

EXPERIENCE OF AGRIBUSINESS INVESTMENT IN LAO PDR

Mekong Regional Land Governance Programme

September 2016

This document presents the experiences of two investors, Stora Enso Lao Co. Ltd (SEL) and Outspan Bolovens Limited (OBL), who have invested in agribusiness plantations (eucalyptus and coffee respectively) in the south of Lao PDR. It discusses the lessons learned on four key topics related to responsible investment: (1) land acquisition, (2) compensation and benefit sharing, (3) community engagement, and (4) grievance mechanisms. They are the result of a week-long multi-stakeholder engagement and dialogue, involving the companies themselves, government, civil society organisations and the communities concerned.

Context and Approach

From 7th to the 10th December 2015, the Ministry of Planning and Investment (MPI) co-led the 'Responsible Investment Study Tour' on a visit of two companies in Champasak and Salavan Provinces in southern Laos. The intention of the Study Tour was to (a) gain a deeper understanding of good investment practices, and (b) examine the challenges and opportunities related to implementing responsible agricultural investment, particularly as they relate to protecting and promoting land tenure for rural communities.

The two companies – SEL and OBL – were approached to participate in the Study Tour to allow participants to see first-hand the realities of implementing responsible investment practices in Laos. The companies were identified as two examples of land-based investors which can provide examples of promising Corporate Social Responsibility (CSR) practices which are replicable for other agro-forestry investors, to improve the quality of investment in Laos.

This Study Tour was part of a multi-stakeholder working group on Responsible Investment in Lao PDR. The group has the goal of improving awareness and understanding of CSR, providing space for cross-sectoral open dialogue, and promoting more responsible agricultural investment in Laos. The group was formed under the Learning and Alliance building (L&A) grant facility provided by the Mekong Regional Land Governance project (MRLG), funded by the Swiss Agency for Development and Cooperation (SDC), and by German Cooperation.

The Study Tour group comprised representatives from central and local government, private sector, development partners, members of the Land Issues Working Group (LIWG), and a local media representative. Participating organisations are identified in full at the conclusion of this report.

Discussions at district and provincial levels with local authorities, community and company representatives were facilitated by SEL and OBL. To collect the data and information contained in these case studies, the Study Tour group conducted semi-structured interviews with provincial and district authorities – including those from local planning and investment offices, natural resource and environment offices and agriculture and forestry offices – held focus group discussions with four communities, and conducted in-depth interviews with company representatives, as well as receiving a completed background questionnaire from both companies.

LESSONS LEARNED

The case studies provide useful lessons for potential and existing land-based investors in Laos, NGOs and government alike. Key 'take home messages' from these case studies are:

- 1. Investors need to go beyond compliance with national laws to achieve business objectives.** Due to differences between national standards and international guidelines, and the complexity and legal pluralism of the Lao legal system, compliance with the law will not yield the certainty required by private sector investment over the long term.
- 2. Engaging with communities prior to investment reduces long-term risks to investment projects.** Companies should begin community consultations well in advance of the project beginning – and continue engaging throughout the project cycle to resolve any issues as they arise.
- 3. Government plays a key role in promoting and setting standards for responsible investment practices.** To attract quality investors, investors require an enabling environment with clearly defined administrative and governance processes.
- 4. Implementing responsible investment requires a multi-stakeholder effort and increased cooperation between private sector and civil society.** Private sector and NGOs do not have to be adversaries, they can be allies – these case studies highlight the benefits of working together, and show that problems are best overcome through multi-stakeholder cooperation.
- 5. All stakeholders involved require a deeper understanding of how to implement responsible investment practices.** Central and local government, investors, NGOs and communities have gaps in their knowledge regarding key topics such as land rights, applying CSR standards, what constitutes free, prior and informed consent (FPIC), stakeholders' roles and responsibilities during land allocation and acquisition processes, and grievance resolution processes.

Presentation of the document

This document is set out in five sections: the first introduces the two companies, Stora Enso Laos (SEL) and Outspan Bolovens Limited (OBL), and the communities with whom these companies are working. The second section gives an overview of the companies' approaches to responsible business conduct. The subsequent four sections examine each of the four key topics in more detail, each followed by a synthesis of how improvements can be made in each, to improve investment in Laos.

Readers should note that these case studies do not present 'perfect' examples of responsible investment. OBL has publicly acknowledged that it did not fully understand the complex context of working in Laos (explained in greater detail in Section 2) and are continuing to work towards addressing community issues. However, the intent of this document is not to discredit any investor or to reiterate past mistakes in great detail. Rather, the document compiles valuable lessons learnt; when negative points are brought to light, it is for the purpose of learning from the past to secure a better future.

Acknowledgements

Study Tour participants would like to thank Outspan Bolovens Limited and Stora Enso Laos for kindly facilitating this Study Tour, and for their time, willingness and openness. Participants also thank the local authorities, and the communities for generously giving their time to talk with the Study Tour group.

This report has been written by James Lette of Social Impact Strategies. The opinions expressed are the author's own.

Background

A new dialogue between private sector, civil society and government

While this document examines the different experiences of two investors, it is not intended to directly make comparisons between them. Rather, the case studies reflect on-the-ground realities – both challenges and opportunities – for companies working towards meeting international Corporate Social Responsibility (CSR) standards in Laos. Both companies represented in these case studies now have socially and environmentally responsible principles embedded in their business operations. However, many other investors in Laos do not follow internationally recognised CSR standards, such as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), Principles for Responsible Agricultural Investment, and ISO 26000 Guidance on Social Responsibility. Investors in Laos tend to view CSR standards as a "non-mandatory concept", prioritizing adhering to mandatory standards legislated under national laws (Earth Systems 2014).

In addition, the private sector and nongovernment organisations (NGOs) in Laos are often isolated from each other and do not have a clear understanding of each other's work and goals, leading to mutual distrust without engaging in meaningful dialogue. These case studies were documented as part of an effort by a multi-stakeholder group to reach a common understanding of CSR in Laos, to facilitate more open dialogue and to forge closer collaborations amongst all stakeholders to promote more responsible investment, including NGOs, private sector, financial institutions, communities and government.

Although awareness of the concept of CSR in Laos remains embryonic, research shows that there is a growing interest across all sectors. Working with multiple stakeholder groups to develop an understanding of the benefits of socially responsible business practices is crucial to support implementation of CSR principles that will positively impact upon rural communities who depend on land for their livelihoods. Through collecting these case studies, participants aimed to identify investors whose practices are creating "shared value" – that is, creating economic value in a way that also creates value for society by addressing its needs and challenges (Porter 2011). By disseminating examples of good – and improving – investment practices and lessons learnt, the case studies seek to encourage companies to integrate social and environmental concerns into their business operations within the Lao context.



Stora Enso Laos

SEL is a local subsidiary of global paper and packaging company, Stora Enso. SEL has been operating a commercial pulpwood agro-forestry project in Laos since 2007. The company's predominately eucalypt plantations cover around 3,800 ha of land (of which 2,500 ha is currently planted), involving over 2,000 households living in 47 villages in Sepon, Nong and Taoy districts in southern Laos (Figure 1). SEL's first plantations were first established in 2007 (Nong district, Savannakhet) and in 2008 (Ta-oy district, Salavan).

SEL leases lands that have been classified by the Government of Lao PDR as 'degraded forest'. These lands are obtained through a combination of leases within three categories - (i) state land concessions of 50 years' duration, (ii) community leases and (iii) private land leases, both of 30 years duration. Following clearance of unexploded ordinances (UXOs), SEL converts degraded forests into eucalyptus plantations using an 'intercropping' model. This model follows a 9 by 1 meter tree spacing, allowing communities to grow rice for household consumption for the first 2-3 years of eucalyptus growth.

SEL exports its plantation timber to Vietnam, where it is predominately used as packaging.

The company's long-term goal involves significant expansion, aiming to acquire 35,000 ha for planting by 2023. Currently, under an exemption to Prime Minister's Order No 13/PM, 2012, SEL has been granted an exemption which allows the company to expand its plantation area.

The Study Tour learnt that SEL has a comprehensive suite of policies covering human rights; employee health and safety; forests, land use and plantations; ethics and compliance; energy; and community development. The long-term challenge for SEL is to continue (and improve upon) its current model of intensive community engagement, particularly during land acquisition processes, to ensure that communities are well informed, consulted with and give consent to being a 'host community' with SEL.



Lapeung and Kacham villages, Ta-oy District, Salavan

The Study Tour visited SEL's 830ha. plantation area in Ta-oy District, where the company is working with 22 villages.

SEL chose to invest in Ta-oy because, in addition to meeting the requirements for plantation growth, it is close to the Vietnamese border and harbours at Hue and Da Nang, providing easy access to export markets. SEL notes that it anticipates a lesser chance of conflict over land due to Ta-oy's low population density and availability of degraded lands. Further, as one of the poorest districts in Laos, developing its operations here enabled SEL to meet social objectives as well as remaining in line with government priorities of reducing poverty in remote communities.

The majority of the villages in the district are isolated with poor road access, and lack access to schools, hospitals and other services. Villages have a high diversity of ethnic groups, including Katang, Ta Oy, Mangkong and Phouthai. Traditionally, these communities practice subsistence farming, using shifting cultivation techniques to grow upland rice. The communities also depend on livestock and the collection of non-timber forest products (NTFPs), both for household consumption as well as selling at local markets. The Ho Chi Minh trail runs alongside these communities, and UXOs remain littered throughout the area as a legacy of war.

The Study Tour group held focus group discussions with men and women from Lapeung and Kacham villages to gain an understanding of the village history and its relationship with SEL. The Study Tour learnt that prior to working with SEL, both villages undertook shifting cultivation of upland rice, with some cultivation of crops such as banana and cassava for home consumption. NTFPs provided an alternative food source, and they gained some income from the sale of rattan, makchon, kuaheem. Market access was poor however, limiting income opportunities. Study Tour participants observed SEL's testing of charcoal production from timber off-cuts, known as thinnings. SEL notes that it anticipates that in the future, charcoal production could become an income generating social enterprise for the local community.

