Annette Schramm

Legal Mobilization in Large-Scale Land Deals

Evidence from Sierra Leone and the Philippines

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Abbreviations

AA	Acknowledgement Agreement
AfDB	African Development Bank
AGPI	Agumil Philippine Inc.
ALDAW	Ancestral Land/Domain Watch
ALLAT	Action for Large Scale Land Acquisition Transparency
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
ARB	Agrarian Reform Beneficiary
AVA	Agribusiness Venture Agreement
CARP	Comprehensive Agricultural Reform Programm
CDA	Cooperatives Development Agency
CFS	Committee on World Food Security
CFS-PRAI	The Principles for Responsible Investment in Agriculture and Food Systems
CSO	Civil Society Organization
CSR	Corporate Social Responsibility
DA	Department of Agriculture
DAGAMI	Danggayan Dagiti Mannalon ti Isabela
DAR	Department of Agrarian Reform
DENR	Department of Environment and Natural Resources
DFI	Development Financial Institution
ECOWAS	Economic Community of West African States
EPA	Environment Protection Agency
ESHIA	Environmental, Social and Health Impact Assessment
FAO	Food and Agriculture Organisation of the United Nations
FBB	Fresh Fruit Bunches
FIAN	FoodFirst Information and Action Network
FPIC	Free, Prior and Informed Consent
GDP	Gross-domestic Product
GFII	Green Future Innovations Incorporated
HRCSL	Human Rights Commission of Sierra Leone

IFAD	International Fund for Agricultural Development
IFC	International Financial Corporation
KMP	Kilusang Magbubukid ng Pilipinas
LGU	Local Government Unit
MAFFS	Ministry of Agriculture Forestry and Food Security
MALOA	Malen Land Owners and Users Association
MSA	Management Service Agreement
NGO	Non-Governmental Ogranisation
NLOS	National legal opportunity structure
NPA	New People's Army
NSADP	National Sustainable Agriculture Development Plan
PADCC	Philippine Agricultural Development and Commercial Corporation
PC	Paramount Chief
PCA	Philippine Coconut Authority
PCSD	Palawan Council for Sustainable Development
PHP	Philippine Pesos
PRSP	Poverty Reduction and Strategy Paper
PTMA	Production Technical and Marketing Agreement
PTMA	Production Technical and Marketing Agreement
QCA	Qualitative Comparative Analysis
REC	Receptivity of the company
RSB	Roundtable on Sustainable Biofuels
RSPO	Roundtable on Sustainable Palm Oil
SiLNoRF	Sierra Leone Network of the Right to Food
SLIEPA	Sierra Leone Investment and Export Promotion Agency
TNC	Transnational Corporation
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDROP	United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure
WB PRAI	Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources

1. Introduction

> "How can we convince more companies to follow international voluntary principles on large scale land-based investments? We have these guidelines in place. Now we have to make a business case for their implementation." (participant at the 2018 Annual Land and Poverty Conference of the World Bank)

> "There was no consultation; there was no transparency, no accountability. They just did this because they have the political power or influence. They did it with force. […] According to the protocols, you have to consult the family. We have to call family meetings and do other things, consult our elders, consult those who are outside." (customary landowner in Sierra Leone describing a foreign investor leasing land)

> "Nobody explained the content of the documents. And, you know, most of us were farmers. We don't know legal terms" (member of a cooperative in the Philippines, which entered into a contract growing agreement with a foreign investor)

The three quotations exemplify different experiences I made during the research for this dissertation[1] on large-scale land deals. The first citation was a comment one participant made during a panel discussion at the 2018 Annual Land and Poverty Conference of the World Bank. It represents ongoing debates about creating international regulatory frameworks for companies investing in farmland in developing countries. These debates were the starting point for my research endeavor, which asks for the relevance of legal provisions for local populations affected by large-scale land deals. The idea voiced by the panel member at the Conference reflects a market-based approach, which assumes that companies will voluntarily follow best practices and consult with affected communities.

