

Land deals and investment treaties

Visualising the interface

Lorenzo Cotula and Thierry Berger

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IIED Land, Investment and Rights series

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United Kingdom

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Acronyms

BIT	Bilateral investment treaty
IIED	International Institute for Environment and Development
ICSID	International Centre for Settlement of Investment Disputes
IIA	International investment agreement
OIT	Other investment treaty
OLC	Open Land Contracts database
UNCTAD	United Nations Conference on Trade and Development

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About the authors

Lorenzo Cotula is a principal researcher in law and sustainable development at the International Institute for Environment and Development (IIED), where he leads the Legal Tools Team and the Legal Tools for Citizen Empowerment programme (www.iied.org/legal-tools).

Thierry Berger is a qualified solicitor and Legal Tools consultant at IIED focusing on law and sustainable development. Prior to his collaboration with IIED, Thierry worked for global law firms for 10 years specialising in international arbitration.

Executive summary

There has been much debate about the national and international legal frameworks regulating large-scale land deals for agribusiness investments in low and middle-income countries. Investment treaties are an important part of the international legal architecture governing foreign investment, including in agriculture.

Investment treaties aim to promote investment flows between the state parties. They establish obligations on the admission and protection of foreign investment. Most investment treaties allow investors to bring alleged violations to international arbitration (investor-state arbitration).

An earlier IIED report shed light on how investment treaties can affect land deals for agribusiness investments in low and middle-income countries. That report drew on the legal analysis of investment treaties and the ways in which international arbitral tribunals have interpreted them. The report concluded that, while the recent surge in agribusiness investments is yet to result in publicly known investor-state arbitrations, businesses could rely on investment treaties to challenge public action to terminate, renegotiate or regulate agribusiness investments.

This report measures the geographic extent to which investment treaties protect agribusiness investments initiated as part of the recent wave of large-scale land deals in low and middle-income countries. The report draws on three research strands:

- Global-level quantitative analysis based on online databases of land deals and of investment treaties;
- A more in-depth investigation of the corporate structures relating to a subset of land deals for which contractual documentation is publicly available; and
- The analysis of publicly known agriculture-related investor-state arbitrations.

The findings indicate that the vast majority of the land deals from the recent wave of agribusiness investments in low and middle-income countries are protected by at least one investment treaty. Limitations in publicly available data mean that the analysis remains inevitably preliminary. But the findings are corroborated both by the global-level quantitative analysis and by the more in-depth investigation of a subset of land deals.

The fact that most land deals are protected by an investment treaty does not necessarily mean that the treaty promoted the investment. Multiple business factors are thought to underlie agribusiness investment decisions and location choices. But the extensive coverage of investment treaties does mean that the exposure of states to the risk of arbitration claims for public action they may take to address issues raised by agribusiness investments is real and relevant to a wide range of geographic contexts.

The analysis of agriculture-related investor-state arbitration points to a small but growing number of cases; to a substantial share of investor wins; and to several cases where the investor had its claim dismissed but the state still had to bear legal costs.

Overall, the findings highlight the relevance of international investment treaties to the recent wave of land deals for agribusiness investments in low and middle-income countries. More research is needed to shed light on the extent to which investors are actually relying on these treaties, and with what results, including in situations that do not lead to investor-state arbitration.

1. Introduction

How international investment treaties can affect land deals

There has been much debate about the national and international legal frameworks regulating large-scale land deals for agribusiness investments in low and middle-income countries. Investment treaties are an important part of the international legal architecture governing foreign investment, including in agriculture. Unlike investor-state contracts regulating individual investments, investment treaties are concluded between two or more states and apply to all investments falling within the scope of the treaty.

Investment treaties include bilateral investment treaties (BITs) and, increasingly, regional investment treaties and regional or bilateral free trade agreements that contain an investment chapter (“other investment treaties”, OITs).¹ With the exception of treaties that have a sectoral focus (e.g. energy), land deals for agribusiness investments would fall within the scope of most investment treaties.

Investment treaties aim to promote investment flows between the state parties. They establish obligations about how investments by nationals of one state will be admitted and protected in the territory of the other state. For example, investment treaties commonly include provisions requiring states to compensate investors at market value if authorities expropriate investments.

Commonly used treaty provisions also require states to treat foreign investors or investments no less favourably than investments by their own nationals or by nationals of other states. Other treaty clauses typically guarantee the investor’s ability to repatriate profits, and require states to provide “fair and equitable treatment”. This latter standard has been taken to mean a wide range of things – including protecting the “legitimate expectations” that the investors had when they made the investment, stability and predictability of the legal framework, and propriety in judicial proceedings.

Most investment treaties allow investors to bring disputes with the host state to international arbitration (investor-state arbitration). In these disputes, the investor typically alleges that the state has violated the treaty, and will usually seek monetary compensation. In deciding the case, the tribunal issues a binding award. If the tribunal finds treaty violations, it usually orders the state to compensate the investor. Widely ratified multilateral treaties facilitate the enforcement of these awards.

1. Investment treaties are often referred to as “international investment agreements” (IIAs). However, “agreements” could include contracts as well as treaties, and to avoid any confusion we use BITs and OITs instead of IIAs.

An earlier IIED report shed light on how investment treaties can affect land deals for agribusiness investments in low and middle-income countries (Cotula, 2015). That report drew on the legal analysis of investment treaties and the ways in which international arbitral tribunals have interpreted them. The report found that, while the recent surge in land deals for agribusiness investments is yet to result in publicly known investor-state arbitrations based on investment treaties, that surge has increased the exposure of states to potential arbitration claims.