Currently the villages each "lease" around 70-80 ha of communal land to SEL. While under Lao law all land belongs to the "national community" (i.e.- the State), SEL has created a model of "village leasing" that de-facto recognises customary tenure and communal land. This model is examined in more detail in following sections.

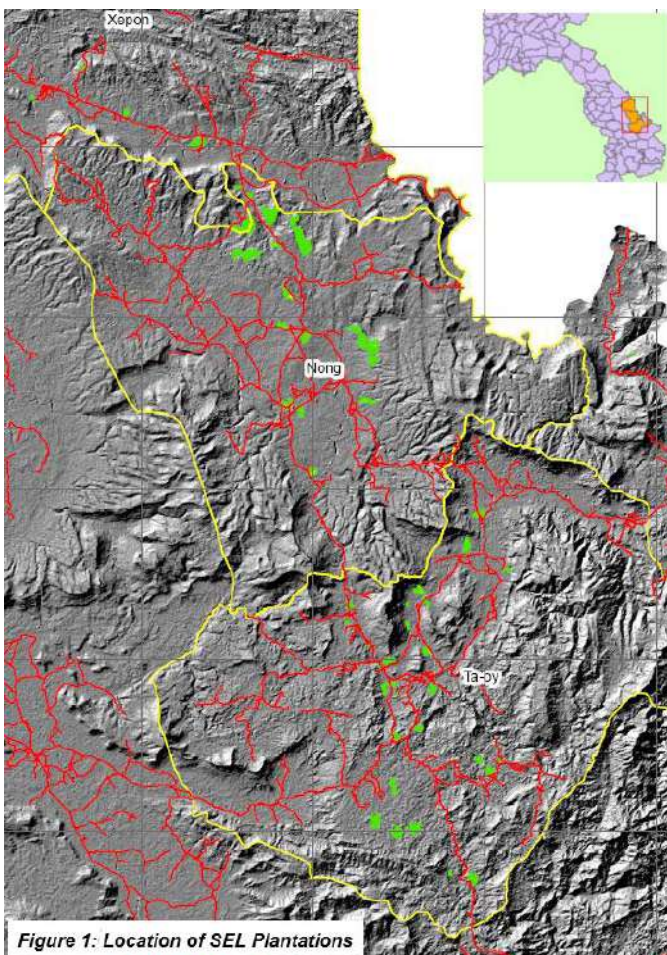


Figure 1: Location of SEL Plantations

Outspan Bolovens Limited

Outspan Bolovens Limited (OBL), is a subsidiary of Olam International, a global processor and trader of agricultural products and food ingredients, including cocoa, coffee, cashew, rice and cotton. OBL was incorporated in 2009 as an agribusiness operating coffee plantations in the Boloven Plateau, Paksong District, Champasak Province. The Boloven Plateau, an elevated region in southern Laos, is well-known for its temperate climate and rainfall, making the location highly suitable for OBL's coffee production.

At the time of the visit, OBL operated plantations at four locations, covering 2,200ha (1,000ha planted), and works with 12 villages, comprising around 1,500 households (Figure 2). This has since increased to 2,500ha over five locations, with 1,20ha planted.

The Study Tour learnt that OBL expects to produce its first crops in 2016, aiming to produce high-quality specialty and certified coffee, with Rainforest Alliance, UTZ and 4C certifications. The coffee is intended for international export to markets worldwide, primarily Japan, America, and European countries. Currently, OBL undertakes primary processing in Laos, exporting its green coffee beans without roasting.

Until OBL's own coffee crops mature and can be harvested, the company is processing coffee crops grown and harvested by small scale farmers. Currently OBL purchases approximately 50 percent of the certified green coffee bean grown on the plateau. The Study Tour learnt that OBL plans to construct a second processing facility to provide the capacity needed to also process its own coffee grown in the future, as well as expand its intake from small scale farmers.

OBL has developed a suite of strategies, systems, policies, principles and codes of conduct which seek to integrate responsible business practices into the company's everyday business approach. OBL's policies cover sustainability standards, concession plantation and farm codes, supplier codes, environmental standards, social policies, stakeholder engagement and quality and food safety.

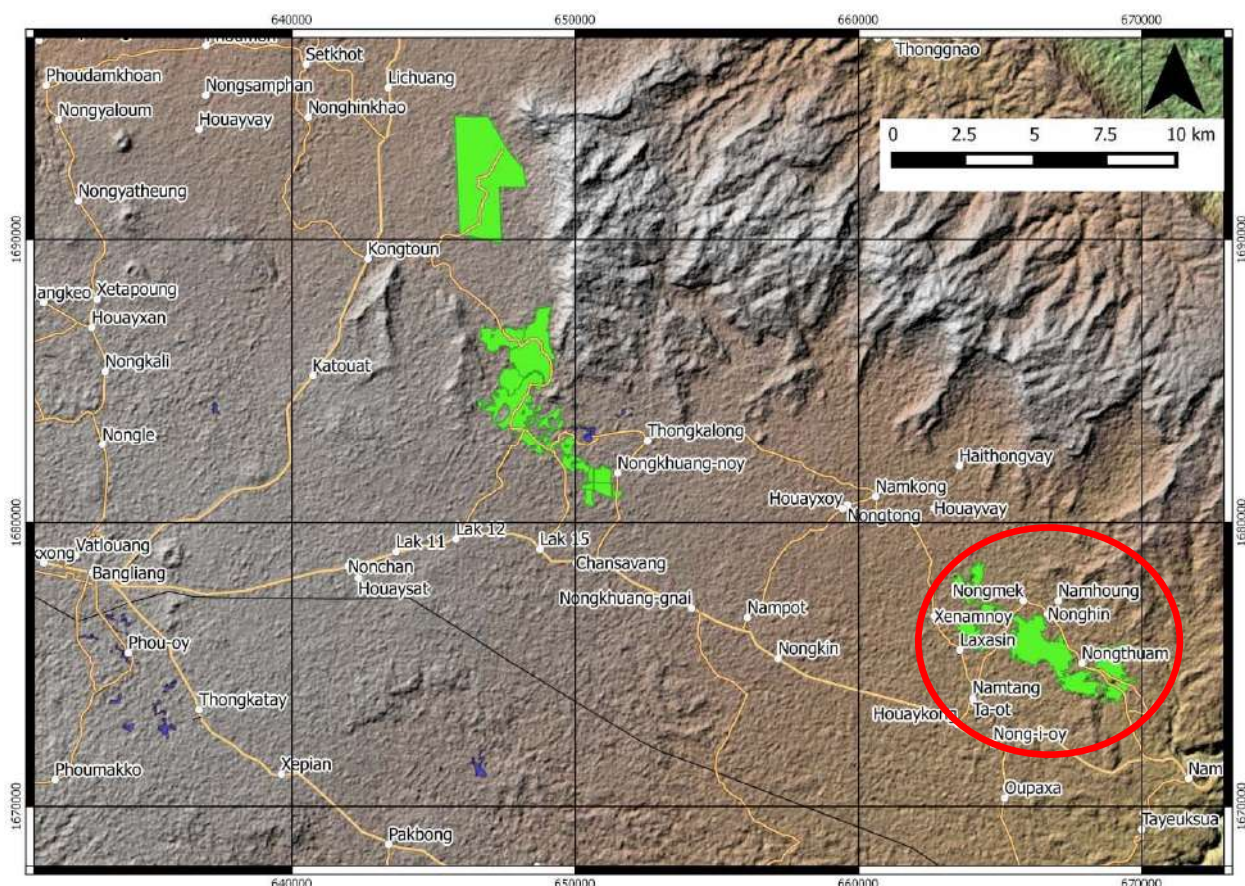
Nongluang, Lassasin and Xenamnoi Villages, Paksong District, Champasak Province

The Study Tour visited the operations of OBL's Thevada and Xekatham Estates, and met with representatives of 7 villages whose lands comprise Xekatham Estate (Figure 2). Study Tour participants held focus group discussions with men and women from Lassasin and Xenamnoi villages. These villages reported that they were resettled due to a hydropower dam project into a cluster of 345 households, several years prior to OBL's arrival. Study Tour participants also held focus group discussions with village representatives from Nongluang village, comprising around 86 households.

The Study Tour learnt that these villages traditionally practiced shifting cultivation of mainly upland rice, while some villages undertook wet rice cultivation. Household income was supplemented by small coffee crops, livestock and NTFP collection. All households reported that they grow at least 3ha of coffee, with some having as much as 10ha. The villages interviewed told the Study Tour participants that they are not self-sufficient in rice, growing enough for 9 months' consumption per year. Villagers attributed this to limited availability of land for growing rice, due to population density on the plateau.

In the Lao context, poverty on the Boloven Plateau is comparably low, although some communities are more disadvantaged. The Study Tour learnt that roads, access to health care, education, electricity and drinking water are relatively good, although in some areas services still require substantial improvements.

Figure 2: OBL Leases on the Boloven Plateau at December 2015, showing field work location



Approaches to Responsible Business

The stated approaches of both investors share a number of core principles:

- Working towards compliance with all applicable local, national and international laws and regulations;
- Preventing and mitigating impact on the community and the environment;
- Improving community livelihoods;
- Caring for their workforce (OH&S) (such as providing housing, child care, health care and safety measures);
- Communicating with the community (e.g. pro-active communications, establishing grievance channels); and
- Extending these principles to other companies through influence on their supply chain.

The responsible business frameworks of both companies are now focused on obtaining and maintaining a 'social licence to operate' from their host communities, in order to enable their business operations to proceed with minimal disruption or delay. Olam's framework has recently been strengthened based on their experiences in Laos.

Each company draws on different approaches as they seek to obtain this 'licence'. However, both companies see poverty alleviation as part of their social contract with host communities, either through improved food security (shared land use benefits in the case of SEL) or through improved income generation opportunities (technical assistance to grow higher yields and better quality, crops in the case of OBL). As will be explored in later sections, each company has experienced different degrees of success in obtaining their 'social licence'.

Both companies see the advantages that building the capacity of villagers through community development, training and employment will provide them in the long-term, in terms of a locally-based, skilled labour force.