This idea contrasted with my experiences during fieldwork in Sierra Leone, reflected in the second quotation. I was sitting with customary

1 This dissertation was part of the research project "F07 Local orders under threat from land grabbing – Global civil society and international law as curse or blessing?" of the Collaborative Research Center 923 "Threatened Order – Societies under Stress" funded by the DFG (Deutsche Forschungsgemeinschaft).

landowners who had not been consulted by an investing company. While the investor did not follow international best practices, they did follow national law, which does however not protect customary land rights. Local landowners were frustrated and their mobilization attempts remained futile. Neither international soft law instruments nor national law did protect their land rights.

Yet, legal provisions do not automatically lead to a positive outcome for local farmers, as my third experience from the Philippines showed (as represented by the third quotation). I met with members of cooperatives, who had entered into a contract-growing-agreement with an investor in palm oil. The investment project had put the economic risk on the cooperatives' members, who only realized the detrimental effects once they were highly indebted. Administrative rules, meant to protect the interests of small-scale farmers, had not been implemented. Furthermore, as the quotation shows, cooperatives had not received any legal help and therefore did not fully understand the contract as well as possible risks involved in the project.

All three quotations present a different view on the regulation of foreign investments in agriculture. Foreign large-scale land investments have been on the rise globally since 2007/2008 and have received considerable attention from civil society organizations (GRAIN 2008), international organizations (Deininger/Byerlee 2011) as well as academics (Cotula 2013; Borras/Franco 2012). Critics often refer to the deals as 'land grabbing' and point out numerous detrimental effects for local communities. Proponents of these investments and host governments emphasize the potential for job creation and economic development (Braun/Meinzen-Dick 2009). However, both sides agree that lease agreements have to be set up in a fair and legal manner to benefit local communities, who usually give up one central element of their daily livelihoods – land. Despite this agreement, there are broadly speaking two approaches to regulation: A market-based approach, which focuses on voluntary principles and self-commitments of companies on the one hand; and a rights-based approach, which demands binding and enforceable regulation, on the other hand. Most of this debate follows ideological or normative assumptions. What is so far missing is systematic empirical evidence and a conceptualization of how local actors use voluntary principles or hard law when faced with foreign investors.

The dissertation addresses these gaps by developing its own framework and applying it to empirical cases from Sierra Leone and the Philippines. In doing so, the dissertation makes a more fine-grained but theoretically and empirically grounded, three-fold argument: First, legal instruments in

themselves do not change the situation of local actors, who need support networks to access and make use of them. Second, voluntary market-oriented instruments can help local actors in settings in which companies are receptive to these demands. Third, binding laws as suggested by rights-based approaches should be preferred, as they do not rely on the receptivity of the company. In consequence, the findings of this dissertation underline the need for a human right to land in addition to providing legal support to local communities.

In this chapter, I will first introduce the research question and relevant basic concepts of my dissertation (chap 1.1), before I will give a brief overview of the research program with its theoretical framework and empirical analysis (chap 1.2). I will then discuss the academic and practical relevance of the study (chap 1.3) before outlining the structure of this thesis (chap 1.4).

1.1 Research question and scope of the study

Research on large-scale land deals has been extensive since these deals were first described as a global phenomenon and termed 'land grabbing' by a Spanish NGO in 2008 (GRAIN 2008). The Land Matrix, a database which collects global data on these deals, defines large-scale land deals[2] as a "transfer of rights to use, control or own land through sale, lease or concession" (Anseeuw et al. 2012: 48) of at least 200 hectares from local communities to foreign investors (which can include joint ventures with national companies). In the dissertation, I use this definition, which excludes purely national or local land deals or cases of state expropriation. The land deals can include a variety of business models form large plantations to outgrower schemes (Hall 2011). I explicitly include contract-growing models, which are often introduced in combination with leases. While contract-farming systems are frequently presented as viable alternative to large-scale lease contracts (FAO 22/06/2010), they often contain considerable corporate control over the land as well (Vellema 1999).

Many large-scale land deals are accompanied by considerable land-use change: from small-scale agriculture for local markets to large-scale indus-

2 I vary the terms used throughout the dissertations such as large-scale foreign investments in land, land investment deals, large-scale land based investments, large-scale land agreements or simply land deals. I use all those terms in line with the definition of large-scale land deals introduced here.

trialized production for the world market (Borras/Franco 2012). Estimates on the total area affected range between 26.7 (Nolte et al. 2016: vi) and 30 million hectares (GRAIN 2016: 4) globally, including all foreign investment deals since 2000. It seems that for the moment, the pace of closing new large-scale land agreements has slowed down. However, it is now that many of these investments have become operational, which is a crucial moment for affected communities (Nolte et al. 2016: 12–14).

