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Lifting the Lid on Foreign Investment Contracts: The Real Deal for Sustainable Development

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Introduction

This is a report on a little known, little understood area of foreign investment relations between corporations and governments. It is an area that is largely hidden from public scrutiny. Yet it has far-reaching implications for the way of life, the rights, and the natural environments of millions of people in countries around the world.

This report is not about the policies that are reflected in bilateral investment treaties between governments, or in regional free trade agreements between governments. Nor is it about controversial efforts on the part of governments to design international investment frameworks to protect the rights of foreign investors. Instead, it looks at foreign investment arrangements at a different level. Its focus is on deals between foreign investors and governments – foreign investment contracts. The terms of these deals have major implications for whether investment projects bring real benefits for the people and environments of the countries where they take place, or whether instead they undermine sustainable development.

Based on our initial investigations into a wide-ranging group of foreign investment projects and their associated deals in Belize, Chile, Ghana, Mali, and Pakistan, we highlight concerns about the processes through which foreign investment contracts are negotiated, the terms of the deals, and their wider implications for sustainable development. We aim to 'lift the lid' on these types of contract; to raise awareness about them; and to alert their negotiators to the

KEY POINTS:

- **Foreign investment contracts – deals between foreign investors and host country governments – have major implications for sustainable development. For example, we have found that some exempt foreign investors from local laws, or commit governments not to change certain laws once the investment has taken place.**
- **Government agencies keen to attract foreign investment have sometimes changed domestic legislation especially to clear the way for environmentally harmful investment projects.**
- **Many foreign investment contracts are hidden from public view and confidentially negotiated. Disputes between foreign investors and governments are typically resolved in the closed world of international commercial arbitration.**
- **Foreign investment contract provisions need to strike a balance between the legitimate interest of investors in stability for their investment on the one hand, and the pursuit of sustainable development on the other. Too often the priority is investment stability at the expense of sustainable development.**
- **Making foreign investment contracts supportive of sustainable development calls for reform at four levels: the processes of contract negotiation; the terms of the contracts themselves; dispute settlement arrangements; and alignment between the wider policy environments in which foreign investment contracts are negotiated and sustainable development.**

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rapidly increasing civil society interest in the implications that they hold for sustainable development.

This report is based on our preliminary work together as partners in an ongoing collaboration. Our shared goal is sustainable development – the policy imperative for governments, people and businesses to balance economic, social and environmental considerations, so as to meet the needs of today's generation without compromising the ability of future generations to meet their own needs.

The problem with foreign investment contracts

Foreign investment has the potential to bring real benefits, enhancing the lives of people around the world by providing products and services that meet human needs. At the same time, the activities of multinational corporations have the potential to harm workers, communities, the environment and even public institutions.

Easier communications around the world have helped to raise public concern about negative impacts of foreign companies in poor countries. But efforts to promote responsible business behaviour through market-driven pressure have so far done little more than tinker at the edges. The basic terms for foreign direct investment in some of the world's most controversial projects – including oil pipelines, mine sites, power plants and dams – are set out in privately negotiated contracts between large companies and government officials of the countries that host their investment projects.

A foreign investment contract, for us, is an agreement between a company or some other kind of business and a state, for the purposes of an investment project in that state. The agreement sets out terms and conditions applicable to the investment project. An investment contract is 'foreign' when it is associated with a foreign business (which may or may not itself be a direct party to the contract) with capacity to control important management decisions or associated impacts.

Foreign investment contracts take a variety of forms. At one end of the spectrum, contracts for mining in Mali are based on a model agreement which is annexed to Mali's Mining Code. In contrast, the 'Third Master Agreement' for the construction of the controversial Chalillo Dam in Belize was fully negotiated between the parties.

In theory, the policy context for the negotiation of foreign investment contracts in host countries should reflect the principles of sustainable development, incorporating environmental protection, economic development, poverty reduction and human development. But there are all too often contrasts between theory and practice.