Each company has sought to derive 'shared value' by identifying and addressing social concerns that intersect with business strategies. For example, OBL follows Olam's global 'CR&S' (Corporate Responsibility and Sustainability) framework with the stated aim of creating shared value, while SEL's Sustainability, CSR, and Stakeholder Relations Policies follow Stora Enso's global value of 'doing good for the people and the planet'.

Each investors' CSR approach is based on a detailed needs assessment and risk management process connected to an internal reporting framework. This process identifies and rates risk, sets specific targets to be met in the short and medium term, and identifies key performance indicators (KPIs) to measure progress. A detailed strategy (with assigned actions and budget lines) sets, by quarter, how they will address each of their goals. Both companies undertake initial assessments of the social, environmental and economic context of their host community, to provide a baseline assessment against which to measure their progress.

OBL's strategy, for example, contains 15 indicators, fourteen of which deal with operational impact (habitat restoration, environmental impacts and footprint; workforce capacity building, working conditions, access to medical care and OH&S), whilst the fifteenth addresses "Livelihood improvement to neighbouring communities", for which a 15 percent increase over the baseline is targeted.

Both companies are signatories or participants in an extensive and diverse range of international standards and guidelines, both generally, and specific to their industry. The parent company of OBL, Olam, has committed to the Roundtable on Sustainable Palm Oil, and is a signatory of the VGGT. OBL has committed to obtaining Rain Forest Alliance certification, and is working towards meeting International Finance Corporation (IFC) performance standards in their plantations/concessions. SEL's commitments include working towards meeting IFC performance standards, the Tropical Forests Dialogue, FAO's Responsible Management of Planted Forests, FSC's principles for sustainable forest stewardship, and the International Tropical Timber Organization guidelines for the establishment and sustainable management of planted tropical forests.

What is 'Shared Value'?

Shared Value is a business approach to generating economic value in a way that also produces value for society by addressing its challenges. A shared value approach reconnects company success with social progress. Instead of companies prospering at the expense of their communities, companies could bring business and society back together if they redefined their purpose as creating "shared value".

(Porter and Kramer, 2011, Harvard Business Review)



Land Acquisition

SEL's Land Acquisition Process

The Study Tour learnt that SEL implements a land acquisition process which seeks to obtain consent from the concerned communities before any land is used. The process, which can take between 4 to 12 months to complete, involves:

1. In the initial phase of a possible collaboration with a village, the SEL Land Team, together with District Forestry and Agriculture Office (DAFO) representatives, hold meetings with the village to discuss and explain:
 - The projects scope (what SEL is, and is not, proposing),
 - SEL's agroforestry model, and the steps involved to establishing the plantation;
 - The potential benefits and impacts to the community; and
 - Any conditions the village may want to impose concerning the use of their lands.

Initial contact is made by SEL with the villages' *naiban* (village head). If the *naiban* agrees, SEL's Lands Team presents the concept to the village. SEL's Lands Teams comprise 3 people per district, who remain involved throughout the land acquisition process.

2. The village then decides if they wish to participate with SEL. Villagers reported to the Study Tour group that this agreement can be reached either by a village meeting or discussion in a village committee – the challenge for SEL is to ensure broad-based consent by majority vote, rather than decision-making solely by village authorities. SEL's efforts towards meeting FPIC standards is discussed in following sections.
3. SEL and the village present their agreement to collaborate to the district office.
4. A participatory Land Use mapping process and boundary survey is undertaken with SEL, with provincial and district offices of relevant government agencies (such as DAFO). Villagers are the focal point in these surveys and participate in all work undertaken. A detailed transect survey is undertaken to assess forest cover, topography, soil types, biodiversity values and other potential ecological and social issues.

This process results in a Village Land Use Map that identifies different land areas. SEL and the villagers agree on the allocation of land uses identified (e.g. cultivation, plantation, conservation).

5. SEL signs a Plantation Cooperation Agreement with the village. Written in Lao and English, this agreement includes the location/size of the plantation and other negotiated terms/conditions of the partnership, such as benefits including the Village Development Fund.
6. The Cooperation Agreement, Village Land Use Map and any Assessment Reports are submitted to the District and Provincial government, accompanied by an application for a Land Use Right Certificate (signed by the *naiban* on behalf of the village) and a Concession Agreement.
7. The Provincial Governor signs a land development plan, outlining the intended use of the village land.
8. SEL applies for any required land concessions from the government. Leasing fees are paid in accordance with the Decree on Land Lease Fees. Concessions

granted by provinces are paid to the provinces directly, concessions granted centrally are paid to the Districts, who retain a certain percentage of the fee, with the balance distributed to other levels of government. Land use taxes are paid directly to the Districts in accordance with Lao law.

9. SEL commences land clearing and UXO surveying, preparing the land for planting.

SEL's Experience

SEL operates based on Plantation Cooperation Agreements, which are tied to a village, and are developed through the same process regardless of the type of lease involved. SEL has secured leases for approximately 3,800 ha of land through their process. As 2,200 ha is the largest amount of land able to be obtained by SEL under concession laws due to the 2012 moratorium (which has since been lifted), SEL have directly negotiated individually, at the village level, the lease of a further 1,600 ha (approximately 40 percent of their operations to date). Village leases are similar in scope, however they run for 30 years, compared to 50 years under a concession, as they are enacted under a different law (Decree 101/PM Article 2, superseded by Decree 88/PM 2008). SEL's aim is to obtain agreement to lease 150ha in one village area.

Community's Experience

In speaking with SEL's host communities, the Study Tour noted that villagers reported an experience that reflected the process outlined by SEL. They reported many visits by SEL to village discussions, with representatives from the District, Village Cluster and SEL in attendance. Kacham village reported that the process took one year, commencing in 2010, followed by land clearance in 2011 and planting in 2012.

They confirmed that the village decided which communal lands SEL would receive, being degraded forest – both young and old fallow lands used for collecting NTFP or hunting animals.

However, although villagers believed there must be written contract related to the transfer of land to SEL, most reported that they had not seen any written documentation of the land transaction and they did not have access to such documents.

Affected people have the right to:

- receive information on the investment project, the benefits they will receive, and environmental and social impacts which may arise;
- provide information on local environment and society, to be used in preparing the project environment assessment and to prevent and minimise environmental and social impacts;
- participate in consultation meetings at all levels to discuss the environmental impact assessment, and the social management and monitoring plan;
- participate in consultation meetings organized by the authorities and the project developer, to share their opinions and give comments on the report and plans, from the first drafts until the final drafts.

Prime Minister's Decree on Environmental Impact Assessment (No. 112/PM 2010; articles 7, 8 and 28).

OBL's Revised Land Acquisition Process

OBL adopted a new "Olam Plantations, Concessions & Farms Code" in 2013. This code establishes processes which are to be adhered to throughout the project cycle, as summarised in the following Figure 3. A series of checklist questionnaires have now been developed by Olam to guide and inform each phase of this process (for example, "Questions to be considered in scoping").

The code establishes a requirement for initial comprehensive legal, social and environmental due diligence before any land acquisition process commences. This is to be conducted at an early stage in the project cycle, so that the business can preemptively identify any potentially relevant environmental and social risks and opportunities.

Once approval in principle has been obtained based on this due diligence, it is then Olam policy to conduct comprehensive Environmental and Social Impact Assessments (ESIA) before any acquisition is completed. Detailed guidance is now provided by Olam on the Terms of Reference for any ESIA and Free Prior Informed Consent (FPIC) procedures, to provide a consistent approach across Olam. These ESIA's are to be conducted independently, to an international standard.

The Code requires the preparation of an Environmental and Social Management Plan, which includes a grievance mechanism for the resolution of any community concerns.

As well as formal management reviews at each step of the process, OBL now use an internal auditing and verification process, utilising a different business department, to check and review the due diligence undertaken. Checklists are completed by OBL's corporate social responsibility (CR&S) function, on behalf of the business.

OBL's Experience

The Study Tour group learnt that locations for OBL's coffee plantation investments on the Boloven Plateau were determined by the provincial government, with final approval from the national government, and a concession issued in February 2010. The ESIA and land survey were conducted by the District and Provincial government, funded by OBL. These reports identified that, of the 1,300ha surveyed, only 127 ha was being used by communities for farming and 1,173 ha was available for planta-

tion development. No community baseline survey was conducted pre-project for the ESIA. OBL states that they were provided with details of village consultation undertaken by the government and agreements were signed/ stamped by village authorities. It is understood by the Study Tour group that, overall, the process took one year.

However, notably more lands than those identified by the ESIA were in use, and many in the community beyond the village leadership were not aware that the land had been leased, as they had not been consulted nor informed during preparation of the ESIA.