This is due to the signing of hundreds of land deals worldwide in a relatively short period of time; the poor quality of at least some of these deals; and vocal calls for public action to terminate, renegotiate and better regulate agribusiness investments. Depending on the circumstances, such public action might lead adversely affected investors to invoke the standards of investment protection enshrined in investment treaties, and expose states to the risk of arbitration claims. Other research has also linked investment treaties to large-scale land deals (e.g. Thrasher and Wise, 2015; Mbengue and Waltman, 2015).

Land deals and investment treaties: measuring and mapping the interface

This report measures the geographic extent to which investment treaties protect agribusiness investments initiated as part of the recent wave of large-scale land deals in low and middle-income countries. The analysis provides an indication of the magnitude of the potential implications that investment treaties could have for public action taken in relation to agribusiness investments.

The report draws on three components:

- Global-level quantitative analysis based on online databases of land deals (Land Matrix, <http://www.landmatrix.org/en/>) and of investment treaties (UNCTAD's International Investment Agreements Navigator, <http://investmentpolicyhub.unctad.org/IIA>);
- A more in-depth investigation of the corporate structures relating to a subset of land deals for which contractual documentation is available in online databases (Land Matrix; and OpenLandContracts, <http://www.openlandcontracts.org/>); and
- The analysis of publicly known agriculture-related investor-state arbitrations.

The core of the report consists of visuals, with the narrative text highlighting key findings. Annex I provides more information on the assumptions, methods and limitations of the study.

The limitations of available data call for caution in interpreting research findings. But no matter how preliminary, the findings tell a clear story. A very large share of the land deals for agribusiness investments concluded in low and middle-income countries since 2000 are protected by investment treaties.

This does not mean that the treaties necessarily promoted the land deals. Business opportunities created by changing agricultural commodity prices and supportive public policies have driven the recent surge in deal making, while commonly mentioned factors influencing location choices include soil and climatic conditions, perceived availability of land, access to water, differentials in land prices and labour costs, “soft” and “hard” infrastructure, and trade preferences granting access to appealing markets (see e.g. Cotula et al, 2009; Deininger et al, 2011; Anseeuw et al, 2012).

The Land Matrix contains data on agribusiness investments in low and middle-income countries, and the current global stock of investment treaties mainly protects investment flows to low and middle-income countries. So the substantial overlap between land deals and investment treaties is hardly surprising. But the significant extent to which land deals are protected by investment treaties shows that the issues raised by IIED’s legal analysis (Cotula, 2015) apply to a wide range of contexts. The next section discusses these findings in greater detail.

2. Key findings

The big picture: Land Matrix vs UNCTAD's Navigator

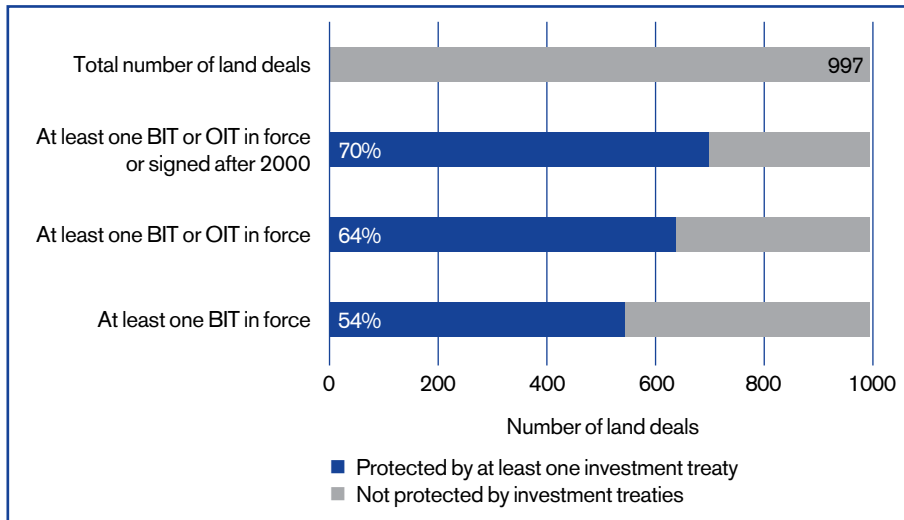
Let us start with the global-level quantitative analysis. The Land Matrix contains data on 997 land deals for agribusiness investments concluded in low and middle-income countries from 1 January 2000. It is difficult to assess the extent to which this data is reliable and up-to-date. Previous IIED research documented discrepancies between Land Matrix data and government-held official records of land deals in some countries (Cotula and Oya, 2014; Keeley et al, 2014). In conducting research for this report, we noted further discrepancies between Land Matrix data and IIED-held data on specific land deals. But the Land Matrix is the most comprehensive global database of land deals, and as such is the go-to place for our global analysis.

With government-supplied data on over 3,000 investment treaties, UNCTAD's International Investment Agreements Navigator is the most extensive global database of investment treaties. We cannot rule out that some treaties may be missing from the database, or that treaties reported as not being in force may have since entered into force. But the Navigator seems the most obvious choice for our global analysis.

To assess the extent to which investment treaties cover land deals in low and middle-income countries, we matched data from the two databases through Visual Basic programming, making the assumptions, using the methods and recognising the limitations discussed in Annex 1.