There can be major mismatches between claims that are made about the positive impacts of foreign investment at the macro level, where decisions on investment contracts are taken, and their actual impacts at the local level. Mostly, local communities affected by investment projects have no say in the negotiation and implementation of the deals that govern the project. Yet they often suffer negative impacts. Only with real appreciation of local contexts can policy-makers and businesses understand how best to get the right balance between sustainable development at the national and local levels.

Part of the problem is that an international policy environment committed to free markets has resulted in a system of investment regulation that is geared towards meeting the interests and needs of foreign investors rather than communities or the environment. All too often governments have focused on reforms designed to free up markets at the expense of efforts to strengthen environmental or social protection. The uses of foreign investment contracts in the world's poorer countries are often a direct result of experiments in macroeconomic policy-making or application of the latest thinking in the technical assistance programmes of the World Bank Group. In the 1980s and 1990s, the structural adjustment programmes of the World Bank and the International Monetary Fund encouraged governments to disengage from direct production of goods and services, promoting processes of privatisation instead. For example, in Ghana, the current policy framework for mining investment contracts is a logical evolution of reforms flowing from a World Bank and IMF-initiated economic recovery programme.

It would be wrong to suggest that foreign investors hold all the cards as they negotiate with host countries; but they often have the best possible professional support from advisers charged with acting in their best commercial interests. Host states might lack the resources to do the same and might find themselves sorely tempted to exchange their long-term right to regulate foreign investors for short-term investment gains.

Foreign investment contracts raise concerns at three levels:

- **Transparency**: many contracts are not publicly available, or are only made publicly available once they have been signed. Few contracts provide opportunities for public input or review during the process of negotiation. These concerns are apparent from case study work in Belize, Pakistan, and Ghana.
- **The content of the contracts**: particularly the balance that they reflect between the concern of foreign investors for stability for their project, and the provisions that are agreed to by host states responsible for upholding public policy goals. These concerns are highlighted by our work in Belize and Ghana.
- **The incidental impacts of the contracts** on sustainable development in the countries where investment projects take place. These result from legal and other processes that, although not part of an investment contract as such, are directly linked to that contract. For example, incidental impacts may include changes to national legislation specifically to clear the way for controversial projects. These concerns are shown in case study work in Chile, Mali, Pakistan and Belize.

Transparency

In many parts of the world, even the basic provisions of foreign investment contracts are not made publicly available. Alternatively, they may be made available once the deals that they reflect have been done, but without providing opportunities for public input.

Transparency, access to information, and rights of public participation are core principles of sustainable development. Lack of transparency is a breeding ground for corruption. It erodes participatory democracy by denying citizens and communities likely to be affected by a project the opportunity to have a say on whether and how investments should be undertaken.

Without public scrutiny of foreign investment contracts, it is impossible for citizens to judge whether or not their elected governments are acting in their best interests and effectively pursuing or meeting public policy goals. It is also impossible for them properly to hold their governments to account for consequences of foreign direct investment. Even where parliamentarians are afforded opportunities to scrutinise contracts, the risks of co-option as well as issues of expertise and capacity all point to the importance of wider public input to foreign investment contract negotiations and scrutiny of draft contracts.

In Chile, contracts associated with privatisation of the water sector are not transparent nor do members of the public have access to them. This lack of transparency feeds a general perception that there are no adequate mechanisms to guarantee the accountability of the companies, particularly in relation to their investment plans for infrastructure development to improve and extend water services.

In Belize, a contract between the Government of Belize and Belize Cruise Terminal Limited (BCTL) was signed in April 2004. BCTL had been established as a joint venture between Carnival Corporation of Panama and Belize Ports Ltd. The contract concerned the development of a cruise ship port and related facilities at the Belize Port Free Zone at Port Loyola, Belize City.