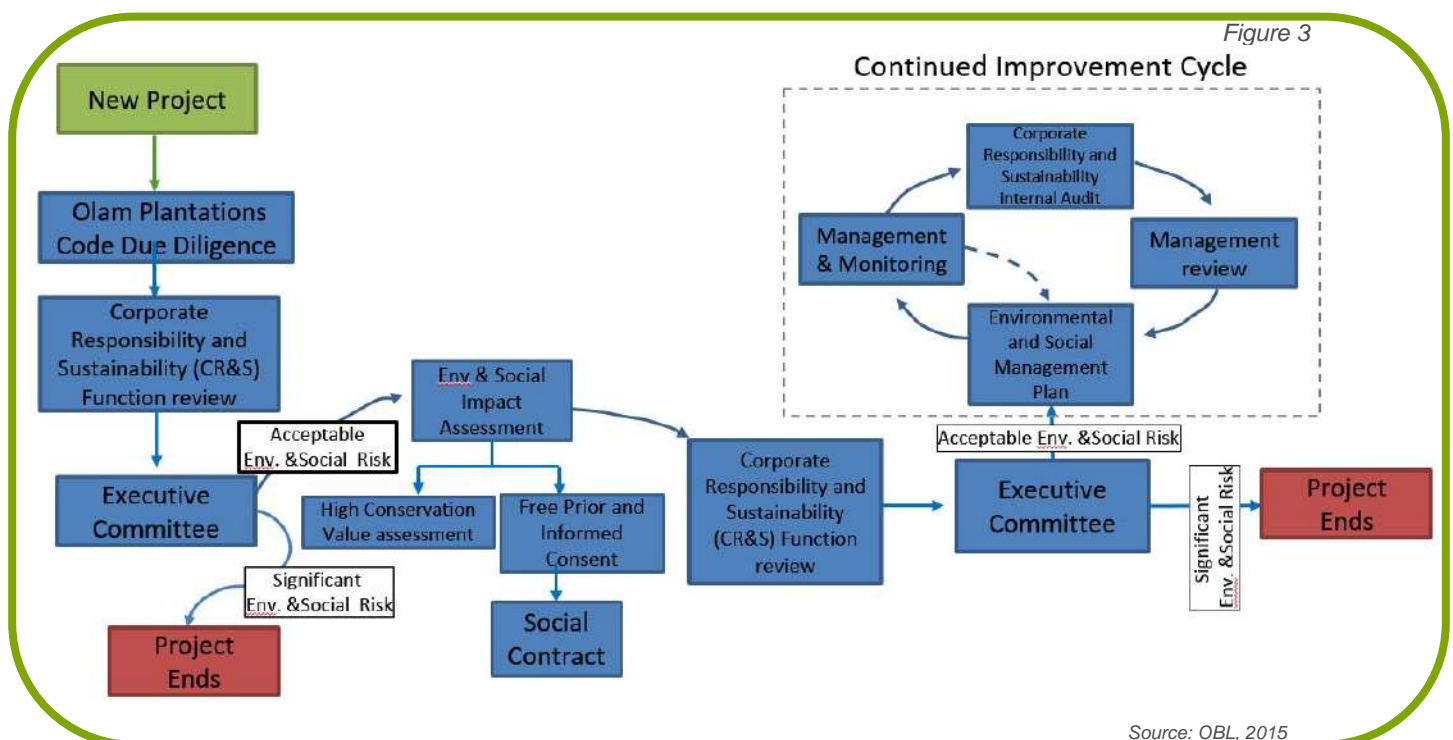
Affected villages followed the national legal framework seeking redress at different government levels. At the end of 2013, at the end of a grievance process (with assistance from NGOs and the LIWG), the communities received back use rights over some family agricultural lands (as mapped by the District-Provincial conflict solution committee), comprising of 230 hectares, as well as compensation for cleared crops.

Olam later acknowledged that it did not conduct due diligence, including no third-party verification of land survey and land use mapping. The company stated in October 2012 that, prior to its investigation in 2012, Outspan was under the impression that sufficient land surveys were conducted according to national laws and regulations, and that the land development was started in the belief that there were no open or unclear issues.

It has further stated that an area beyond the 150 hectares originally granted by the provincial Government was cleared without National government approval, as it was their understanding that this "was the accepted practice – that the decision as to the grant and use of land is made at local level where a survey is done and a map produced and, if no reservations are expressed, it is sent to national Government in order that a certificate can be formally issued. i.e. in local practice, possession of the certificate is merely a formality once the provincial recommendation has been made." (see <http://bit.ly/OBvf1>)

Importantly, Olam concluded that "Olam is now fully cognisant of the difference between national standards in Laos compared with international practices that we consider appropriate for our work."

Olam has subsequently revised its global policies and practices in terms of land acquisition, social impact assessment and community engagement.



As a consequence of adhering to domestic rather than international standards, OBL did not obtain a 'social licence to operate', losing the trust of their host community from the outset of their project. OBL states that it is working towards regaining the trust of the communities. OBL's efforts to improve investor-community relationships includes, returning some contested lands, revising the company's land acquisition processes, and implementing the 'Enhancing Sustainability of Coffee-based Agriculture' (ESCA) project. The ESCA project aims to increase coffee farmers' household income by delivering Farmer Field School and related trainings to improve coffee quality and yields, as well as preserving the environment and soil quality. Between 2016 and 2020, OBL expects to reach over 3500 farmers through the project. ESCA is intended to benefit both farming communities, who improve their knowledge and skills, can access inputs and markets, and the company, as it secures a sustainable source profits through regular supply of coffee beans for processing and export.

Community's Experience

History of Xenamnoi (Xe-Namnoy) Village

The village of Xenamnoi was resettled from its previous location in an adjacent district to this location in 1995, due to a combination of government policy of 'village consolidation' and resettlement from the Xe-Namnoy dam. As a consequence, the locality has a history of land conflict and conflicting land claims, which predates the arrival of OBL. It was upon this complex land use mosaic and high demand for scarce land that OBL's land concession was granted.

In speaking with community representatives, the Study Tour learnt that most villagers considered that the compensation provided by the dam project was inadequate, limited to a 30m x 40m plot of land on which each household could construct a house (on which the dam project built 315 houses). The village collectively was given a further land allocation, rather than an allocation by household. However, most of the land onto which villagers were resettled was already occupied by a neighbouring village. Additionally, villagers reported that the land they received was of poorer quality, with less fertile soil and more weeds, limiting the yields they could achieve. Villagers told the Study Tour group that they felt their food security had declined with the loss of access to NTFPs in their traditional forests and the change in agricultural lands. As a consequence, villagers report that up to many residents return to their old village – it was not clear when or for how long – a distance of 38 kilometres away.

Villagers reported that the number of households living in the locality has increased since 1995, leading to further conflict due to the scarcity of land. The village noted that there is conflict between villages about the boundaries of village land, with boundary markers deliberately destroyed so that there are no reference points available. Shifting cultivation practices exacerbate these border conflicts, with different villages claiming and using land at different times.

Xekatham Estate

Thee Study Tour held focus groups with Nongluang, Lassasin and Xenamnoi villages, to learn from the communities' perspective the history and impacts of OBL's past land acquisition processes. Community representatives reported that land allocation process involved:

- Provincial and District government official explained the project to the village leaders.
- Following agreement by the village leadership to the project, government officials surveyed the land.
- The Study Tour group witnessed disagreement amongst community members as to whether any documents were signed by the village leadership, however it appears that village leadership signed either the survey, or minutes of a meeting about the survey, to identify their agreement to the



land being used. Not all appropriate representatives appear to have been involved. Village leadership stated that at the time they believed the land was not in use, with its occupiers having returned to their old land in the Xe-Namnoy Dam area.

Importantly, OBL did not attend initial meetings with local government authorities and communities. Accordingly, there was a lack of information about OBL and its project. The Study Tour was also told by communities that confusion persists amongst villagers as to whether they leased the land to the government or to OBL. Not all community members at the community focus group discussions were aware that OBL was given a 35-year concession. They reported that they had not seen any documentation for the lease of the concession area.

It appears that a lack of communication between the company, communities and local authorities also permitted misunderstandings to arise. Some community members told the Study Tour group that the local authorities had promised the company would establish a school, a village development fund, water supply and road improvements. This was done without OBL's knowledge. Communities reported that they were disappointed that these 'promises' had not eventuated.

When the Study Tour group asked communities what improvements could be made to the land acquisition process based on their experiences, they supported the role of government in the process, but highlighted that the company, communities and government all needed to be a party in any contract. Communities also said that the government should monitor that the company abides by the contract.

Communities also stressed that *companies should not just work with the government and ignore the community*. Companies should instead have a detailed conversation with all members of the village *before* they start acquiring land, to make sure that communities understand the purpose of the proposed project, timing, long-term impacts, commitments, and benefits. The villagers suggested that a company should bring a detailed contract to these discussions, so that the terms proposed were clear. Communities also told the Study Tour group that the investor should be aware, however, that the villagers must farm their land so cannot devote a month full-time to negotiate the project and contract.

The Right to Choose

Private purpose land use transfers on communal land shall only be implemented if agreed upon by consent of a **minimum two-thirds (but ideally 80%) majority** of all affected land use rights holders.

Land Issues Working Group, 2014

Towards Better Land Acquisition

Investors need to go beyond compliance with the law to achieve business objectives. Due to differences between national standards and international guidelines, the complexity of the legal system, non-transparency in decision-making, and a plurality of legal norms, compliance with the law will not yield the certainty required by private sector investment over the long term.

Building knowledge and capacity amongst all actors – investor, government and the community - is an essential part of negotiating and implementing agreements, as:

- **Knowledge of the land acquisition process in Laos is limited, and confusing for all actors in the process.** This will particularly be the case for any new investor to Laos, as evidenced by OBL. The ability of different line ministries and government agencies to grant land concessions under different circumstances leads to confusion amongst all actors. The roles and responsibilities of those involved in the process are unclear. There is a need for a streamlined approval process, removing the overlapping approval processes at central, provincial and district levels.

Improved guidelines for land acquisition in Lao PDR, and follow-up monitoring of investments, should be developed and shared to assist relevant government officials and company staff to follow appropriate land acquisition processes.

- **Communities need to be aware of their rights.** In order to meet FPIC standards, during land acquisition processes, investors should work with the community to ensure they understand the process and their rights. This could involve training and capacity building for key company staff to deliver information and engage with communities in a culturally appropriate way - for example using Lao language communications tools (posters, pamphlets, video) to explain in concise and farmer-understandable language the purpose, long-term implications and both potential benefits and consequences of the project, as well as farmers' rights under the law. Validation tools for testing community understanding are useful for investors to ensure that communities fully understand the proposed project and are aware of their legal rights.
- **Investors should ensure that the community has the capacity to participate equitably.** This can be done, for example, by investors (or government or NGOs) facilitating farmer-to-farmer exchanges, providing training on contract negotiations and rights under Lao law, covering meeting costs, funding independent advice, or supporting others to build the knowledge and capacity of government officials at district and provincial level as an essential part of improving transparency and efficiency of negotiating and implementing agreements.
- **There is a lack of understanding amongst all parties, even those who apply international best practice, as to what constitutes FPIC.** For example, companies were not clear as to the level of village participation required, or what proportion of agreement or consensus is required to infer consent. Clarity is also required as to the practical application of IFC's Performance Standards for rural, upland populations in Lao PDR, and the distinction between 'free, prior and informed consultation' referenced by the World Bank and others. An information tool is required to explain how FPIC can be achieved.