The analysis suggests that, globally, 64% of the land deals for agribusiness investments included in the Land Matrix are protected by at least one investment treaty that is currently in force (see Figure 1). This figure includes both BITs and OICs. It increases to 70% if we include investment treaties that were concluded after 1 January 2000 and are reported as not in force in the UNCTAD Navigator (Figure 1). Should the states parties decide to bring these investment treaties into force, depending on their formulation the treaties may protect pre-existing land deals.

Figure 1. Number of land deals for agribusiness investments covered by investment treaties



Country-specific data also point to considerable investment treaty coverage (Figures 2 and 3). Considering investor countries first, 80% of the 106 overseas land deals by investors based in the United Kingdom are protected by at least one investment treaty in force or signed after 1 January 2000, as are 61% of India's 46 deals and a staggering 100% of Viet Nam's 48 deals. Looking at host countries, 98% of the land deals concluded in Indonesia are covered by an investment treaty, followed by 96% of land deals in Laos, 90% in Cambodia and 85% in Mozambique.

There are substantial variation and exceptions. Only 36% of land deals in Ghana appear to be covered by an investment treaty, for example. Brazil has reportedly been the recipient of 47 agribusiness investments, but none of them seems covered by an investment treaty.² Regional integration processes and associated regional investment treaties affect several of the investor or host countries with the highest shares of treaty coverage.

2. Brazil concluded 14 BITs in the 1990s but did not ratify any of them. It more recently concluded several cooperation and facilitation treaties that differ significantly from conventional BITs. None of these more recent treaties appears to apply to land deals for agribusiness investments included in the Land Matrix database.

Figure 2. Investment treaty coverage for investor countries with 20 overseas land deals or more

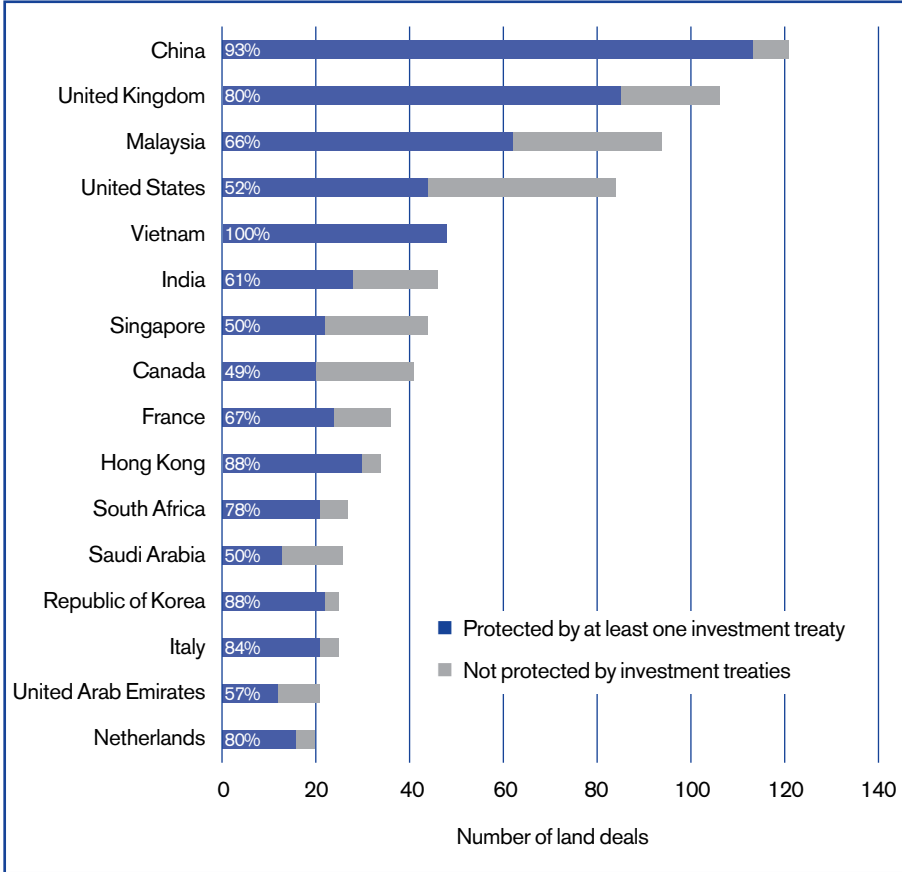
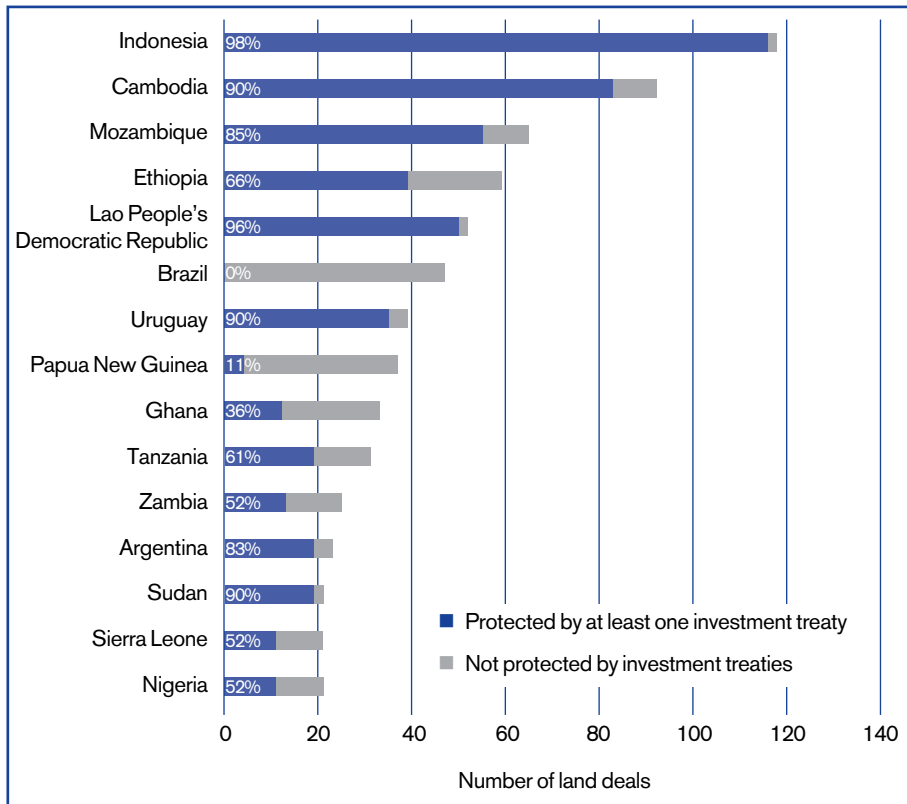