The terms of the cruise contract were not made public. Then in October 2004 the agreement was leaked, promoting widespread public discussion. The overriding fear, according to Tourism Minister Mark Espat (who himself claimed not to have been consulted on the deal) was that *'cruise passengers by the hundreds and thousands will overrun the popular destinations, diminishing the premium you can charge, destroying the exclusivity of Belize and after a few good years, Belize would lose its cruise industry charm and with the loss would be the loss of a steadily growing overnight sector'*. After a great deal of pressure from within the tourism industry, a 'clarification agreement' was signed that addressed some of the concerns – such as those raised by contractual clauses on the applicability of environmental legislation to BCTL. Not only did the 'clarification agreement' not go far enough for the Belize Tourism Association, an umbrella group, but there is also a question as to whether or not the 'clarification' has been legally incorporated into the terms of the contract. The Belize Tourism Association began judicial review proceedings late in 2004, on the grounds that the contract was unreasonable and unlawful. Their case has yet to be decided.

The disclosure of the cruise contract clearly triggered concern, both because of the terms as well as the secrecy of a deal that will have far-reaching effects for the country. It has also stimulated widespread public discussion within the tourism industry and beyond about what model of development Belize will pursue in its efforts to promote tourism in the country. Without public engagement, the policy decisions reflected in the terms of the deal, and its prioritisation of high-volume visits by cruise ship tourists, would have taken effect without any meaningful opportunities for public review.

In Pakistan, in 1997, the Pakistani Ministry of Petroleum and Natural Resources granted a licence to Premier Exploration Pakistan Limited, which at that time was a joint venture between Anglo-Dutch Shell and English Premier Oil, allowing it to undertake natural oil and gas exploration in the Kirthar National Park. The Park is the largest national park in Pakistan. As well as being on the UN list of protected areas because of the number of threatened animal species it hosts, the Park is crucially important for water supply to Karachi, which has a population of 14 million people. Despite the controversy surrounding oil exploration in the Kirthar National Park and a rash of litigation related to the Shell-Premier investment, our project team was not able to access relevant documents. This continues to be the case now, even after the joint venture between Premier and KUFPEC (Shell divested from the project once the controversy erupted) completed exploration activities in the Park.

Not all countries fail to provide for public access to investment contracts. For example, in Ghana, the Constitution makes provision for Parliamentary involvement in grants of rights or concessions for exploitation of minerals. Any transaction, contract or undertaking has to be ratified in Parliament by a two-thirds voting majority. On the government side, negotiations are normally led by the Minerals Commission. Usually, before ratification of a mining investment agreement, the Parliamentary Committee on Minerals and Natural Resources would have an opportunity to scrutinise the agreement and to ask questions to officials from the Minerals Commission on aspects of the agreement. Whether and when contracts become available to the wider public depends on whether the Parliamentary Committee invites public comments on the contract document; for most agreements placed before Parliament this does not happen. Ratification by Parliament has little impact on the substantive content of agreements negotiated by the Minerals Commission. It is a last resort right of veto.

A public right of access to information is clearly not the same as a public right of participation. In the Ghanaian case, the extent of the public right to comment is at least determined by a Parliamentary Committee. In practice though, the exercise of this discretion has rarely offered members of the public opportunities to make substantive inputs to contracts whilst substantive negotiations are still under way. Civil society groups and communities living in and around potential mining sites in Ghana rarely have opportunities to make inputs during the negotiation process.

Another way for host country governments to provide for public access to information about foreign investment contracts is formally to adopt them as part of their legislation. This approach has been taken, for example, in the case of oil and gas projects in Cameroon and in

Azerbaijan. It has a number of consequences: not only does it offer additional security to foreign investors, but it may also carry wider legal implications stemming from the fact that the host state's action in ratifying the contract through legislation amounts to more than a contractual act as an exercise of sovereign authority. And if contracts breach other kinds of national laws, their adoption through legislation can also potentially open the way for citizens to challenge the terms of those contracts in national courts.