Investors should establish robust governance systems to verify the achievement of FPIC principles and ensure that village input into decisions has been broad based. Systems should include process documentation that verifies input has been sought - not just from village authorities, but from the entire community, including women and other marginalised groups - as well as continuous validation that communities understand the terms of the proposed project. Investors should also ensure that land survey documents are verified by community members - ideally using participatory methods to involve villagers in surveying the land. FPIC should be understood as collective decision-making, and as such, agreements and accompanying documents should be signed not only by the Village Chief (naiban), but also signed by representatives of several village organisations (such as Lao Women's Union, Lao Youth Union, Lao Front for Reconstruction, head of elder committee, Land Use Planning Committee).

Investors need to be directly involved in the land acquisition process. Investors should negotiate directly with the community with the assistance of the government. Investors should take the lead providing early explanations of their project, to ensure community understanding, and to ensure any commitments made to a community on their behalf are endorsed. The reputational risk and the impact of any loss of host community trust will outweigh any short-term benefits obtained. On a related note, the involvement of 'middlemen' should be avoided, as interests of intermediary actors do not necessarily align with either the company's or the community's interests, which can lead them to act unethically.

ESIAs should either be prepared independently of all involved parties, both the investor and government, or they should be subject to independent external verification. Greater transparency is required, including allowing public comment of all ESIA documents. These case studies clearly identify the need for third-party verification. However, the Study Tour group learnt that there are a limited number of companies offering ESIA services in Laos. Ongoing training and capacity building is needed for both the Lao government and private consultancies to conduct comprehensive ESIA's and the role of FPIC within them.

Possession of a Concession Agreement is not an adequate level of consent on which to proceed with a project. Broad-based consent should be sought by the investor, including all groups within communities, particularly women and other groups whose voices are often overlooked (i.e. - not simply gaining consent from village authorities). In addition, village level "Cooperation Agreements", such as those applied by SEL, represent good practice. Written agreements should be reached with each village affected by the concession, the relevant district and provincial government line agencies, and the investor. These should define: the size of land allocated; the location of the land allocated; the duration of the concession and the future of the land when concession ceases; mechanisms for compensation and benefit sharing (price/ha/year; duration for re-evaluation of land price to include inflation; how compensation is provided to villagers; etc.); as well as grievance mechanism processes.

Participatory Land Use Planning (PLUP) processes can be useful in determining concession areas. This PLUP process is a useful method for demarcating land use zones, particularly communal land, as well as village boundaries. The resulting Village Land Use Plan can help communities protect and sustainably use their lands. However, land use plans can sometimes restrict villagers' use of their lands, so training for investors, government and communities on genuinely participatory land use planning - and how to use the Land Use Plans - is recommended.

Lease 'Cooperation Agreement' commitments should be two-way, outlining obligations from both parties, to reinforce that it is a mutually beneficial relationship. The SEL agreement, for example, includes company agreement to provide a village development fund, while villagers agree on aspects such as following safety instructions, and controlling cattle.

Compensation and Benefit Sharing

SEL's Experience

The Study Tour learnt that SEL's operations provide the following to their host communities:

- Participatory land use surveys with villages and SEL Land Teams, providing a basis of community planning;
- UXO clearance from plantation areas – SEL notes that this adds substantial costs to their plantation model, approximately \$1,000USD/hectare;
- Improved access roads into the communities, also used by SEL;
- Establishing agro-forestry eucalyptus plantations (on 7 year rotations) with wide 9-by-1 meter intercropping areas for community use. SEL contend that this agro-forestry model benefits traditional practices around land use and increases land productivity, allowing more trees to be planted while at the same time improving village food security;
- Preparation of land for eucalypt planting and soils in the intercropping areas to allow rice (or other crops) to be planted;
- Job opportunities for villagers – SEL notes that this provides cash income as villagers are trained and hired as labour during plantation activities (i.e. planting, weeding, fertilizing, etc.). The SEL model intentionally makes intensive use of manual labour whenever possible, in order to create local jobs and support the local economy (for instance harvesting by chain saw rather than machine, as well as manual labour approaches to land clearance (however ploughing is done mechanically)). SEL employs approximately 100 full-time labourers across its operations, with fluctuating seasonal village day labour. In 2015 SEL reports that it provided around 29,000 days of work for around 6,000 labourers from 40 villages (an average of 3 people per household, who earn on average US\$5 per day).
- A Village Development Fund (VDF).
- A Scholarship Pilot Program (established in 2010) to promote ability, achievement and gender equality in primary school by offering scholarships for selected students. The scholarships are fully financed by SEL, separate to the VDF, and are administrated by the relevant District office in cooperation with SEL.
- Farmer-to-farmer excursions – SEL told the Study Tour group that around 200 farmers are brought together to discuss local developments and exchange ideas and experiences in relation to the agroforestry model. This also enables farmers to bring up their concerns directly with the company.
- Support for community events, such as a district sporting event with participants from 32 villages across three districts.
- SEL also told the Study Tour group that the company is examining the potential to utilise local waste streams to create biological fertilisers for composting in the tree plantations, and establishing community operated charcoal production using plantation by-products.

Intercropping

SEL develops its plantations using an agroforestry model, providing spaced intercropping areas (9-meter by 1-meter wide) where village crops can be cultivated between the rows of eucalyptus trees. This model started in 2007 as a rotation scheme that SEL promotes as similar to the villagers' traditional shifting cultivation cycle, where newly cleared land is used for two years before it is left fallow for the next three to four years.

SEL's plantation operate on 7 year rotations, with tree harvest occurring in year 7. For the two first years, villagers are able to grow rice between the trees – SEL reports that this provides better yields than traditional shifting cultivation practices (70 percent of the plantation area can be used for food and cash crop production in the first year of the cycle; 50 percent in the second year).

Years 3 to 7 currently provide for livestock grazing. SEL acknowledge that crop production during years 3 to 7 is difficult, requiring refinement and further testing. SEL told the Study Tour group that opportunities for other crops (cassava, beans, etc.) are being tested as a potential for cash crops.

It is SEL's objective to structure their plantations, so that every year there is an area in which rice can be grown by communities. This would be difficult to achieve, requiring plantation rotation starts to be staggered, in turn requiring further land to be provided by a village, as all plots in a village area are currently operating at the same growth stage.

Village Development Fund

SEL creates and administers a Village Development Fund (VDF) for each village partnered with. In addition, SEL makes additional payments at the Village Cluster and District levels. These payments for the lease are based at the following rates, regardless of the type of lease:

- US\$350/ha to the VDF, 50 percent up front, which is paid in-kind (for both 30 and 50 year leases).
- US\$5/ha to a Khet Development Fund (KFD) for the kumban (village cluster), via a 100 percent upfront monetary payment, to be used for developing the khet's administrative centre. SEL requires this fund to benefit the whole khet, not individual households.
- US\$20/ha to the District, via a 100 percent upfront monetary payment, to be used for developing the district's administrative centre. SEL requires this fund to benefit the whole district, not individual households.

There are a number of controls around when this money can be accessed and how it can be used. VDF payments cover the leasing period, which is normally 50 years. Only half of the VDF payment can be accessed upfront in the first year – unless an exception is made, such as in Kacham village, where the majority of VDF was used in the first year to install electricity. Payment of the second half of the fund is delayed, held by the company to meet later needs so that the VDF is sustainable. These payments are divided over the subsequent 6 rotations (a lease is 7 rotations long (7x7 years), with the first rotation accounting for the 50 percent upfront payment. Accordingly, every further 7 years at tree harvest, the village receives 1/6th of \$175/ha.

SEL reported that the village does not receive the payment in cash, rather in-kind through projects decided upon by the village, with SEL retaining control of the VDF funds. SEL's custody of the funds is audited and villagers can view the accounts on request. SEL does not pay interest on the VDF over the course of the 50-year lease, however they do adjust the value to account for inflation. The details of this process are under development by SEL.

A village proposes how the VDF is used, within a framework set by SEL's guidelines. The district government also reviews projects that are proposed. VDF projects need to distribute benefits fairly and equally amongst all villagers, and support local development and livelihoods. Priority development activities for the VDF include: food security or income generation (e.g. purchasing livestock); infrastructure development (e.g. roads, electricity, water, sanitation, health clinics, schools); or education (scholarships). The two most common requests SEL receives are for electricity and livestock.

Currently, SEL administers \$1.2 million USD in VDF funds. The Total VDF Paid up to date is US\$680,000.

Community's Experience

Communities reported to the Study Tour group that they were satisfied with the VDF, the improvements it has provided (such as electricity), and the opportunity for cash income from labour. They viewed the compensation they received as fair, although they did not have detailed knowledge of the value of the land leased.

Communities reported that cash income has increased notably since working with SEL. For example, SEL paid 40,000kip/day for land clearance related work, or 700,000kip/ha. They paid 250kip/seedling for planting. In 2015 SEL reports that it provided, on average, \$3,625USD to each village for the day labour of 150 people, or around 5 days' work per person.

Communities told the Study Tour group that they would like to increase production of cash crops, but find the market limited. They said that they spend the additional income for schooling and housing repairs.

Communities considered their level of food security to be good, greatly improved since working with SEL, although they do not grow enough rice to consume the entire year. They ceased shifting cultivation of upland rice during the first 2 years, whilst they grew rice in the plantation area, and then resumed their traditional practices. They harvested higher rice yields from the plantation (1.8 tonnes - 60x30kg bags of paddy (rice with husks). They purchase additional rice from traders at 5,000 kip/kg (an expensive rate).

Table 1 identifies the level of rice self-sufficiency and sources of cash income in Kacham village in 2012 and 2014, estimated by SEL. It is noted that 2014 data relates to the second year of the rice growing phase of intercropping. The impact of subsequent years without rice crops is not known.

The villages do not as yet obtain benefit for the intercropping system, after the initial rice growing period ends. Communities told the Study Tour group that they have tried to plant banana, cassava, and corn; however, cows and goats ate and destroyed the crops. This was attributed to their inability to protect the intercropping area with fences. It was not clear however if this was due to a SEL policy against fencing, or rather the method of plot allocation. Villagers reported that cattle did not affect the

rice plantings, as to avoid conflict each family was allocated land (jointly by the village authority and SEL), and were able to fence their own area. However, they stated that this was not possible for other crops as land was not allocated officially to each family, which made responsibilities unclear. Villagers reported that they would like to grow cassava, peanuts, and banana.