Figure 3. Investment treaty coverage for host countries with 20 land deals or more

Scrutinising corporate structures and their implications for investment treaties

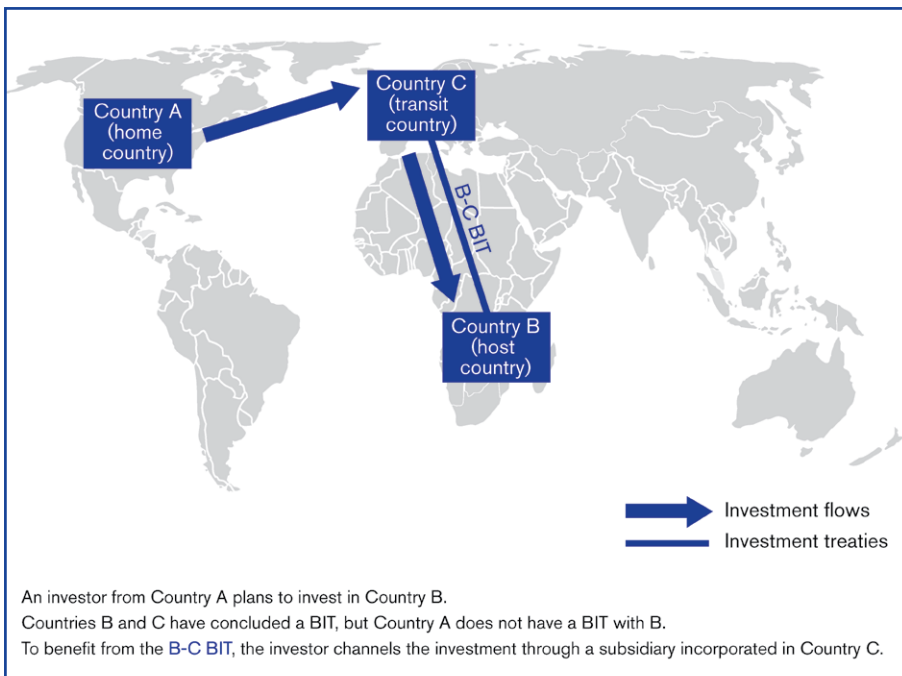
Our global-level analysis based on the Land Matrix and the International Investment Agreements Navigator can only provide an incomplete representation of the interface between land deals and investment treaties in low and middle-income countries. It primarily establishes whether a land deal between an investor from investor country A and an entity in host country B is covered by an investment treaty to which countries A and B are both parties.

In practice, however, investment treaties that host country B may have concluded with third countries C, D and E might also protect an investment from investor country A. As a result, the share of land deals protected by investment treaties could be higher than what is suggested by looking at investment treaties concluded directly between the investor country and the host country.

This is how it works. Many investment treaties protect investments that a company incorporated in one state makes in the other state. By referring to the country of incorporation to determine nationality, rather than, say, the country where the company conducts substantial business operations, these investment treaties effectively allow the practice of “treaty shopping”.

Treaty shopping occurs when a company based in one country and investing in another country benefits from the protection accorded by an investment treaty concluded between the host country and a third country. This is done by channelling the investment through a subsidiary incorporated in the third country, even if the company has no real connection with that country. The company may want to do this because the host country has no treaty with its home country, or to secure advantages available under a more favourable treaty (see Figure 4). Some recent investment treaties contain safeguards against treaty shopping, but many older treaties do not.

Figure 4. How investment treaty shopping works



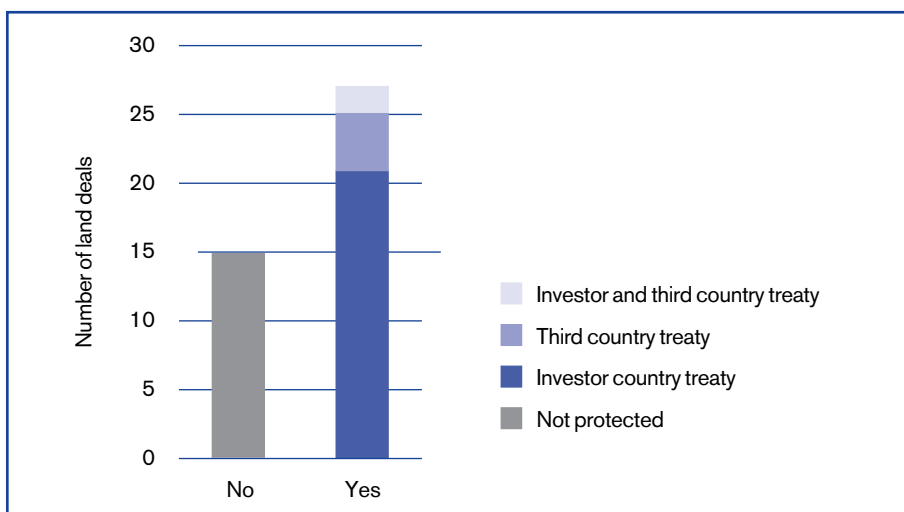
As a result of this situation, assessing whether a land deal is covered by an investment treaty requires information about corporate structures that is often not in the public domain. Also, the corporate structures underpinning land deals for agribusiness investments may be very complex, and span multiple jurisdictions (Cotula and Blackmore, 2014).

