

ZIMBABWE'S CONTESTED LARGE-SCALE LAND-BASED INVESTMENT: THE CHISUMBANJE ETHANOL PROJECT

KEY ISSUES

- Zimbabwe needs policy and legal reforms to provide clarity on land tenure, land valuation and compensation.
- Following the Fast Track Land Reform Programme, all land vests in the state, but this has not resolved conflicting claims to land, including between local communities and state institutions.
- Biofuels investments present important potential benefits that Zimbabwe can leverage in the interests of national economic development.
- Expansion of commercial farming for biofuels onto community land in Chisumbanje has sparked conflict and allegations that companies have embarked on 'land grabs' with state support.
- Policy clarity on land rights and improvements in land administration and land-use planning can help avoid such land-related conflicts.
- International land governance frameworks can guide the development of improved policy and law to govern Zimbabwe's land.

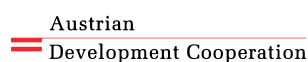
INTRODUCTION

Zimbabwe's fast-track land reform from 2000 onward yielded significant land transfers, but led the country to face debilitating production challenges and lack of investment in agriculture. Since then, Zimbabwe has not crafted a land policy, and depends on a raft of existing land laws (such as the Agricultural Land Settlement Act, Deeds Act and Surveying Act) for land management. These are old pieces of legislation that cannot resolve land-related problems facing rural people, such as the lack of clarity on land tenure, land valuation and compensation, disputes related to land access, poor land administration and weak land-use planning. These problems converge to make investment in land a mammoth challenge, which underscores the need for a clear land policy.

This policy brief presents the example of a biofuels production project and its value chain to argue that there is a need for a

land and investment policy to guide communities, investors and stakeholders. The expansion of commercial sugarcane farming and the establishment of an ethanol refinery at Chisumbanje in Zimbabwe's Chipinge District present both opportunities and risks for rural people in the area. Without clarity on land tenure, investors are also faced with challenges when deciding the extent to which they can put their money into agriculture. When policy is blurred, as is the current situation in Zimbabwe, it may create opportunities for some local people to benefit, while at the same time leading to dispossession and marginalisation of others. Decisive policy direction from government is needed so that these investments can be carefully managed and structured in such a way that they can benefit both the local land users and the investors, and with recognition of local people's land

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rights. In the case of Zimbabwe the following points should be considered:

- 1 Zimbabwe needs to develop an **overarching land policy** and review the legal framework governing all aspects of land rights and land acquisitions.
- 2 Government should **consider investments only after conducting careful impact assessments**. These should include land tenure impact assessments, community impact assessments, and environmental impact assessments. It also needs to develop in-house capacity to strengthen land negotiations and dispute resolution.
- 3 Government should **avoid expropriation as a tool for accessing land**. If expropriation must be used, it should follow established procedures that include extensive consultation with “land losers”, judicial review, land-for-land compensation, and full resettlement and rehabilitation packages.
- 4 **Transparency should be ensured**. This includes updating public records of all important documents relating to the investments and building independent monitoring and evaluation mechanisms for the lifespan of each investment project. Government should promote and facilitate information sharing among different stakeholders to avoid land-related conflicts that may be caused by the investors’ further expansion.
- 5 Government should **not rely on self-regulation by investors** but should ensure that companies comply with national regulations and international guidelines on land tenure, and deliver on all promises they make as part of the investment deal.

Chisumbanje ethanol production model

The Chisumbanje Ethanol Plant (Green Fuel) is a joint venture operation between Macdom Investments and the government of Zimbabwe represented by its agricultural investment arm, the Agricultural and Rural Development Authority (ARDA). It started as a Build-Operate-Transfer (BOT) and later on changed to a joint venture. ARDA owns the land while two companies, Macdom Investments in Chisumbanje and Rating Investments in Middle Sabi, provide the sugarcane to Green Fuels, which then produces the ethanol (Zuze 2014). Through ARDA, government invested US\$36.7 million in land and immovable assets and holds a 10% stake in Green Fuel. Macdom Investments injected the capital and holds a 90% stake in Green Fuel. The total investment into Green Fuel is US\$300 million and the machinery and related equipment for ethanol production was imported from Brazil and assembled by locals with the help of Brazilian engineers (Zuze 2014). The

Chisumbanje ethanol project is large-scale (see Types of Biofuels Investment below) and incorporates several core estates:

- a) Chisumbanje estate increased from 5 500ha in 2014 to 8 500ha in 2015;
- b) Middle Sabi estate has maintained production of sugarcane on 3 500ha;
- c) Nuanetsi estate has maintained production of sugarcane on 1000ha;
- d) land for community production of sugarcane has increased from 1 110ha in 2014 to 1 300ha in 2015.

