Understanding agricultural investment chains:
Lessons to improve governance

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Acronyms

CAO	Compliance Advisor/Ombudsman
CEO	Chief executive officer
CFS	United Nations Committee on World Food Security
EBA	Everything But Arms initiative (European Union)
EIA	Environmental impact assessment
ESG	Environmental, social and governance
ESIA	Environmental and social impact assessment
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FSC	Forestry Stewardship Council
ICSID	International Centre for Settlement of Investment Disputes
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IIED	International Institute for Environment and Development
MoU	Memorandum of Understanding
NARLD	National Authority for Resolution of Land Disputes (Cambodia)
NGO	Non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
PRI	Principles for Responsible Investment
RSB	Roundtable on Sustainable Biomaterials
RSPO	Roundtable on Sustainable Palm Oil
SIA	Social impact assessment
UNCTAD	United Nations Conference on Trade and Development
US	United States
WFP	World Food Programme

Executive summary

Topic and rationale

Recent years have seen renewed private and public sector interest in developing country agriculture. A new wave of large-scale acquisitions of farmland for plantation agriculture has taken place in Africa, Asia and Latin America, fuelled by changing agricultural commodity prices, expectations of rising land values and public policies to promote long-term food and energy security.

Despite emerging evidence on certain features of these land deals, uncertainty still surrounds the actors, relations, processes and incentives involved. What is increasingly clear is that, rather than a transaction between a provider and an acquirer of land, each deal may in fact involve a complex web of multiple parties. The concept of an 'investment chain' offers a useful tool to visualise this (see Figure 1).

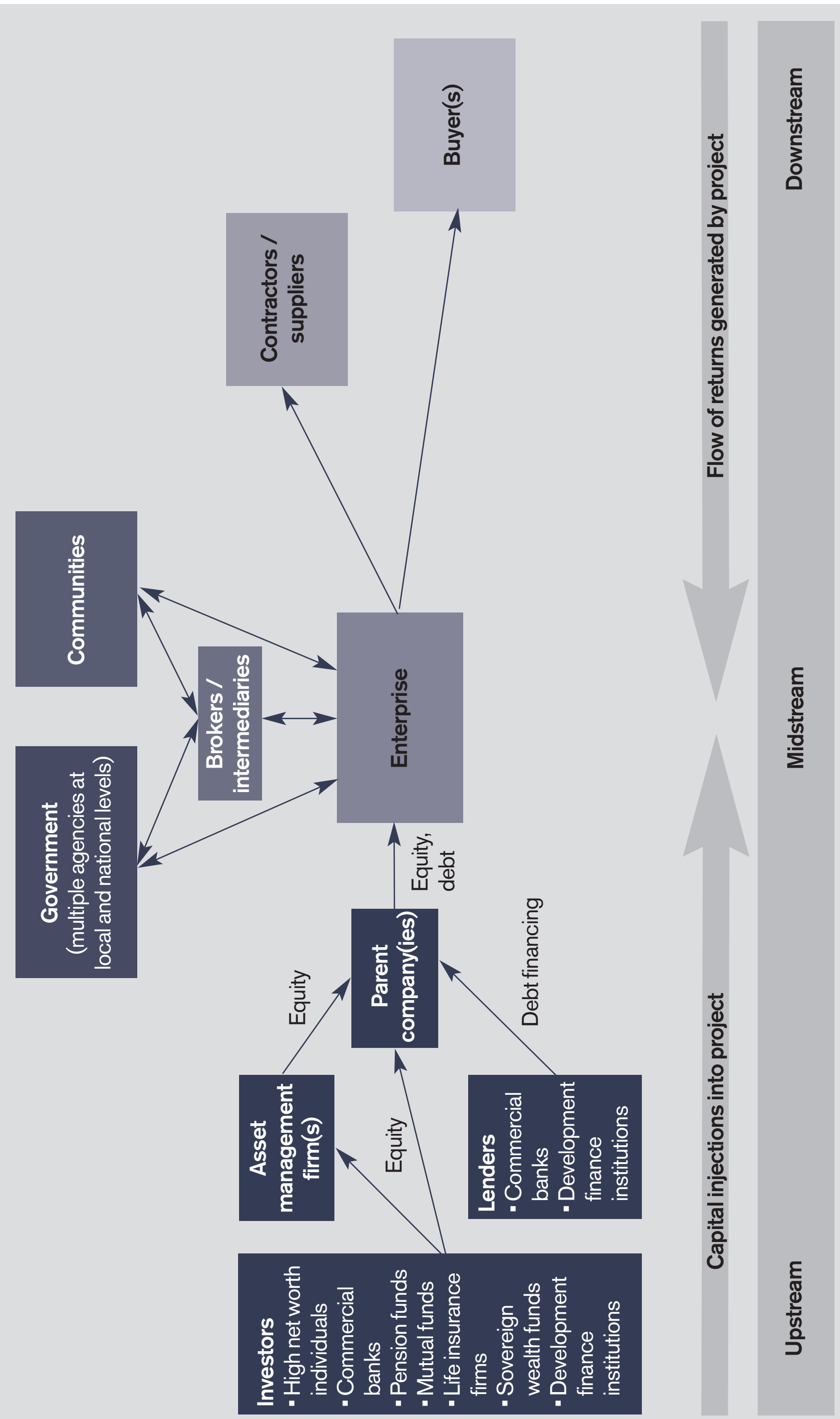
Drawing on 10 case studies of recent large-scale land deals, this report aims to improve understanding of the investment chains that underpin the deals, and to identify 'pressure points' for effective public action to ensure that investments respond to local and national development agendas and promote inclusive sustainable development. Properly implementing the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security is an important step in that direction. Endorsed in 2012 by the Committee on World Food Security, the Voluntary Guidelines provide guidance on important aspects of the governance of agricultural investment – from promoting investment by, with and in small-scale producers, to protecting all legitimate tenure rights, through to ensuring transparency of process. Promoting implementation of the Voluntary Guidelines constitutes the focus of this report.

'Investment chains' and 'pressure points'

The notion of 'investment chains' captures the multiplicity of actors and relations linked to a project, and the flow and distribution of value among those actors. Any given investment chain involves multiple sites of decision making, resourcing and operation, often spread over multiple geographies. Capital contributions and financial returns are distributed in different segments of the chain. Money flows from project financiers ('upstream') to the enterprise that leads project implementation ('midstream'), through to various contractors and suppliers ('downstream'). It also flows from buyers back up through the investment chain.

The notion of 'pressure points' refers to sites along the investment chain where public action can influence the behaviour of actors, or the nature of relations between those actors, in order to implement the Voluntary Guidelines. Depending on

Figure 1. Visualising an investment chain



the context, this may include action to improve governance and strengthen safeguards and public participation in policy and deal making. It may also include action to improve the terms of land deals, restrict or cancel such deals, or promote alternative models of agricultural investment that place small-scale producers centre stage. Finally, it may include action to improve public accountability throughout the investment process. Pressure points range from factors shaping the incentive structures of investors and asset managers, to requirements for local consultation, through to action targeting buyers downstream.

Activation of pressure points can involve government action and 'hard' regulation, but also a wide range of third-party certification schemes, civil society advocacy, and action by people affected by the deals. In a context of global legal pluralism, activation of pressure points may involve processes in the host state, in the investor's home country and in third countries that may be connected to the investment, as well as a range of international processes.

This report identifies the various pressure points that can exist at each of segment of an investment chain, and how these can be activated or strengthened by relevant stakeholders.

Relations between the enterprise, the host government and communities

The land deals examined for this research embody complex relations between the enterprise that acquires land rights, the host government and communities affected by the project. A wide range of intermediaries facilitate those relations. There can be significant differentiation of interests and negotiating power within the same stakeholder group – between different government departments, for instance, or within 'local communities'.

'Midstream' relations between the enterprise, the host government and affected communities provide significant pressure points for public action to implement the Voluntary Guidelines. Examples of public action on pressure points include:

- Participatory development and implementation of a shared national strategy for agricultural development, with the active involvement of key stakeholders including federations of small-scale producer organisations, to guide decisions on agricultural investment;
- Well-thought-out tools (such as land use planning and scrutiny of feasibility studies) and accountability mechanisms to ensure that investment decisions do respond to this strategy;
- Transparency in the management of public lands and of investment processes, including through disclosure of investment contracts, and action to improve the downward accountability of government and customary authorities;

- Strong rights to land and natural resources vested with local communities, coupled with robust local consultation and consent requirements and with rigorous and transparent impact assessment processes;
- Regulation of land acquisition by foreign investors, including new legislation and authoritative interpretation of existing laws, and calibration of land rental fees and fiscal regimes in ways that discourage speculative land acquisitions and promote investment models that are less land intensive;
- Effective and accessible remedies for affected people, including courts and company grievance mechanisms, and use of opportunities for public scrutiny and input in the settlement of investor-state disputes;
- Leveraging pressure points to influence the conduct of brokers and intermediaries, including through synergies with professional bodies;
- Capacity support for governments to govern investment processes effectively, for communities to analyse, deliberate and negotiate, and for intermediaries to perform their professional responsibilities.

Relations within the corporate structure

The corporate structure refers to the players involved in the ownership and management of a venture. Large land deals may bring together into corporate structures complex constellations of financiers, agribusiness and local partners. Corporate structures may link the world's financial centres to national actors – whether government bodies or private operators, or public officials acting in a private capacity – that offer local grounding to transnational ventures. The development of these constellations is facilitated by a wide range of intermediaries, such as the asset managers who link international capital to investment opportunities. In other cases, the corporate structures behind large land deals involve considerably more localised processes, reflecting socio-economic changes that are taking place in host states.

'Upstream' relations within the corporate structure can offer significant pressure points for public action. The nature and effectiveness of these pressure points depend on factors such as the length of the chain, and how much control actors in one segment can exert over another. Examples include:

- Host government action to regulate the ways in which companies are allowed to be legally structured and their public disclosure requirements, and action to regulate transfers of equity shares in ways that discourage speculative land acquisition;
- Adoption and use of home country legislation, for instance to promote transparency in land deals concluded by companies based in the regulating country, to provide arrangements to hold parent companies to account, and to ensure that legislation regulating the 'fiduciary' duties of fund managers does not get in the way of sensible consideration of environmental, social and governance (ESG) aspects in investment decisions;

- Advocacy targeting end investors, parent companies or home country governments;
- Multi-stakeholder dialogue to promote synergy between the Voluntary Guidelines and international standards, including those applicable to the finance sector.

Relations with business partners

In any given venture, an enterprise will have multiple business partners, both upstream and downstream, including lenders, service providers and buyers. Each of these relations offers potential to promote implementation of the Voluntary Guidelines:

- Upstream, lenders may have to abide by a number of standards when making financing decisions and monitoring implementation. They may in turn require that the recipients of their loans meet certain requirements in order to receive financing, some of which may overlap with the Voluntary Guidelines;
- Lenders may be able to exert significant leverage and influence not only applicable standards, but also important aspects of the core business model – for example, promoting inclusion of small-scale producers as suppliers, shareholders or business partners;
- Grievance mechanisms established by lenders can offer a means of recourse, particularly for affected villagers and civil society, and involvement of certain lenders can increase transparency on the project;
- Downstream, buyer(s) of the commodities produced by an enterprise can require suppliers to comply with specified standards, and buyers themselves can be held accountable for the indirect impacts of their purchases;
- Advocacy targeting lenders or buyers can be effective, depending on these players' leverage and their handling of reputational risk;
- Trade law arrangements can also provide an entry for scrutiny, for example where non-governmental organisations have called on governments in target markets to suspend trade preferences on exports originating from countries where land deals are contested.

Concluding remarks

The findings of this research demonstrate the wide scope for strategies to be targeted at diverse actors, by a wide range of players, to ensure that investments uphold the Voluntary Guidelines. One common thread links these diverse strategies – the recognition that implementing the provisions of the Voluntary Guidelines that tackle agricultural investments requires translating those provisions into instruments and processes that have real 'bite'.

This could include innovative use of existing legislation (such as through improved administrative processes or more effective citizen use of legal rights), the development of new regulation where legislation is inadequate, integration of the Voluntary Guidelines into a wide array of international standards that are backed by grievance procedures, and continued monitoring, scrutiny and enforcement action by governments and civil society alike.

Equally important is the recognition that no single pressure point alone is likely to suffice – it is important to harness the multiple pressure points that can shape the many facets of these investments. Therefore, alliances between stakeholders that have comparative advantage in activating complementary pressure points can be particularly fruitful.

An analytical framework using investment chains as its entry point, as highlighted in this report, helps to identify the multiple pressure points that can be leveraged to facilitate implementation of the Voluntary Guidelines. Importantly, the investment chain's notion of flow and distribution of value can help assess how the costs and benefits of investments are shared among actors in different segments of the chain, showing how equitable or inclusive an investment really is.

A new agenda for research and public debate lies ahead. Investment chains challenge us with their complexity, but they can also unlock important insights on the inclusiveness of investments, and on pressure points that can be activated to promote investments that better support inclusive sustainable development.

1. Introduction

1.1. Topic and rationale

Recent years have witnessed renewed private and public sector interest in developing country agriculture. A new wave of large-scale acquisitions of farmland for plantation agriculture has taken place in Africa, Asia and Latin America, fuelled by changing agricultural commodity prices, expectations of rising land values and public policies to promote long-term food and energy security.

A growing body of evidence has emerged that has shed some light on the scale, geography, drivers, features and early outcomes of these large-scale land deals, although there is still uncertainty in the evidence base. In addition, it is increasingly clear that early conceptualisations of the deals as merely involving the transfer of land from one land provider to one land acquirer were overly simplistic. Evidence suggests that each land deal may involve a complex network of multiple parties.

In government, several agencies with different mandates may have responsibility for different aspects or stages of deal making. At the local level, socially differentiated 'communities' may embody diverse interests and aspirations backed up by varying degrees of negotiating power. And behind the enterprise that is formally acquiring the land, there may be extensive chains of contractual and other relations that link that company to its shareholders and ultimate owners, its lenders, its advisers and service providers, its contractors and its suppliers. Various types of intermediaries may facilitate relations between the enterprise, the host government and local landholders, and different incentive structures may drive the decisions of each type of actors.

However, the specifics of the 'investment chains' that underpin the latest wave of land deals are still poorly understood. Little is known about the actors, relations, processes and incentives involved. Yet a good understanding of these investment chains is an important step towards improving governance of agricultural investments, as it can help to identify pressure points for effective public action to ensure that investments respond to local and national development agendas and promote inclusive sustainable development.

This issue has recently gained renewed momentum. In 2012, the Committee on World Food Security (CFS) – the top United Nations body in matters of food security – endorsed the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. The Voluntary Guidelines provide guidance on important aspects of the governance of agricultural investment – from promoting investment by, with and in small-scale producers, to protecting all legitimate tenure rights, through to ensuring transparency of process (see Box 1).

A good understanding of investment chains (such as who to influence, how, at what stage and during which decision-making processes) can help to increase the effectiveness of public action, by state and non-state actors alike, to improve governance and promote implementation of the Voluntary Guidelines. Depending on the context, this may include action to strengthen safeguards and public participation in policy formulation and investment decision making. It may also include action to improve the terms of land deals, restrict or cancel such deals or promote alternative models of agricultural investment that place small-scale producers centre stage. Finally, it may include action to improve public accountability throughout the investment process.

This report aims to improve understanding of the multiple actors involved at various stages of the investment chain; of the relationships and processes that link these actors together; of how actors, processes and relations evolve over the duration of an investment project; and of pressure points for public action to promote the implementation of the Voluntary Guidelines.

The findings challenge perceptions that large land deals (and associated decision making) are linear processes that involve a single company having full control over its business activities. Instead, the research highlights the multiple sites of decision making, resourcing and operation that are involved in any given deal, and the corresponding plurality of pressure points for public action to improve governance and implement the Voluntary Guidelines. The findings also offer initial insights into some of the strategies that can and have been used to activate specific pressure points to push for investments that uphold the Voluntary Guidelines and better support inclusive sustainable development.

1.2. Conceptual framework: the 'investment chain' and its 'pressure points'

The investment chain

This report uses the concept of 'investment chain' to map the actors, relations and processes involved in the design, financing and implementation of large-scale land deals for plantation agriculture in low and middle-income countries.

The notion of investment chain mirrors the more commonly used concepts of 'value chain', 'commodity chain' or 'supply chain' (Porter, 1985; Gereffi, 1999; Gibbon, 2001; Gereffi *et al*., 2005; Seville *et al*., 2011). Terminology, conceptual frameworks and methodological approaches differ widely, and there is a fair amount of confusion about the use of these terms (Sturgeon, 2001).

'Value chain' and 'supply chain' are often used interchangeably to describe the set of actors and activities that are involved in transforming inputs into a valuable good or service. Varying forms and levels of value addition occur in different segments of the chain – in the case of agriculture, from farming to processing and trading, through to distribution and retailing.

But while the literature on supply chains tends to emphasise the flow of products or services, work on value chains focuses on the flow and distribution of value. For example, Cox *et al*. (2002) explore the way in which revenues paid by the consumer are distributed along each stage of the chain – from production through processing and to sale – and the nature of competition for the revenues at each stage of the chain.

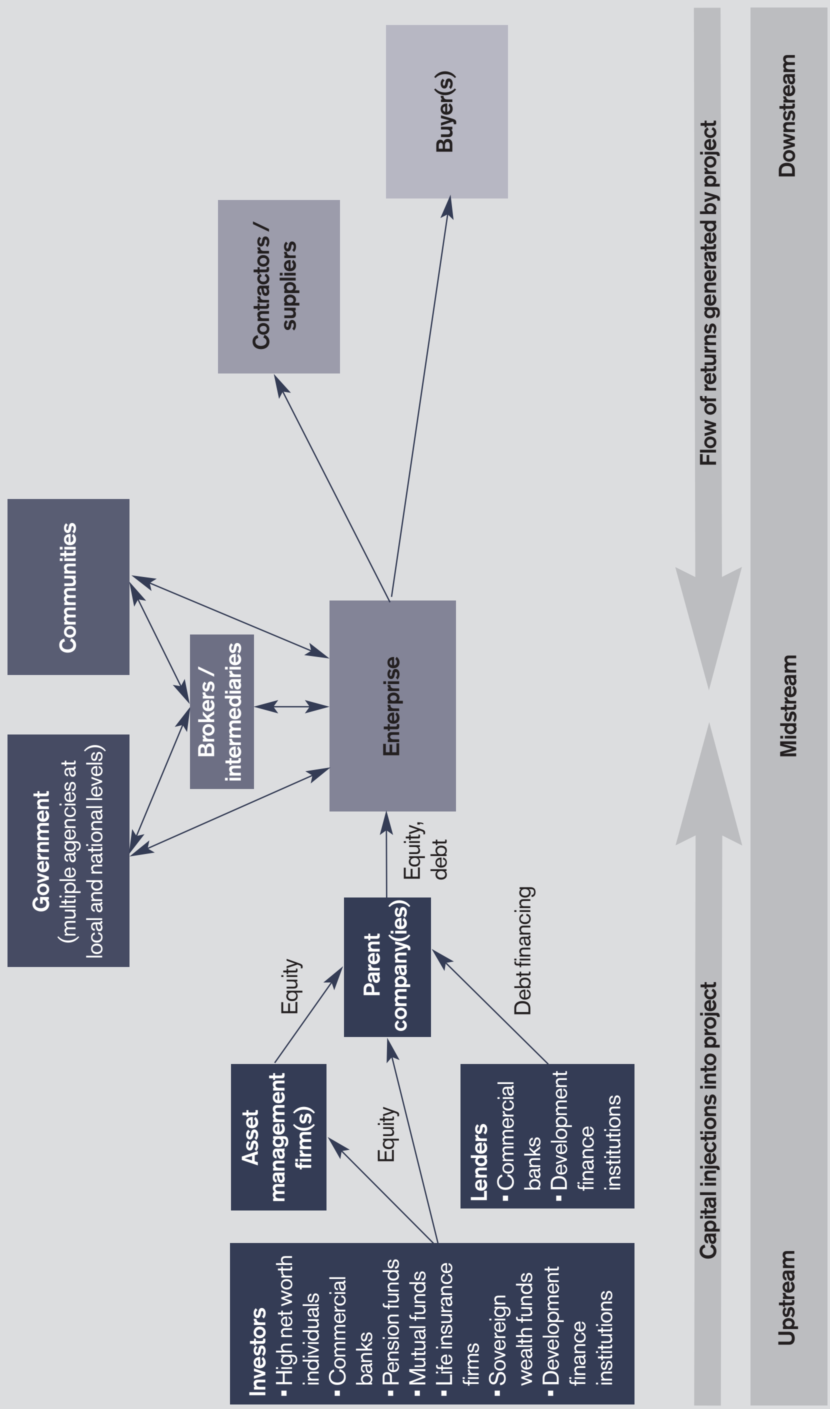
The design, financing and implementation of an investment project – like the creation and distribution of value through the production of goods and services – typically involve multiple and often geographically dispersed actors. They include asset owners, asset managers, lenders, operating companies, consultants, intermediaries, service providers, contractors and suppliers. These actors are connected by a network of contractual and other relations, which are referred to here as the investment chain.

Like a value chain, an investment chain typically includes multiple segments. Central relations in large land deals are between an enterprise and a land provider – typically the host government, but many deals also involve more or less formalised relations with local landholders. A range of brokers and intermediaries facilitate and mediate these relations. 'Upstream' of this set of relations are the players involved with project initiation, design and financing, while relations with contractors, suppliers and buyers are 'downstream' of the land deal. While in a value chain context suppliers are upstream and buyers downstream, seen from an investment chain perspective (and therefore the flow of capital) both suppliers and buyers are downstream (see Figure 1).

In common with use of the term 'value chain', the notion of investment chains captures the flow and distribution of value along the chain – namely, how the capital contributions and the financial returns linked to the project are distributed among actors in different segments of the investment chain (see Cochet and Merlet, 2011). The literature on value chains tends to look at the flow of products or services and the distribution of associated revenues. In an investment chain, however, the focus is on the flow and distribution of money up and down the chain. At one end of the chain, money flows down from project financiers to the enterprise that leads project implementation, through to various contractors and suppliers; at the other end, it flows from buyers back up through the investment chain.

Compared to many value chains, relations in investment chains may involve closer collaboration between different actors, because by definition these actors participate, directly or indirectly, in the same business venture. Also, an investment chain can link together not only different types of business players (including end investors, lenders, agribusiness companies, contractors, consultants and intermediaries) but also, for example, government authorities in home and host countries.