Villagers that the Study Tour group spoke to had an understanding of the compensation process, the amounts of money paid for leasing (which is the same regardless of the form of lease, or for a concession), and the VDF deferred payment structure. They did not however understand how much of the VDF was spent on projects, such as electricity. They did consider receiving an electricity supply as a fair exchange for their land. They report that they communally decide on VDF projects. In deciding on VDF projects, it appears that SEL gives the villages a 'menu' of options from which villages can choose.

SEL field staff were not aware of how the VDF contribution amount of \$350 was determined. Villagers considered the amount paid to be fair – the Study Tour group noted that SEL's VDF is significantly more than amount paid by other investors, understood to be in some cases USD\$50/ha.

During the Study Tour focus discussions, some confusion arose around the transparency of VDF projects and questions on whether all households receive benefits. For example, the naiban at one village reported that all households received cattle, but this information was disputed by villagers, with only 20 households benefiting. There is also a perception that village leaders receive separate payments from the VDF. For example, some community members reported that in 2010, 3 million kip was paid to only 2 village heads, and in 2012, 12,965,000 kip was paid to just 6 households, while in 2015, 88,750,000 kip was paid to the whole village. For the Study Tour group, the reasons for confusion were not known, but the group recommends that this be explored by SEL, either to rectify or to alleviate incorrect perceptions.

Table 1: Village Impact of SEL Plantation, Year 2

	2012 (before SEL)	2014 (with SEL)
Rice self-sufficiency of households		
less than 3 months	50%	0%
3 – 5 months	35%	33%
6-8 months	11%	48%
Rice production	800kg/ha	2400 kg/ha
Kg per person work day	3kg	12kg
(1kg of rice = 5,000kp)	15,000kp	50,000kp
Village cash income	25 million kip per year 1.4m kip per HH (USD 172)	194 million kip/ year (+670% in 2 years) USD 1,154 per household
Sources of Cash		
Livestock	0%	6%
NTFP	40%	1%
Crop planting	0%	0%
Hired Labour	0%	60%

Land Valuation in Laos

In Lao PDR, the amount of compensation paid by an investor to a community for land is governed by a centralised regulation, wherein all land is categorised by zones. A valuation is assigned each year to land in each zone (by Ministry of Environment and Natural Resources (MoNRE)). This table sets the compensation a community receives. There is no community input or negotiation, and any amount paid beyond this would be a voluntary offer from the investor. The government is however promoting a new model of investment wherein communities become 'shareholders' based on the value of the land".

OBL's Experience

At the end of a three-year redress process which followed the land conflict in 2010, OBL paid compensation, returned land use rights over part of the concession land (230 hectares), and provided rice to affected households. Villagers were compensated with payments for the value of their assets on the land that was cleared, however not for fallow land, traditional land or forest areas (including rotational fallow fields). As State land concession, OBL pays the government (as the legal owners of that land) for a concession fee for leasing the communal area.

OBL recognise they are responsible for solving grievances, but are required to work within the government processes to do so. The compensation rate paid to villagers for their assets was set by a District-Provincial committee established under a decree from the Provincial Governor – the Study Tour learnt that no baseline assessment was carried out to determine the compensation level, and the group heard from villagers that there was some confusion around the compensation rates. As no records were available of what land uses were cleared, OBL negotiated compensation rates with the communities around certain base assumptions and government set compensation rates (such as 1,200 coffee trees per hectare, for example, at 30,000 kip per tree). OBL accepted all land areas identified by villagers, areas which the District-Provincial committee surveyed and identified in a register (location, size, crop, and compensation details).

The Study Tour learnt that OBL's operations provide the following to their host communities:

- Permanent income to employees from surrounding communities working year-round for OBL, and seasonal income to workers. OBL currently hires limited amounts of labour from all of the surrounding villages, due to those plantations' early growth stage.
- Increased economic opportunities for farmers, by:
 - a. training for farmers (through its Outgrower program) on good agricultural, social and environmental practices to receive certifications for their coffee.
 - b. equipment and training to farmer groups to process coffee.
 - c. premiums on supplied coffee from the certified projects.
- Interest-free loans to farmers, based on coffee delivery.
- Free basic medical and dental care to workers and communities.
- Support for the building of schools, access to drinking water, and administration of the village and cluster.

Outgrower Program

Outgrower schemes are attractive models for agri-food companies as they ensure control over sourced supply, while at the same time granting access to local markets (OECD, 2008). OBL's Outgrower program has the following objectives:

1. Supporting professionalization of business-oriented cooperatives and farmer groups, through capacity building and the development and implementation of business plans.
2. Development of an extension and capacity building system.
3. Improvement of quality and productivity through Good Agricultural Practices (GAP) training.
4. Improvement of access to finance for farmers, via cooperatives and farmer groups
5. Commercialization of the Service Supply of cooperatives, farmer groups and Outspan.
6. Communication of project results to national and international stakeholders.

The program aims to increase household income from coffee by 25 percent, and increase OBL's 'community livelihood indicator' by 15 percent over its baseline.

The program commenced in 2013/14 with 10 farmer groups comprising 110 families farming 497ha. By 2015/16 it had expanded to 48 groups farming 1,484ha. In 2016 OBL reports that the company will spend \$200,000USD on the program.

- Other community support can also be provided on-demand to communities around the estates (for example, construction of a meeting hall).

OBL has supported farmer groups to acquire pulping machines and other coffee processing equipment. They have also offered to support a coffee-roasting machine if a village coffee cooperative is established to manage its use.

OBL provided donations to communities in the past 5 years of 570,000,000 kip (around \$70,000USD). This includes around \$12,000USD for infrastructure in 4 villages near the Xekatom Estate in the last financial year. OBL spent around 600 person-days on development and implementation related to their 'Outgrower' program last financial year.

Currently, OBL has no VDF in place – the Study Tour learnt that this is because the operation is still in its investment phase and so is not yet generating income. However, the group was told that OBL strongly believes in developing economic partnerships as a sustainable means to share benefits with the local communities, and in this respect the company has commenced an "Outgrower program" to train farmers and develop mutual opportunities (examined in detail in the following section). OBL is open to farmers being shareholders in their projects, subject to negotiation of suitable overall terms.

Community's Experience

With the return of their private lands and payment of compensation, villages indicated to the Study Tour group that they are now generally satisfied with the resolution of the dispute. However, tensions within the villages appear to remain, and four families refused to participate in the government-led compensation process due to its perceived inadequacy (Two of these families have recently reached a settlement with OBL).

As with SEL, there was disagreement about the distribution of compensation within the village, with villagers reporting that compensation did not benefit all, and was only paid to six households. This is likely due to OBL compensating the individual households who were using the land returned to the community at the time it was cleared. OBL noted that all farmers were compensated in line with the claims received.

The Study Tour learnt that the lack of a VDF is also a key issue for the community, which when combined with the dispute and compensation process, has built upon community's view that they have received little benefit from the concession. Whilst contributions are made by OBL to local infrastructure, they are ad-hoc, and communities do not seem to correlate their development as a direct benefit of the OBL concession. Communities said that they prefer a VDF to be established, rather than ad-hoc contributions by the company. During focus group discussions, it appeared that an ad-hoc process has also given rise to confusion in the community – the Study Tour group learnt that establishing a defined VDF process and ongoing community engagement is important in solidifying a good community-company relationship.

OBL notes that it intends to expand its Outgrower program via the ESCA project, offering an alternative avenue to further land acquisition and working towards a 'shared value goal' to obtain higher grower yields and achieve better quality coffee. This goal also reflects the desires expressed to the Study Tour group by the coffee farmers. The community is concerned with the poor yields they obtain from their lands (0.2kg per tree, compared to 4kg per tree by OBL, albeit a different species), and are aiming to double their yield to 0.4kg per tree (the first step in OBL's outgrower programme). Communities told the Study Tour group that their lands are poor quality, although these lands were intended for OBL plantation before being returned. Villagers agree that they need technical assistance to increase their yields. Coffee farmers request technical knowledge which is appropriate to the village, concerned that the information they have received from OBL couldn't be transferred as it is too 'high tech', and requires fertiliser. Whether this is due to inadequate technical content, or could be addressed by different teaching methods or credit system, could be further explored by OBL in designing its Outgrower program and future community-focused projects. OBL's programme emphasises non-bought inputs to improve yields.

Towards Better Compensation and Benefit Sharing

Investors should directly negotiate agreements with communities, which compensate for any loss of land use / access associated with a project, in addition to any payments required by the government. The community should be involved in valuing their land as part of this process, and valuation should consider the ongoing value of lost crops/ productive land. Wherever possible, and as a priority, communities should receive equivalent equally productive lands in other areas rather than cash. As stated under PM Decree 192, communities affected by investment projects *should not be worse-off due to the project*.

The Study Tour group discussed with district government representative's cases where this had occurred. For example, an electricity line project initially proposed compensation of 1 million kip per durian tree, which following complaints and mediation, was increased to 2 million kip per tree, plus an element for opportunity cost, whereby payment was made for 100% of the fruit profit in year 1, with further payments proportionally declining over 3 years.

It is leading practice that such agreements **go beyond compensation to address long-term community development goals**. This will help the investor to establish mutually beneficial community relationships and a social licence to operate over the long-term.

Such an approach **recognises that customary and communal land has a monetary value**. In order to meet the principle of full replacement cost, assets and livelihoods need to be valued accurately in economic terms. A baseline livelihoods survey should be prepared for this purpose to supplement the centrally defined land value table.

Compensation is not benefit sharing. Compensation provides short-term redress for the loss of access to land and assets. Going beyond compensation, benefit sharing provides broader economic participation in a project. This could involve, for example, business opportunities or production royalty payments. A VDF whose funds are provided only in compensation does not achieve this.

A successful benefit sharing (or win-win) strategy is one which aims to create 'shared value' - objectives which both the community and the investor share – providing benefits to business whilst providing long-term livelihood benefits to the community. SEL seeks this value through the shared use of the plantation land under their agroforestry model for household food production, and training a skilled local workforce for maintaining SEL plantations. OBL aims to create shared value through supporting and training coffee farmers to improve coffee yields and quality, to improve household incomes while ensuring OBL a regular supply of high quality coffee.