To find out more about these issues, we researched the corporate structures relating to a subset of 42 deals for which contractual documentation is available in online global databases – namely, the Land Matrix and the OpenLandContracts database. We obtained complementary information from corporate reports, and in some cases from published research reports.

This analysis produced results broadly comparable to the ones presented in the previous section: at least 27 (64%) of the 42 land deals are protected by at least one known investment treaty currently in force (16 land deals), or signed after 1 January 2000 (11 land deals). In most cases (23 land deals), the protection applies through a treaty concluded directly between the investor country and the host country. But in 6 cases the corporate structure would allow the application of at least one investment treaty involving a third country.

These 6 cases include 2 land deals that are also covered by an investment treaty between the investor country and the host country, so the investor would effectively be able to choose which treaty to activate (Figure 5). Features of corporate structures that are not in the public domain could mean that some of the remaining 15 land deals might also be covered by an investment treaty.

**Figure 5. Are land deals protected by an investment treaty?
(considering corporate structures, based on a subset of deals)**



A few contracts for agribusiness investments not covered by investment treaties (e.g. in Liberia) contain some treaty-like provisions, including substantive standards on expropriation, non-discrimination and repatriation of profits, and legal remedies via investor-state arbitration. However, the relevant subset of contracts was too small for us to draw any conclusions, and the issue would warrant further research.

Exploring the corporate structures has also shed some light on the geographic patterns of investment processes. Several agribusiness investments we examined appear to be channelled via Mauritius (Figure 6). This may be due to multiple factors, including tax considerations. But it is worth noting that Mauritius has a considerable network of investment treaties with other African countries, including BITs and regional treaties (Figure 7).

Figure 6. Agribusiness investment channelled via Mauritius

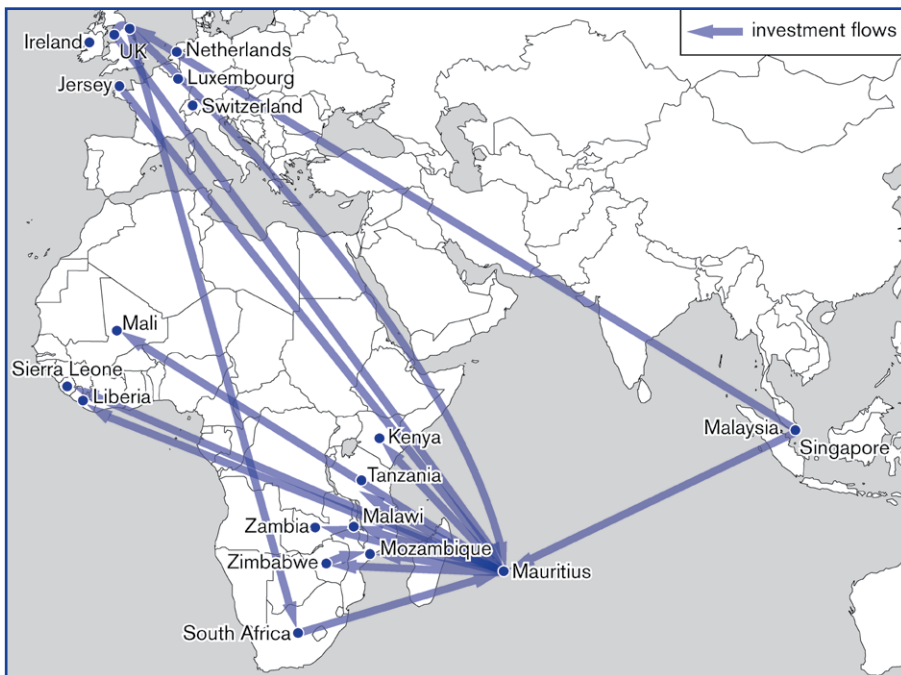
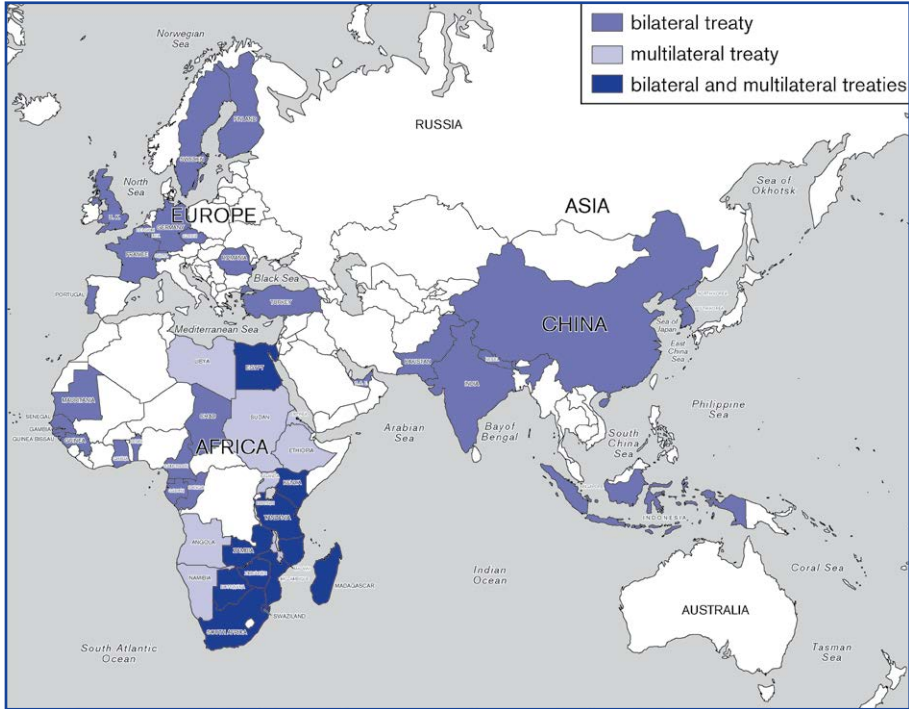