Figure 1. Visualising an investment chain



Investment chains for individual investment projects are embedded within, and affected by, wider social and economic processes – such as global trends towards the 'financialisation' of agriculture (the growing involvement of the finance sector in agriculture; Anseeuw *et al*., 2011), or towards vertical integration (whereby processors and traders become more directly involved with agricultural production, for example). In turn, these wider social and economic processes are influenced by changes in the distribution of risks and returns in global agriculture (see Cotula, 2013).

The concept of value chains has come under criticism in recent years. As Henderson *et al*. (2002:442, emphasis in the original) aptly put it:

> *A major weakness of the 'chain' approach is its conceptualization of production and distribution processes as being essentially vertical and linear. In fact, such processes are better conceptualized as being highly complex* network *structures in which there are intricate links – horizontal, diagonal, as well as vertical – forming multi-dimensional, multi-layered lattices of economic activity. For that reason, an explicitly relational, network-focused approach promises to offer a better understanding of production systems.*

This critique has given rise to other approaches that focus on 'networks', rather than 'chains' (such as 'global production networks'; see Henderson *et al*., 2002). Like value chains, investment chains rarely involve a purely linear flow of relationships, and are often characterised by complex webs of relationships within and across segments of the chain. Compared to a 'chain', the notion of 'network' allows for far greater complexity and variation (Henderson *et al*., 2002). It also enables a better understanding of 'horizontal' relations among actors within the same segment of the chain. But it arguably loses explanatory power in understanding 'vertical' relations that link together actors based in different segments of the chain, as well as processes of vertical integration whereby one firm takes closer control over other segments of the chain.

While acknowledging the limitations of the 'chain' approach, this report uses the concept and language of investment chains primarily for pragmatic reasons. In current debates and policy responses on large land deals, much attention has focused on the role of the agribusiness ventures that acquire rights to land. The notion of investment chain highlights that these are only one actor, albeit a critical one, located in one segment of the investment chain. In turn, this provides insights into the multiple targets for public action, including upstream (such as financiers) and downstream (such as buyers) of the agribusiness firm that fronts the land deal. In developing strategies to improve public accountability, for example, key questions include not only who is acquiring the land, but also where the money comes from, and who will buy the produce.

One important insight from the 'chain' literature relates to the leverage that actors in one segment of the chain can have over actors located in other segments. In value chains, there is plenty of literature on how the shifting balance of negotiating power between actors along the value chain (from producers upstream to buyers downstream) influences the governance of the chain (Gereffi, 1999; Gibbon, 2001). In the food and agriculture sector, for example, fragmentation at the farming segment and concentration at the farm input, trading, processing and retailing segments would tend to depress the negotiating power of farmers (De Schutter, 2010).

In an investment chain context, comparable analysis can be developed of the leverage that players upstream (such as lenders) and downstream (such as key buyers) can exert to influence the conduct of the enterprise acquiring land, and of the ways in which public action can prioritise the targeting of the most effective pressure points to influence corporate conduct.

A 'flow and distribution of value' approach to investment also offers other useful conceptual insights, particularly in the context of research to assess how the costs and benefits created by large land deals are distributed among actors located in different stages of the investment chains – from financiers to agribusiness operators, through to the host government, local stakeholders and a range of suppliers and buyers (see Cochet and Merlet, 2011). However, this aspect is beyond the scope of this report.

Public action and pressure points in the context of global legal pluralism

Public action is defined here very broadly to include government regulation (that is, the enactment, implementation and enforcement of rules) at national and international levels, including treaties, legislation, decisions by regulatory agencies and administrative practice; voluntary initiatives, such as international standards and certification schemes; action in pursuit of a public interest taken by people affected by a large land deal; advocacy and scrutiny by non-governmetal organisations (NGOs), federations of rural producer organisations and public interest bodies; as well as development interventions and dialogue processes.

A number of 'pressure points' are embodied in relations at each stage of the investment chain. The notion of pressure points refers to sites where public action can more effectively influence the behaviour of actors in the investment chain, or the nature and implications of relations between those actors. At the pressure points, public action can change the incentive structures that shape the behaviour of actors in the investment chain.

For example, everything else being equal, a government policy to charge higher rental fees on land leases would decrease incentives for enterprises to acquire land beyond what they can cultivate. Civil society advocacy that leverages the reputational risk of upstream investors or downstream buyers can indirectly affect the conduct of an enterprise. Villagers may be more likely to be listened to if they have stronger rights to their land and are better organised for collective action.

Public action to promote implementation of the Voluntary Guidelines needs to be understood in the context of global legal pluralism. Indeed, transnational investment flows have challenged the traditional geographic boundaries of public action. The investment chain for a given investment project can straddle multiple jurisdictions, raising issues about the role of home, transit and host states in regulating different segments of the investment chain, and also raising issues about inter-state cooperation and various forms of extraterritorial regulation. Multiple sources of governance are typically at play in any given transnational investment chain – from international treaties regulating double taxation or protecting investment, to national legislation regulating land tenure or investment promotion in host states, through to legislation in the investor's home country.

Scholars have talked about global legal pluralism to describe the 'variety of institutions, norms and dispute resolution processes located and produced at different structured sites around the world' (Snyder, 2002:10) that regulate transnational economic relations. The notion of global legal pluralism does not merely denote a coexistence of multiple sources of regulation – it also points to increasingly blurred lines between those sources of regulation. For example, the traditional boundaries between national and international law, and between 'hard' and 'soft' law, are becoming increasingly fluid (Picciotto, 2011; Tan, 2013).

The strategies of players engaged in public action also reflect a global legal pluralist context. For example, many large-scale land deals in low and middle-income countries have catalysed responses by local-to-global alliances of affected villagers, national and international NGOs, federations of producer organisations and public interest law firms based in home and host countries, allowing for the simultaneous harnessing of national, international and transnational regulatory instruments (Polack *et al.*, 2013; Cotula, 2014).

The notion of 'investment chain' opens up opportunities for exploring in an integrated way the variety of channels for public action affecting different segments of the chain. This report focuses on those pressure points that can be harnessed to ensure proper implementation of the principles embodied in the Voluntary Guidelines (see Box 1). The Voluntary Guidelines are primarily aimed at states, but they also recognise the important role of non-state actors, including civil society organisations, in promoting proper implementation (Article 26.5). Therefore, in identifying possible pressure points, the report discusses action by both state and non-state actors.

Box 1. The CFS/FAO Voluntary Guidelines

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security were officially endorsed by the Committee on World Food Security (CFS) in May 2012.

The CFS is the top United Nations body responsible for policies concerning food security. Membership of the Committee is open to all states that are members of the Food and Agricultural Organization (FAO), the International Fund for Agricultural Development (IFAD) or the World Food Programme (WFP), and also non-member states of FAO that are member states of the United Nations.

In addition to member states, the work of the CFS is also open to 'participants'. These include representatives of UN agencies and bodies, civil society and NGOs, international agricultural research systems, international financial institutions and private philanthropic foundations. The CFS may invite other interested organisations relevant to its work to observe entire sessions or specific agenda items ('observers').

The endorsement of the Voluntary Guidelines came after one year of inter-governmental negotiation, based on a 'Zero Draft' text that was produced following two years of public consultations led by FAO.

The Guidelines cover a wide range of issues concerning the governance of land, fisheries and forests. They provide guidance on the overall framing of tenure and governance systems, on the legal recognition and allocation of tenure rights and duties, on transfers of tenure rights and duties, on the administration of tenure, on responses to climate change and emergencies, and on implementation, monitoring and evaluation.

Article 12 of the Guidelines specifically deals with agricultural investments, though other provisions also provide relevant guidance. The text formed the object of much negotiation, and as is often the case in texts produced through multilateral negotiation, the language is flexible to cover a wide range of different contexts and also to enable compromise among the negotiating states.

The Guidelines provide pointers for measures to regulate investment chains. As with all carefully negotiated texts, any attempt to identify 'key provisions' inevitably entail a degree of subjectivity. The authors identify the following pointers as being particularly relevant to the regulation of investment chains:

- Developing policies that promote **equitable distribution of benefits from use of state-owned land,** and allocating publicly owned tenure rights consistently with broader social, environmental and economic objectives (Article 8.6);
- Ensuring **protection of all legitimate tenure rights**, including through safeguarding against dispossession that may be caused by large-scale land deals (Articles 3.1.2, 12.4 and 12.6) and ensuring fair and timely valuation of tenure rights including for compensation purposes (Articles 18.1 and 18.4);
- Supporting **investments by, with and in smallholders**, including through considering models not involving large-scale land deals and promoting partnerships with local tenure rights holders (Article 12.2 and 12.6);
- Ensuring **community consultation and participation**, which in the case of indigenous peoples should aim to obtain the free, prior and informed consent of these peoples (Articles 3B.6, 8.6, 9.9 and 12.7);
- **Prior, independent assessments on the potential positive and negative social and environmental impacts** of proposed investments, including impacts on the enjoyment of tenure rights and of the human right to food (Article 12.10);
- Ensuring **transparency** in transactions in tenure rights linked to agricultural investments (Article 12.3), and also in market transactions (Article 11.4);
- Establishing measures to ensure the **monitoring and evaluation** of the operation of the Guidelines (Article 26.1), and the monitoring of the implementation and impacts of deals for agricultural investments (Article 12.14).

1.3. Methods and limitations

The report maps investment chains for 10 land deals in Africa, Asia and Latin America. The aim of the research is to generate evidence on the mechanics of large-scale land deals and possible pressure points that can be leveraged, rather than the specific details of particular cases. Data for each case were extracted following a common template. The analysis emphasises how actors and relations evolve over a project's duration, thereby avoiding static snapshots that would limit the lessons that can be learnt. The report does not discuss the impacts of large-scale land deals. Some case study projects have now been suspended or terminated.

The unit of analysis is the investment project, not the company (a company may have multiple projects, even in the same country). The analysis of the investment chain charts the web of relations linked to the corporate entity leading implementation of the investment project, which is referred to as the 'enterprise'. The enterprise is commonly one entity within a wider business group.

The report draws on a review of the literature, on intelligence gathered through company websites and on an analysis of available contractual and project documentation. Despite the growing evidence base, published research on important aspects of investment chains remains scarce. The literature review therefore had to rely on media and NGO reports to a greater extent than would be desirable for a research report. In a few cases, information from literature, company websites and project documentation was complemented by a few interviews with company officials and other stakeholder groups.

The selection of the case studies aimed to ensure diversity of i) scale (covering deals for diverse land areas); ii) crops/sectors and target markets; iii) geographies (concerning both host and home countries, and including both foreign and domestic investors); and iv) actors involved. However, as mentioned above, limited access to data proved a major challenge to the research. Publicly available information about key aspects of an investment chain can be very limited – including not only sensitive commercial information, but also, for example, data about the role of local brokers and intermediaries and the key decision-making moments in land deals.

To mitigate this problem, case study selection had to prioritise land deals that have already been relatively well documented in the literature. It is recognised that these data access considerations create a bias in favour of better-documented deals – which are often larger-scale deals involving foreign capital. This may include investment projects that are relatively more transparent, and projects that have attracted considerable attention from NGOs and the media.

It is also recognised that limited data access remains a problem even for the better-documented deals, and that further research based on more in-depth case studies is warranted. Information about relations within investment chains is usually not in the public domain. The report is therefore based on inevitably incomplete data.

Acknowledging the limitations of the available evidence base, the research is framed as a scoping study – that is, as an initial report to pave the way for further, more in-depth analysis.

As already stated, the aim of the research is to generate evidence on the mechanics of large-scale land deals, rather than to shed light on a few individual deals per se. The case studies are useful as an evidence base from which to distil insights on those mechanics. In light of these considerations, and in order to avoid excessive detail distracting from the analysis developed in the report, the case study projects are anonymised as much as possible, with just an indication of geography given (for instance, Brazil-1, Mali-2). It is recognised that full anonymity is impossible to achieve in a study of this nature – because informed readers may be able to identify some deals, and because the need to use references to back up statements can indirectly reveal information about the identity of the investment projects.

Table 1 offers an overview of the cases analysed for this research.

1.4. Outline

The report is structured as follows:

- **Chapter 2** explores the actors, relations and processes in the corporate structure – in other words, the players involved in the initiation, ownership and management of the venture. Chapter 2 also discusses the financing of the venture, insofar as it involves direct participation in the corporate structure through equity holding. Lending is discussed separately in Chapter 4.
- **Chapter 3** explores the actors, relations and processes involved in land provision, focusing on the role of host governments, local stakeholders and a range of intermediaries that facilitate relations between the enterprise on the one hand, and government and local stakeholders on the other.
- **Chapter 4** analyses the actors, relations and processes that link the enterprise to its business partners located outside the corporate structure – particularly its lenders, buyers and contractors.
- **Chapter 5** summarises the key findings and distils insights on pressure points and possible ways forward for public action to improve governance and promote the implementation of the Voluntary Guidelines.

Table 1. Synopsis of case studies

Case study	Contracts and timeline	Land area	Activity, crop and market	Land acquirer (geographic origin, nature of enterprise)	Other comments
Brazil-1	Negotiations started in 2010. An MoU was signed with the host government in 2011. Construction started in early 2012.	100 ha to build a processing plant and related infrastructure.	Soybean processing (crushing plant, oil refinery and biodiesel plant) for export to the Chinese market.	A Chinese state-owned company.	Initial reports suggested that the project would involve large-scale land acquisition for plantation agriculture. But the deal does not involve agricultural production: the processing plant will source soy from farmers in the area, with projected capacity to absorb produce from 200,000 ha of land. Legal restrictions on foreign land ownership in Brazil were tightened in 2010, partly in connection with concerns about land acquisition by Chinese operators.
Cambodia-1	Land concessions were signed with the host government in 2006. Development began in 2006, mill started operation in 2009.	19,100 ha. Two land concessions (for 9400 ha and 9700 ha) allocated to two separate companies (a plantation company and a processing firm).	Sugarcane plantation and processing facilities to produce sugar for export to European and US markets.	Exact shareholding structure is contested. Shareholding includes parent companies listed in Thailand and Taiwan. A Cambodian national was initially involved but sold the stake in 2010. Equity participations have changed over time, and it was impossible to establish with certainty the latest shareholding structure.	A firm buying sugar from the processing facility has denied that the two land deals relate to the same business venture.

Table 1 continued

Case study	Contracts and timeline	Land area	Activity, crop and market	Land acquirer (geographic origin, nature of enterprise)	Other comments
Cameroon-1	The Establishment Convention was signed with the host government in 2009. Three presidential decrees authorising provisional land leases were announced in November 2013.	The Establishment Convention is for over 73,000 ha. The presidential decrees concern land leases for a total land area just short of 20,000 ha.	Palm oil plantation and refinery. Target market not yet publicly announced, but investment prospectus refers to global demand for palm oil, suggesting export orientation.	A private US company.	
Ethiopia-1	The current lease was signed with the central government in 2010, and replaces a lease signed by the regional government in 2009.	10,000 ha.	Rice plantation. Target markets are unknown, but likely to involve export.	Private limited company incorporated in Ethiopia. The ultimate owner is a dual Ethiopian-Saudi national.	The enterprise has announced ambitious expansion plans.
Ghana-1	The MoU was signed in 2010, the land lease in 2012. The contracts have been signed with customary authorities.	6750 ha.	Jatropha plantation and processing, targeting national market first.	Italian private company.	The MoU provided the company with a 'land option' for 46,000 ha.
Laos-1	The Project Development Agreement was signed with the host government in 2010. The project is currently in a pilot phase.	Initial 811 ha, subject to expansion.	Agroforestry plantation, with a wood processing facility to be established in the future. The venture primarily targets the Vietnamese outdoor furniture market.	Swedish publicly listed company. Indonesian investor through Singapore-listed and US-based companies.	The venture started as a pilot, but the company has plans for expansion and has applied for a total land concession of 35,000 ha.

Table 1 continued

Case study	Contracts and timeline	Land area	Activity, crop and market	Land acquirer (geographic origin, nature of enterprise)	Other comments
Liberia-1	The concession was signed with the host government in 2010.	350,000 ha for gross concession, of which 220,000 ha for plantation and 40,000 for outgrowers.	Palm oil.	South African company controlled by UK-based conglomerate. This investor withdrew in 2012.	
Mali-1	The Convention of Establishment was signed with the host government in 2007, with full production projected for 2017. The foreign investor withdrew in 2012. Reports in late 2013 suggested that another investor might take over the project.	The convention is for 20,245 ha.	Sugarcane plantation, outgrower scheme and processing facility for the production of sugar, ethanol and electricity, targeting the domestic market.	Company part of a business group controlled by a local national.	Public-private partnership model involving joint ventures with host government. Involvement of multilateral lenders led to changes to project design.
Mali-2	The investment convention with the host government is not dated. A lease was signed with a parastatal agency in 2010. Implementation started in 2010.	The lease is for 7400 ha, the investment convention refers to a total of 20,000 ha.	Wheat and other crops.	Swiss based private investment group.	
Sierra Leone-1	The MoU was signed with the host government in 2010. It includes development targets to be met by 2015. The land lease was signed with customary authorities, and separate 'Acknowledgement Agreements' were signed with customary landholders.	The land lease is for 20,000 ha.	The project comprises of a sugarcane plantation, ethanol distillery and biomass power plant. It aims to produce ethanol and electricity. Ethanol is primarily for export to the European market. Electricity will be fed into the national grid.		Eight European and African development finance institutions have provided debt and equity financing. First biofuels project in Africa to be certified by the Roundtable on Sustainable Biomaterials.

2. Relations in the corporate structure

This chapter explores the actors and relationships involved in the 'corporate structure' of investments, as exemplified by the cases analysed for this research. The corporate structure refers to the players involved in the ownership and management of a venture. The chapter explores the key decision-making moments, sites and incentives, the evolving relations among multiple actors, and pressure points for public action to promote the implementation of the Voluntary Guidelines.

2.1. Length and integration in investment chains

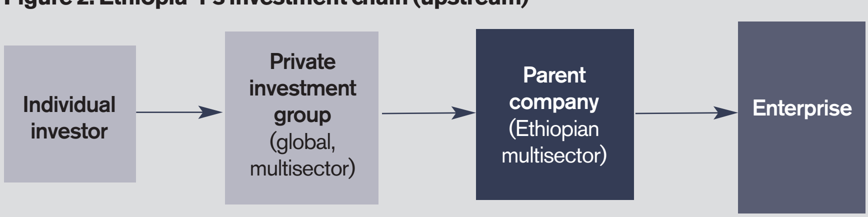
Diversity of configurations and its implications for pressure points

Investment chains can vary significantly in their 'length' – that is, the number of actors along the investment chain between the ultimate source of capital and the enterprise that implements the investment project, or the enterprise's downstream contractors. Investment chains also vary in their degree of 'integration' – that is, the extent to which actors in one segment of the investment chain can exercise control over actors in other segments of the chain. A high level of integration may involve an investor's full and direct ownership of the companies along the investment chain through cascades of wholly or majority-owned subsidiaries.

One example of an integrated investment chain is provided by Ethiopia-1 (see Figure 2). The enterprise is a subsidiary of an Ethiopian investment company, which is part of a larger business group owned by a billionaire Saudi-Ethiopian national (MIDROC PLC, 2013). Similarly, in Mali-2, the enterprise is part of a business group directly owned by a Malian national, although the project also involves significant lending from a Malian development bank (L'Indépendant, 2009). Before the Mali-2 venture, the business group was mainly known for its grains trading operations (La Révélation, 2011), so the group's branching out into direct agricultural production also provides an example of vertical integration in the value chain.

Highly integrated corporate structures create challenges and opportunities for harnessing pressure points to influence enterprise behaviour. On the one hand,

Figure 2. Ethiopia-1's investment chain (upstream)



integrated investment chains may present fewer (in number) pressure points, because there is only one or a small number of ownership interests that could be targeted. On the other hand, the potential for influence could be very high if the one or small number of actors who make key decisions can be targeted effectively – because they have high levels of influence over the enterprise.

In other investment chains, there are multiple players who have equity in the enterprise, directly or indirectly. The case of Cambodia-1 illustrates this scenario (Figure 3). In this case, the shareholders of the processing company source funds from a number of different actors. The majority shareholder is a publicly listed company in Thailand, which in turn has a number of shareholders.

The top 10 shareholders of the Thai parent company, accounting for some 50 per cent of all equity in that company, include: a Thai holding company (with some 32 per cent equity); a Thai individual who also holds positions of responsibility in the management of the company (2.6 per cent equity); the Singapore branch of a global asset management firm (2.2 per cent equity); and five individuals from a wealthy Thai family, including an individual who is CEO and president of the company (KSL Group, 2013). An asset management firm controlled by a German banking group was also, until recently, an investor in the Thai parent company (according to CLEC, undated).