Projects should develop ways to maximise low-skilled labour inputs, as this will be the most direct and sustainable community-level benefit. For example, training and hiring local labour for planting, maintaining and harvesting agroforestry crops.

Ideally, a benefit sharing strategy should be implemented from the investment's inception, regardless of the cash flow position of the project.

An accepted, tried and tested approach in Laos is the **establishment of a Village Development Fund (VDF) to manage compensation and benefit sharing funds**, until such time as they can be used to benefit the community. As demonstrated by SEL, VDFs can be used to make investments over the length of a lease. Acknowledging that leases run for 50 years, or several generations, this can provide a measure of intergenerational equity to villagers.

Safeguards should be set up in order to ensure effectiveness of the benefit sharing process. For a VDF, these safeguards should:

- Ensure decision-making processes are participatory, and based on a shared community and company understanding of village needs and priorities;
- Have broad-based consent, with majority of villagers agreeing to a decision;
- Provide the community with information so that they understand the benefits and costs of any investment considered;
- Conduct and provide to the community annual financial audits of the VDF, as well as to local authorities.
- Define details of the VDF and its articles of association within the lease agreement between the investor, community and government.

Replacement Cost

Lessons for compensation for future investments can be drawn from Article 6 of Prime Ministerial Decree 192 of 2005 (Compensation and Resettlement of the Development Project) - communities should be compensated for their lost rights to use land, as well as for lost assets: *"Project owners shall compensate project affected people for their lost rights to use land and for their lost assets (structures, crops, trees and other fixed assets) affected in full or in part, at replacement cost"*. In addition, the Article states that villages should be *"provided additional assistance to ensure that they are not worse-off due to the project"*.

"Replacement Cost" is the method of valuation of assets that helps determine the amount sufficient to replace lost assets and cover transaction costs. For losses that cannot easily be valued or compensated for in monetary terms (e.g. access to fishing, grazing, or forest areas), attempts are made to establish access to equivalent and culturally acceptable resources and earning opportunities. Where domestic law does not meet the standard of compensation at full replacement cost, compensation under domestic law is supplemented by additional measures necessary to meet the replacement cost standard.

World Bank Operational Policy 4.12, Revised April 2013

Community Engagement

SEL's Experience

SEL's Land Teams facilitate community consultations during land acquisition processes, and are responsible for ongoing community liaison. Currently SEL has four Land Teams, comprising three staff in each district. The Study Tour group learnt that Land Teams staff usually come from the ethnic community in which they work, so they can speak the local dialect. They use videos, maps, pictograms and other communication tools during the consultation process.

SEL has recently revised its land acquisition processes in order to better meet international FPIC requirements. As part of this transition, SEL is developing communications products in collaboration with NGOs, designed to help Land Teams deliver information in a culturally appropriate way, and ensure communities more fully understand the long-term implications of the proposed investment.

SEL acknowledged that its Land Teams require further assistance to understand FPIC processes, and to understand that their role is not to be 'salespeople' for SEL. Improvements in this area, such as engagement Standard Operating Procedures (SOPs), are being developed by SEL under an advisory services agreement with the International Finance Corporation (IFC).

As well as land acquisition, the Study Tour group learnt that SEL regularly consults with local communities for all projects that involve the community itself (e.g. planning for VDF infrastructure projects) or activities proposed for their traditional lands. SEL provides information to village leaders so they can make an informed decision on whether to consent to the planned activity. When SEL plans business operations on village lands, they will meet with village leaders and explain what the company is planning and when, and inform the naiban if village labour may be involved.

SEL told the Study Tour group that the company holds 'farmer-to-farmer' events, inviting villagers to join in excursions to other villages to see first-hand what the SEL model looks like in practice and talk to local villagers about their experiences. These events also benefit SEL, enabling them to expose potential host villagers to existing host villages.

Community's Experience

During focus group discussions, communities said that they had a good relationship with the company. Some community members expressed their happiness with SEL, describing them as "not like other companies", and described SEL field staff as "like family". When asked by the Study Tour group, communities answered that they felt they could communicate freely with SEL, via phone calls and through the company's frequent visits to the village.



OBL's Experience

OBL's plantation management teams explained to the Study Tour group that they regularly visit and communicate with communities around their estates. Any issues which cannot be resolved or decided at plantation level are conveyed to the CR&S Manager, following Outspan's grievance redress procedure. The Study Tour group also heard that community representatives are welcome to bring their concerns or questions directly to the company management offices in Pak-song. OBL's approach is to ask communities directly what they expect or why they are not satisfied, and try to discuss and resolve at the local level before escalating through the formal grievance redress procedure.

The Study Tour group learnt that OBL holds large meetings to discuss issues, a roundtable of government and community, where all participants can express their wants and concerns. At these meetings all participants must agree on an issue for OBL to proceed.

Community's Experience

Communities visited during the Study Tour were impacted by OBL's land acquisition processes in 2010, and the relationship continues to be influenced by it. Several community members reported that they still do not understand key elements of OBL's coffee project, and some community members said they had unanswered questions despite settlement of the grievance process in late 2013. Residents of Nongtouang village did not all know that OBL was the company using their communal lands. As two other companies operate in the same area (DakLak and Champa Lao) there was some confusion amongst villagers as to which company was responsible for what land or issue.

Villagers told the Study Tour group that they had not been invited to any formal meetings with OBL for some time. However, they noted that they do meet informally at other district meetings where they can raise any issues they have.

While OBL currently hires limited labour from the village, due to the plantations' growth stage, this will change when OBL's crop is ready to harvest at the end of 2016. In addition, the community-company economic partnership will also be solidified when OBL is able to purchase coffee grown by these villages as a closer processing plant is being built – at the time of the Study Tour these village lands were too far from OBL's processing plant, and the robusta beans grown are not preferred by OBL. OBL has however provided each villages farmer group equipment and pay a value-added premium to encourage the production of pulped rather than dried beans. During focus group discussions, communities requested the company's assistance with market access, and negotiating a good, consistent price for their crop.



Towards Better Community Engagement

Communities affected by an investment project have a right to be meaningfully involved in investment decision-making processes. The case studies demonstrate that meaningful and continuous participation of communities in investment decisions can avoid delays and operational disruptions, and ensure social harmony.

The capacity of communities to participate needs to be strengthened. This could be achieved by village-level education and awareness-raising on communities' rights under Lao law, as well as using culturally appropriate tools and participatory consultations methods to facilitate more broad-based community participation.

Investors should engage affected communities early in the project planning process, prior to major decisions being made. As well as forming trust with the community, it permits community views to be reflected in the design, such as by changing aspects of the project's design to modify impacts.

Consultation should be seen as an investment, as establishing a strong agreement from the outset can help avoid delays and disagreements later. Community consultation at the inception stage also allows for the time required to conduct adequate consultations, as building understanding requires consistent and ongoing communication throughout the project cycle.

Investors should engage directly with the community, rather than relying on intermediaries. This ensures the information provided is accurate, preventing misinformation to be spread about the project, inadvertently or otherwise.

Communities need to be informed with access to all relevant information, so that they can participate in a meaningful way. Communities cannot provide their consent to a project if they do not have genuine understanding of the proposed project – information provided should inform communities of both positive and negative impacts, timeline, terms of a lease, and obligations of both company and the community. Communications should be a participatory, two-way process of information exchange.

As well as informing communities, investors need to continually **verify that the community understands what is being proposed.** This is crucial to avoid later misunderstandings creating conflict and loss of trust.

Community engagement needs to be maintained throughout the life of a project. Investors should build a relationship with their host community, which requires an ongoing rather than transactional approach to engagement. Engagement should not cease once land has been acquired, or a conflict solved.

What is a 'Social Licence to Operate'?

'Social licence' is the level of acceptance or approval continually granted to a company's operations by a local community. Obtaining acceptance from a community provides a company with access to raw materials, markets, financing, talent, and legal permissions. Without this licence, companies may face serious reputational harm, lost business opportunities, operational disruptions (such as the withdrawal of village labour required to operate the enterprise), litigation and even social unrest.

(Australian Centre for Corporate Social Responsibility)

Participation needs to be inclusive and equitable, seeking out and facilitating the involvement of all those affected and ensuring that all interests are heard, including the poor and vulnerable. Companies should not rely only on discussions with village leaders or committees. It must ensure that mechanisms (such as public meetings) are organised regularly to give an opportunity to all villagers to obtain information, and voice their concern. The Study Tour group also found it challenging to obtain input from all community members – dividing into smaller groups so that village authorities are not the only group speaking is one method for encouraging marginalised groups to voice their views. As demonstrated by the OBL experience, it is in an investors' interest that participation within a community is broadened beyond initial discussions with village leadership.

It is crucial that the voices of women be heard, as acquisition of communal lands affects men and women's livelihoods differently. The engagement processes of both companies examined appear to focus on men, overlooking women in the decision-making process for land acquisition or VDF projects. The participation of women in Study Tour meetings was also limited, demonstrating that more gender-sensitive ways of involving women – especially women belonging to ethnic minority groups – are needed so that the views of women are not marginalized. Investors should employ women on their community consultation teams to assist with this engagement.

Investors need to **ensure that their community engagement process has appropriate financial and human resources** to implement the above approaches.



Grievance Mechanisms

The Study Tour learnt that currently both investors resolve grievances within the government system. Both companies try to resolve issues at the local level, without escalating them to higher levels of government.

The government process is consensus-driven and reflects national development goals. Interviews identified that the following process is applied:

- Village level / Cluster level – Complainant approaches the *naiban*, and then the Village Mediation Unit/ Committee. If the issue cannot be solved locally it is escalated to the district.
- District level – The District Conciliation Committee (which includes a representative of the National Assembly), attends the village to (1) explain the purpose of the project to the community, and (2) apply the Prime Ministerial and district decrees relevant to the issue (such as compensation). Government interviewees reported that this process generally leads to understanding and the conflict is settled.
- Province and Central level – Petitions can be made to the Court, or the National Assembly. A National Assembly Hot-line has also been established to receive complaints.