Apart from describing ongoing trends (White et al. 2012; Hall 2011; Anseeuw et al. 2012), the literature on large-scale land deals has focused on explaining the 'land rush' (Akram-Lodhi 2012; Cotula 2012) and analyzed its oftentimes negative impacts (Schoneveld 2017; Kress 2012; Oya 2013b). The two main problems identified are lacking community participation in closing the land investment deals (Vermeulen/Cotula 2010) and insufficient benefits, which cannot make up for the loss of land (Schoneveld 2017).

Responses to large-scale land deals can be observed among local populations as well as on the global level. One research strand focuses on 'reactions from below' (Hall et al. 2015) including a number of case studies focusing on resistance against, or for better incorporation in, land investment deals (Gingembre 2015; Grajales 2015; McAllister 2015). Another research strand looks at 'reaction from above' (Margulis et al. 2013) and critically discusses different global governance initiatives to regulate foreign large-scale land investments (Seufert 2013; Stephens 2013; Johnson 2016).

The dissertation builds on this existing research but goes one step further in linking the 'reactions from above' with the 'reactions from below' in asking how local actors can actually make use of such instruments. It therefore contributes to closing the following research gap:

> "It is of great interest to study how international frameworks trickle down to local policy arenas, how they are used by stakeholders, and how they are finally shaping conflicts at the local level and affecting their results." (Brüntrup et al. 2014: 433)

Essentially gaining a better understanding of how legal frameworks suggested on the global level can have an effect locally is one good reason for focusing on legal aspects in local reactions to large-scale land deals. Another reason is the inherent legal nature of large-scale land deals. Current large-scale land deals are usually based on contracts, often in the form of lease agreements. Large-scale land deals are therefore an inherently legal process and are shaped by the surrounding legal framework (Cotula 2011).

To get a closer understanding of how affected communities use legal instruments, I use the concept of legal mobilization, which is defined on a very basic level as "[…] the act of invoking legal norms to regulate behavior" (Zemans 1983: 700) – in the case of my dissertation the behavior of investing companies. Primarily, I am interested in how local actors can successfully use legal mobilization to get better deals or change company behavior. Consequently, my research question for this dissertation is: *Under which conditions can local actors successfully pursue their goals through legal mobilization?*

I will elaborate further on the research question before I give an outlook over the research program.

First, the research question zooms in on *local actors* and their actions. It focuses on those actors who do become active and make demands vis-à-vis an investor. I specifically focus on smallholder farmers who are directly affected by a large-scale land deal through entering into a contract with a company or through losing their land involuntarily. These actors can vary considerably from case to case: a whole community, a local chief, chiefdom elites, local civil society organizations, women, or youth groups. As I do not want to predetermine this group, I will speak of local actors, local communities or simply smallholders[3]. Furthermore, many affected communities are far from homogenous, and different groups within an investment area might have varying demands vis-à-vis an outside investor (Gilfoy 2015; Larder 2015; Borras/Franco 2013). I will only specify the term local actor in each empirical case. In this way, it is also possible to broach the issue of excluded or marginalized local groups and to discuss conflicts within the communities. Even though my starting point are local actors, this does not mean that other actors such as NGOs, lawyers, government officials, national elites and international civil society do not play a role. On the contrary, outside actors play a decisive role in providing local communities with resources, expertise and alliances (Polack et al. 2013: 33–35). In this way, the analysis is not limited to the local level but follows the var-

3 It should be noted that my dissertation does not specifically discuss or investigate indigenous people rights, as this has been done elsewhere (Xanthaki 2007; Wiessner 2008; Prill-Brett 1994). This should in no way be regarded as a normative decision but rather follows pragmatic considerations: 'Indigenous rights' have been discussed in separation of 'peasant rights' on the international level and have received formal recognition in regards to their collective right to land (Sändig/Schramm 2016: 257).

ious legal measures in their respective use and origin throughout the levels.