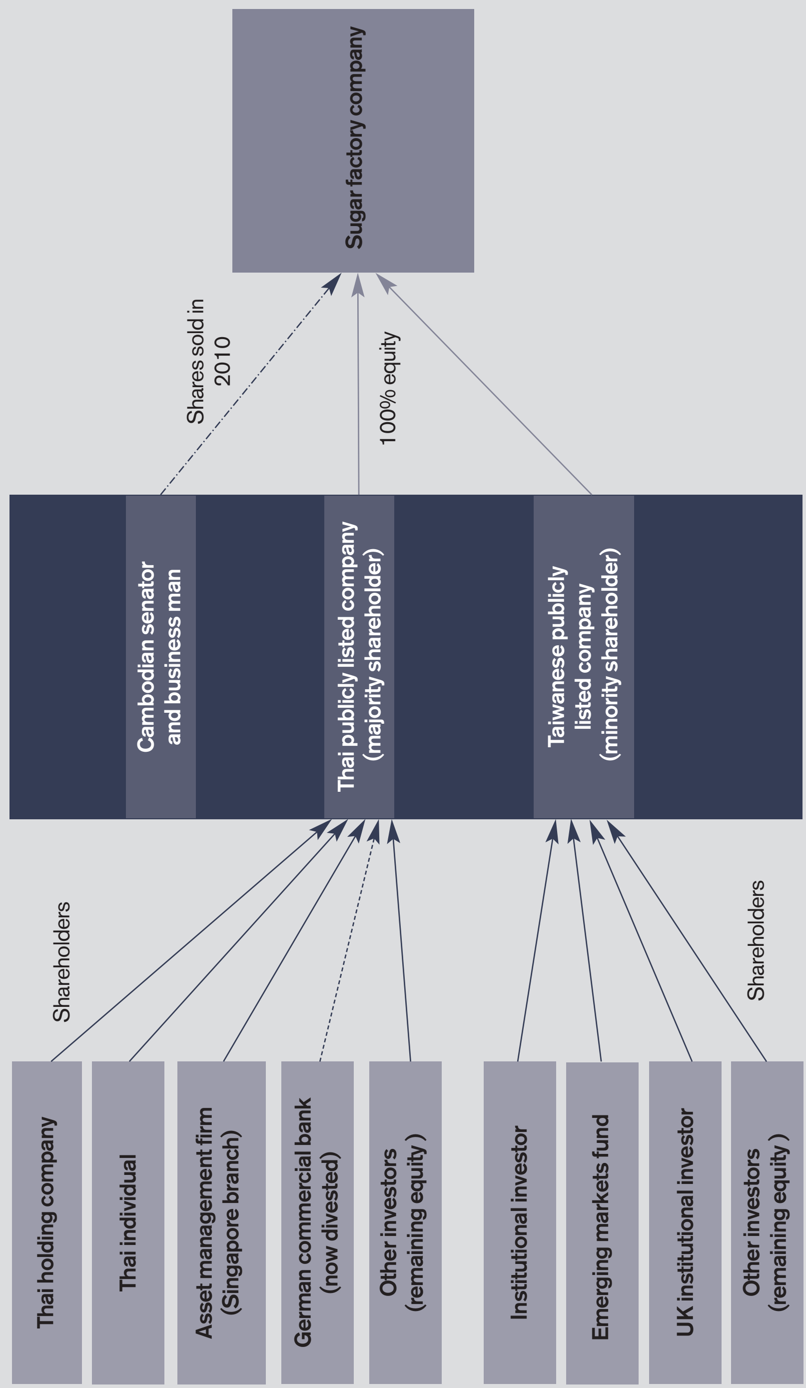
The other (minority) shareholder of the Cambodia-1 processing company is an Asian food goods company listed on the Taiwanese stock exchange. The major shareholders of this parent company are made up of institutional investors and investment funds. The equity structure of the Taiwan-listed company is quite diffuse: the largest shareholders include an institutional investor (with 1.12 per cent equity), followed by a fund specialising in emerging markets (with 0.66 per cent equity), and an institutional investor based in the UK (with 0.36 per cent equity) (according to Morning Star, 2013). Institutional investors would manage the savings of large numbers of clients, such as rich individuals or workers saving towards their pensions.[1]

Cambodia-1 also illustrates how ownership can evolve over the project's duration. A Cambodian national, who is a senator from the ruling Cambodian People's Party, was reported as originally holding equity in the two companies, but as then having sold his participation in both companies (The Phnom Penh Post, 2012).

These longer and more diffuse investment chains can involve both private and public bodies. For example, Sierra Leone-1 is led by a private firm based in Switzerland. But eight government-owned European and African development finance institutions have also financed this project by way of debt and equity financing. Sweden's bilateral development finance institution, which is wholly owned by the Swedish government, and a bilateral private-sector development bank based in the

1. Institutional investors are financial institutions that accept funds from third parties for investment in their own name but on the third parties' behalf. They include pension funds, mutual funds and insurance companies (OECD, 2011).

Figure 3. Cambodia-1's investment chain (upstream)



Netherlands, which is 51 per cent owned by the Dutch government, both invested in Sierra Leone-1 by way of equity financing.

Together, these two development finance institutions have a 21 per cent equity holding in the Sierra Leone-1 enterprise (ABSL, 2013; see Figure 4). As will be discussed in Chapter 4, development finance institutions are also involved in this deal as lenders. This case illustrates that, while early reports about large-scale land deals paid much attention to the role of governments in China and the Gulf in supporting large land deals, the involvement of public bodies is a feature of land deals originating from other geographies too.

Where there are multiple owners, there will be a greater number of actors playing a role in the management and governance of the enterprise. Plurality and diversity of players in the corporate structure can increase the number of possible pressure points for influencing the behaviour of the enterprise. But it will also commensurately decrease any individual investor's specific influence.

In addition, where the investment chain is relatively long and displays a larger number of end investors and low levels of integration (particularly where the end investors are removed from the running of the enterprise), it may be harder even to identify the most relevant pressure points, not least because complex relationships may be difficult to trace, and because the targeted actor (such as the end investor or fund manager) may have relatively little control over the way in which the venture is run.

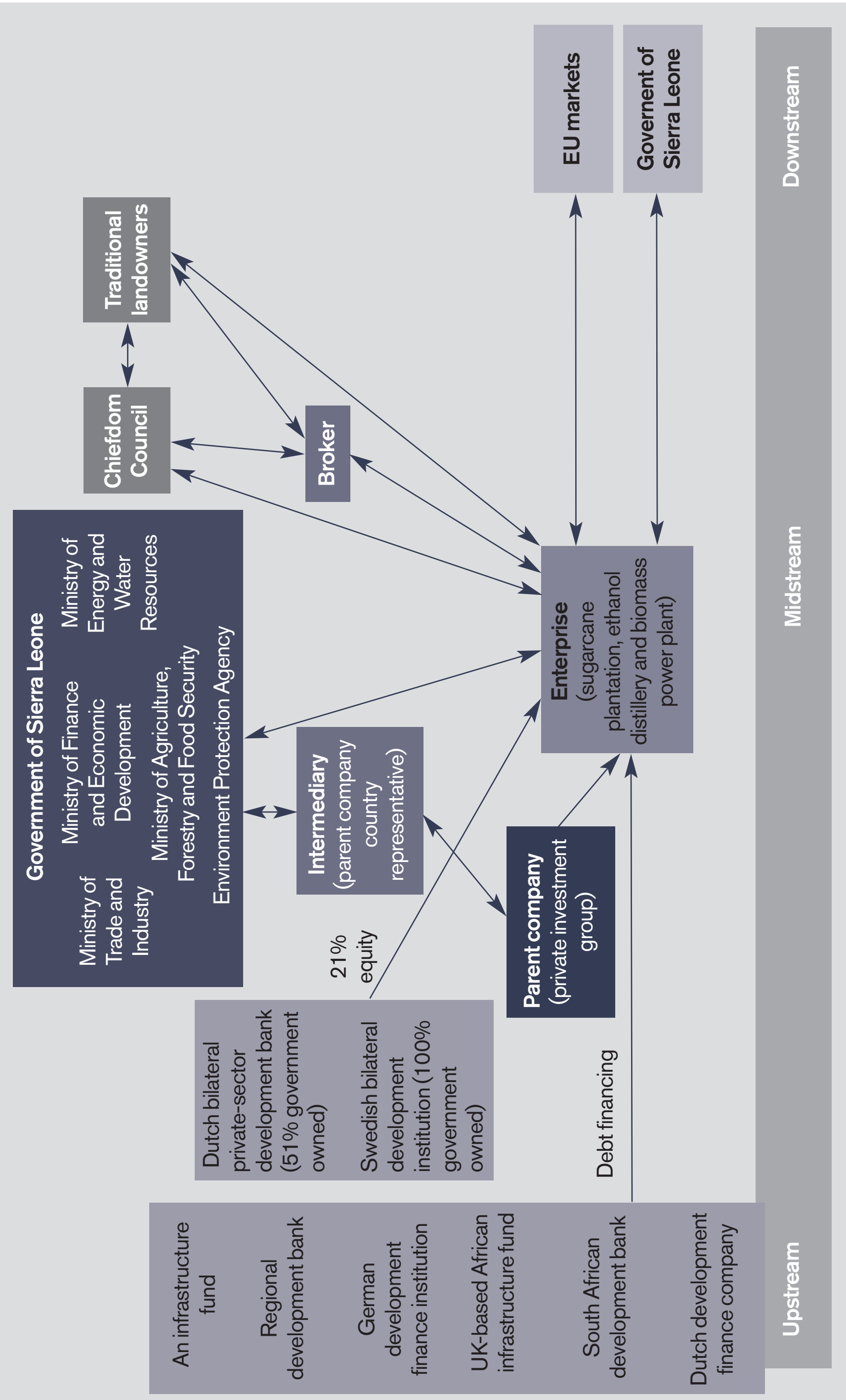
A closer look at the role of end investors and asset managers

Longer and more complex investment chains create space for a wider range of actors to play a role. Specialised asset management firms (fund managers) may connect the financial resources held by end investors (such as pension funds or high net worth individuals) to investment opportunities (the enterprise, or its parent company). For example, an asset management company may set up an investment fund and seek capital from investors; the investment fund would then acquire shares in agribusiness companies, or even directly in key assets such as farmland (Buxton *et al*., 2012).

In addition to performing these practical functions, the fund managers and investment brokers can also influence the ways in which land and agriculture are perceived and conceptualised in investment circles. While documentation available on the 10 case studies does not provide much evidence on this point, the wider literature on agricultural investments provides some useful pointers.

Research shows that in order to make land an investible asset, the brokers that advertise global farmland funds 'render [land] abstract, show its extent, indicate its value, and allow different physical, economic and social characteristics to be visualized together for the purpose of comparison' (Li, 2012:10). The social and political embeddedness that characterises land relations in the real world of local contexts, and the role of land as a basis for social identity and spiritual value, are absent in these narratives – land is an 'asset class' to be invested in, alongside other commodities.

Figure 4. Sierra Leone-1's investment chain



In most cases, end investors and fund managers only have a remote connection to the land and the agricultural venture, or even to the enterprise itself. In the Cambodia-1 example, end investors have invested in shares in the two parent companies of the processing company, based in Thailand and Taiwan, rather than in the Cambodian company itself – or, even more indirectly, they have invested in investment funds, which in turn hold shares in the Thai and Taiwanese parent companies (as seen in Figure 3).

In order to develop attractive combinations of risk and return, many investors diversify their investments into very large portfolios, often with small equity participations. This situation underpins a trend towards increasingly passive management of investments against predefined benchmarks (OECD, 2011). As a result, investors may lack the incentive or ability to engage in monitoring the corporate practices of investee companies (OECD, 2011). But some asset management firms pursue more 'hands on' management strategies, through direct control over agricultural operations (Buxton *et al*., 2012).

Established industry processes can provide useful pressure points for influencing corporate behaviour in the upstream segment of the investment chain. For example, certain types of investment structures involve thorough due diligence and screening before proposed investments are approved. This process may include consideration of possible 'environmental, social and governance' (ESG) concerns. In fact, some institutional investors involved in the investment chain underpinning a given land deal may have signed up to international guidance on responsible investment, such as the Principles on Responsible Investment (PRI), backed by the United Nations.[2]

The PRI have been signed by some 1200 asset owners, fund managers and service providers worldwide, though predominantly in the West. They explicitly promote integration of ESG concerns in investment decision making (discussed further in Box 3). This can offer a benchmark for governments and civil society to remind upstream investors of the standards they have voluntarily signed up to, and promote scrutiny of the extent to which those standards are being adhered to.

ESG due diligence can create opportunities for screening concerns relating to some of the issues dealt with by the Voluntary Guidelines. But proper consideration of some important aspects of the Voluntary Guidelines, such as promoting investment by, with and in smallholders, would in most cases require expanding the scope of traditional ESG due diligence exercises.

Applicable law in the investor's home country may affect the degree of discretion that fund managers have in integrating ESG considerations (including considerations based on the Voluntary Guidelines) into their investment decision making. In several anglophone jurisdictions, for example, the trustees that manage pension funds or mutual funds (in other words, trusts) owe 'fiduciary duties' to the fund's beneficiaries, such as workers saving towards retirement.

2. See www.unpri.org.

These duties are conventionally interpreted as involving a legal obligation to ensure that decisions are taken with appropriate advice, so as to maximise returns commensurate with an acceptable level of risk (Buxton *et al*., 2012). In other countries where trusts are not widely used and investments are channelled through other legal vehicles, national legislation imposes duties comparable to fiduciary duties.

There have been concerns that, if applied too rigidly, these duties could prevent trustees (or managers operating under the trustees' supervision) from taking proper account of ESG considerations, especially if this can adversely affect returns. In the United Kingdom, for example, the much-quoted *Cowan v. Scargill* case, which dates back to the 1980s,[3] has been interpreted by many as adding weight to a narrow interpretation of fiduciary duties that precludes or limits consideration of non-financial aspects in investment decision making.

However, an influential report produced by an international law firm for the United Nations Environmental Programme's Finance Initiative challenged narrow approaches to applying fiduciary duties (Freshfields Bruckhaus Deringer, 2005). The report found that giving due regard to ESG considerations would not constitute a breach of fiduciary duties. In fact, 'fail[ure] to take account of ESG considerations that are relevant and to give them appropriate weight' could itself be a breach of fiduciary duties (Freshfields Bruckhaus Deringer, 2005:100).[4] Attention to ESG considerations is today widely considered to be an important part of investment decisions in the mainstream investment industry.

In some countries, legislation dispels any doubts on these issues by explicitly clarifying that consideration of ESG (or non-financial) aspects does not in itself constitute a breach of fiduciary duties. For example, Section 79.1 of the Trustee Act applied in the Canadian province of Manitoba, as amended in 1995, provides:

> *Subject to any express provision in the instrument creating the trust, a trustee who uses a non-financial criterion to formulate an investment policy or to make an investment decision does not thereby commit a breach of trust if, in relation to the investment policy or investment decision, the trustee exercises the judgment and care that a person of prudence, discretion and intelligence would exercise in administering the property of others.*[5]

Investors themselves can reduce any remaining uncertainty about their ability to factor in ESG considerations (including considerations based on the Voluntary Guidelines) by making explicit reference to these considerations in the document that outlines the investment strategy of a given fund (for example, the 'Statement of Investment Principles' published by some institutional investors in the United Kingdom). This would signal to clients the investor's determination to take ESG

3. *Cowan v. Scargill* [1984] 3 WLR 501.
4. In relation to the *Scargill* ruling, the report argued that this case is unlikely to be a reliable legal authority in a challenge before English courts involving ESG considerations, not least due to the specific facts of the case and because much has changed in industry practice and public perceptions since the 1980s (Freshfields Bruckhaus Deringer, 2005).
5. For an analysis of this legislation, see Freshfields Bruckhaus Deringer (2005). The full text of the Act is available at http://web2.gov.mb.ca/laws/statutes/ccsm/t160e.php.

considerations seriously (Freshfields Bruckhaus Deringer, 2005). It could also offer hooks for civil society, who could scrutinise investment decisions on the basis of declared principles.

Cambodia-1 illustrates how civil society strategies can target end investors. In this case, a local NGO acting on behalf of villagers affected by the project reached out to an investor in one of the parent companies. The NGO called on that investor to examine the alleged negative downstream impacts of the investments. The investor did not respond directly to the appeal, but later sold its shares in the project and withdrew from the investment (CLEC, undated). While it is impossible to establish the reasons for this divesture based on publicly available information, the possibility cannot be ruled out that that concern about ESG risks may have played a role.

Similarly, in Sierra Leone-1, NGOs based in Sweden, the home country of one end investor, placed pressure on that investor to ensure that the project supports human rights (Swedwatch, 2013). The strategy has been to leverage the investor-enterprise pressure point by publishing investigations and posing a reputational risk to the investor.

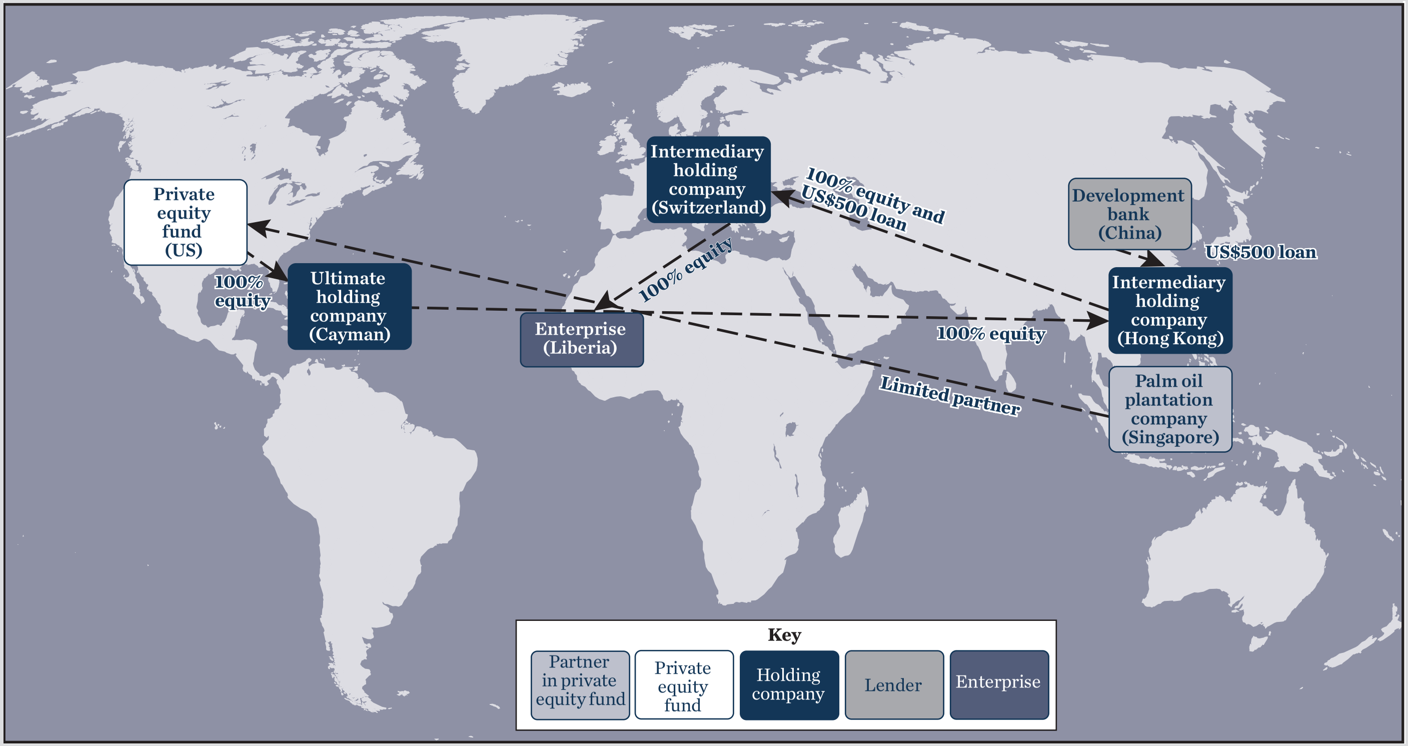
Ultimately, much depends on the investors involved. Institutional investors such as pension funds tend to be more responsive to ESG concerns, and several industry guidelines have been developed that mainly target institutional investors. Because institutional investors effectively manage savings owned by the broader public, they are also often more thoroughly regulated and subject to stricter disclosure requirements (Buxton *et al.*, 2012). On the other hand, private equity (from rich individuals or unlisted companies) or hedge funds tend to be harder to scrutinise, and their attitude towards ESG concerns will vary greatly.

Even within the same end investor category, investors can take very different approaches to managing their investment portfolios. Some may 'screen out' investments that are likely to have high ESG risks, others may make the investment but seek to 'engage' with the recipients of their investment to reduce the risk. Investors are also likely to react differently to adverse campaigning depending on their individual reputational considerations and corporate strategies. However, the trend towards more passive approaches to managing investment portfolios, discussed above, would reduce leverage in strategies that target end investors.

2.2. The geography of investment chains

The geography of investment chains (or where the key actors are located) is also relevant in terms of understanding relationships, processes and pressure points. Actors in the corporate structure may span national boundaries and may therefore be subject to different sites of regulation. So geography determines applicable law, and with it some important pressure points. More generally, the geographic spread of an investment chain can affect opportunities and challenges for efforts to implement the Voluntary Guidelines.

Figure 5. The geography of Liberia-1's investment chain (upstream)



Source: based on information included in the concession agreement between the Republic of Liberia and the enterprise (dated 2010), with additions from BTINVEST (2013)

Again, the case studies present much diversity. Some deals involve very low levels of geographic dispersion: in Mali-2, the enterprise is led by a Malian national; while in Ethiopia-1 the enterprise is controlled by a dual Ethiopian and Saudi national, who is best seen as a member of the Ethiopian national elite. In these cases, geographic dispersion may still emerge in relations outside the corporate structure. For example, Ethiopia-1 involved the provision of consulting services by firms based in Pakistan, namely to carry out the impact assessment study (Bloomberg, 2012).

Other case studies present significantly greater geographic dispersion within the corporate structure itself. Before the foreign investor pulled out in 2012, Mali-1 involved subsidiaries incorporated in Mali and controlled by a South African company, which is in turn ultimately controlled by a business group based in the United Kingdom (Illovo Sugar, 2013). According to the Establishment Convention, the Mali-1 deal also involved a US consultancy firm as a partner in the venture.

Liberia-1 is led by an Indonesia-based, Singapore-listed company, which channelled the investment through a US-based fund. According to an annex to the concession agreement for Liberia-1, the US-based fund controls the enterprise (a company incorporated in Liberia) through a chain of holding companies that appear to be based in the Cayman Islands, Hong Kong and Switzerland (see Figure 5). So in addition to a host country and (potentially multiple) home countries, an investment chain may also involve one or more ‘transit’ countries, which will have implications for the pressure points that can be used.

Patterns in geographically dispersed investment chains are partly a function of incentives created by investment protection or double taxation treaties: an investor may choose to channel the investment through a third country if that country has concluded advantageous investment treaties or tax treaties with the host state – and also with the home state, in the case of double taxation treaties.

National legislation can also create powerful incentives, particularly with regard to taxation. Some investments would appear to be channelled through low-tax jurisdictions. For instance, Liberia-1 appears to involve a company based in the Cayman Islands, according to an annex to the concession agreement between the enterprise and the host government. However, this research could not assess the relevance, extent and effects of any tax minimisation practices in relation to any of the case studies covered.

National actors often play a key role in establishing or managing the enterprise or in helping the enterprise gain access to land. These roles, further discussed in Chapter 3, can enable national actors to acquire an equity participation in the enterprise, thereby becoming involved in the corporate structure. The involvement of national actors in the corporate structure may be particularly important in deals with significant geographical dispersion, because national actors can offer a degree of local knowledge and access to networks and contacts that a foreign investor may not have.