SEL's Experience

SEL is currently developing an internal grievance mechanism as part of IFC's advisory services agreement with SEL. It is likely to consist of various channels, including online and in-person, and will not depend on a complainant's literacy.

SEL received around 20 community grievance complaints in 2015. All grievances were resolved through community meetings attended by District Agriculture and Forestry Office (DAFO) representatives.

The majority of grievances raised by the local communities concerned VDF payments. Sometimes this is due to delayed delivery of promised benefits (i.e. infrastructure projects, livestock, etc.) resulting from VDF processing times and obtaining the required internal and local government approvals. Other VDF-related grievances are the result of misunderstandings of the terms and conditions of the VDF.

SEL noted that there were also grievances related to the timing of SEL's preparation of intercropping land, which can sometimes result in the villagers missing the start of the planting season. SEL, together with DAFO, will meet with the villagers and try to resolve the issue in a mutually beneficial way.

In addition, SEL told the Study Tour group that it plays a broader mediation role in the community. Infrequently, grievances are raised by communities which involve boundary disputes with adjacent communities. SEL, together with DAFO, will meet with both communities and attempt to resolve the dispute and, if necessary, re-survey the boundaries.

Community's Experience

When asked by the Study Tour group, communities said that they maintained a good relationship with SEL. They reported that if an issue arises, they could phone one of several SEL staff directly.

Villagers considered that their contractual relationship was with SEL, which they said gave them no ability to involve the District government in any disputes. Consequently, they did not complain to higher levels of government if they experienced problems.



OBL's Experience

In Laos, the government is responsible for the settlement of land-related grievances that cannot be resolved at village administrative level. In addressing its land dispute, OBL worked with the provincial government to establish a new "Provincial Compensation Evaluation Committee" (Provincial decree No. 1089/ 2012). This Committee was a redesign of the Provincial Grievance Committee, to address challenges identified during its operation. The Committee was established as part of OBL implementing a new approach to grievance resolution, allowing the company to play a greater role in resolving the dispute, gaining direct community-company contact, and thereby ensuring the grievance resolution process continued moving forward, as it had become protracted. The Committee comprised provincial and district officials and Outspan representatives whose duties were to work with village authorities to collect detailed data on the areas of land impacted by the investment, evaluate the amount of compensation due and explain to affected families the compensation process.

The experience in Laos led to a review of Olam's internal systems and the establishment of the Olam Plantations, Concessions and Farming Code in 2013. A key learning for Olam was the need to ensure that future land-based investments allow for direct and agreed access to the communities; community consultations led by the company – with cooperation of local government – are a more effective way to build mutual trust and ensure FPIC principles are applied. This Code now requires the preparation of an Environmental and Social Management Plan, which includes a grievance mechanism for the resolution of any community concerns. The objectives of IFC Performance Standard Number 7 are guiding principles for OBL's Grievance Resolution procedure.

OBL's new grievance mechanism provides training for its staff and village representatives on lodging, registering and resolving complaints. OBL aims to solve grievances as quickly as possible, and to do so at the local level directly with the complainant. If the issue cannot be resolved, the complaint is escalated to the CR&S Manager. Communities had a direct contact number for this manager; complaints could also be raised anonymously and in writing. If the issue remains unresolved, the complaint is directed to the formal government processes.

Further detail of this process is provided in Figure 4.

Community's Experience

Whilst no recent complaints were identified by the villages, they remain unhappy with the land acquisition process and its resolution. Whilst OBL has paid claimants compensation, there remained some confusion amongst meeting participants as to whether all compensation monies had been received.

Villagers were unable to express a clear understanding as to what they should do when a grievance arises, particularly who they should talk to in either government or OBL. They did believe that District officials needed to become more involved in dispute resolution.

Towards Better Grievance Mechanisms

A well designed grievance resolution mechanism is essential for any project, as company-community conflict or disagreement is likely in many cases. However, it is *how* a company manages and responds to conflicts that determines the quality of the ongoing relationship, and in turn their social licence to operate. This is critical when disputes involve access to land and livelihoods, which can lead to significant social unrest. The benefits of a well-designed and administered approach are underlined by these case studies.

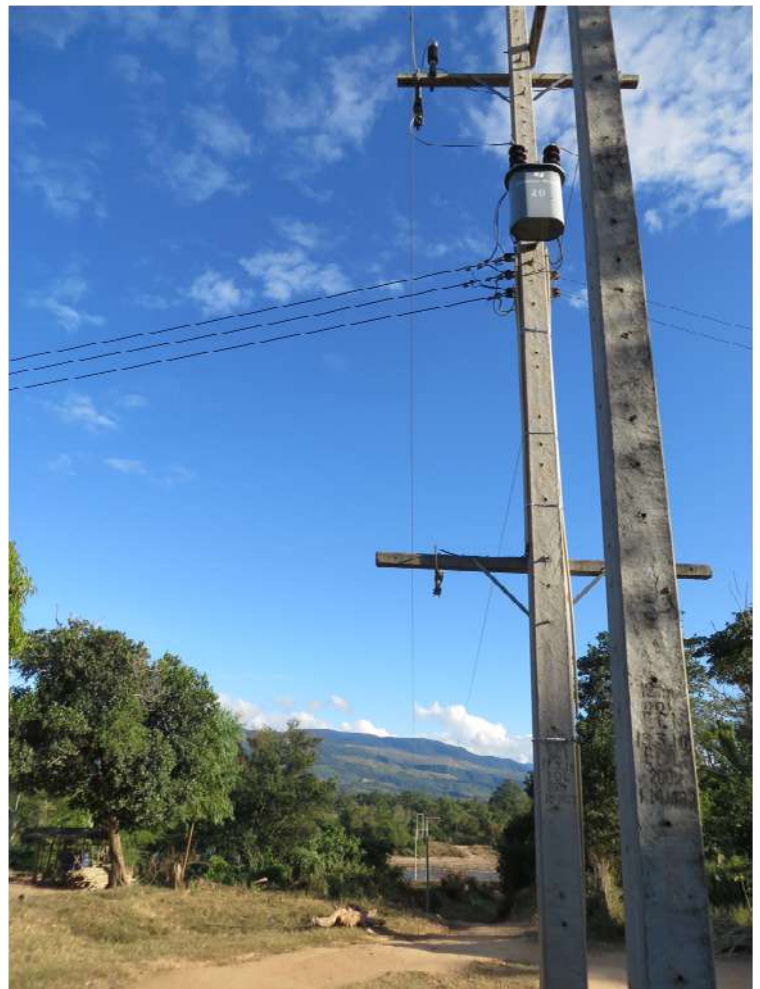
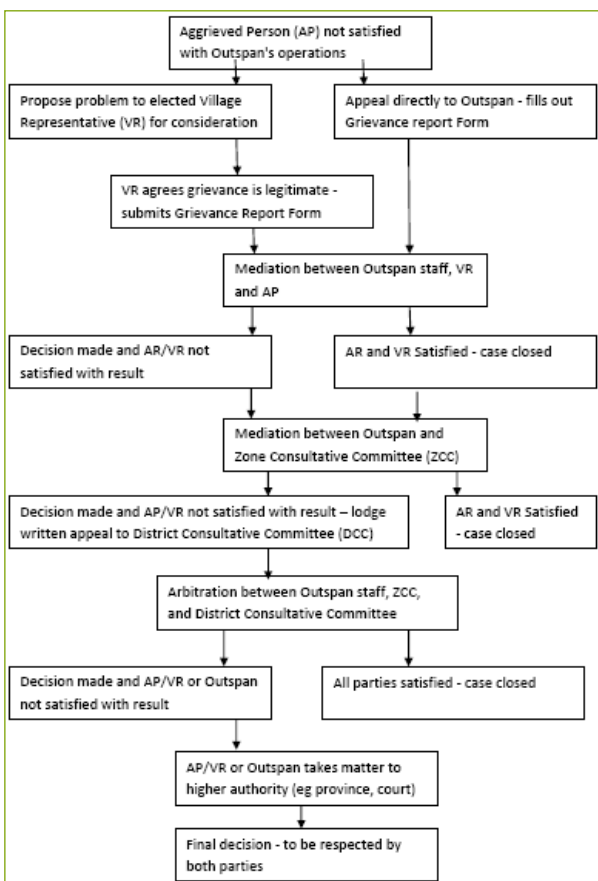
Emphasis should be on avoiding land disputes rather than addressing them once they have occurred. Besides avoiding real and unnecessary hardships for affected communities, this approach ensures social stability and harmony. It is also makes economic sense; a study by RRI (2012, 2013) demonstrates that unresolved conflicts over land significantly increase financial risks for companies.

In designing a grievance resolution mechanism, the eight effectiveness criteria for operational-level grievance mechanisms provided in the United Nations Guiding Principles on Business and Human Rights (2011) should be a key point of reference.

The experience of the companies demonstrates that **grievance mechanisms should be:**

- **discussed and resolved as soon as possible** at the village level, with mechanisms in place to enable issues to be proactively identified.
- **developed with the host community and relevant government authorities** during the project planning stage, before serious issues emerge. Its agreement with the community should be documented as part of the lease agreement. This will also improve its enforceability. As noted by OBL, the investor needs to directly engage with the community.
- **publicised** so that the community is aware of its existence as well as how to access it. During initial community consultations a company could, for example, use posters or images to deliver information on how to access the grievance mechanism, and distribute materials such as a 'complaints hotline' contact card.
- **accessible**, both physically, in addition to being clear and understandable despite language or literacy. This could involve a telephone hotline, or an anonymous village mailbox.
- **available at no cost**. Many villagers do not have the necessary funds to proceed through the formal government process.
- **transparent and credible**, so that outcomes are seen as fair. Complaints should be logged in a company register, with feedback on investigations undertaken and its outcomes provided to the complainant and the community.
- **provide for a tiered response tied to complaint severity**. An agency, independent of those involved in the conflict, government and the company, and possibly under the National Assembly, should be assigned to investigate and mediate land-related grievances.

Figure 4: OBL's Grievance Procedure



Study Tour Participants:



Supported by:



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