Across the estates, Green Fuel’s own projections are to increase to 40 000ha under sugarcane, to raise its investment to \$800 million and expand jobs to 33,000. Currently, production is on 9 100ha with an investment portfolio of \$230 million (excluding government contribution) and the value of import substitution (of petrol) stands at \$80 million per year with the production of 80 million litres of ethanol. As of 2015, Green Fuel employs 9 100 people, this number fluctuating with the peak and off-peak sugarcane seasons.

ARDA provided the land on a lease basis as part of government’s contribution to the project. However, it has not resolved the claims by local people that they own the land. Green Fuel has defended the project, arguing that land-related matters are the responsibility of government. Government did set up an inter-ministerial task force led by the Deputy Prime Minister during the Government of National Unity. This task force sought to balance the interests of the three potentially conflicting parties – government, Green Fuel and the local population.

ARDA and the Ministry of Agriculture Mechanisation and Irrigation Development (MoAMID) were central to the initial offer of land on a lease basis to Green Fuel. Yet, all land is owned by the state and administered by the Ministry of Lands and Rural Resettlement (MLRR), which to date has not provided a statement on the Chisumbanje project, ostensibly because the land is statutorily owned by MoAMID.

The Chisumbanje model of land tenure

The Chisumbanje ethanol production model is one that exemplifies land tenure as a “system of access to and control over land and related resources”. The state, the investors and communities define the rules and rights which govern the leasing, appropriation and cultivation of land. Strictly speaking, it is not the ownership of the land itself that is contested, but the rights and duties over it.

TYPES OF BIOFUELS INVESTMENT

Large-scale processing plant with core estates, whereby:

1. Firm holds the land, water and technology, and employs labour on the estate and in the processing plant;
2. Firm achieves large-scale production (larger than 17 500ha in Brazil);
3. Firm incurs low transaction costs in environmental monitoring (and possible self-monitoring).

Medium-scale processing plant with core estate and out-growers, whereby:

1. Firm holds the land, water and technology, and employs labour on a core estate and processing plant;
2. Firm depends on supply of feedstock by out-growers through contract farming;
3. Firm shares the costs of environmental monitoring.

Small-scale farms connected to a processing firm, whereby:

1. Firm holds the land and technology, and employs labour only in the processing plant;
2. Farmers provide all the feedstock, possibly through contract farming;
3. Firm may run the risk of being held to ransom by producers, costing production time and resources;
4. Smallholder communities receive broader benefits from decentralised production;
5. Firm incurs high transaction costs in environmental monitoring of many farms.

In Chisumbanje, land rights include a diverse set of individual rights and duties, and collective regulations, at different levels of family organisation, communities, corporate sector, local governments and state. The rights and duties that individuals or families hold are themselves embedded in a set of rules and

norms, defined and enforced by authorities and institutions which may be those of rural communities and/or of the state. The case of Chisumbanje demonstrates that no system of land tenure can work without a body with power and authority to define and enforce the rules, and provide arbitration in case of conflict.

Yet, the investor in Chisumbanje has established a project in a communal area with unclear ownership of land between the state and communities, which creates disputes. The current land investment projects comply with existing national legislation yet do not adequately recognise the claims of local communities to customary ownership of the land. The Chisumbanje ethanol investment also does not comply with global land governance guidelines, such as those advanced by the Food and Agriculture Organization of the United Nations on land tenure (FAO 2012) and agriculture and food systems (FAO 2014).