These national actors are typically national elites, including successful businessmen, government representatives, or both (in the case of Cambodia-1, for example). But host government agencies may also hold equity participations in the project. For example, in Mali-1 the host government was a part owner in the venture: the host government controlled the company running the sugarcane plantation and had a minority stake in the company implementing the processing component (Djire *et al*., 2012, and contractual documentation). As discussed, the foreign investor pulled out of this project in 2012.

The extent of geographic dispersion has implications for the pressure points that can be used. This applies to both government-led regulation and civil society action for accountability. As to the former, for example, home country governments can play an important role through enacting transparency and disclosure requirements (see Box 2, concerning examples from the extractive industries), clarifying the place of ESG considerations in the exercise of fiduciary duties (as discussed above), or establishing legal frameworks for transnational litigation for corporate accountability. The role of home country governments is explicitly mentioned in the Voluntary Guidelines (Article 12.15).

Civil society action can also leverage geographically dispersed pressure points. In Cambodia-1, NGOs have filed a complaint against the Thai parent company before Thailand's National Human Rights Commission (The Cambodia Daily, 2013a, 2013b and 2013c). Some of the alleged violations raise issues of direct relevance to the Voluntary Guidelines, particularly the provisions in the Guidelines calling for protection of all legitimate tenure rights. In 2012, the Thai National Human Rights Commission found that it had jurisdiction to hear the complaint.[6] The company denies any wrongdoing.[7]

Box 2. Home country legislation to promote transparency

In the United States, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 requires disclosure of payments to the US or foreign governments made by oil, gas and mining companies listed on US stock exchanges. Regulations in Hong Kong also require disclosure of payments to governments made by extractive industry companies listed on the Hong Kong stock exchange (Gormley, 2013).

In 2013, the European Union adopted new Accounting and Transparency Directives that feature similar disclosure requirements of payments to governments for companies listed on EU-regulated stock exchanges, and also for unlisted companies that meet certain size criteria (turnover, total assets or number of employees). This European legislation applies not only to extractive industry companies, but also to logging firms.

These laws do not cover the agricultural sector. However, comparable home country legislation could in principle be developed to promote transparency on key aspects of land deals for agriculture, although political will to make this happen has so far been limited.

While US and EU legislation concerning extractive industries has focused on public revenues, comparable legislation in land matters would need to cover a wider range of issues. Indeed, public revenues are not as important a consideration in land deals as they

6. See www.business-humanrights.org/Links/Repository/1013888.
7. See www.business-humanrights.org/Documents/Cambodia-sugar-EU-EBA.

are in extractive industries, not least because (as will be discussed) many land deals involve little public revenue.

On the other hand, disclosing information about how much land a company has acquired, where, from whom, how and for what purposes can enable more effective public scrutiny of large land deals.

The geography of investment chains also influences the applicability of international voluntary standards and guidelines, such as the OECD Guidelines for Multinational Enterprises. The OECD Guidelines apply to multinational enterprises based or operating in countries that adhere to the Guidelines and include a number of provisions that would support the implementation of the Voluntary Guidelines, as discussed in Box 3.

2.3. Project initiation, structuring and financing

Project initiation and financing can come from diverse sources, with sites of decision making shifting over time. Some deals conform to the widespread perception that the land-acquiring company initiates and leads the process. For example, in Sierra Leone-1 the company led project design and applied for land from the relevant authority (African Development Bank Group, 2010; Driver and Bisset, 2012). In Ethiopia-1, the landholding enterprise was set up as a subsidiary of its parent company, which provided the enterprise's financing (Bloomberg Businessweek, 2013).

But other case studies illustrate the complexities that may be involved. In Mali-1, the host government played a key role in project design, and proactively looked for a suitable investor (Djire *et al.*, 2012). In Ghana-1, the project was initiated by a national from the local town (after spending time in North America) together with consultants from Italy. The group secured land from the local chief, and only after that stage did they secure the involvement of an Italian company with the necessary capital.[8]

Some parent companies in the cases reviewed for this research are privately owned (such as Ethiopia-1), while others are publicly listed on stock exchanges (such as Laos-1), and yet others may involve combinations of both privately owned and publicly listed shareholders (such as Cambodia-1 until 2010). Private individuals may also be investors. The nature of the parent company (private individual, privately owned company, publicly listed company) can influence the nature of pressure points and the potential for leverage. This is largely by shaping the degree to which a company needs to disclose information and be accountable to external stakeholders, and by altering the incentives that drive decision making. Although differences between company types and their governance structures depend to a large degree on the jurisdiction, some general considerations can be drawn.

8. Interview with a company official, October 2012.

Generally speaking, privately held companies tend to have fewer or less demanding disclosure and reporting requirements (for instance, via annual reports and financial statements) than publicly listed companies. So the involvement of a publicly listed company may be expected to increase opportunities for accountability. For example, it may be easier to influence publicly listed companies by targeting their shareholders, or by using information publicly disclosed by the company.

In this research, it has been possible to trace upstream investors – such as shareholders in parent companies – by accessing publicly available information on the shareholders of listed companies. However, these aspects vary according to geography. For example, there is variation in disclosure requirements for publicly listed companies in different jurisdictions, while in the European Union private companies have to publish their financial statements (Privco.com, 2013).

In addition, publicly listed companies may have greater concerns about reputational risk, since they face possible drops in share price and shareholder pressure if their reputation is tarnished. Reputational risk can offer a powerful entry point for efforts to hold investors to account. On the other hand, there is an argument that unlisted companies may be better able to make long-term decisions compared to publicly listed companies, because they are not under the same pressure to increase share value in the short term.

This argument has been explicitly articulated by some enterprises involved with land deals. For example, the main investor in Sierra Leone-1 explains that being a privately owned investment group has allowed them to avoid 'the short-term demands of institutional shareholders and kept [their] sights fixed on long-term growth' (AOG, 2013). However, empirical evidence on these issues is still limited and it is difficult to make generalisations.

The legal structure and management of the enterprise can take different forms. A foreign investor may set up a local branch or division. Alternatively, it may set up one or more locally incorporated subsidiaries (as was done in Cameroon-1 and Liberia-1, according to contractual documentation). Much depends on the national law of a host country.

For example, establishing a locally incorporated subsidiary is a legal requirement in some jurisdictions. In the case of a separate subsidiary, the parent company can still have very close control (or even complete control, depending on the shareholding) over the management of the enterprise, even more so where parent and subsidiary share the same CEO or senior management.

Broadly speaking, the financing of the deal – who provides money to it, and how – can occur through equity participations or through lending. The case study projects involve multiple combinations of these. Both equity and lending can affect important aspects of project initiation, design and implementation, beyond the provision of capital.

In Sierra Leone-1, for example, the memorandum of understanding (MoU) between the investor and the host government suggests that end investors and lenders expressed their support for the project and their intention to participate in the financing through a letter addressed to the government of Sierra Leone. This seems to have been a consideration in project approval by the host government.

As with many other aspects of the corporate structure, financing can evolve over time. As discussed above, financing can involve both public and private financial players. Lending relations are further discussed in Chapter 4.

Box 3. International guidance on responsible investment

The **UN Guiding Principles on Business and Human Rights**, a document unanimously endorsed by the UN Human Rights Council in 2011, clarify the human rights duties of states and the responsibilities of companies in the context of business activities.

The Guiding Principles are based on a conceptual framework developed through an international consultation process led by the then Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Professor John Ruggie. Core content from these Principles is referenced in the Voluntary Guidelines (Article 3.2).

The Guiding Principles rest on three pillars: 1) 'protect' – the duty of states to protect human rights against third-party interference, including interference from business actors; 2) 'respect' – the responsibility of business to act with due diligence to avoid infringing on human rights and to address adverse impacts that may arise from their activities; and 3) 'remedy' – the need for effective remedies, including judicial fora and non-judicial grievance mechanisms.

The state duty to protect requires states to enact and enforce laws, issue guidance and provide effective remedies. Compliance with the Guiding Principles requires businesses to establish a policy commitment to meet their responsibility to respect human rights; a human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; and processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

The Principles are directly relevant to several principles embodied in the Voluntary Guidelines. Indeed, protection of legitimate tenure rights, impact assessments and community consultation can all raise important human rights issues – for example, in relation to the right to property, the right to food or the right to housing. Though the Guiding Principles are reported to have enjoyed widespread uptake and support from both the public and private sectors, there is no overarching accountability mechanism that makes the framework legally enforceable (Kenan Institute for Ethics, 2012).

The **OECD Guidelines for Multinational Enterprises** are recommendations for responsible business conduct that 44 adhering governments encourage their enterprises to observe wherever they operate. They are not legally enforceable.

The OECD Guidelines apply to all the entities within a business group that operates in more than one country (including parent companies and subsidiaries).

Compliance with the OECD Guidelines is monitored by National Contact Points – agencies established by adhering governments to promote and implement the Guidelines. The National Contact Points can hear complaints from people who allege non-compliance with the Guidelines.

Several provisions of the OECD Guidelines present synergies with the principles embodied in the Voluntary Guidelines – for example, in relation to disclosure of corporate information, respect for human rights, stakeholder engagement and environmental management systems.

The **Principles for Responsible Investment** (PRI) are a set of six principles, which signatories commit to abiding by. Signatories include asset owners (such as pension funds), asset managers, and a range of service providers. The Principles relate to financial investments made in companies (investees).

The first two PRI principles are most directly relevant to the Voluntary Guidelines. They require that signatories incorporate ESG issues into investment analysis and decision making, and into their ownership policies and practices. The other four principles relate to seeking disclosure on ESG from investees, promotion of the Principles within the industry, working together to improve effectiveness and reporting on activities and progress towards implementing the Principles.

There are a number of ‘suggested actions’ for each principle. In relation to Principle 1 on incorporating ESG issues into investment analysis and decision making, for example, suggestions for possible actions involve addressing ESG issues in investment policy statements; supporting development of ESG-related tools, metrics, and analyses; and asking investment service providers (such as financial analysts, consultants, brokers, research firms, or rating companies) to integrate ESG factors into evolving research and analysis.

The PRI are quite vague, which potentially limits their usefulness in regards to supporting implementation of the Voluntary Guidelines. In addition, monitoring and reporting is carried out by signatories themselves (Just Economics, 2011). There are no consequences if companies fail to meet their commitments under the PRI. However, the case could be made for aspects of the Voluntary Guidelines to be incorporated under ESG issues, for example in the creation of organisation-wide policy that shapes operation activities, as required in the first implementation step of the PRI.

Finally, there has been much debate about **Principles on Responsible Agricultural Investment.**[9] The Principles were first proposed in 2010 by the World Bank, FAO, IFAD and the United Nations Conference on Trade and Development (UNCTAD). The Principles are treated as a ‘living document’, and a consultation process is currently underway through the CFS to develop Principles on Responsible Agricultural Investment.

9. See www.fao.org/fileadmin/templates/est/INTERNATIONAL-TRADE/FDIs/RAI_Principles_Synoptic.pdf.

2.4. Key insights

There is much diversity in the corporate structures examined in this study. In a sense, this diversity reflects the multiple forces that drive large-scale land deals – from the strategies of national elites to a convergence of factors in the global energy, food and finance sectors. Large land deals may bring together into corporate structures complex constellations of financiers, agribusiness and local partners. These corporate structures may link the world's financial centres to local actors – whether government bodies or private operators, or public officials acting in a private capacity – that offer local grounding to transnational ventures.

The development of these constellations is facilitated by a wide range of intermediaries that operate within the upstream segment of the investment chain, such as the asset managers that link international capital to investment opportunities. In other cases, the corporate structures behind large land deals involve considerably more localised processes, reflecting socioeconomic changes in the host state – including the emergence or consolidation of national business groups.

Relations within the corporate structure can offer significant pressure points for public action to promote implementation of the Voluntary Guidelines. But these pressure points vary considerably depending on the nature of the corporate structure, including: the length and integration of the investment chain; the geographical dispersion of the investment chain; and features of investment initiation, structuring and financing.

These variables can shape the effectiveness of pressure points in both negative and positive ways. For example, a tightly integrated investment chain would offer fewer but potentially more effective pressure points. In less integrated chains, the ultimate source of funds may be distant from the enterprise, but more entries will exist if more players are involved. Similarly, geographic dispersion affects the number and nature of the sites of regulation, for example by opening options for regulation and scrutiny in the investor's home countries and in third countries through which the investment may be channelled.

Examples of public action targeting pressure points in the corporate structure may include:

- **Host government action** to promote transparency in the upstream segment of the investment chain, for example by identifying the corporate structure in an annex to a publicly available investment contract, as was done in Liberia-1; to regulate the ways in which companies are allowed to be legally structured, and their public disclosure requirements; and to discourage speculative land acquisition (such as by restricting indirect as well as direct transfers of the deal, for example where the ultimate shareholder sells shares in the enterprise or an intermediary holding company rather than the land lease itself).
- **Adoption and use of home country legislation** that promotes transparency in land deals concluded by companies based or listed in the regulating country;

provides opportunities to hold parent companies to account in their home country for harm caused by activities overseas; and ensures that legislation regulating 'fiduciary' or comparable duties does not get in the way of sensible consideration of ESG aspects in investment decisions – including aspects covered in the Voluntary Guidelines.

- **Advocacy** could target end investors that have issued progressive 'Statements of Investment Principles' or signed up to industry standards such as the PRI; home governments that may be involved in the deal, directly or indirectly (such as through a state-controlled or funded development finance institution); transnational litigation led by affected people or civil society groups, aimed to promote corporate accountability of parent companies in their home country.
- **Multi-stakeholder dialogue** could promote synergy between the Voluntary Guidelines and international standards that target the upstream segment of the investment chain, such as the PRI, and that provide complaint mechanisms, such as the OECD Guidelines for Multinational Enterprises. While the Voluntary Guidelines themselves offer limited direct guidance for end investors, they can help provide clarity about what ESG concerns would be expected to be at stake in agricultural investments. Effective coordination between efforts to implement the Voluntary Guidelines and the development of Principles on Responsible Agricultural Investment is also key.

3. Relations with government, communities and intermediaries

Large-scale land deals typically involve multiple relations between the enterprise on the one hand, and government and local landholders on the other. The provision of land is at the centre of these relations – as are other important aspects of agricultural investments (such as tax matters or the regulation of the investment project).

The nature of land-supply relations varies depending on the national context. Where states claim ownership or control of large areas of land, governments are a key player in deal making, for instance Cambodia-1, Cameroon-1, Ethiopia-1, Laos-1, Liberia-1, Mali-1 and Mali-2. In jurisdictions where land is owned by customary entities, chiefs play a critical role in making land available to enterprises, such as Ghana-1 and Sierra Leone-1.

In jurisdictions where private, individual land ownership is more widespread, before the project the land at stake may be owned by private entities, as in the case of Brazil-1. But formal legal relations are only part of the story. For example, even where land ownership is vested with the government according to national law, enterprises can develop some form of engagement, and relationship, with the people who use the land.

Government and local landholders are themselves connected by multiple types of relations, for example where the government is actively engaged in promoting local support for the project, or where customary authorities are integrated, directly or indirectly, into the government administration. In addition, local 'communities' are often highly differentiated, reflecting diverse and possibly conflicting interests and aspirations.

Relations within the community; between government and the community; between the enterprise and communities, and between the enterprise and the host government can all have important repercussions for the design and implementation of agricultural investments. A wide range of brokers and intermediaries can play a role in facilitating and mediating these relations.

This chapter explores these multiple relations, and the pressure points that can be harnessed in efforts to improve the governance of land and agricultural investments.

3.1. Relations with government

The central role of government in land deals

Land acquisitions typically involve contracts between at least two parties. In many low- and middle-income countries, it is often governments that sign the deals and make land available to investors. In fact, a policy thrust to attract foreign investment into agriculture has been a key driver in government efforts to promote land deals.

The case of Mali illustrates these efforts. Here, the Office du Niger area hosts much of the country's irrigable potential. Productivity on small-scale farms in the area has increased sharply since the mid-1990s, but demographic growth and plot subdivision have resulted in growing pressures on the finite irrigated land – with an average farm size of less than two hectares (Aw and Diemer, 2005; Adamczewski, 2011). For the government, expanding the infrastructure to irrigate more land became an imperative, yet there were limited public resources to finance the expansion (Djiré *et al.*, 2012; Hertzog *et al.*, 2012).

To address this challenge, in 2008 the government issued an 'appeal to investors', calling on private capital to acquire land in the area and bring the irrigation scheme to its claimed full potential of covering one million hectares.[10] The Mali-1 and Mali-2 enterprises were both developed in response to this policy thrust. The Malian government was heavily involved in shaping the Mali-1 project and then seeking out foreign partners on a public-private partnership basis.

Some governments have made public offers of land to prospective investors. In 2009, the Ethiopian government was reported to have earmarked 1.6 million hectares of land, extendable to 2.7 million, for investors willing to develop commercial farms (Reuters, 2009). Comparable processes are taking place elsewhere too. In Laos, the government launched a strategy to 'turn land into capital', while several countries have taken steps to establish 'land banks' that can facilitate enterprise access to 'idle' land.

More recently, however, governments have become more cautious. Since 2012 several states have enacted total or partial moratoria on land deals (including Laos, Ethiopia and Cambodia). These changes in policy are partly due to the disappointing outcomes of some land deals, and to pressures from local groups and civil society (on Cambodia, for instance, see The Cambodia Daily, 2012).

In other cases, the official interpretation of existing law has become more restrictive. In Brazil, for example, a 2010 Legal Opinion issued by the Attorney General clarified that restrictions on foreign land ownership applicable under a law dating back to 1971 would also apply to Brazilian companies controlled by foreigners. This interpretation put a brake on discussions over large-scale land deals by Chinese companies, and might have caused a reorientation in project design for Brazil-1 – away from large-scale land acquisition, and towards sourcing of produce from local farmers (Soybean & Corn Advisor, 2011a and 2011b).

The mechanisms through which governments facilitate access to land for prospective investors depend on features of national legislation. In many low- and middle-income countries, governments claim ownership or control of much of the land. In some cases, the national constitution vests ownership of all land with the state (for example, under Article 40 of Ethiopia's Constitution of 1995). Land legislation may also vest land ownership with the state (as in Laos). In other

10. The appeal is reproduced in Adamczewski (2011).

countries, private ownership is allowed or even promoted in law but remains limited in practice, partly due to constrained access to land registration processes (as in Cameroon and Mali).

Where the state owns or otherwise controls the land, the government is legally empowered to allocate land leases or concessions to investors. As a result of these trends in national law, most of the deals examined for this research involve long-term leases or concessions on land that is ultimately owned or controlled by the host state. In Cameroon-1, Ethiopia-1, Laos-1, Liberia-1, Mali-1 and Mali-2, the enterprises acquired land rights through contracts with the government.

But governments may play an important role in deal making even where they do not directly control the land and offer it to the enterprise. In Sierra Leone-1, the enterprise acquired land through a deal with customary chiefs, but it also signed a contract with the host government to deal with the tax regime, legal protection and other issues concerning the investment, including social and environmental impact assessments.[11] In Brazil-1, reports suggest that, while the land was previously owned by a private landowner, the municipality provided the land needed for the processing facility, and state-level and federal government agencies led the deal making (Powell, 2011).

The terms of the deals between the enterprise and the government may themselves create incentives that promote large-scale land acquisition. Land rental fee levels are an important aspect in this regard. Comparing land fees across countries is fraught with difficulties, but evidence suggests that fee amounts are often very low (Deininger *et al.*, 2011). In Ethiopia-1, the land has been leased out at a cost of US$1.60 (30 birr) per hectare/year, according to the lease contract. Some commentators have regarded similar rental fees in Ethiopia as low (Keeley *et al.*, 2014). In Cameroon-1, state land was to be leased for US$1 per hectare/year for developed land, and US$0.50 per hectare/year for undeveloped land (according to the Establishment Convention concluded for the Cameroon-1 project).

Low land fees may be compensated by investor commitments to contribute capital and develop infrastructure. Attracting investment is often more important for host governments involved in land deals than public revenues per se. In addition, public revenues other than land fees may also be involved that are not directly apparent from the contract. In Cameroon-1, for example, the deal allowed the government to keep and auction timber felled from the project area (according to Wrobel, 2012). But even so, low land fees create few incentives for investors to minimise land acquisition and source from local farmers. They can also encourage speculative acquisitions, because land values are widely expected to rise.

The important role of government in making land available to enterprises, and the incentives for large-scale land acquisition that are created by government policy, highlight the need for pressure points to increase effectiveness and accountability

11. Analysis of the contracts concluded for this project.

in government decision making. This relates both to the management of state-owned land and to the governance of investment processes. Misperceptions among government officials about options for agricultural 'modernisation', distance between government and its constituents, particularly in rural areas, and outright corruption can all prevent government action from pursuing the public interest.

A key issue is ensuring that public decisions about individual investments are based on a long-term strategy for agricultural development in the host country that builds on local and national development aspirations. This strategy would (or should) have direct implications for the balance between small, medium and large-scale farming, for the models of agricultural investment to be promoted and for the way investments should be regulated. In countries where small-scale farming continues to provide the backbone of national agriculture, it is important that federations of small-scale producer organisations are recognised as key players in the framing of these strategic policies.

It is also important that strategic decision making fully takes account of the diversity of possible investment models. Indeed, agricultural investments can take many different shapes, and there is experience with investment models that minimise land acquisition and involve small-scale producers as suppliers, shareholders and business partners (see for example Vermeulen and Cotula, 2010; Djiré *et al*., 2012; Mujenja and Wonani, 2012).

There are some examples of country-level strategising on pathways to agricultural development. For example, in Mali, the Agricultural Orientation Act of 2006 embodies a vision for agricultural development in the country. The law was elaborated with the active participation of national federations of rural producer organisations. It recognises the role of both large and small-scale producers in agricultural 'modernisation'.

Subsequently, however, the government signed many large land deals for plantation agriculture, including Mali-1 and Mali-2. Federations of producer organisations called on the government to implement the principles of the Act.[12] Continued advocacy and scrutiny after the adoption of strategic policy instruments are critical to ensure that policy is reflected in decision making about individual investments and that governments are held to account for their decisions.