Aside from the general problem of lack of access to the terms of foreign investment contracts, some deals include provisions which prevent members of the public from accessing the information that they need to assess the socio-economic implications of the project. In Ghana, for example, a typical mining lease would likely bind the Government to treat all information submitted under obligations in the lease as confidential for a period of five years, or until termination of the lease. Even then, the consent of the company might be required.

Lack of transparency in the negotiation of foreign investment contracts can shift public concern to processes and forums whose mandates do not match the underlying concerns but that do at least allow a measure of public participation. For example, in some cases, including the Chalillo Dam project in Belize and Shell-Premier's exploration in Pakistan, public concerns about lack of transparency have found expression through legal challenges to environmental impact assessment procedures that countries have adopted for evaluating the environmental impacts of large projects. But these impact assessment procedures are not designed to enable effective scrutiny of non-environmental concerns. They are a poor substitute for wider transparency or public opportunities to shape the terms of the contracts themselves.

The content of foreign investment contracts

Foreign investment contracts need to strike a balance between the legitimate interest of investors in stability for their investment on the one hand, and the pursuit of sustainable development on the other. When there is a long time-frame between the initial investment and materialisation of profits, investors need appropriate safeguards against non-commercial risks – such as the risk that their investment could be expropriated through nationalisation. All too often in the cases that we are aware of, the balance reflected in foreign investment contracts appears disproportionately to favour the foreign investor, not the host country government as keeper of the country's overall public policy goals. Some examples of contract clauses that raise particular concerns are highlighted below. The detailed implications of any contract for sustainable development can only be assessed by looking at it in the round; alongside wider domestic legal requirements and the provisions of any relevant intergovernmental investment agreements.

Dispute settlement

Foreign investors generally have rights to compensation from host states if their contractual rights are breached. But compensation is not a benefit that is typically available to domestic businesses. When disputes arise between foreign investors and the countries that host them, foreign investment contracts usually say that they should be resolved in the largely closed world of international arbitration, as opposed to through national courts. Many have criticised the opaque nature of arbitration processes. Restrictions on dissemination of information about the dispute, publication of the detailed outcome of the dispute (the 'arbitral award') and interventions by non-disputants with an interest in the outcome of the dispute are the norm. The members of the elite community of international arbitrators are often employed by law firms that specialise in negotiating foreign investment contracts for companies. Conflicts of interest are a real and systemic concern. And where investment disputes arise from action taken by host states to protect a public interest or the rights of their citizens (e.g. environmental legislation, or action in favour of indigenous communities), international commercial arbitrators may not be best placed effectively to take those broader interests into account.

Stabilisation clauses

'Stabilisation' clauses are legal devices that foreign investors commonly use to manage so-called 'non-commercial risks'. They are typically used in contracts with host countries where there is political, regulatory or institutional uncertainty or when standards addressing potential impacts of the investment have not yet been developed. In effect, stabilisation clauses work by committing the host government not to take action or to alter its legal system in a way that negatively affects the investment project.
If a government that is party to a stabilisation clause breaches the commitment, it is likely to be required to pay compensation. With increasing attention now being paid by governments to environmental and social issues in many countries, these policy areas have also been brought within the scope of the stabilisation mechanisms of foreign investment contracts, alongside longstanding areas of 'stabilisation' concern such as tax laws. Even where stabilisation clauses specifically focus on the risk of 'expropriation' of foreign investment projects through government action – as in Mali's model mining agreement, for example, – developments in international arbitration can make them more far-reaching than they appear at first sight. Recent arbitral awards, particularly under the North American Free Trade Agreement (NAFTA), have shown the willingness of arbitrators to broaden the concept of expropriation well beyond nationalisation or similar acts of government to environmental measures with a substantial impact on the competitiveness or viability of investment projects.