The second term in need for further concretization is the concept of *legal mobilization*, which in its most general sense means 'using the legal'. This can happen in three different ways (McCann 2004: 507): Calling on legal institutions such as courts, human rights commissions, ombudsman offices etc.; using legal representation through paralegals or lawyers; and making legal arguments drawing on a range of legal norms. In this dissertation, I will be looking for all three forms of legal mobilization, which often coincide.

It is important to note that I do not focus specifically on litigation, which is often at the center of studies on legal mobilization (McCammon/McGrath 2015). Instead, I am interested in the many ways in which legal arguments are employed outside the courtrooms. Calling on legal institutions or following a litigation strategy are far-reaching instruments. Social actors might not be able to use them due to a lack of resources. At the same time, they might not want to aim for litigation right away, because a good relationship with the other side is more important. In consequence, "[c]itizens routinely mobilize legal strategies for negotiating exchanges and resolving disputes in many social settings without relying on direct official intervention" (McCann 1994: 8). In these contexts, having a lawyer can make a difference, especially when individuals face powerful actors such as transnational corporations. Legal representation is often crucial for navigating through complicated and disempowering legal procedures as well as creating realistic expectations about what can be achieved (Gallagher/Yang 2017: 171). As will be discussed in the theoretical as well as empirical part of this dissertation, legal advice is highly relevant in large-scale land deals in which local actors, who often miss a formal education, have to negotiate with transnational corporations.

Apart from legal representation, the use of legal arguments is probably the most widespread form of legal mobilization, even though it is not often explicitly studied as such. Legal arguments are not only formulated in courts but during advocacy campaigns (Hertel 2015), in the media (Gianella 2017) and in everyday lives (Ewick/Silbey 2007).

Following this broad view on legal mobilization, I employ a comprehensive understanding of 'the legal', which means "to refer to the meanings, sources of authority, and cultural practices that are commonly recognized as legal, regardless of who employs them or for what ends" (Ewick/Silbey 2007: 22). The term contains the concept of written law but goes beyond this narrow understanding to include references made to less formalized

rules. This approach enables an open and unbiased look on the empirical material and allows me to include references to customary law. This broad definition furthermore pays tribute to the great variety of initiatives found on the ground (Polack et al. 2013).

The third element of the research question in need of clarification is the *successful pursuit of goals* by local actors. I use the term goals, although I am aware that this might mean protecting fundamental rights. Yet, I do not want to make any presumptions about the kind of claims affected people make vis-à-vis a company. As existing research has highlighted, only some communities ask for a complete withdrawal of an investing company. In many cases, local actors aim for better terms of incorporation in the land deal (Borras/Franco 2013: 1735). In consequence, I identify respective goals as the demands made vis-à-vis the company by local actors. Essentially, successfully pursuing their goals means that local actors have their demands met by investing corporations. In this view, the abandonment of an investment project might not be considered a success, as this might not necessarily be what local actors wanted. In this way, partial success is possible, as the company might make some concessions, for example paying higher rental fees, while at the same time not giving in on other issue areas. What success means can only be specified in each case.

Apart from the elements, which are explicit in the research question, further considerations determine the scope of my study:

First, my research focuses on transnational companies and their local subsidiaries as the main interlocutor of local actors, even though government officials and national elites usually play a leading role in facilitating and signing a large-scale land deal (Keene et al. 2015). The latest research has additionally identified financial actors such as pension funds, investment or development banks as important players (Ouma 2014: 163). As these actors often provide pivotal funding for large-scale investments in land, they are able to exert considerable influence on the daily operations of the plantations (Millar 08/01/2016). In consequence, local groups target not only transnational corporations in their fight for their interests but also express demands towards these other actors. If these demands aim at influencing the setup of the investment, I will include them in the analysis. However, if requests are made towards the national government in a general way, for example, for land reform, these campaigns will not be considered further in the research. Essentially, the focus is on the relationship between the investing company signing the land deal and the affected local population.

Furthermore, my research is limited to large-scale land investments in 'developing' countries, which I define according to the 'low' and 'lower middle' income groups of the World Bank (World Bank 2018a). There are three reasons for this decision: First, data from the Land Matrix shows that developing countries are among the most targeted countries (Anseeuw et al. 2012: 10; Nolte et al. 2016: 19). According to my calculation[4], 77 % of all large-scale land deals with the participation of a transnational investor take place in these countries. Second, the impacts large-scale land deals can potentially have positively or negatively are considerable in these countries. On the one hand, agriculture plays an important role in these economies, contributing 30,1 % to the GDP in low and 16,5 % to the GDP in lower middle income countries in 2016 (World Bank 2018b). Even more, the agricultural sector employs about 69 % of the workforce in low and 39 % of the workforce in lower middle income countries in 2017 (World Bank).