Transparency is a key element of the Voluntary Guidelines (see Box 1). It is widely believed that transparency in the management of public lands and in contracting processes, including through disclosure of contracts (for instance investment contracts and land leases) can help to improve accountability and ensure that decision making responds to the agreed national strategy. There have been some advances. For example, the governments of Liberia and Ethiopia have posted

12. For instance, see the 'Kolongo Appeal' issued by national federations of producer organisations gathered at the Kolongotomo Farmers Forum, November 2010: http://farmlandgrab.org/17414.

contracts online and the contracts for both Liberia-1 and Ethiopia-1 are available from government websites.[13]

But contract disclosure is only one part of the story – because it occurs after decisions have already been taken and the contract has been signed. Opportunities for transparency and for public and local participation in decision making when all options are still open, and the ability of citizens to seek administrative or judicial review of adverse government decisions, are also crucial to ensure that investments support broader social, economic and environmental objectives and thus the Voluntary Guidelines.

Some studies have raised concerns about the level of capacity in government administration to negotiate and manage the complex transactions underpinning large-scale land deals. In Mali, for example, Djiré *et al*. (2012) have noted that many enterprises were granted provisional land allocations without the necessary scrutiny of their capacity and track record, and without social or environmental impact assessments; that some allocations appeared founded on subjective considerations (such as personal relations between enterprise officials and government staff), rather than objective criteria; that procedures were not always being followed; and that government agencies were not monitoring delivery of required documentation (such as feasibility studies) within deadlines.

Djiré *et al*. (2012) have also noted the limited capacity of government to handle the complex issues involved in community consultation, resettlement and/or compensation. In the absence of clear national guidelines and effective administrative structures, much depends on the goodwill of the enterprise and any requirements imposed by lenders (Djiré *et al*., 2012). In these contexts, initiatives to strengthen the capacity of government to govern investment processes can make a significant difference in the implementation of the Voluntary Guidelines.

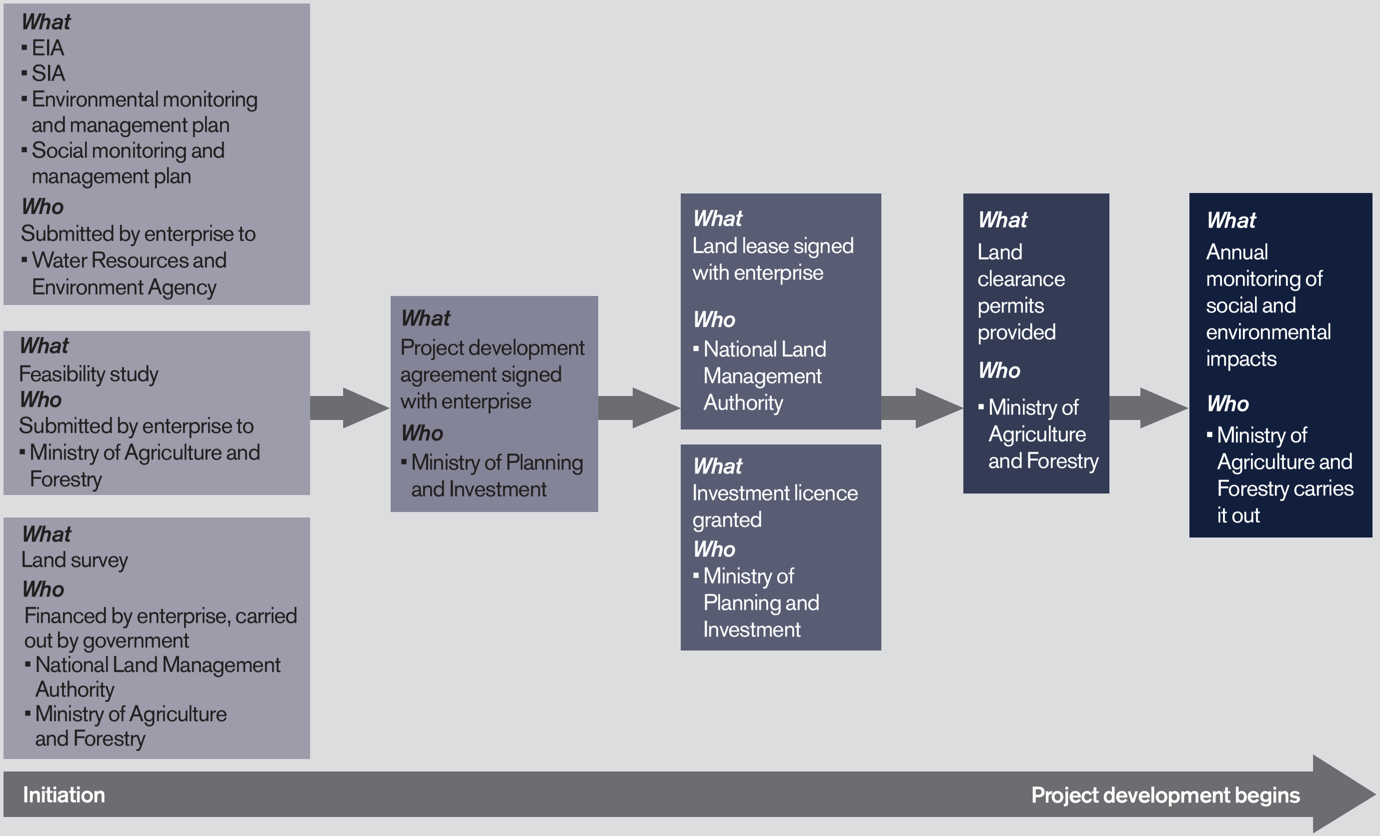
Project approval: the role of multiple government agencies

Each land deal typically involves multiple contracts. The enterprise and the host government may sign a memorandum of understanding; a ‘convention of establishment’ (also referred to as investment agreement or project development agreement – the contract that sets key terms of the investment project); a land lease or concession (which allocates land to the enterprise); and special agreements or licenses for water rights, tax incentives or other aspects of the project. Environmental permits may include conditions based on findings of an environmental impact assessment (EIA) and/or a social impact assessment (SIA).

A considerable time lag may exist between the approvals of different contractual documents. In Cameroon-1, for example, the Establishment Convention was signed in September 2009; it was four years later in November 2013 that three presidential decrees for three-year provisional land leases were read out in full on the national

13. www.leiti.org.lr and www.moa.gov.et/web/pages/land-leased.

Figure 6. The investment process and role of different government agencies in Laos-1



radio.[14] The decrees relate to three separate leases for some 13,000, 1200 and 5300 hectares, for a total land area just short of 20,000 hectares. The enterprise can obtain a definitive long-term lease (*bail emphytéotique*) if it delivers on the investment plan at the end of the three-year period – that is, in 2016.

Underlying the web of contracts is a wide range of different government agencies. Some ministries may be responsible for allocating land, others for approving environmental and social impact assessments and issuing environmental permits, others for granting tax incentives. For example, Laos-1 involved a feasibility study approved by the Ministry of Agriculture and Forestry; impact assessment studies and management plans approved by environmental authorities; a Project Development Agreement concluded between the enterprise and the Ministry for Planning and Investment; and land concessions signed by the authority responsible for land management (see Figure 6).

Other agencies may deal with other aspects of the project. For example, the enterprise may need to register with the ministry of commerce (as in Cambodia) or with the investment promotion agency (as in Ghana) in order to conduct business in the country or enjoy tax or legal benefits. Separate government agencies (at the ministry of finance, or the investment promotion agency) may be responsible for granting business licences or providing tax incentives if, for example, the enterprise invests in deprived regions or special economic zones (such as lower rental fees for land in Ethiopia; FAO, 2011). In irrigation projects, water authorities may be responsible for issuing water licenses.

Investment promotion agencies are institutionally mandated to attract foreign investment. Their nature, role and powers vary substantially across countries. This diversity reflects broader differences in political orientation on issues such as foreign investment and the role of the private sector and of government regulation. When it comes to land access, the role of investment promotion agencies ranges from facilitating an enterprise's dealings with government land agencies, to a more direct role in making land available to investors.

In Laos-1, the main investment contract was signed by the national investment promotion agency, which sits within the Ministry for Planning and Investment, while the land concession was signed by the national authority responsible for land. In Ethiopia, the Ethiopian Investment Agency issues investment permits, work permits, trade registration certificates and business licenses, and it determines the incentives offered to the enterprise, such as tax breaks (Ethiopian Investment Agency, 2013), but it is not directly involved in land provision. Rather, land leases above 5000 hectares are offered by the Ministry of Agriculture and Rural Development, and smaller land deals can be issued by regional authorities (see below).

Ministries responsible for agriculture also tend to play an important role, for example in the scrutiny of feasibility studies (see Figure 6). The feasibility study provides an

14. The radio broadcast is available at http://crtv.cm/cont/radio/radio_sola_fr.php?idField=12187&table=radio2.

important pressure point for influencing the design of investment projects. Governments may require the investor to explore the viability of business models that minimise land acquisition and source from small-scale producers. They may also scrutinise feasibility studies thoroughly to assess the viability and realistic nature of proposed investments, the extent to which commercial viability depends on projected increases in land values (rather than, say, productivity increases), and the relationship between the proposed project and the amount of land sought. In deciding on investment proposals, it is important that development gains are assessed against gains from actual or potential alternative forms of land use (see Comité Technique Foncier et Développement, 2010).

Environmental ministries or agencies also tend to play a role in deal making, because national legislation typically requires the conduct of impact assessment studies as part of the process for approving land deals. Some impact assessment studies are publicly available, in summary or in full, including those for Cameroon-1, Laos-1, Mali-1 and Sierra Leone-1.

In principle, the requirement, scrutiny and use of impact assessment studies can provide effective pressure points to implement the Voluntary Guidelines. In addition to environmental impacts, the Voluntary Guidelines explicitly refer to the assessment of positive and negative impacts on important social aspects – such as tenure rights, food security and livelihoods (Article 12.10).

However, national law commonly requires the conduct of an environmental impact assessment, but not of a social impact assessment. This raises questions as to the extent to which existing national law requirements for impact assessment studies can address social issues of direct relevance to the Voluntary Guidelines, such as loss of access to land and natural resources.

The legislative focus on environmental impacts alone is a legacy of early conceptualisations of sustainable development that focused on balancing economic development with environmental sustainability. More recent conceptualisations of sustainable development emphasise the integrated consideration of social, environmental and economic aspects. The Voluntary Guidelines add momentum to this trend. Their implementation may require rethinking national legislation explicitly to mandate social as well as environmental impact assessments. It also requires effective scrutiny and use of the results of these assessments by government and civil society.

Some projects do involve more comprehensive impact assessments, as a result of corporate policy or lender requirements. For example, Sierra Leone-1 involved the realisation of an Environmental, Social and Health Impact Assessment.[15]

Decentralisation may add further complexity to the roles of different government agencies, particularly in relation to the division of responsibilities between local and

15. A summary of this assessment is available at www.afdb.org/fileadmin/uploads/afdb/Documents/Environmental-and-Social-Assessments/Addax%20Bioenergy%20-%20ESHIA%20summary%20-%20Final%20EN.pdf.

central government agencies. In some countries, local government may sign deals below a certain land area size (such as in Ethiopia and Laos). This can result in diverse approaches being followed in different parts of the same country. In Ethiopia, federalism and devolution of land management responsibilities to regional governments have resulted in much diversity in the ways in which regional authorities have fulfilled their responsibilities – though a trend toward convergence appears to be emerging (Keeley *et al*., 2014).

The division of responsibilities between local and central government can evolve over time. In Ethiopia, reforms in 2009 have curbed the power of regional governments to issue leases above 5000 hectares (Keeley *et al*., 2014). Ethiopia-1 first involved a land lease issued by the regional government of Gambela, but as the deal exceeds 5000 hectares, the original contract was replaced by a new contract signed by the Ministry of Agriculture and Rural Development.[16]

Coordination among multiple agencies at local and national levels appears to be a recurring challenge. In some cases, different government agencies appear to negotiate contracts with different enterprises, using different contract models and with little coordination between them. For example, the Establishment Convention for Mali-1 was signed by the Minister of Industry and Trade (Djiré *et al*., 2012), while a comparable convention for Mali-2 was signed by a central government agency responsible for the irrigable Office du Niger area (an agency then called SEDIZON). The format and content of these two contracts look very different.

The situations outlined above call for clear and transparent rules on respective roles and responsibilities, including through effective coordination mechanisms; for clear accountability lines between different government bodies; for effective administrative agencies insulated from interference via personal or political relations; for capacity to monitor compliance with legislative or contractual requirements; and for predictable sanctions (including suspension or termination of the deal, or withdrawal of licenses) where procedures or institutional remits are not complied with.

All of these issues are directly related to the implementation of the Voluntary Guidelines, and demonstrate the need and potential for public action to leverage a wide range of pressure points. These could include the role of NGOs in bringing attention to perceived procedural irregularities at different stages of the contracting process, such as whether the authority signing the contract has the legal authority to do so. NGOs have also drawn attention to whether prescribed procedures have been followed; to non-compliance with environmental and social impact assessment (ESIA) requirements, or conditions included in environmental permits; or to the low rental fees that are often offered to investors.

16. Observation based on the text of the 2010 land lease.

Managing a long-term relationship

Long durations are a recurring feature of contracts for large land deals. Known contract terms in the deals reviewed for this research range between 30 years (Mali-2) and 99 years (Cameroon-1),[17] and several contracts can be extended or renewed. In this context, identifying pressure points in the relationship between the enterprise and the host government requires an understanding of how that relationship evolves and is managed over the entire duration of the investment project – well beyond project approval stage.

In relation to the implementation of the Voluntary Guidelines, this raises a number of issues. One is the government's capacity to monitor compliance with the deal and sanction non-compliance. This issue applies across a wide range of issues – from collecting taxes to monitoring compliance with environmental permits. The case studies illustrate some of these capacity challenges. In Ethiopia, for example, some have commented that the government lacks the capacity to effectively monitor and evaluate the impacts of investments: 'Monitoring and evaluation remains a major challenge, given the size of many regions, the remoteness of investment locations and lack of staff and vehicles' (Keeley *et al.*, 2014:1).

Another important issue linked to managing long-term investment relations concerns dispute settlement. The approaches taken in the case study projects vary, reflecting different government policies and negotiating outcomes. The overlapping jurisdiction of multiple dispute settlement bodies can itself form the object of negotiation and contestation. In Cambodia, for example, the government established a National Authority for Resolution of Land Disputes (NARLD) to address disputes relating to land claims. However, the head of the NARLD reportedly stated that the Authority is unable to resolve land disputes linked to land concessions (The Cambodia Daily, 2013d). The Cambodian government has also established a Special Economic Zones Trouble Shooting Committee. The committee acts as a complaints mechanism for investors and is responsible for finding solutions to complaints (Royal Government of Cambodia, undated). However, there is little specific information on whether and how this mechanism has been activated.

In some of the deals reviewed, contracts, laws or treaties allow the enterprise to bring disputes to international investor-state arbitration (including the Cameroon-1, Laos-1, Liberia-1, Mali-1 and Sierra Leone-1 contracts). This route would allow the enterprise to seek compensation for the violation of government commitments through proceedings before an international arbitral tribunal, avoiding national courts that may be perceived to be not impartial or effective. In these cases, mechanisms for the enterprise to enforce an award of damages for adverse government action can be quite effective, and constraints on the exercise of regulatory powers more stringent (see Cotula, 2014).

17. Analysis of the contracts for the two projects.

A key issue is the extent to which the concerns and aspirations of people affected by the investment project can be fed into the settlement of disputes between the enterprise and the host government. Pressure points depend on the effectiveness and impartiality of courts and specialised bodies. Recent years have also witnessed advances in the transparency of investor-state arbitrations administered under certain arbitration rules (for example, those of the International Centre for Settlement of Investment Disputes, ICSID) or certain investment treaties. Some arbitration systems, including ICSID, now allow third parties to make written submissions to the arbitral tribunal. Third parties would include people affected by the investment and NGOs supporting them. Civil society submissions still remain relatively rare in investor-state arbitration, but some such submissions (not concerning the case studies) have specifically raised issues that would be directly relevant to implementing the Voluntary Guidelines, including impact assessments and protection of local land rights (for a more in-depth discussion, see Cotula, 2014).

3.2. Relations with local communities

Framing the relationship

Many large land deals involve some form of engagement with local communities. Even where the government owns the land and allocates it to the enterprise, the latter has an incentive to establish a working relationship with local communities. This incentive stems from the long-term nature of the business and its vulnerability to adverse action by affected people (such as protests and sabotage), and possibly from a desire to strengthen the enterprise's 'social license to operate'. As a result, formal and informal relations between the enterprise and local communities are a recurring feature of large land deals.

Enterprise-community relations should not be understood as a simple binary relationship, however. Large land deals typically enter local arenas characterised not by united, undifferentiated 'communities', but by highly stratified groups with diverging interests. Land relations may be hotly contested along fault lines that are rooted in history and are not always easy for government officials and incoming investors to understand (as discussed more extensively in Cotula, 2013). Differentiated and contested local arenas mean that local stakeholders may be involved in or affected by the deals in different ways – as dispossessed people, labourers, producers or consumers, for example.

Social differentiation among and within groups, and the multiple types of relations through which local stakeholders are integrated into large land deals, mean that 'communities' may be divided over an investment project, which can result in patterns of both opposition and cooperation.

Also, local responses to a large land deal are mediated by pre-existing tensions over land and authority. The history of struggles over land does not start when an investment project enters the local arena. Longstanding tensions may be re-ignited by the advent of the deal. In Mali-1, opposition from some villages was partly related to local political and clan struggles between two lineages that date back to colonial times. The municipal council, led by members of one lineage, supported the project, while members of the other family led local opposition to the deal, arguing that the council had 'sold out' community land on the cheap (Djiré *et al*., 2012).

Land provision and use

Local actors may be direct land providers, namely in jurisdictions where land ownership is vested with clans, families or individuals. In these cases, the enterprise signs the land lease with customary chiefs or private entities, rather than government agencies. In Ghana, for example, large areas of land are owned by clans, families and individuals. Therefore, many land deals are signed by customary chiefs (Schoneveld *et al*., 2011; Wisborg, 2012; Boamah, 2012). In Ghana, the role of government in promoting and negotiating the deals is more limited than in some other African countries, and other research suggests that the central government has less systematic information about land deals in the country (Cotula and Oya, forthcoming). In line with this context, the Ghana-1 enterprise secured first an MoU then a land lease from the local customary chief (Futuris, undated).

Customary law also formally governs land tenure in much of Sierra Leone, with the exception of the western part of the country where the common law system applies. Consequently, ownership of land is vested in the chiefdoms and communities. In the Sierra Leone-1 project area, customary land tenure is based on family tenure. Such family units are legal bodies with the right to claim and hold land. However, the paramount chiefs are recognised to be the custodians of the land on behalf of their entire chiefdom (African Development Bank, 2010).

In Sierra Leone-1, land was therefore leased to the enterprise by the traditional landowners through the local chiefdoms in the areas affected by the project (ABSL, 2011). In addition to signing the land lease with the Chiefdom Councils, the Sierra Leone-1 enterprise signed 'Acknowledgement Agreements' directly with the affected landholders, and made additional payments to those landholders to compensate for their loss of crops, trees and fixed assets (African Development Bank, 2010). While there was no legal requirement for the enterprise to conclude the Acknowledgment Agreements, these agreements helped the enterprise to demonstrate that the project did not involve involuntary resettlement. This was an important consideration for certification purposes, discussed further in Chapter 4.

Where the land is formally owned or otherwise controlled by the central government, the deal may still involve some form of community-enterprise agreement, which the contract between the enterprise and the host government may then refer to. In Cameroon-1, the enterprise obtained land rights through a deal with the central government, but it also signed an MoU with some local communities to establish 'consent' for the project to be implemented on the communities' land.

Effectively, this MoU was intended as an expression of confidence by local groups, which was expected to help the enterprise in its negotiation with the government (Nguti Sub Division, 2010). However, one community subsequently felt that the company had not lived up to its promises. So it rescinded the MoU and withdrew their support for the project until they deemed it to meet their demands (Nguti Sub Division, 2010).

In principle, mechanisms for public participation and consultation (such as in ESIAs or land allocation decisions) can provide opportunities for engagement with local groups, though for these mechanisms to be effective they need to be insulated from politicisation and bias. The design of consultation and participation processes is extremely important to ensure accessibility across community groups and power structures, and to avoid elite capture.

The nature of this research, which draws primarily on the available literature, makes it impossible to determine what pressures, if any, communities felt subjected to when they negotiated with enterprises. As a broad generalisation, negotiations between enterprises and communities in rural Africa tend to involve asymmetries in capacity and negotiating power. Without adequate independent support to local communities (this issue is touched upon in connection with the role of intermediaries; see Section 3.3 below), it should not be assumed that direct negotiations will deliver a fair outcome.

Also, local land management systems can have direct repercussions for the nature of large land deals. Where customary authorities negotiate with the enterprise, the extent to which community members are consulted depends on the approach followed by the company, and on the socio-political nature of customary institutions. Indeed, the socio-political nature of customary institutions raises complex issues about the relationship between chiefs, multiple groups of local constituents (such as descendants of the first occupants and 'migrants') and government authorities.

In some contexts, customary chiefs may have incentives to enter into negotiations for large land deals. These deals may offer an opportunity for chiefs to receive higher revenues than they would be able to receive from small-scale farmers. The revenues can be a source of personal enrichment or, if the chiefs use monies for development projects, a way of consolidating the chiefly power base through patron-client networks. Also, compared to numerous small-scale tenancies, fewer, larger and more formalised transactions make it easier for the chiefs to collect revenues (Boamah, 2012).

In addition, allocating large areas of land to companies can provide a means for chiefs to assert their ownership of the land. Being able to lease out the land without contestation, and perhaps even with the official sanctioning of the transaction from government agencies, implies a recognition that the chief has ultimate authority over the land in question. This can be an important benefit for the chiefs, especially where customary landholdings, and the boundaries between them, are unclear or contested. In effect, allocating land to a company means staking a claim to radical title over that land.[18]

Where customary authorities play a central role in deal making, mechanisms to ensure their downward accountability are critical in implementing the Voluntary Guidelines, particularly with regard to protection of legitimate tenure rights and community consultation and participation. This may involve accountability mechanisms under customary systems (for instance, Ghana's traditional arrangements for 'de-stooling' chiefs), but also the establishment of clear fiduciary duties owed by customary chiefs to their constituents under national law (as is the case under case law developed by the courts in Ghana). However, evidence suggests that the effectiveness of legal recourse mechanisms is often limited, and that traditional arrangements for chiefly accountability have been eroded by socio-economic and cultural change (Ubink, 2007).