The legacy of a peculiar form of stabilisation arrangement is now the subject of considerable controversy in Chile. Following the 1974 military coup, General Pinochet's government set about addressing the reluctance of foreign companies – particularly those in the mining sector whose interests had previously been expropriated – to invest in Chile. 'Decreto Ley 600' of 1974 set out a series of tax benefits and guarantees for foreign investors. Foreign investors benefiting from the law would be protected by means of a contract signed with the State. Due to the particular legal form of the contract, it could not be modified without the consent of the investor. And even then, amendment carried the same requirements as an amendment to the constitution: a two-thirds majority vote of the legislature. The effect, practically if not legally, is to place foreign investors on the same level as the sovereign state. One of the principal contributions of foreign investment to the development of poorer countries lies, at macro level, with its potential to generate tax revenues. But the pressure for middle and low income countries to compete for position in the race to attract foreign investment by lowering taxes is significant.

Current debate on mining tax reform in Chile follows increased public awareness of consistently low levels of taxes paid by mining companies investing in the country. The transnational enterprises that control more than 60% of the Chilean mining industry bear less than 25% of the tax burden. In the last decade, foreign companies investing in Chile have exported copper of a value of over US$43 billion, whilst contributing taxes of less than US$270 million.* Government proposals aim to head off sophisticated tax avoidance strategies and to levy royalty payments on income derived from the sale of mineral products. Proposals provide for a phased approach for investments currently protected by contracts provided for under 'Decreto Ley 600'.

The legal implications of stabilisation clauses are controversial, but they tend to be interpreted by arbitrators as creating legally binding obligations that have to be respected by the state. In many cases, such clauses are reinforced by provisions of bilateral investment treaties committing a state party to comply with investment contracts concluded with nationals of the other state party ('umbrella clause'). In some contexts, there are legal concerns about the constitutionality of stabilisation clauses, and the legitimacy of state action in agreeing to them.

Choice of law clauses

The effect of stabilisation clauses can be reinforced by clauses that define which system of laws governs the project. Sometimes these clauses 'internationalise' the contract, so that parts of it are governed by a legal system other than that of the host state. Most controversially, these 'choice of law' clauses, as they are known, may state that the law of the host state is to apply with the exception of specified pieces of legislation. The Belize Chalillo Dam 'Third Master Agreement' waives 'any and all environmental laws, rules or regulations', whether in force or new, except those to which the investor specifically agrees to be bound.

Applicable standards clauses

Sometimes, investment contracts contain clauses setting out the range of standards, other than those of the host state, that are to govern the project. These may include references to 'good industry practice', or even to the standards of another country. The substance of these provisions (including in particular how clearly the substantive obligations that they lead to can be identified) and their appropriateness are particular concerns.

Local content requirements

The quality of the local economic development benefits brought by a foreign investment project may depend on the kinds of economic opportunities that it brings for local people. Here, host states may be concerned to maximise input to the project through locally produced goods and services, whereas foreign investors may seek to maximise their freedom to source goods and services, or hire workers, from whatever sources they see fit.

Property rights-related provisions

Foreign investment contracts sometimes address property rights – with direct implications for property rights-holders near proposed investment projects. For example, host country governments sometimes provide investment contract guarantees to foreign investors that land for the project is guaranteed free of any other conflicting property rights.

The indirect impacts of foreign investment contracts

Foreign investment contracts can have many indirectly associated impacts, aside from the direct impacts of the terms of the contracts themselves. Most starkly, Belize's Chalillo Dam and an oil exploration concession granted to Shell-Premier for exploration in Pakistan's Kirthar National Park were associated with legislative changes with the express aim of removing legal blockages to the investment projects.