Figure 7. Mauritius's network of investment treaties

Patterns in investor-state arbitration

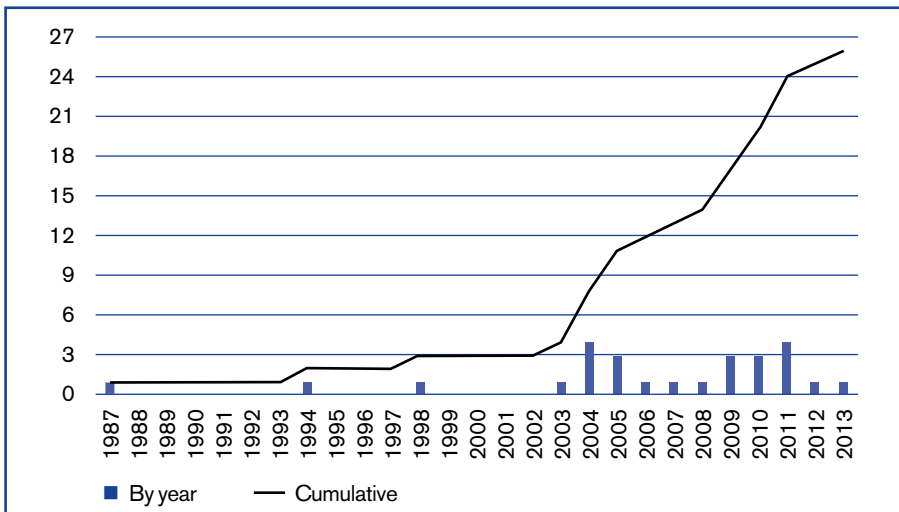
The third component of the research involves an analysis of publicly known investor-state arbitrations concerning the agriculture sector. Agriculture accounts for a small share of the global arbitral case load – less than 4% of the case load of the International Centre for Settlement of Investment Disputes (ICSID), a major arbitration forum (ICSID, 2015).³

We searched for agriculture-related arbitrations on the ICSID (<https://icsid.worldbank.org/apps/ICSIDWEB/cases/Pages/AdvancedSearch.aspx>), ITA Law (www.italaw.com), International Investment Reporter (<http://www.iareporter.com>) and Investment Treaty News (<https://www.iisd.org/itn/>) websites. We identified 26 arbitrations covering investments from farming to agro-processing through to fertiliser manufacturing. We recognise that other arbitrations are very likely to exist for which information is not publicly available, and that our analysis is likely to underestimate significantly the volume of agriculture-related arbitrations.

3. This figure includes fisheries and forestry as well as agriculture. It excludes land-related investment disputes in sectors other than agriculture (e.g. tourism and real estate).

The arbitrations targeted a wide range of countries, including Venezuela (5 arbitrations), Mexico (4 arbitrations) and Zimbabwe (3 arbitrations). The vast majority of these arbitrations were initiated under investment treaties; only three cases were brought under national legislation and/or investor-state contracts. In line with wider trends in investor-state arbitration, there appears to have been a marked increase in the arbitral case load since 2003, and 12 of the 26 publicly known cases were initiated after 2009 (Figure 8).

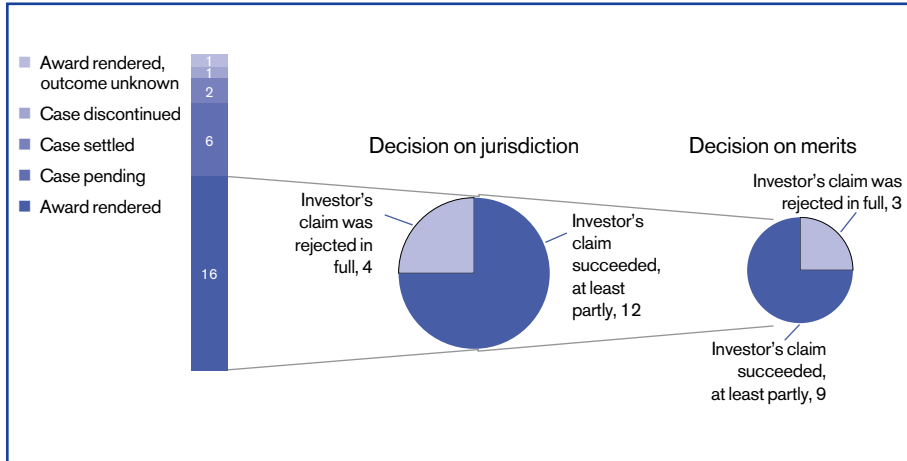
Figure 8. Agriculture-related investor-state arbitrations over time



Several of these publicly known arbitrations have been settled or discontinued, and in one case the arbitral tribunal rendered a decision but the outcome is unknown. Of the remaining 16 cases, the investor won 9 and had their claims dismissed in 7. However, a more disaggregated analysis presents a somewhat different split.