Social differentiation is likely to shape the way in which land deals affect local stakeholders. An interview with a small-scale farmer who lost land to Ghana-1 suggested that migrants can lose their land more easily than farmers belonging to the landowning family.[19] Anecdotal evidence suggests that similar patterns have emerged in large-scale land deals implemented in other parts of West Africa.

In addition, gender is an important but still little understood aspect of large land deals (for some gender analyses of agricultural investments, see for example Daley, 2011; and FAO, 2013a, 2013b, 2013c and 2013d). Gender equality is an essential principle to guide implementation of the Voluntary Guidelines (Article 3B.4) and gender sensitivity is referred to in numerous provisions of the Voluntary Guidelines (such as Articles 4.4, 4.7, 5.3, 5.5, 6.1), including in relation to the negotiation process for large land deals (Article 12.11).

In many low and middle-income countries, men and women access land in different ways. For women, access to land is often mediated through their male relatives or husbands. For example, in patrilineal systems, a woman may cultivate a plot given to her by her husband, or may help her husband to farm his plot. This situation means that women tend to have more fragile land rights than men. If the husband dies or the couple divorces, for example, the wife could lose the land. Despite much diversity in local contexts, women also tend to have a weaker voice in decision making concerning land. Indeed, with some important exceptions, women tend to be excluded from customary authorities, and they are often marginalised in local consultations about proposed land deals.

This context makes women less able than men to influence the design and implementation of agricultural investments. Research into the Sierra Leone-1 case found that 'women…have had a very limited role in the negotiations and they seldom receive any of the leasing payments. They are very much affected by the project, but due to their low status they have had less opportunity to receive information, less

18. These considerations are based on Boamah (2012), and on thinking developed by Lund (2011).
19. Interview with affected farmer, October 2012.

access to the complaints mechanisms and less chance to find work than men' (Swedwatch, 2013:1). Yet, where land deals take land used for foraging, they affect women more than men – because women are often responsible for collecting wood, fruits, nuts and medicinal plants, whether for consumption or sale.

But generalisations about the vulnerability of women in large land deals should be avoided – not least because women are a very diverse group. Women with different wealth, income, age and status fare very differently in customary systems, and these differences may have repercussions on the ability of women to have a voice in negotiations. Also, women may value opportunities for wage employment on plantations; and social infrastructure provided by the enterprise, such as water points, may ease tasks traditionally performed by women, such as water collection.[20]

Taking gender issues into account would require ensuring that the pressure points used are gender-sensitive. This would include ensuring that local consultation processes reach a wide range of local community representatives in ways that ensure equal and effective participation of women and men in consultation; and that gender issues are fully factored into comprehensive social and environmental impact assessments (FAO, 2013a). It is also important to ensure that mechanisms to ensure redress and accountability are accessible for women.

Partnership agreements

While this report focuses on large-scale land deals, community-enterprise agreements are not necessarily confined to transfers of land rights. In fact, Articles 12.2 and 12.6 of the Voluntary Guidelines call for considering investments that involve partnerships supporting local farmers, rather than large land deals. For example, local communities may be involved in the investment project as suppliers, selling farm produce to the enterprise for the enterprise to process and sell, or even as shareholders, holding an equity stake in the company and representation on the company board (see for instance Vermeulen and Cotula, 2010; Djiré *et al*., 2012; Mujenja and Wonani, 2012).

Because of the focus of this research, all the case studies embody land deals. But some also involve various kinds of partnerships that have been, or may be, negotiated with local farmers. For example, Mali-1 was going to involve an outgrower scheme, though the foreign investor has since pulled out of the project. Similarly, the contract for Laos-1 refers to the possibility (so far unfulfilled) of establishing an outgrower scheme, in which case the enterprise would need to provide farmers with seedlings, input and training and to source produce from those farmers.

The Laos-1 enterprise has developed an 'intercropping' scheme, in recognition of the fact that some members of the community have lost farmland to the project (as identified by the EIA). The intercropping scheme allows rice to be grown and harvested between the rows of trees in the plantation. The enterprise is required to

20. For anecdotal evidence of this in Ghana, see Cotula (2013).

provide communities with the first lot of seeds to be used and the local village council decides which village members use which areas of land on the plantation for their rice.[21]

Host governments can take action to promote investment models that minimise land acquisition and involve collaboration with small-scale farmers in the project area. For example, as already mentioned governments could require feasibility studies to investigate the viability of these models and thoroughly to justify requests for land. For this type of requirement to work, governments would then need rigorously to scrutinise the feasibility studies submitted by companies.

3.3. Relations with brokers and intermediaries

The relations that link an enterprise to the host government and to local actors are often mediated by a diverse range of brokers and intermediaries. These intermediaries may help the enterprise to obtain high-level political support, navigate administrative procedures or reach out to local communities. They may do this in return for an honorarium (effectively acting as service providers to the project), an equity participation in the project or other benefits that the venture may bring (for example, enhancing their own reputation). The role of intermediaries is still little documented, and presents grey areas and problematic issues. Understanding the nature, role and relations of these players is critical in identifying pressure points to promote implementation of the Voluntary Guidelines.

A first dimension to this is the close relations that may exist between enterprise staff or owners on the one hand, and host government officials or politicians on the other. In Ethiopia-1, there have been close relations between the enterprise and the government. For example, the executive director of the enterprise used to have a prominent role in government as a State Minister for Capacity Building (Addis Fortune, 2011). Close relations between the enterprise and host government politicians or officials may be valued by the enterprise, because they can provide benefits in terms of networks and know-how for navigating the regulatory context. If not properly regulated, however, these relations could also create conflicts of interest and result in government decisions that are not best aligned with the public interest.

A second dimension concerns the involvement of third parties as brokers, facilitators or intermediaries. Little empirical evidence is publicly available that can shed light on the nature and role of these players. But interview data and some publicly available reports provide some glimpses.

For example, Laos-1 company officials indicate that a local contractor – a manufacturer of wood products – played a key role in initiating the project and navigating through the administrative procedures necessary to set up the project.

21. Interview with a Laos-1 company official, June 2013.

Without this local expertise and contacts, the project may not have been able to go ahead. The contractor worked on this project for over two years, while the Laos-1 enterprise awaited its foreign investment licence and the finalisation of the Project Development Agreement with the host government.[22]

In Sierra Leone-1, a number of brokers are reported to have been involved in establishing the enterprise. A Sierra Leonean parliamentarian for the area in which the enterprise has leased land, who is a member of the ruling party, has reportedly described himself as the 'bridge' between his people and the enterprise (according to Oakland Institute, 2011).

In addition, a country representative of the enterprise was reportedly thanked by the President of Sierra Leone because his 'friendship with the CEO, lasting over twenty years, has led to this investment' (Sierra Express Media, 2010a). Also in Sierra Leone-1, local landowners and chiefdom councils were assisted by a local law firm during land deal negotiations in order to ensure their 'rights [were] secured' (ABSL, 2011). The lawyer that ran this law firm was later appointed Attorney General and Minister of Justice (Sierra Express Media, 2010b).

The interface between an enterprise and its brokers and intermediaries can provide pressure points through which to support implementation of the Voluntary Guidelines. Brokers and intermediaries may belong to a regulated profession. For example, the legal profession is usually governed by the law society in the relevant jurisdiction. Lawyers are typically bound by a code of conduct, which they have to abide by in order to retain their practising certificate. Codes of conduct differ from country to country, but generally the duties imposed upon a lawyer include a duty to act in the best interests of their clients, a duty of confidentiality to their clients, and mechanisms to manage potential conflicts of interests. The professional body under which lawyers practise have the power to revoke a lawyer's practising certificate if the code of conduct is contravened.

It is worth noting that the Voluntary Guidelines specifically call on 'professionals who provide services to States, investors and holders of tenure rights to land to undertake due diligence to the best of their ability when providing their services, irrespective of whether this is specifically requested' (Article 12.13).

Pressure points vis-à-vis less regulated brokers and intermediaries are more limited. This is particularly the case where individuals are not operating in a professional capacity and where no criminal offence is involved that could be prosecuted. In the case of politicians, depending on the national political space, democratic mechanisms can be leveraged to prevent or sanction abuse of power. Transparency and public scrutiny are particularly important in these contexts.

22. Interview with a Laos-1 company official, June 2013.

3.4. Key insights

The land deals examined for this research embody complex relations between the enterprise, the host government and local communities. Key features of these relations vary considerably based on national legislation (such as whether land is nationalised or privately owned), socio-political context and corporate policies, among other factors. But there are also recurring features, including the involvement of brokers and intermediaries in facilitating those relations, and the complexities linked to differentiation of interests and negotiating power within the same stakeholder group (such as between different government departments, or within local 'communities').

Relations between an enterprise and government, an enterprise and communities, and government and communities offer numerous pressure points for public action to implement the Voluntary Guidelines. Governments are the key players in regulating investment, both in home and host countries, and they are the key audience for the Voluntary Guidelines. Governments play a crucial role in designing national development strategies and national regulation. They also play a more direct role in land deal making, as most of the deals reviewed involved some form of contract with the host government.

The nature of this more direct role varies depending on whether the government allocates the land to the enterprise directly, or whether it helps the enterprise to access land from private individuals, local communities or customary authorities. It also varies depending on whether government action responds to a concerted strategy to promote large land deals (see, for instance, the 'calls for investors' in Mali and Ethiopia, and the 'hands on' involvement of the Malian government in Mali-1), or whether governments act in a reactive mode to proposals from investors.

The multiple roles of governments in land deals – from strategy formulation, to regulation, through to the negotiation of individual deals – highlight the critical role that the host government can play in implementing the Voluntary Guidelines. This role has repercussions for all key principles underlying the Voluntary Guidelines in relation to agricultural investments – from supporting investments by, with and in smallholders, through to ensuring transparency, protection of legitimate tenure rights and community consultation.

Socially differentiated 'communities' have been actors in some deal making, particularly where they own the land under national law. Where customary authorities negotiate with enterprises on behalf of their constituents, mechanisms to ensure their downward accountability are critical in the pursuit of the policy objectives outlined in the Voluntary Guidelines – particularly protection of legitimate tenure rights and community consultation and participation.

Examples of public action leveraging pressure points in relations between the enterprise, the host government and local communities include:

- **Participatory development and implementation of a shared national strategy** for agricultural development, with the active involvement of key stakeholders including federations of producer organisations, so as to inform decision making on what investment models to promote, by whom, where and how;
- Mechanisms to carry through these strategic directions, such as **participatory land use planning** or **regulation and scrutiny of feasibility studies** (that is, requiring feasibility studies to consider options alternative to large-scale land acquisition, including partnership models, and effective government scrutiny of feasibility studies submitted by companies);
- **Transparency** in the management of public lands and of investment processes, including through disclosure of investment contracts; action to improve the **downward accountability of government officials and customary authorities**; mechanisms to regulate possible conflicts of interest, for example where host government officials hold equity stakes in the enterprises that acquire land; and public scrutiny of compliance with prescribed rules and procedures;
- **Strong rights to land and natural resources** vested with local communities; robust local consultation requirements, including free, prior and informed consent for indigenous peoples; and opportunities for local voices to be heard throughout investment decision-making processes (such as through meaningful decentralisation of rights, powers and responsibilities);
- Comprehensive legal requirements and effective public scrutiny of **social as well as environmental impact assessments**, rigorous monitoring of compliance with social and environmental management plans, and sanctioning of non-compliance;
- **Regulation of land acquisition by foreign investors**, including new legislation and authoritative interpretation of existing laws (as was done in Brazil), and **calibration of land rental fees** and fiscal regimes in ways that discourage speculative land acquisitions and promote investment models that are less land intensive;
- **Effective and accessible remedies** for affected people, including courts and company grievance mechanisms, and use of opportunities for public scrutiny and input in the settlement of investor-state disputes (such as international arbitration);
- **Leveraging of pressure points** to influence the conduct of brokers and intermediaries, including, in the case of regulated professions, through synergies with professional bodies (for instance, working with law societies to promote proper conduct and accountability in the legal profession), and through transparency and public scrutiny to discourage improper conduct;
- **Capacity support** for governments to govern investment processes effectively, for communities to analyse, deliberate and negotiate, and for intermediaries to perform their professional responsibilities.

4. Relations with business partners

In any given venture, the enterprise will have multiple 'business partners'. These actors may provide lending to the enterprise or its parent company, they may supply a wide range of services to the enterprise, or they may buy the enterprise's produce. The relationships that exist between these partners and the enterprise can have significant ramifications for the nature and outcomes of investments, and can offer important pressure points for public action to implement the Voluntary Guidelines. While an enterprise can have a wide range of different types of partnerships, this chapter focuses on lenders, service providers and buyers – recognising that these are the dominant types of partners in the deals reviewed.

4.1. Lenders

As explored briefly in Chapter 2, lenders are upstream actors in the investment chain, and they play an important role in making an investment project possible. First and foremost, lending provides the capital needed to finance the operations. But compared to lending mediated by stock markets (for example, in the form of a company's issuance of bonds), lenders that provide finance to a specific project tend to take a more 'hands on' approach to managing their loans.

These lenders are likely to carry out thorough due diligence on the project. They can also offer support or backing in the enterprise's negotiations with government – or with other lenders (as stated, for instance, in the Sierra Leone-1 enterprise-government contract). Indeed, the profile of the lenders, and the standards they attach to their lending, can offer a degree of financial and reputational security about the project both to the government and to other prospective lenders.

Lenders do not own equity in the project (though some banks do provide equity investments – see Chapter 2). They are therefore outside the corporate structure. But they can exercise significant leverage on the project. This is not only because of the funding they provide to that project. The involvement of a multilateral development bank is widely perceived to reduce political risk: the host government is thought to be less likely to expropriate the project, for example, if a multilateral lender is involved. This can allow lenders to have considerable leverage – companies may accept to comply with the lender's standards even if the amount of lending is relatively small.

Also, companies may need to access financing from a lender for future projects too. This 'repeat custom' effect can enable lenders to retain leverage over a project even after the loan has been partly or fully repaid – for example, to ensure that the project continues to comply with lender standards. Multilateral lenders can exercise significant leverage vis-à-vis host governments as well, especially where they fund multiple projects in the host country.

A single project may receive lending from multiple institutions, and these institutions may adopt diverse policies and approaches. In the case of Sierra Leone-1, for example, the venture received lending from several European development banks – including a regional development bank and government owned and/or funded institutions based in Germany, the UK, Belgium and South Africa (ABSL, 2013; see Figure 7). As discussed in Chapter 2, the project also involved equity investments by public development finance institutions in Sweden and the Netherlands. Arguably, the fact that the project aims to export renewable energy to the European Union may have been a consideration in the lending and investment decisions of these banks.

Lenders can influence the design and implementation of the investment. So the presence and identity of lenders can shape opportunities to implement the Voluntary Guidelines. In Mali-1, for example, the involvement of a regional development bank resulted in the development of more thorough social and environmental impact assessments and management plans, and in important changes to project design – namely, through the use of a significant part of the leased land area for an outgrower scheme rather than for the plantation (Djiré *et al.*, 2012). The plurality of lenders (as in Sierra Leone-1) increases the number of possible pressure points, but it can also dilute the influence of an individual lender over the project. However, lenders often act together as consortia, which would increase their overall leverage over the project even where lending is very fragmented.

There are many different types of lenders, and the nature of the lender can have important repercussions for the pressure points that could be used to implement the Voluntary Guidelines. A first distinction is between large and small lenders. Another is between international lenders and lenders that are primarily active in one country. Mali-1 and Sierra Leone-1 involved consortia of large international lenders. Brazil-1, a deal led by a Chinese state-owned enterprise, received lending from a state-owned development-oriented bank based in China (Dim Sums, 2011). But national lenders may be involved too, especially in deals led by local nationals. For example, Mali-2, a project led by a Malian national, involved lending from a national agricultural development bank (L'Indépendant, 2009). In turn, this bank is owned by the Malian government and by public and private lenders in Mali and overseas.

Ownership (state or private) and orientation (from purely commercial to development aims) are also important considerations. Multilateral development banks are more likely to have established institutional policies and performance standards to manage social and environmental risks.

Examples include the Performance Standards developed by the International Finance Corporation (IFC), and the comparable documents established by regional development banks including the African Development Bank, the Inter-American Development Bank and the Asian Development Bank. Projects that receive financing from one or more of these institutions would need to apply the relevant performance standards in order to receive and maintain financing (as was the case in Mali-1 and Sierra Leone-1).

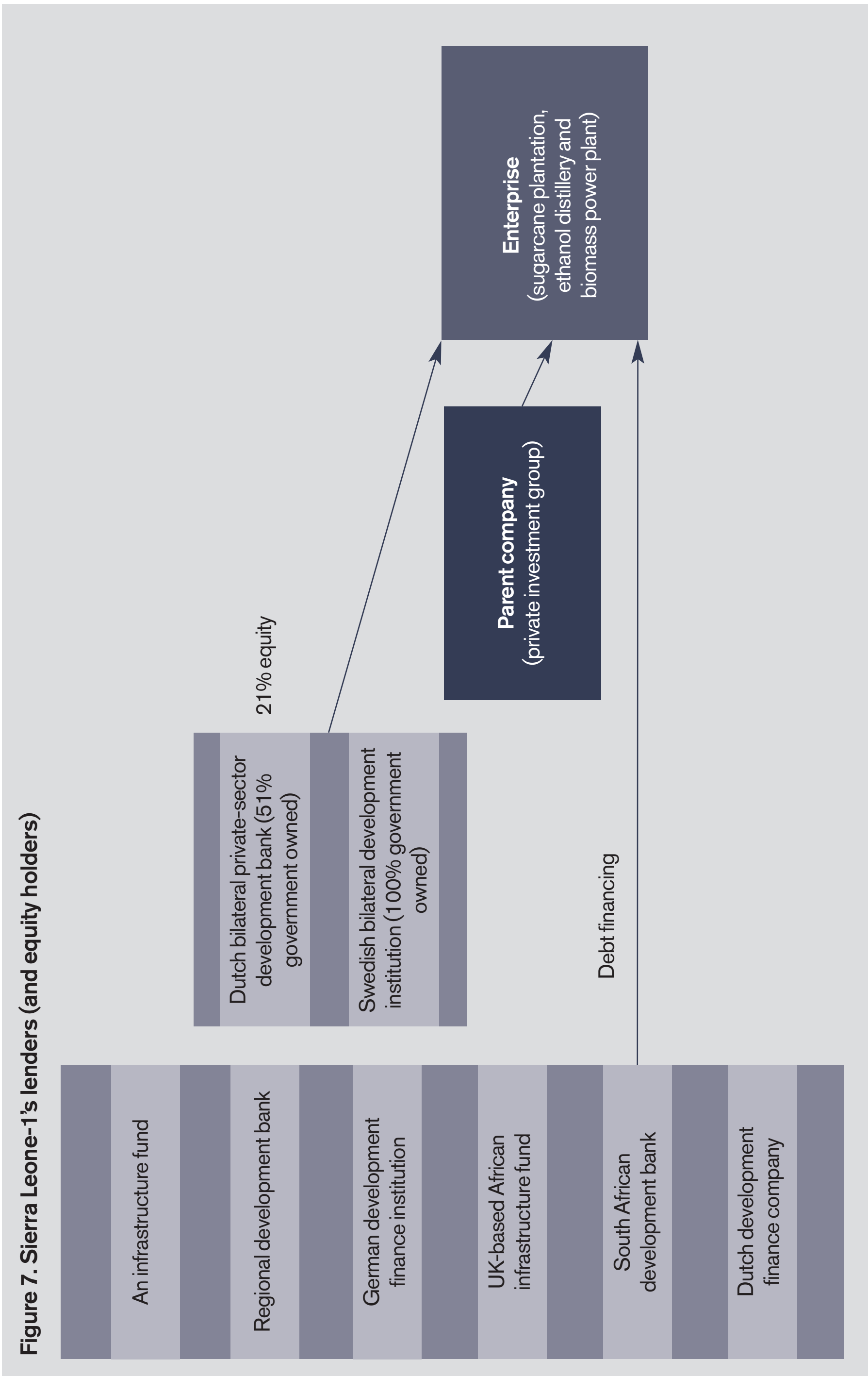


Figure 7. Sierra Leone-1's lenders (and equity holders)

Many commercial lenders have also established their own internal safeguards and procedures, which clients would need to comply with. A number of major banks have subscribed to the Equator Principles, which provide an international benchmark for the internal policies of the signatory banks (see Box 4).

Some banks have established grievance mechanisms that provide opportunities for affected people, and for groups supporting them, to bring claims that the project has not complied with the lender's standards. Again, multilateral lenders provide a good illustration (see for instance the Compliance Advisor/Ombudsman (CAO) of the IFC, and similar institutions in regional development banks). Some recent complaints to the IFC CAO involve agribusiness ventures and land acquisitions, albeit indirectly.[23]

Finally, the involvement of certain lenders can significantly increase transparency on the project. Some multilateral lenders disclose on their website basic information about the project, key project documents (such as impact assessments) and documents about grievance procedures.[24]

It is also worth noting, however, that many other lenders pay much less attention to social and environmental safeguards, and many do not have grievance procedures in place. In these cases, the potential for leveraging the lender's influence to promote implementation of the Voluntary Guidelines may be more limited.

Box 4. IFC Performance Standards, the Equator Principles and the Voluntary Guidelines

The **IFC Performance Standards** contain several provisions that can help to implement some of the principles embodied in the Voluntary Guidelines, particularly with regard to protection of all legitimate tenure rights, to impact assessments and to local consultation.

Performance Standard No. 5 on Land Acquisition and Involuntary Resettlement calls for the minimisation of involuntary resettlement, with preference to be given to negotiated settlements over compulsory takings. It also calls for the improvement or at least restoration of livelihoods of the affected people to pre-project levels, through compensation at full replacement cost and additional assistance as required, and for suitable systems to deal with grievances.

When indigenous peoples are affected, IFC Performance Standard No. 7 on Indigenous Peoples requires IFC clients to seek free, prior and informed consent for projects that involve relocation of indigenous peoples; that impact on lands and resources subject to traditional ownership or customary use; or that may significantly impact on critical cultural heritage.

While there is much convergence between IFC standards and the Voluntary Guidelines, there are also differences. Unlike the Voluntary Guidelines, for example, the IFC standards make no reference to considering investment models that involve partnerships with local producers.