The Chisumbanje project was established in the midst of a policy gap, under the government of national unity. This created problems for the project as decision-makers differed on the best landholding and investment model to adopt, given the tenacious and unclear land ownership rights.

While biofuel production can serve as an engine of rural growth and is a national strategic priority, some major concerns exist:

- a) the total area of suitable land remains highly uncertain, especially given constrained supplies of irrigation water in areas targeted for jatropha, for instance, where yields could be low;
- b) competition between food and fuel can occur depending on the pricing of biofuels feedstock, which may lead to displacement of land used for food production; and
- c) a potential exists for domination by large industry players, to the detriment of rural populations.

A key consideration in biofuels feedstock production is the need for land that has certainty of rights. According to government, the current management arrangements provide for such protection of the investments and allow corporates to invest in biofuels feedstock production.

Key elements requiring policy and practical attention: Lessons from Chisumbanje

Land ownership issues

Over 9 100 hectares of land are being leased for sugarcane production for ethanol. Villagers were displaced in two sites namely Chisumbanje and Chinyamukwakwa. The affected

are communal settlements on the Chisumbanje ARDA Estate under the jurisdiction of Chief Garahwa as well as the 116 Chisumbanje ARDA Settler Scheme farmers who have offer letters. In Chisumbanje, only 172 out of 1 008 families who lost land ranging from 2-40ha were compensated with 0.5ha irrigated plots. In Chinyamukwakwa, 388 families out of the 694 families affected were compensated with 0.5ha irrigated plots. The Chisumbanje Ethanol Project consists of sugarcane plantations in Chisumbanje (36 000ha) and Middle Sabi (10 000ha), with the ethanol plant being located in Chisumbanje. The 116 settler farmers on 410ha of land and 125 war veterans on 250ha of land constitute the out-growers who produce sugarcane on contract for the investor.

Land disputes: The community perspective

Disputes over land ownership are at the centre of the conflict between ARDA and the community of Chisumbanje. The investor, Green Fuel, has been caught up in this conflict as they have leased land from ARDA which local people claim to be theirs. The community claims that they have been cultivating the land and co-existing with ARDA long before Green Fuel arrived and that they own the disputed land through custom.

Land disputes: The company perspective

According to Green Fuel, ARDA leased the land from the Chipinge Rural District Council (RDC) and communities have not challenged the land lease arrangements of the RDC and ARDA on communal lands since independence in 1980. Land ownership issues only arose after Green Fuel arrived and made a deal with ARDA, which claimed to own the land. The MLRR has not intervened to clarify the land rights situation, preferring ARDA, from whom Green Fuel leases the land, to deal with it. Failure by the government to resolve the land issue has led to these conflicting claims that the government now needs to resolve.

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RECOMMENDATIONS

1 Compliance with international land governance principles

- The Zimbabwe government should review and strengthen the legal framework governing all aspects of land rights and land acquisitions.
- The Zimbabwe government, and private investors, can study and draw from the FAO Voluntary Guidelines on Responsible Governance of Land, Fisheries and Forests (FAO 2012) and the Principles for Responsible Investment in Agriculture and Food Systems (FAO 2014), in order to improve their land governance and land investment practices.
- Transparency should be ensured, and requires maintaining and disclosing public records of all the significant documents relating to the investment and building of independent monitoring and evaluation mechanisms for the lifespan of each investment project.

2 Improving land policy and land negotiations

- Government should consider investments only after conducting careful impact assessments. These should include land tenure impact assessments, community impact assessments, and environmental impact assessments. The government should avoid expropriation as a tool for accessing land.
- If expropriation must be used, it should follow established procedures that include extensive consultation with “land losers”, judicial review, land-for-land compensation, and full resettlement and rehabilitation packages.
- ARDA and other stakeholders in the state need to work closely together and consult with communities in light of the company’s expansion plans.
- As currently constituted and with the acrimony around land rights, the Chisumbanje project does not comply with some of the responsible guidelines for agricultural investments developed and promoted by institutional investors. In particular, existing land rights and resources have not been respected in this case.
- Investors should self-regulate to prevent perceptions or realities of human rights abuses, as evidenced in this case in the pillaging of farmers’ crops and the impounding of their cattle.