Looking at decisions on jurisdiction (i.e. the tribunal's decision on whether it can hear the case), the investor won 12 of the 16 cases. Of the 12 cases that proceeded to the merits stage (i.e. the tribunal's decision on the substantive claim), the investor won 9 (see Figure 9). This picture suggests that investors have had their claims upheld, at least in part, in the majority of decisions. It is impossible to generalise this finding based on such a small set of cases, but the picture is broadly in line with trends across sectors (UNCTAD, 2015; Mann, 2015). The state managed to escape liability in a total of 7 cases (4 on jurisdiction grounds, and 3 on the merits).

In 6 of the 7 cases where the investors had their claims dismissed, the state still had to bear its own legal costs and/or a portion of the arbitration costs. The outcome of the tribunal's decision on costs was not known for the remaining case.

Figure 9. Outcomes of agriculture-related investor-state arbitrations

Summary of key findings

The findings indicate that the vast majority of the land deals from the recent wave of agribusiness investments in low and middle-income countries are protected by at least one investment treaty. Limitations in publicly available data mean that the analysis remains inevitably preliminary. But the findings are corroborated both by global-level quantitative analysis based on databases of land deals and of investment treaties, and by the more in-depth investigation of a subset of land deals.

The fact that most land deals are protected by an investment treaty does not necessarily mean that the treaty promoted the investment. Multiple business factors are thought to underlie agribusiness investment decisions and location choices. But the extensive coverage of investment treaties does mean that the exposure of states to the risk of arbitration claims for public action they may take to address issues raised by the recent wave of agribusiness investments is real and relevant to a wide range of geographic contexts.

The analysis of agriculture-related investor-state arbitration points to a small but growing number of cases; to a substantial share of investor wins; and to several cases where the investor had its claim dismissed but the state still had to bear legal costs.

Overall, the findings highlight the relevance of international investment treaties to the recent wave of land deals for agribusiness investments in low and middle-income countries. More research is needed to shed light on the extent to which investors are actually relying on these treaties, and with what results, including in situations that do not lead to investor-state arbitration.

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Annex 1. Remarks on assumptions, methods and limitations

Land deals for agribusiness investments

The global-level quantitative analysis draws on data from the Land Matrix database (as of 1 October 2015; www.landmatrix.org) and from UNCTAD's International Investment Agreements Navigator (<http://investmentpolicyhub.unctad.org/IIA>).

The Land Matrix includes land deals for 200 hectares or more concluded in low and middle-income countries since 1 January 2000. We used the “default” version of the Land Matrix, which only includes “concluded” deals (i.e. we did not consider “intended” and “failed” deals) and foreign investors (i.e. we excluded domestic investments, which as a general rule are not covered by investment treaties).

We only considered land deals for agribusiness investments, so we excluded deals recorded in the Land Matrix categories: “Conservation”, “Renewable energy”, “Forestry unspecified”, “Tourism”, “Other”, or a combination of these. The investor country is reported for 997 deals included in the analysis; these deals cover 78 host countries.

We recognise that Land Matrix data may not be fully accurate and up-to-date. The Land Matrix website itself warns that *“[t]he data should not be taken as a reliable representation of reality”* due to incomplete information and rapid developments in deal-making (<http://www.landmatrix.org/en/about/>).

The figures generated on the basis of Land Matrix data focus on assessing the interface between land deals and investment treaties, and should not be used to draw wider inferences. For example, empirically grounded literature has questioned the scale of the widely reported role of China in land acquisition, particularly in Africa (see Figure 2).

It is possible that some host country geographies might be over-represented in the Land Matrix database, particularly due to the sustained public attention received by land deals in sub-Saharan Africa and parts of Asia. However, there is nothing to suggest that any biases relevant to investment treaties might be at play – with the exception of the more general remark that the global stock of investment treaties currently in force primarily covers investment flows to low and middle-income countries, so land deals in these countries (and in the Land Matrix) are more likely to be covered by an investment treaty.

International investment treaties

The UNCTAD International Investment Agreements Navigator is the most comprehensive global database of international investment treaties. It is possible that some treaties might not be listed in the database; that treaties recorded as “not in force” may have since come into effect; and that some treaties recorded as in force may have been terminated. Depending on the rate of treaty termination, these limitations are likely to contribute to a potential underestimation of the quantitative results presented in the report – meaning that more land deals could be covered by an investment treaty than our findings suggest.

We considered all investment treaties that are recorded in the UNCTAD Navigator as being in force, and separately we considered investment treaties not yet in force, but signed after 1 January 2000. The rationale for considering the latter group of treaties is that states might plausibly ratify them at some point, which depending on treaty formulation might extend protection to pre-existing land deals. A total of 2023 bilateral investment treaties (BITs) in the database meet the above parameters in relation to the 78 host countries in the Land Matrix database.