The **Equator Principles** are a voluntary 'baseline and framework' developed by commercial lenders as a benchmark for their own internal social and environmental

23. See, for instance, www.cao-ombudsman.org/cases/case_detail.aspx?id=79.
24. See, for instance, www.afdb.org/en/projects-and-operations/project-portfolio/ and www.cao-ombudsman.org/cases/.

policies, procedures and standards. Following a revision in 2012, the Equator Principles apply to operations financed through certain types of project-based lending that meet specified criteria, including: project-finance transactions with total project capital costs of US$10 million or more;[25] and project-related corporate loans meeting specified criteria (such as a total aggregate loan amount of US$100 million or more).

The Equator Principles are relevant to the implementation of the Voluntary Guidelines because they call for social and environmental impact assessments, the application of specified social and environmental standards (which would affect the protection of legitimate tenure rights, for example) and culturally appropriate engagement with affected communities.

Ensuring that the provisions of the Voluntary Guidelines are fully reflected in existing lender standards would be an important step towards implementing the Guidelines. In April 2013, the World Bank publicly endorsed the Voluntary Guidelines (World Bank, 2013). It also announced that it would review and update its environmental and social safeguards policies via a multi-stakeholder process, which will be informed by the content of the Voluntary Guidelines. There are other similar opportunities for synergies between lender strandards and the Voluntary Guidelines, as discussed in more depth in the conclusions.

4.2. Buyers

Under certain circumstances, the buyer(s) of the commodities produced by the enterprise can have significant influence over the activities of the enterprise. In fact, the presence of a buyer that commits to specific purchases prior to the development of a project can be a consideration in the decision as to whether to invest in the venture, or whether to expand it in future. Having a committed buyer can also offer a degree of security to the investment; it can thus help to attract new investors (or maintain existing ones), and help to foster the support of government.

Some buyers require suppliers to comply with specified standards, and buyers themselves can be held accountable for the indirect impacts of their purchases. The extent to which buyers can influence the enterprise depends on a variety of factors, including the volumes purchased, the terms applied and the presence of other buyers. High levels of concentration among traders, processors or retailers can give buyers significant leverage over their suppliers.

Finally, the geographic location of the buyers can affect applicable rules and standards – the country where buyers are based may enact rules and standards that imports must comply with. For example, the European Union (EU) has adopted renewable energy sustainability criteria for biofuels sold in the European Union, which enterprises targeting European markets would need to comply with (for instance, Sierra Leone-1).

25. Project finance is a method of funding in which the lender looks primarily to the revenues generated by a single project, both as the source of repayment and as security for the exposure.

Until recently, buyers received less attention than they deserve in international debates about ways to promote implementation of the Voluntary Guidelines. This is now changing, and NGOs are stepping up advocacy efforts that explicitly target buyers. Examples include Oxfam's 'Behind the Brands' campaign, which included public petitions to major sugar buyers to 'make sure their sugar doesn't lead to land grabs'.[26] In response to an NGO report that linked sugar consumption to large-scale land acquisitions for sugarcane cultivation (Oxfam, 2013), Coca-Cola committed itself to 'zero tolerance' for 'land grabbing', and to requiring that its suppliers adhere to the principles embodied in the Voluntary Guidelines (The Guardian, 2013).

Cambodia-1 illustrates the multiple transnational routes that people affected by land deals have been pursuing vis-à-vis buyers, with the support of NGOs, in order to promote respect for land rights – a key part of the Voluntary Guidelines – and to obtain redress for perceived violations. In 2013, villagers filed a lawsuit against a UK buyer before the courts of England and Wales. A mediation procedure, now closed, was also initiated vis-à-vis a US-based buyer before the US National Contact Point responsible for overseeing compliance with the OECD Guidelines for Multinational Enterprises. The companies deny any wrongdoing.[27]

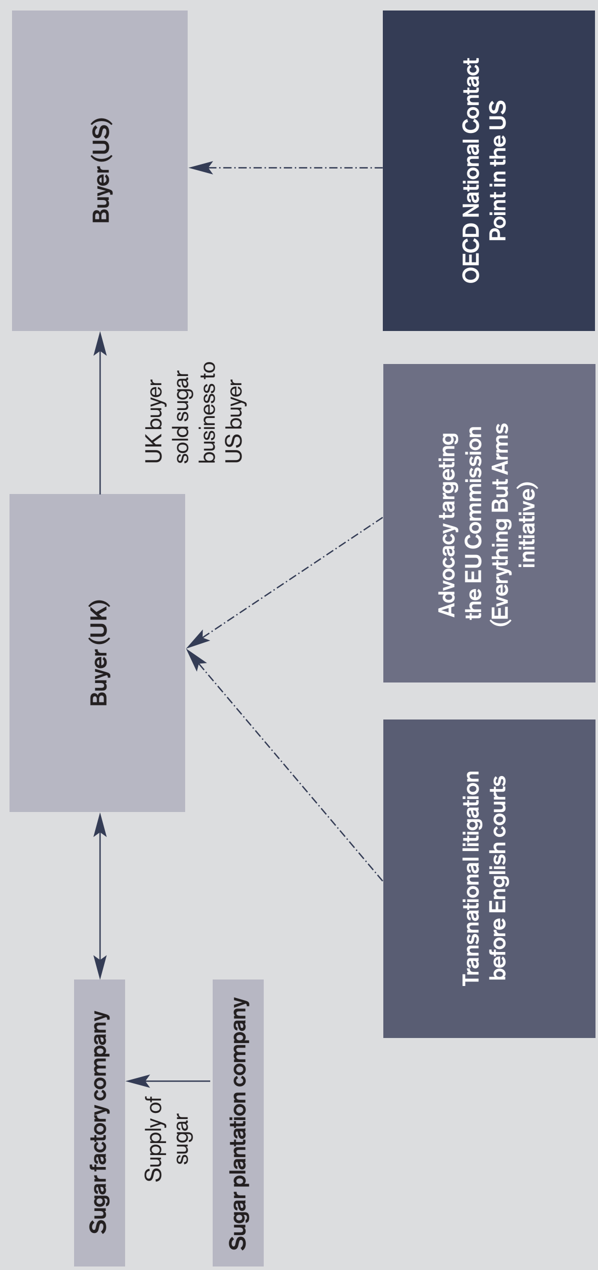
Because sugar produced in Cambodia is exported to the European Union under the preferential 'Everything But Arms' (EBA) trade arrangement (see Box 5), campaigners have taken alleged violations of the land rights of people affected by sugar cane developments in Cambodia to the European Commission, calling for an investigation and for the suspension of EBA benefits to sugar imports from Cambodia.[28] As a result of civil society advocacy, the European Parliament called on the European Commission to investigate the Cambodian government's practice of issuing economic land concessions, and to suspend EU trade benefits to Cambodian firms currently exporting sugar to Europe should human rights abuses be found.[29] The Commission has raised the matter with Cambodian authorities at the highest level, but has so far refrained from initiating a full investigation.[30]

Box 5. Leveraging trade law to protect land rights

The 'Everything But Arms' (EBA) initiative is a unilateral scheme of trade preferences for least developed countries established by the European Union as part of its wider Generalised System of Preferences. A Generalised System of Preferences is a regime that a country can establish unilaterally to provide trade preferences for developing countries (Bartels, 2007). Under the EU EBA, imports from least developed countries are free of duties and quotas, with the sole exception of armaments.

26. See www.behindthebrands.org.
27. Information about these cases is available at www.business-humanrights.org/ and http://oecdwatch.org.
28. Between 2012 and 2013, a consortium of NGOs including international and Cambodian organisations wrote three letters to the European Commissioner responsible for trade, citing findings from reports by the UN Special Rapporteur on the Situation of Human Rights in Cambodia.
29. Resolution of the European Parliament of 24 October 2012, Doc. RC\916979EN.doc, available at www.boycottbloodsugar.net/wp-content/uploads/2013/01/Cambodia-EP-resolution-26-October-2012.pdf, para. 6.
30. Interview with an international NGO officer, November 2013.

Figure 8. Cambodia-1's investment chain (downstream), with relevant pressure points



EU legislation empowers the European Commission to suspend these preferences, in whole or in part, including in cases where an investigation documents 'serious and systematic violations' of internationally recognised human rights (Article 15 of EU Regulation No. 732 of 2008, applicable until 31 December 2013; and Article 19 of EU Regulation No. 978 of 2012, applicable from 1 January 2014).

The European Commission has rarely used these powers (examples include Myanmar in 1997, Belarus in 2007 and Sri Lanka in 2010), partly due to sensitivities about the use of trade sanctions against partner countries and to concerns about legality of measures under the rules of the World Trade Organization (APRODEV, 2012).

The European Union has also concluded numerous bilateral or regional preferential trade agreements that include human rights clauses – allowing the withdrawal of benefits under the agreement if the other state commits human rights violations (see Bartels, 2012). These clauses have been activated on a number of occasions, though usually in connection with military coups or electoral fraud. In legal terms, human rights violations connected to large land deals would also qualify, but as yet there have been no cases where trade benefits have been suspended in connection with large-scale land deals.

Figure 8 provides a synopsis of some of the pressure points that have been leveraged in connection with sugarcane developments in Cambodia.

It is worth noting that buyers may include not just commercial players, but also government agencies. In Sierra Leone-1, the government of Sierra Leone is a buyer of a share of the power generated by the biomass power plant. Indeed, the MoU between the enterprise and the host government, examined by the authors, requires the latter to enter into a 20-year Power Purchase Agreement with the enterprise. It has been estimated that the project will supply 'approximately 20%' of Sierra Leone's national grid (Awoko, 2014).

Business partnerships between the enterprise and the host government may help the project to go ahead, for instance by offering some security of demand for the company's produce. But they could arguably raise concerns about possible tensions between the government's multiple roles (as public-interest regulator and business partner).

4.3. Contractors

In agribusiness projects, many important activities are carried out by contractors rather than the enterprise itself. This may include, for example, the conduct of feasibility studies (Laos-1) and of impact assessment studies (Cameroon-1; Ethiopia-1; Laos-1, where the impact assessment process involved a consultancy firm and associated a UN agency; and Sierra Leone-1); clearing and planting operations (Cameroon-1); construction services (Brazil-1, where construction of the processing facility was led by a Brazilian contractor); the provision of seedlings, farm input or technical assistance (Sierra Leone-1); or the provision of management services to run the venture.

Several of these functions have a direct bearing on the implementation of the Voluntary Guidelines. For example, feasibility studies can shed light on whether investment models that include small-scale producers would be commercially viable; impact assessment studies are critical in ensuring that social and environmental risks are properly factored in; and land clearance operations can directly affect respect for legitimate tenure rights.

In fact, contractors may carry out tasks that are directly at the community interface – and in this sense there is an overlap with the intermediaries discussed in Chapter 3. For example, the Laos-1 enterprise contracted a specialised forestry firm to undertake the feasibility study and run the pilot stage of the project. The contractor is ultimately owned by a Swedish company, but includes both Lao and Swedish expertise and is grounded in Laos (WWF, 2012). The contractor was tasked with making contact with local government authorities and with village communities; collecting data on the project site; and commencing pilot plantations on selected sites (UNDP, 2010).

The involvement of contractors can add significant complexity to the investment chain. This is the case in terms of the web of contractual relations associated with the project. But it is also the case in terms of geographic spread, because a venture can involve contractors based in different parts of the world. This also applies to land deals led by local nationals. As discussed, Ethiopia-1 is led by a national investor, and even though the ultimate owner has dual nationality the enterprise is best understood as a venture rooted within Ethiopia. But the enterprise is reported to have contracted the services of Pakistani consultancy firms for the conduct of the environmental impact assessment (Bloomberg, 2012).

As discussed, the Voluntary Guidelines call on professionals providing services to states, investors and local landholders to undertake due diligence to the best of their ability when providing their services (Article 12.13).

4.4. Third-party sustainability certification schemes

A number of the cases analysed for this research have achieved certification relating to sustainability (Sierra Leone-1),[31] or have demonstrated aspirations to do so (Laos-1, for example).[32] Strictly speaking, certifiers are not business partners of the enterprise. But they perform functions that can affect important aspects of the business, particularly market access.

The impetus for obtaining certification can stem from the enterprise and its investors directly (because it may make business sense), or via buyers who may require their products to be sustainably sourced. Legislation can also play an important role in promoting uptake of certification. This is illustrated by the Sierra Leone-1 case. In

31. ISEAL (2011).
32. Interview with a company official, June 2013.

February 2013, this venture became the first biofuel operation in Africa to be certified by the Roundtable on Sustainable Biomaterials, RSB (RSB, 2013).

Sierra Leone-1 aims to produce ethanol for the European market, and European legislation creates powerful incentives for certification. The EU Renewable Energy Directive of 2009 states that only biofuels produced according to specified sustainability criteria can count towards meeting the renewable energy consumption target established in the Directive (Article 17). Biofuels that do not comply with the criteria can be exported to the EU, but may be less attractive to buyers. In 2011, the European Commission recognised that an adapted version of RSB certification would certify the biofuels as sustainable under the terms of the EU Directive (ISEAL, 2011). Therefore, for Sierra Leone-1, RSB certification appears to have been important for market access purposes.

Third-party sustainability standards and certification schemes can offer a useful pressure point by which to support the implementation of the Voluntary Guidelines. This pressure point exists both at the project design and implementation phases, with several certification schemes embodying standards relating to the protection of land rights.

In the case of Forestry Stewardship Council (FSC) certification, which Laos-1 is aiming to obtain for its plantations, producers who wish to become certified have to (amongst many other requirements) 'recognize and uphold the legal and customary rights of indigenous peoples to maintain control over management activities within or related to the Management Unit to the extent necessary to protect their rights, resources and lands and territories. Delegation by indigenous peoples of control over management activities to third parties requires Free, Prior and Informed Consent' (FSC, 2013:14).

This provision supports the references in the Voluntary Guidelines to the protection of all legitimate tenure rights, and to obtaining the free, prior and informed consent of indigenous peoples. Ensuring that prevailing sustainability standards, including those that can affect entry to large consumer markets (like the European Union), are in line with the Voluntary Guidelines would give significant support to implementing the Voluntary Guidelines.

Third-party sustainability standards and certification schemes can also offer a pressure point as a means of recourse if the investment fails to meet the standards specified. Indeed, many certification schemes have grievance mechanisms or dispute resolution facilities embedded within them, which stakeholders can utilise to hold certified companies to account. Certification bodies can sanction companies if they fail to ensure ongoing compliance with the standards, which can ultimately result in companies losing their certificates. This could pose both a reputational risk and ultimately a financial risk for companies if buyers or investors withdraw as a result.

In the case of Cameroon-1, civil society organisations lodged a complaint with the grievance facility of the Roundtable on Sustainable Palm Oil (RSPO). The parent company had applied for RSPO membership. The complaint alleged, among other things, that the company had not provided information and ESIA documents to communities, as required under the transparency requirements of the standard, and that operations had been initiated without an approved ESIA (Pro Wildlife *et al*., 2012). The company denied the allegations but withdrew its application for RSPO membership (Reuters, 2012). This development may affect its market access, but it also illustrates the limited leverage that certification initiatives may have, as buyers can simply withdraw.

While sustainability standards have traditionally been applied to developed country investors, they are increasingly being applied to emerging economy investors too (Blackmore *et al*., 2013). For example, Chinese investors operating in Brazil are increasingly applying international standards to their operations (such as FSC and ISO 26000), but home governments are also developing their own national standards to apply to overseas investment and production. This includes the Guidelines on Environmental Protection for China's Outbound Investment and Cooperation, which were launched by the Chinese government in 2013 (Blackmore *et al*., 2013).

While these are currently 'guidelines' rather than standards against which investors can become certified, some aspects overlap with and support the Voluntary Guidelines (such as the need to carry out environmental impact assessments) and they offer civil society groups (and host governments) a new source of leverage for holding Chinese companies responsible for their environmental and social impacts overseas.

4.5. Key insights

In any given venture, the enterprise will have multiple business partners, including lenders, service providers and buyers. Similar to relations within the corporate structure and with government and communities, relations with business partners highlight the polycentric nature of the investment chains that underpin large land deals.

Rather than a linear flow of relations, investment chains involve complex webs of relations that are dispersed both geographically and functionally. The relationships that exist between the business partners and the enterprise can have significant ramifications for the nature and outcomes of investments, and can offer important pressure points for efforts to implement the Voluntary Guidelines. The channels and modalities for this vary depending on the type of business partnership.

Lenders present significant potential for promoting implementation of the Voluntary Guidelines. As with investors that have an equity stake in the project, lenders may have to abide by a number of principles and standards when making financing decisions and monitoring implementation. They may in turn require that the recipients of their loans meet certain requirements in order to receive financing, some of which may overlap with the Voluntary Guidelines; for example, carrying out a thorough social and environmental impact assessment, applying international social and environmental standards, or respecting local land rights. Periodic reviews of lender standards offer opportunities for ensuring that these standards fully reflect the principles embodied in the Voluntary Guidelines.

Where lenders can exert significant leverage, they may also be able to influence important aspects of the core business model – including, for example, by reducing the plantation area and introducing an outgrower scheme, as was done in Mali-1.

Grievance mechanisms established by lenders can also offer a means of recourse, particularly for affected villagers and civil society, if lenders' requirements are not met. Therefore, where lender standards and the Voluntary Guidelines converge, lenders can offer an additional accountability mechanism in the implementation of the Voluntary Guidelines. The involvement of certain lenders can also increase transparency on the project, which can improve opportunities for civil society to hold investors to account on key aspects of the Voluntary Guidelines.

The **buyer(s)** of the commodities produced by an enterprise can have significant influence over the activities of the enterprise. Some buyers require suppliers to comply with specified standards, and buyers themselves can be held accountable for the indirect impacts of their purchases. The geographic location of the buyers can affect applicable law and standards. Trade law arrangements can provide an entry for scrutiny, for example where NGOs have called on governments in target markets to suspend trade preferences on exports originating from countries where land deals are contested. There is growing experience with these channels for influence, and building on this experience would support efforts to implement the Voluntary Guidelines.

There are other types of business partnerships too, and they may provide additional entries. **Contractors** can have a direct bearing on implementation of the Voluntary Guidelines, for example where they are offering services concerning environmental impact assessments. They have a responsibility to carry out due diligence before engaging with enterprises, which arguably should include key social and environmental risks relevant to the Voluntary Guidelines.

While not a business partner per se, **third-party certification schemes** can play an important role in the enterprise's business model. Some sustainability standards overlap considerably with aspects of the Voluntary Guidelines. So certification schemes can offer an additional pressure point for the implementation of the Voluntary Guidelines, and an avenue for accountability through grievance mechanisms. Again, promoting alignment between certification standards and the Voluntary Guidelines can help promote the implementation of the Voluntary Guidelines.

5. Conclusions and ways forward

5.1. Why adopt an 'investment chains' approach?

This report has mapped the multiple and complex relations that characterise the investment chains underpinning large land deals in low- and middle-income countries. The research has shown that each deal involves encounters between a plurality of different players that may be spread over multiple geographies, from local to global arenas. Large land deals may ultimately involve, for example, mediated relationships between local landholders in Africa or Southeast Asia, on the one hand, and consumers and savers in Europe or North America, on the other. These relationships are mediated through chains of operators that vary in length – from institutional investors and asset management firms, to the parent company and its subsidiaries, the enterprise, lenders, a wide range of service providers, through to buyers.

While discussions about the role of business in large land deals often imply a relatively homogeneous 'private sector', the analysis of investment chains highlights the great diversity of business entities that may be involved in the deals – from financiers to agribusiness firms, through to various consultants, suppliers and service providers. An understanding of the diverse motivations and incentive structures of these different players, and of the relations and leverage between them, is critical for effective public action to promote implementation of the Voluntary Guidelines.

An example might clarify this point. Globally, the farming sector tends to be very fragmented, with individual companies accounting for very small shares of global production for most key commodities. On the other hand, there is significant concentration in the trading, processing and retailing segments, where major global companies can control vast shares of global production. These downstream players may have recognisable brands vulnerable to reputational damage, and may exert significant leverage over the land-acquiring enterprise. If any efforts to facilitate, say, multi-stakeholder dialogue on how to promote implementation of the Voluntary Guidelines fail to persuade land-acquiring companies to join the process, it might be possible to engage with large downstream players, who could encourage their suppliers to come on board.

Through the analysis of a small sample of land deals, this report has also provided glimpses of the far-reaching transformations that underpin large land deals. These include the trend towards growing vertical integration, whereby companies traditionally focused on processing or trading are taking a more direct role in agricultural production (such as Mali-2). They also include the growing interest in land and agriculture among financial operators, a phenomenon that some commentators have dubbed the 'financialisation' of agriculture (see Anseeuw *et al*., 2011). Several of the deals examined in this report involve close relationships between the world of global finance and developing country agriculture.