On the other hand, rural areas in developing countries are extremely prone to poverty:

> "Three of every four poor people in developing countries live in rural areas—2.1 billion living on less than $2 a day and 880 million on less than $1 a day—and most depend on agriculture for their livelihoods" (World Bank 2007: 1)

In consequence, growth in the agricultural sector is seen as a big chance in reducing poverty and creating economic growth for the poorest (World Bank 2007). In these contexts, large-scale land deals could have positive but also extremely negative impacts, including increasing poverty and food insecurity (Nolte et al. 2016: 19). Third, it is often in low and lower middle income countries that the legal system and state capacities to protect tenure rights and regulate large-scale land investments is the weakest (Deininger/Byerlee 2011: 97). The role of international regulation could therefore be potentially higher.

Apart from my focus on developing countries, I further limit my research to foreign investment in land agriculture. I exclude land transac-

4 For the purpose of the calculation, I coded all countries according to their income category as defined by the World Bank (as categorized in June 2017). I differentiated the land deals into 'transnational' land deals, which had at least one foreign investor involved, and 'domestic' deals in which investors came from the very same country. All own calculations in this dissertation are based on the complete Land Matrix dataset downloaded on 12/06/2018.

tions and expulsions for the purpose of mining (Sibaud 2012), tourism (Cohen 2011) or conservation (Fairhead et al. 2012). There are two reasons for this decision: First, underlying mechanisms for investment in these sectors are different. The state wholly owns sub-soil minerals in most countries and mining is usually regulated in specific legislation. Agricultural land, on the other hand, is owned by individuals, families and communities, whether through formal or informal tenure rights (FAO 2002: 11). Even in cases where land is state-owned, local communities usually have more or less formalized use rights. Second, most of the debate around large-scale land deals and new attempts of global regulation took place in the context of investments in agriculture, making it a relevant research endeavor in itself. However, this does not mean that insights from this research are not applicable to other types of investment.

One last limitation of my research is the focus on issues arising directly around the land transfer itself: Who leased or planned to lease whose land for which amount of rent and is this contested? I exclude other issues such as social responsibility commitments, environmental problems, or labor rights issues, even though they frequently arise during the operation of large-scale agricultural investments. During my research interviewees repeatedly raised concerns around recruitment and labor conditions; however, it is merely beyond the scope of this thesis to analyze all these issues at the same time. Labor and environmental issues are covered by different national and international regulation than land tenure issues, making it extremely difficult to study all relevant legislation. While I might mention some of these issues in the case studies of individual land deals, the overall focus is clearly on the land transfer and the underlying regulation in regards to decision-making and land tenure.

Summarizing these points, an extended version of my research question would be: *Under which conditions can local actors successfully pursue their goals, linked to decision-making processes around land deals, vis-à-vis transnational companies, through legal mobilization in cases of large-scale agricultural land investments in developing countries?*

Before I continue with describing the research program of this study, a note on terminology: The literature often uses the term 'land grabbing' to describe the same phenomena as I do. The term was initially coined by the Spanish NGO GRAIN, who used it to describe the surge in large-scale land deals since the beginning of the 2000s (GRAIN 2008). While prominent researchers in the 'land grabbing' literature acknowledge the political connotation of the term, they argue that the term 'large-scale land invest-

ments' is even more problematic as it suggests these investments as "solution to rural poverty" and "ethical 'win–win' outcomes" (Borras/Franco 2012: 35). This picture of land deals as something potentially beneficial for local populations is strictly denied by these researchers and activists who argue that large-scale land-based investments are never benefiting the local population but are rather a tool "to further capital accumulation for the insatiable corporate hunger for profits" (Borras et al. 2013: 171).