We also included selected treaties listed under “Other Investment Agreements” (“other investment treaties”, OITs, in the terminology used by this report) in the UNCTAD Navigator provided that they featured 1) substantive investment protection provisions and/or 2) investor-state arbitration clauses. We have excluded treaties with an explicit sectoral focus excluding application to agriculture (e.g. the Energy Charter Treaty). We could only review OITs available in English, French, Spanish or Portuguese. Based on these criteria we included 77 out of a total 362 OITs listed in the Navigator.

We could not review the content of all the treaties. We have assumed that each relevant investment treaty contains a definition of “investment” that covers land deals for agricultural investments, and encompasses both direct and indirect investments. *Ratione temporis*, we have assumed that investment treaties are formulated to cover agribusiness investments initiated before the entry into force of the investment treaty.

Database linking

The Land Matrix, BIT and OIT databases were linked in Microsoft Excel through the use of Visual Basic coding. For each deal, the programme searched for all the potential host and investor country combinations (the Land Matrix database contains land deals including up to seven investor countries) across the databases of BITs in force, BITs signed after 1 January 2000 but not in force, OITs in force, and OITs signed after 1 January 2000 but not in force. The programme then indicated which types of treaties apply to each deal.

We considered a land deal to be protected by an investment treaty if at least one treaty was applicable to at least one of the investors involved. Minority shareholders typically enjoy the protections provided by investment treaties. But for the overwhelming majority of the land deals reviewed, the applicability of an investment treaty related to the sole or main ultimate parent company, or to companies connected to it.

Analysis of corporate structures

A more in-depth investigation of the corporate structures was undertaken on a subset of 42 land deals for which public domain contractual documentation exists in whole or in part. We reviewed contracts available on the Open Land Contracts (OLC) database (<http://www.openlandcontracts.org/>) as of 7 October 2015. The following were excluded: 1) forestry concession agreements; 2) contracts concluded before 1 January 2000; and 3) an “investment incentive contract”. This exercise led us to identify 35 contracts, out of a total of 69 on the OLC database.

We also reviewed agriculture-related contracts available in English or French on the Land Matrix database – excluding contracts in other languages, or relating to other sectors. For this exercise, we reviewed deals listed as “concluded”, “intended” or “failed” in the Land Matrix database. We identified a total of 40 contracts, of which 33 overlapped with those available on the OLC database, bringing the total sample of contracts to 42.

We conducted literature and web searches to obtain additional information on each of these selected land deals, particularly information on corporate structures. We also searched for complementary information on deals routed via Mauritius. We primarily relied on information from the Land Matrix and OLC databases but also from corporate reports whenever possible, and on publicly available research reports and online databases such as farmlandgrab.org.

Research on the land deals routed via Mauritius used the same sample of 42 contracts but also led to the identification of 4 additional land deals – for a total of 46 deals, of which 16 were routed via Mauritius. We matched data from the 42 deals and from the Mauritius case study against the same dataset of investment treaties used for the global-level quantitative analysis.

Figure 6 isolates the parts of the corporate structures that are relevant to Mauritius. In most cases, corporate structures were considerably more complex than it is suggested by the arrows in the figure.

Despite these multiple sources, data on corporate structures remains extremely difficult to access. We recognise that our information is likely to be incomplete and possibly not up to date. As a result of this limited information, our analysis is likely to underestimate the extent of treaty coverage, because features of corporate structures we may not be aware of might trigger the application of an investment treaty.

Analysis of investor-state arbitrations

The analysis of international investor-state arbitration focuses on arbitration cases relevant to agriculture. It excludes cases related to fisheries and forestry. It also excludes arbitrations relevant to land but relating to other sectors such as tourism or real estate.

The analysis draws on the ICSID (<https://icsid.worldbank.org/apps/ICSIDWEB/cases/Pages/AdvancedSearch.aspx>), ITA Law (www.italaw.com), International Arbitration Reporter (www.iareporter.com) and Investment Treaty News (<https://www.iisd.org/itn/>) websites.

We searched the ICSID database using the “subject of the dispute” and “economic sector” filters, selecting “agricultural enterprise” for the subject of the dispute filter and “agriculture, fishery and forestry” for the economic sector filter. We then reviewed the relevant awards and arbitration documents available on ITA Law to ensure that the cases were indeed agriculture-related. We excluded fisheries and forestry cases.

We found additional arbitration documents and information on these and other arbitrations on the International Arbitration Reporter (<https://www.iareporter.com>) and Investment Treaty News (<https://www.iisd.org/itn/>) websites. We conducted general web searches to check for any glaring omissions.

In some of the cases reviewed, the arbitral tribunal decided on jurisdiction and on the merits in the same award.

Publicly available information on arbitrations remains very limited, particularly for cases arbitrated under rules other than ICSID. Therefore, we expect that our analysis is likely to significantly underestimate the number of arbitrations. Underestimation might be particularly pronounced for older arbitrations conducted before recent increases in procedural transparency under some arbitration rules.

Land deals and investment treaties: Visualising the interface

International investment treaties are an important part of the legal frameworks governing foreign investment. This report measures the extent to which investment treaties apply to agribusiness investments initiated as part of the recent wave of large-scale land deals in low and middle-income countries. It finds that the vast majority of land deals are protected by at least one investment treaty. Depending on circumstances, public action to terminate, renegotiate or regulate land deals could expose states to the risk of treaty-based arbitration claims in a wide range of geographic contexts. More research is needed to shed light on the extent to which investors are actually relying on these treaties, and with what results.

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