The Chalillo Dam project was lauded by the Government of Belize as a solution to the country's energy security challenges and to bolster the under-productive Mollejón Dam. Belize meets its energy needs from diesel-driven power stations and by using imported oil and the output of a hydroelectric power station on the Macal River at Mollejón. Additionally, about half the country's energy needs are met under a preferential contract with Mexico, allowing purchase of off-peak electricity (mostly from a natural gas facility in the Yucatan). The Government of Belize attempted to rally public support for the building of a second dam and reservoir on the Macal River at Chalillo by suggesting that the Mexico supply could be cut off at the whim of the Mexican government, leaving Belize at the mercy of a foreign power. Building the dam would mean flooding nearly ten square kilometres of land that had been designated by Belize as protected. The area has been described as one of the most biologically rich and diverse regions remaining in Central America. The Government of Belize gave its consent to the dam. Whilst ultimately unsuccessful litigation challenging the environmental impact assessment was making its way to Belize's highest court of appeal (the Privy Council in the UK), the Government

* Jorge Lavanderos Illanes (2003), *Royalty, regalia o renta minera (lo que Chile no cobra).* Santiago de Chile: Impresos y Editorial Lafken Ltda, p132.

proposed legislation to secure the future of the controversial project – regardless of what any court or tribunal anywhere might have to say about it. Section 4(d) of the Macal River Hydroelectric Development Bill, 2003 said:

> *[F]or the avoidance of doubt and for greater clarity, [the Belize Electric Company Limited] shall proceed with the design, financing, construction and operation of the Chalillo Project... notwithstanding any judgment, order or declaration of any court or tribunal, whether heretofore or hereafter granted, issued or made.*

A storm of protest followed in the national press. The Bill was passed and subsequently repealed after the Privy Council reacted unfavourably. But construction of the Chalillo Dam had already begun.

In Pakistan, non-governmental organisations made strong legal arguments against oil exploration by Shell-Premier in the Kirthar National Park. They based their arguments on the provincial legislation of the state of Sindh. Section 15 of the 1972 Sindh Wildlife Ordinance prohibited activities likely to disturb or damage local fauna and flora in any area designated as a National Park. It also prohibited *'clearing or breaking up any land for cultivation, mining or for any other purpose'* in a National Park. Notwithstanding the apparent illegality of its move, the Sindh Department of Industries reportedly granted a letter of no objection to oil exploration in the Park in 1996. In 1997, in contradiction of the letter of no objection, the ban on mining was reinforced through a Government of Sindh notification.

Local NGOs prepared to mount a legal challenge to Shell-Premier's exploration. Their efforts were thwarted in 2001, when the Governor of Sindh (who had himself formerly been a Shell-Premier Director) amended the protective Wildlife Ordinance so that it would not apply to *'any activity in a national park in connection with the exploration or production of oil and gas which is undertaken in accordance with an environmental impact assessment'*. The Governor's notification had the effect of legalising the exploration so long as requirements imposed by an environmental impact assessment were complied with.

The Shell-Premier investors and then their successors had closed their operations in the Kirthar National Park by the end of 2004 after exploratory wells drew a blank. The legislation designed to facilitate their investment is their legacy. And with legal obstacles to further exploration cleared, Pakistan's central government has reportedly received expressions of interest from a number of foreign companies for awards of new exploration licences.

Foreign investment contracts have more indirect impacts too. One example is the 1288km Dakar-Niger railway line, which runs from Koulikoro on the river Niger in Mali to the port of Dakar on the Atlantic Coast. For the inhabitants of Mali's Kayes region, the train line is the principal connection to the rest of the country. The railway was controlled by public companies owned by the governments of Mali and Senegal – until poor economic circumstances led the governments of the two countries to consider privatisation through the issue of a concession. After several years of negotiation, in September 2003, a concession was granted to Transrail SA. Transrail is a private, limited liability for-profit company under Malian law with a shareholding structure that includes the governments of Mali and Senegal, employees of the enterprise established to operate the line, and a Canadian investor, Canac, which is part of the Canadian National Railway Company.

Since privatisation, the new company has prioritised freight over passenger services. This has resulted in an erosion of citizens' opportunities for free movement, generating frustration among affected populations and possible negative effects for the socio-economic development of the region. While the concession agreement does refer to developing passenger services, the implementation of this clause does not seem to have been a priority for the investor. These issues could have been better addressed, either in the legislation governing the privatisation or in the terms of the concession itself – for instance, through more effective mechanisms to call the investor to account for failure to deliver. The balance that was eventually arrived at may have been the only way of securing a future for the railway. But without full transparency in negotiations that conclusion is difficult to verify.

