by the Economic Land Concession contested by the local community, surrounded by sugarcane grown on the ELC and operated as part of a single undertaking by Phnom Penh Sugar. Response to 60 Minutes ‘Dirty Business’ Story — The banks, ANZ, <<http://www.9jumpin.com>>.

com.au/show/60minutes/stories/2014/november/dirty-business-60-minutes/⟩.

- 208** Kelly Dent, Food, Climate and Humanitarian Advocacy Manager, Oxfam Australia, correspondence with Gerard Brown, Group General Manager, Corporate Affairs, ANZ, 1 May 2015, <www.oxfam.org.au/grow/files/2015/05/oxfam-letter-to-anz-1-may-2015.pdf⟩.
- 209** Letter from Dr Mark Zirnsak, Director, Justice and International Mission Unit, Synod of Victoria and Australia, Uniting Church in Australia, to Mike Smith, September 2014.
- 210** Kelly Dent, Food, Climate and Humanitarian Advocacy Manager, Oxfam Australia, correspondence with Gerard Brown, Group General Manager, Corporate Affairs, ANZ, 1 May 2015, <www.oxfam.org.au/grow/files/2015/05/oxfam-letter-to-anz-1-may-2015.pdf⟩.
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- 214** For example, countries within the bottom 50 on Transparency International's annual Corruption Perception Index.
- 215** Responsible Investment Association of Australasia, Responsible Investment Benchmark Report 2015 Australia, Responsible Investment Association of Australasia fact sheet, <http://responsibleinvestment.org/wp-content/uploads/2015/08/2015_Benchmark_Factsheet_AUST_FINAL.pdf⟩.



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