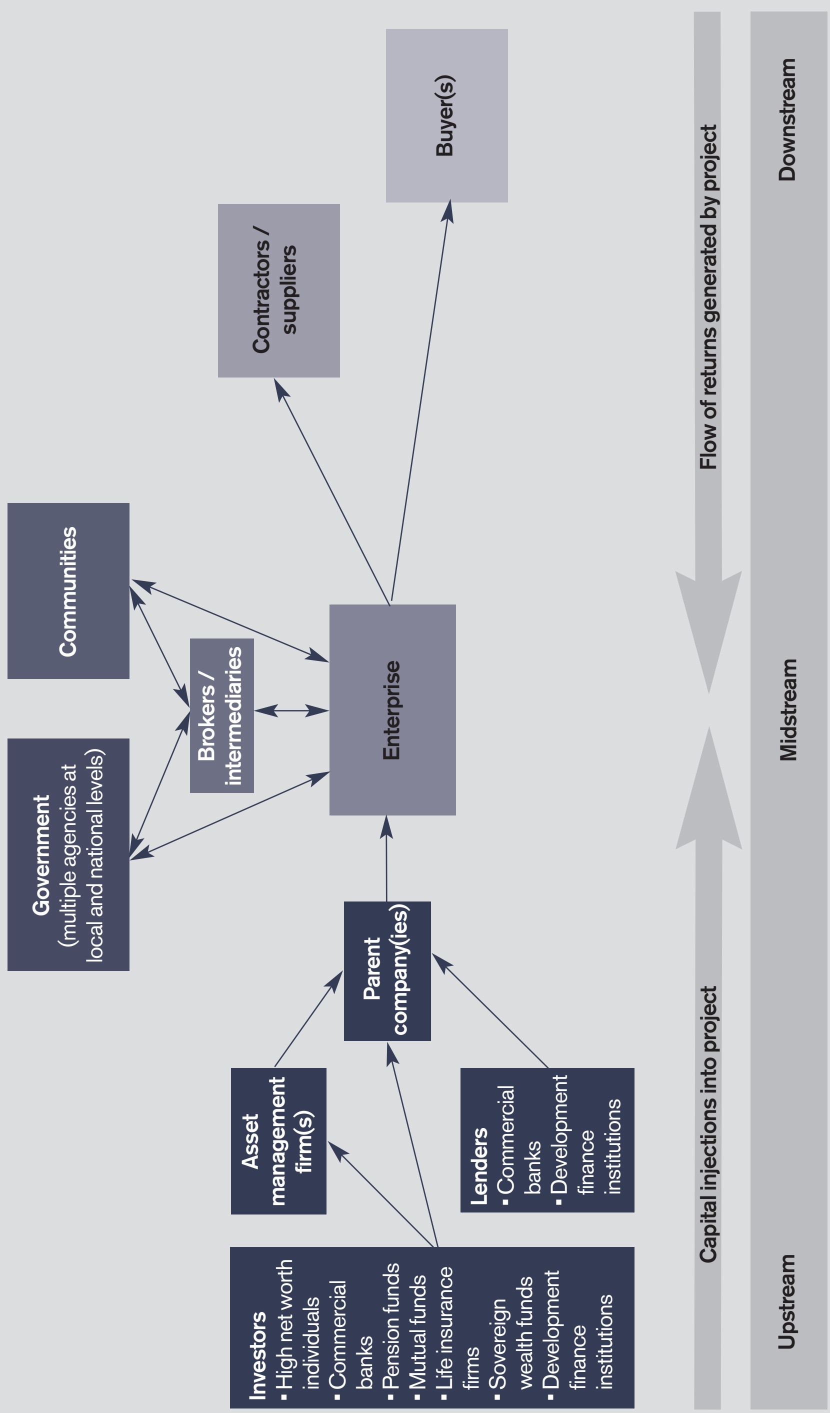
However, it is also important to recognise the great diversity of situations in large land deals, and of the forces that drive these deals. While transnational land deals have attracted much public attention, evidence suggests that, in many countries, a large amount of land has been acquired by local and national elites (for instance see Deininger *et al*., 2011, and Cotula and Oya, forthcoming). Due to limitations in data accessibility, this report could only make limited inroads into understanding the investment chains that characterise these more localised deals. These chains are likely to differ markedly from the chains that pass through the capitals of global finance, but a degree of geographic spread in the investment chain can still arise even in deals that are primarily led by local nationals – as illustrated by the use of foreign contractors in Ethiopia-1.

Relevant pressure points range from the factors that shape the incentive structures of asset managers and enterprise operators, through to the effective implementation of impact assessment and requirements for local participation and consultation. The pressure points can involve 'hard' government regulation targeting critical aspects of investment processes, such as investment codes, land laws, company law norms setting standards of disclosure, and legislation on impact assessments and operating standards. Pressure points can also involve a wide range of voluntary initiatives, such as certification schemes, as well as community and NGO action – as illustrated by examples discussed in this report of transnational litigation and advocacy.

Where actors in a given investment chain are geographically dispersed, pressure points are also spread over distant geographies. The law of multiple jurisdictions may be leveraged, as can different bodies of voluntary guidance targeting distinct operators. These include the Equator Principles for commercial lenders; the OECD Guidelines for Multinational Enterprises, for companies based or operating in countries adhering to these Guidelines; the Principles on Responsible Investment for end investors; or the Roundtable on Sustainable Palm Oil for the palm oil industry.

Importantly, action targeting different segments of an investment chain would require different types of interventions. This is because the players, incentive structures and pressure points are different. Therefore, in discussing practical ways forward, the remainder of this section differentiates between upstream, midstream and downstream segments. This analysis largely overlaps with the way this report is organised (Chapters 2, 3 and 4, respectively), with one important exception: lenders are dealt with together with end investors, given similarities in pressure points (see Figure 9).

Figure 9. A generalised investment chain



5.2. Pressure points upstream: lenders, investors and parent companies

The upstream end of the investment chain is often the least understood part of the chain – particularly where parent companies or investors are not publicly listed companies, or where investments are channelled through multiple countries, including jurisdictions where transparency requirements are limited (such as tax havens).

Yet it is critical to better understand and engage the upstream end of the investment chain, because that is where key parameters for investments are set. Also, lenders and investors may have institutional policies that pursue broadly comparable aims to those reflected in the Voluntary Guidelines; they can have significant leverage over the enterprise; they may be sensitive to reputational risks; and they may provide mechanisms for voicing grievances.

While the Voluntary Guidelines themselves offer limited direct guidance for end investors or lenders, they complement existing guidance that specifically targets those players – such as the Principles for Responsible Investment, which mainly relate to consideration of ESG issues in financial investment processes. A combined application of these multiple standards (with the Voluntary Guidelines providing clarity about what ESG concerns are relevant to agricultural investments involving land deals, for instance) can help to promote the implementation of the Voluntary Guidelines.

A number of considerations are important in relation to the upstream stage of the investment chain. First, the level of integration at this part of the investment chain will affect the number of pressure points available, and the relative influence of each of these pressure points. Second, relationships at this stage of the investment chain are rarely static; shareholders can change with relative ease. Third, investors, lenders and parent companies will be subject to different reporting requirements, depending on the jurisdiction they are based in and whether they are state-owned enterprises, publicly listed companies or privately owned entities. Finally, geography can shape the nature and availability of pressure points – particularly those relating to legal levers that may exist in jurisdictions other than the host state, such as the country where the parent company is based.

What follows is a discussion of possible ways forward for different stakeholders to leverage pressure points in the upstream part of an investment chain. The material covers ground already covered in the substantive chapters of the report. However, presentation of the material by stakeholder category might help to make the action points more concrete and immediate.

Home and host governments

- Host governments play a central role in **shaping investment strategies and policies within their jurisdiction**. For example, the reference in the Voluntary Guidelines to considering investments by, with and in smallholders calls on governments to facilitate the emergence of a shared vision of national development. This vision would provide the basis for decisions on what types of investment to promote, where and how, and a framework within which individual investment projects would fit more coherently than has often been the case.

- Host governments also determine the **design and implementation of regulation governing investment within their jurisdiction**. This would include issues of direct relevance to the governance of the upstream end of the investment chain. One example of this would be scrutinising the upstream segment of the chain, for instance through identifying the corporate structure in an annex to a publicly available investment contract. Another example would be regulating the ways in which companies are allowed to be legally structured, and their public disclosure requirements. Yet another would be discouraging speculative land acquisition, for instance by ensuring that the investor cannot circumvent any restrictions that may apply to transfers of the deal by selling shares in intermediate holding companies.
- Given the geographic dispersion of investment chains, the **home governments** of investors and lenders can also play an important role in **designing and implementing relevant legislation**. With regard to the investor's home country, this role is explicitly recognised in the Voluntary Guidelines (Article 12.15). Home country governments can help to promote transparency, for example through legislation requiring disclosure of information from companies listed or based in the home country. Home country legislation can also clarify that sensible consideration of ESG aspects in investment decisions does not in itself constitute breach of 'fiduciary' or comparable duties, building on legislation already adopted in some jurisdictions. Finally, home country courts and quasi-judicial bodies can provide opportunities for corporate accountability where access to justice in host countries is constrained.

Non-governmental organisations

- National and international NGOs can play – and have been playing – an important role in **scrutinising the upstream end of investment chains**. International NGOs in particular can help with scrutiny and advocacy targeting investors and lenders based in their home country, including against 'Statements of Investment Principles' or equivalent documents developed by institutional investors to guide their investment decisions. By leveraging reputational risk, NGOs can encourage end investors and lenders to apply pressure on the enterprise, reconsider the terms of their financing or even exit the deal altogether. Based on a clear mandate from affected people, NGOs can also help villagers to seek a remedy against parent companies, including through legal challenges in home or host countries.
- Alliances of national and international NGOs can help to **bridge the local and the global** – keeping up to date with developments and impacts of investments on the ground, liaising with local communities, and promoting awareness on investments, investors or lenders in the home countries and internationally. Alliances between locally rooted and internationally oriented NGOs can also help where pursuit of

redress requires action in different countries. It is critical that NGO action responds to grassroots demand, and that the messaging of vocal international NGOs reflects and strengthens the voices of those most directly concerned.

- While much recent NGO action has focused on advocacy for accountability, NGOs can also perform a useful role by helping to **identify and disseminate positive experiences that involve alternatives to large land deals, and facilitating constructive dialogue** with end investors, lenders, agribusiness companies, governments and federations of rural producer organisations on how these alternatives could be upscaled.
- It is important to bear in mind that **NGOs have very different mandates** or raisons d'être, which will affect their specific roles or actions taken – some NGOs may focus on environmental impacts, others on social issues, yet others on transparency or human rights, and some may be concerned with sustainable development in the round. National and international NGOs may have different perspectives and priorities. **The specific approaches of NGOs will also vary** – some may seek to engage constructively with parent companies and/or investors to influence behaviour, others may launch public campaigns against investors to challenge their behaviour.

Donors and multilateral development agencies

- Development agencies can play an important role in **convening stakeholders** and establishing **platforms for dialogue**. This can help to identify entry points to facilitate the implementation of the Voluntary Guidelines, including through workshops to disseminate better practice or improve investor understanding of how implementation of the Voluntary Guidelines can reduce ESG risks.
- Development agencies can also **promote dialogue and collaboration among standard setters** that target end investors, lenders or companies (such as the Equator Principles, Principles on Responsible Investment, OECD Guidelines for Multinational Enterprises and IFC Performance Standards) to ensure integration of the Voluntary Guidelines in applicable standards. They could also identify opportunities for joined-up implementation and monitoring, for instance through raising awareness about the Voluntary Guidelines among the National Contact Points for the OECD Guidelines for Multinational Enterprises, or among the PRI community.
- Donors can **support governments and NGOs by strengthening their capacity** to perform their roles effectively – for example by improving understanding of the upstream segment of the investment chain and how to use pressure points that require specific skills or expertise. They can also **support multilateral agencies** in the dialogue promotion and standard-setting activities outlined above.

Researchers

- There is much that is still poorly understood in the upstream segment of the investment chain. Researchers can help **improve understanding of relations among upstream players**, and the nature and relative effectiveness of multiple pressure points affecting those relations. This can help inform stakeholder strategies to leverage pressure points to promote implementation of the Voluntary Guidelines.

5.3. Pressure points midstream: relations between enterprise, government and communities

The midstream part of any investment chain is very significant, since it is the segment in which relationships are established between an enterprise and the host government, and the enterprise and local communities. It is important to recognise that the nature of these relations varies by country, for example depending on land ownership structure.

Where the government owns the land, it will play a particularly central role in deal making. But even where the land is privately owned, enterprises may develop some form of engagement or relationship with people who use the land. Therefore, large land deals tend to involve multiple relations, more or less formalised, with both government and local communities. The nature and organisation of government also varies in different countries, for example depending on the political space, the degree of centralisation/decentralisation and the relations between the multiple agencies that make up any government. These multiple relationships, the agreements made, and the incentives offered at this stage are central in determining the ultimate outcomes of an investment.

It is also important to recognise the diversity of perspectives that may exist within each category of actor in any given context. Each deal involves multiple government agencies with different mandates and negotiating power within the government. Local 'communities' are typically differentiated and may be divided over an investment project, resulting in patterns of both opposition and cooperation. Also, 'communities' are likely to be affected by an investment in different ways – depending on gender, for example.

Brokers and intermediaries often play an important, if discreet, role in brokering land deals and forging relationships between governments and enterprises or between communities and enterprises.

What follows is a discussion of possible ways forward for different stakeholders to leverage pressure points in the midstream part of an investment chain.

Host governments

- Governments play a vital role in **developing and implementing a strategy for agricultural investment** in their country, as part of that country's wider vision of national development. This strategy should reflect the needs and aspirations of citizens. It would provide the basis for decisions on what types of investment to promote, where and how, and a framework within which individual investment projects would fit more coherently than has often been the case. Experience in some countries where framework legislation on agriculture was enacted with the participation of federations of producer organisations (such as Mali) can be built upon and learned from. The reference in the Voluntary Guidelines to the desirability of supporting investments by, with and in smallholders, including through partnerships with local tenure rights holders, provides an important reference point for these processes.

- Government are well placed to lead action to **ensure that all legitimate tenure rights are duly recognised and protected**, including against arbitrary dispossession in connection with large land deals, as called for in the Voluntary Guidelines. In many countries, this would require stepping up efforts to protect and document rural land rights, including collective rights to land and associated natural resources. Some countries have recently tightened up legal restrictions on land acquisitions by foreign investors.
- Effective government action can help the host country to maximise the **economic benefits obtained from investment.** For example, governments can establish mechanisms for thoroughly scrutinising investment proposals and monitoring ongoing investments; require feasibility studies to explore the viability of investment models that minimise land acquisition and source from local farmers; develop arrangements to strengthen their own capacity in key areas where this is needed (for instance, contract negotiation, financial modelling and scrutiny of feasibility studies); and devise and administer fiscal regimes that minimise incentives for speculative land acquisitions, promote collaborative investment models, and effectively tax profits. Aligning land fees with land values is an important element of these fiscal regimes.
- Governments also have the lead responsibility to ensure that **effective social and environmental safeguards are in place**, including strict local consultation requirements and robust social as well as environmental impact assessments to be carried out before key decisions are taken. Given the major power imbalances that characterise negotiations between the enterprise and affected people, government support for communities is key – as is rigorous scrutiny of impact studies and ongoing monitoring of compliance with social and environmental management plans.
- Where needed, host country regulators can strengthen mechanisms to **regulate possible conflicts of interest**, for example to deal with situations where host government officials hold equity stakes in the enterprises that acquire land.
- More generally, translating the Voluntary Guidelines into real change would require that governments lead a thorough **review aimed at bringing national legislation in line with the Voluntary Guidelines. Governments should also establish clear and transparent roles and responsibilities among different ministries**, and promote effective communication and coordination between ministries.

Community-based and producer organisations

- Membership-based organisations such as community associations and federations of producer organisations can **play an important role in defending**

the rights of their constituents, and **in representing and strengthening their voices.** They can act – and in several cases have already acted – as a convenor and catalyst for collective action, leveraging strength in numbers and unity in communication. Depending on the circumstances, this may involve support for local opposition to proposed investments, through to support for the negotiation of fairer terms of investment.

- Local consultation and impact assessment requirements may provide opportunities for this action, but there is also a need for democratic deliberation before a specific investment project reaches a local community. So at local and national levels, rural producer organisations are a **key player in the development of a shared vision of agricultural development**, which would have direct repercussions for what models of agricultural investment should be promoted and regulated.
- Community-based and producer organisations can also play an important role in the **review of national legislation** against the Voluntary Guidelines, discussed above. For example, the Voluntary Guidelines talk of 'legitimate' tenure rights but do not define this term. Grassroots-level participatory processes can help to identify what tenure rights are considered to be 'legitimate' in a given context, and raise questions as to the extent to which national legislation duly protects those rights.
- Where there is space for more inclusive forms of agricultural investment, cooperatives of local producers can **help farmers to participate in business ventures as suppliers, shareholders and business partners**.

Non-governmental agencies

- National and international NGOs play a vital role in **holding governments and investors to account**. NGO **scrutiny, advocacy and pursuit of multiple accountability avenues** are critical in promoting respect for the principles enshrined in the Voluntary Guidelines. NGO action may involve alliances between national and international NGOs. National NGOs tend to have stronger legitimacy in promoting downward accountability within their respective country contexts. NGO and government action can be mutually reinforcing – for example, where NGO advocacy prompts government enforcement action.
- It is critical that NGO action responds to grassroots demand, and that it strengthens the voices of the people concerned. NGOs can **support citizens and affected people** to help ensure their voices are heard at the necessary levels, including through organisational support, legal empowerment work, and participatory monitoring of compliance and impacts. Considerations about the political space in the host country are important in identifying the most suited advocacy and capacity-support strategies.
- As discussed, NGOs can also perform a useful role by helping to **identify and disseminate positive experiences with alternatives to large land deals**, and facilitating constructive national and international dialogue on how to promote upscaling of these alternatives.

Donors and multilateral development agencies

- Development agencies can work to **strengthen the capacity of governments** to develop and enforce legislation that implements the Voluntary Guidelines, **and the capacity of national NGOs and producer organisations** to strengthen local rights and voices throughout investment processes.

Researchers

- Researchers can help to **improve understanding on relations and pressure points affecting the midstream segment of the chain**, particularly the role of brokers and intermediaries – who they are, how they are incentivised and how their activities might be governed.
- Researchers can also generate **evidence on the social, environmental and economic outcomes of investments**. This can contribute to the implementation of the provision in the Voluntary Guidelines calling for monitoring of implementation and impacts of agricultural investments (Article 12.14), feed into ongoing monitoring of implementation of agricultural development strategies, and provide insights on how to design investments that uphold the Voluntary Guidelines.

5.4. Pressure points downstream: contractors, buyers

Like the upstream part of the investment chain, the downstream part is often characterised by limited information. It is difficult to obtain data on contractors, for example; decisions about which contractors to use, when, for what and under what terms are typically commercial decisions left to the enterprise, with no major legal requirement for transparency. Also, downstream segments (from farm gate purchase of a product to final consumption) can be very complex, with multiple traders, distributors and buyers engaged in complex networks. This is likely to make it more challenging to identify pressure points.

But in some investment chains the identity of the buyers may be clear, and there may even be a single buyer. Also, buyers may demand that produce complies with specific standards, and may exert significant leverage over their supply chains. As discussed above, the recent high-profile advocacy campaign targeting major buyers of sugar, led by international NGO Oxfam, has started delivering some commitments – at least on paper – for buyers to eliminate 'land grabbing' from their supply chains.

As with the sections on upstream and midstream relations, we now discuss possible ways forward for different stakeholders to leverage pressure points in the downstream part of an investment chain.

Governments

- Host governments play a key role in **regulating the activities of contractors and buyers** to ensure implementation of the Voluntary Guidelines within their jurisdiction.

- Where investments involve contractors and buyers located overseas, the countries where these operators are based can also play an important role in regulating their activities.

Non-governmental organisations

- Based on a clear mandate from the people most directly concerned, NGOs can engage with buyers and contractors by **pointing to better practice, leveraging reputational risk, initiating dialogue, helping affected people use grievance mechanisms** (such as the OECD National Contact Points) **or bring transnational litigation for corporate accountability, and leveraging opportunities provided by international trade arrangements** that affect market access.

Researchers

- Important aspects of the downstream segments are little understood, particularly with regard to the role of contractors and how the relationship between them and the enterprise might be used as a pressure point. Researchers can **help to improve understanding** on this important aspect of investment processes.

5.5 A final remark

Taken together, the steps suggested in the previous sections amount to an ambitious body of work that combines diverse activities – including research, advocacy, scrutiny, capacity support and regulation – by a wide range of stakeholders. One common thread links these diverse activities. It is the recognition that implementing the provisions of the Voluntary Guidelines that tackle agricultural investments requires translating those provisions into a wide range of instruments and processes that have real 'bite'.

This could include innovative use of existing legislation (such as through improved administrative processes or more effective citizen use of legal rights), the development of new regulation where legislation is inadequate, integration of the Voluntary Guidelines into a wide array of international standards that are backed by grievance procedures, and continued monitoring, scrutiny and enforcement action by governments and civil society alike. It is also possible that provisions of the Voluntary Guidelines might be referred to in legal processes, for example before international human rights bodies, to clarify the interpretation of treaty provisions.

Equally important is the recognition that no single pressure point alone will suffice – it is important to harness the multiple pressure points that can affect the many facets of these investments. Therefore, alliances between stakeholders that have comparative advantage in activating complementary pressure points can be particularly fruitful.

So far, transnational alliances of villagers, local and international NGOs, federations of producer organisations and public interest law firms have been particularly effective at harnessing the potential of transnational investment chains. This is illustrated by high-profile campaigns targeting investors, lenders or buyers, and by experience with transnational litigation for corporate accountability. There is much potential for sharing lessons on what works where, and under what conditions, among civil society organisations.

Considerations about national sovereignty make it more difficult for governments to harness the multiple pressure points in transnational investment chains in a comparable way. But there is potential for more concerted action, including at regional level, and the momentum behind the Voluntary Guidelines may provide new opportunities for more intergovernmental collaboration. In Africa, the Land Policy Initiative, led by the African Union, the United Nations Economic Commission for Africa and the African Development Bank, provides an important arena for greater intergovernmental coordination at regional and continental levels.

This situation highlights the relevance of an analytical framework that uses investment chains as its entry point. This conceptual framework helps to identify the multiple pressure points that can be leveraged to facilitate implementation of Voluntary Guidelines. It also emphasises the dynamic nature of these pressure points. Importantly, the notion of flow and distribution of value embodied in investment chains can provide new conceptual insights for the assessment of how the costs and benefits of an investment project are shared among actors located in different segments of the investment chain – from financiers, to agribusiness firms, to host governments and local stakeholders, through to a wide range of contractors, suppliers and buyers (see Cochet and Merlet, 2011). This analysis can provide insights on how equitable or inclusive an investment really is.

A new agenda for research and public debate lies ahead. Investment chains challenge us with their complexity, but also demonstrate the wide scope for critically examining the distribution of costs and benefits, and for pursuing multiple strategies targeted at numerous actors, by a wide diversity of players, to bring about investments that uphold the Voluntary Guidelines – and, ultimately, better support inclusive sustainable development.

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Understanding agricultural investment chains: Lessons to improve governance

Despite emerging evidence on the features of large-scale land deals in Africa, Asia and Latin America, uncertainty still surrounds the actors, relations, processes and incentives involved – from financiers to suppliers and intermediaries, through to buyers, and the flow and distribution of value among those actors – these are the key factors that make up an 'investment chain'. Good understanding of the investment chains that underpin land deals is critical in improving the governance of agricultural investments.

Drawing on ten case studies of large-scale land deals, this report aims to improve understanding of investment chains and to identify ways for public action to ensure that investment responds to local and national development agendas and promotes inclusive sustainable development.

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