Some foreign investment contracts generate major impacts on the property rights or livelihoods of local people. In Ghana, for example, a key by-product of mining agreements has been the taking of land and damage to property associated with mining. Legislation provides for compensation to be paid for disturbance of rights related to the land's surface and the appropriation of property. But even mining industry practitioners agree that compensation levels are inadequate. A significant number of cases before the Ghanaian High Court in Tarkwa, a major mining town, deal with issues either of non-payment or payment of inadequate compensation.

In most African countries, only a tiny proportion of rural land is formally registered or titled. Most African farmers gain access to land through customary rights, which are rarely adequately protected by national legal systems. Whilst some countries, including Mali, have adopted a legislative approach that ensures greater sensitivity to these local realities, many have yet to do so, exacerbating the likelihood that efforts physically to 'clear the way' for foreign investment or guarantee free access to foreign investors through foreign investment contracts will cause hardship for local people.

These kinds of indirect impacts happen to have been associated with foreign investment contracts. But the problems are of wider significance, reflecting systemic challenges in the governance of foreign direct investment. We expect that our efforts to understand the wider impacts of foreign investment contracts will generate helpful insights for others working to analyse the sustainable development implications of foreign direct investment more widely.

What needs to happen next?

This report has highlighted a range of concerns about foreign direct investment governed by foreign investment contracts. The specific concerns are heightened by a generalised lack of transparency in the negotiation and accessibility of foreign investment contracts, by their tendency to favour settlement of disputes by private international arbitral tribunals not national courts, and by their potential to undermine public policy goals related to sustainable development.

Alongside enhanced transparency, new tools will need to be developed to facilitate monitoring and evaluation of foreign investment contracts through a sustainable development lens, linked to provisions that allow foreign investment contracts to be reviewed.

Some of those concerns can be addressed through changes in the terms of the contracts themselves. Others might best be addressed through changes in national legislation in the host countries concerned, or through efforts on the part of home countries to ensure that multinational corporations headquartered in their territories behave properly. International financial institutions and the providers of the project finance that allows deals to go ahead are also potentially important leverage points. Their loan repayment terms can fundamentally affect the structure of foreign investment contracts themselves, but they can also help to improve the terms of contracts by attaching social and environmental conditions to provision of finance. Addressing some of these issues, and assessing what is commercially feasible, will call for sound economic analysis of the terms of different deals.

What makes most sense when strengthening the contribution of foreign investment contracts to sustainable development will differ from sector to sector, country to country, and project to project. That is one reason why it is important to assess the sustainable development implications of these deals from the bottom up, applying a mix of 'home' and 'host' country expertise and political understanding. We will work with allies in civil society, business, financial institutions and governments to get a balance between full transparency and commercial confidentiality so as to meet the needs of sustainable development. We will build wider understanding on the different types of foreign investment contracts, why they are used, and the global and the sectoral legal and economic trends. We will ground our recommendations in an understanding of commercial realities and local impacts. And we will use a creative mix of sound research, advocacy and engagement to make sure that foreign investment contracts make the best possible contribution to sustainable development.

Further information

For further information about Lifting the Lid on Foreign Investment Contracts *and our plans for the next three years, please contact the project coordinator, Halina Ward, at halina.ward@iied.org, or the following in-country contact points: for Chile, Hernán Blanco, hblanco@rides.cl; for Ghana, Nii Ashie Kotey, enakotey@yahoo.com; for Mali, Moussa Djiré, djiremous@yahoo.fr; for Pakistan, Shaheen Rafi Khan, shaheen@sdpi.org. The project partners are grateful to Candy Gonzalez (belpobz@starband.net) for her help and support in the initial stages of our work.*

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