Other researchers have, however, pointed out that existing evidence is not enough to support these sweeping claims: Case studies trying to determine the socio-economic consequences of large-scale land investments often lack reliable baseline data (Oya 2013a: 512). And cumulative oriented studies, which look at socio-economic impacts of these deals beyond the individual case, are largely missing (Cotula et al. 2014: 905). This missing evidence is one of the reasons why I use the term 'large-scale land deals' instead of land grabbing in this dissertation, even though I do not assume that large-scale land deals are necessarily beneficial for local populations either. However, I do believe that if local actors are able to protect their interests and get a fair deal, large-scale land deals can be socio-economically beneficial. According to this assumption, land deals that are only profitable under exploitative circumstances (for example, through paying extremely low rents), would not even materialize (Li 2011: 284).

1.2 Research program and findings

In my research question, I ask for the *conditions* for the successful use of legal mobilization vis-à-vis investors. By doing so, I follow a configurational approach, in which different conditions can be combined in various ways to explain a particular outcome (Blatter/Haverland 2012: 80). While I do assume that it is possible to identify regularities and causal mechanisms, I believe that the context and the combination of factors play a significant role in explaining a social outcome. My theoretical framework conceptualizes core conditions, which will help me to analyze my empirical material systematically. My empirical analysis will furthermore be open enough to allow for the identification of additional conditions.

I derive the building blocks for my analytical framework from three different theoretical perspectives applied to the basic situation: Local actors and investing companies find themselves in a bargaining situation, which is structured by the legal framework in a country. A *legal perspective* is the most obvious one and focuses on how different legal opportunity struc-

tures will lead to different outcomes. A *social mobilization* perspective looks at social dynamics, which might enable or impede local actors to access the legal opportunity structure. Missing knowledge and missing resources are major challenges, which can be overcome with a strong support network. A *business management* perspective zooms in on the company and asks how managers determine who is an important stakeholder worth responding too. These three perspectives lead to three conditions: The *favorability of the national legal opportunity structure*, *the strength of the support network* and the *receptivity of the company*.

The three conditions guide my empirical analysis, which focuses on two countries with different national legal opportunity structures: Sierra Leone and the Philippines. I choose two cases of large-scale land deals in each country. In these cases, I identify legal mobilization attempts that are analyzed using causal process tracing. I thereby focus on the role of the support network and the receptivity of the company. The findings from the case studies are then compared within each country and across countries.

My findings underline the following relationship between the three conditions: If the national legal opportunity structure is favorable and locals have a strong enough support network, they should be able to reach their goals through legal mobilization. If the national legal opportunity structure is unfavorable and the support network is strong, it depends on the receptivity of the company if legal mobilization can be successful. Furthermore, two additional conditions are discussed: the inhibiting role local and national political elites and missing unity among local actors. I subsequently suggest conceptualizing the situation of large-scale land deals as extended bargaining situations, which has to take into account multi-level and multi-actor bargaining.

Overall, the thesis provides an analytical framework that is illustrated and refined through empirical research. The framework is applicable in other contexts of company-community relationships beyond foreign investment in agriculture and therefore provides a useful tool for further research. The empirical work offers not only rich case studies but also a systematic and comparative view on the research question of how local actors can successfully use legal mobilization in large-scale land deals. Through this interaction of theory and empirics, my dissertation contributes to different strands of academic literature as well as ongoing policy debates.

1.3 Contributions to academic literature and policy debates

The starting point of this dissertation is the literature on large-scale land deals and the discussion about possibilities of legal reform and international regulation in creating beneficial outcomes for local populations (Margulis et al. 2013; German et al. 2013; Borras et al. 2013; Brüntrup et al. 2014; Johnson 2016; Narula 2013; Polack et al. 2013). As the literature review in chapter 2 will show, there is considerable debate about whether national legal reform and international soft-law instruments can bring about meaningful change for local actors affected by large-scale land deals. Existing empirical research shows that even when there are national laws in place, they do not automatically generate better conditions for local communities (German et al. 2013). Furthermore, there is considerable doubt that international public or private soft law regulations have any benefit as they do not contain any real accountability mechanism (Johnson 2016). At the same time, case studies show that local actors undertake efforts to protect and claim their rights through local and national authorities but also by appealing to international certification schemes (Polack et al. 2013).

My dissertation contributes significantly to this literature in three ways: First, it provides a 'bottom-up' legal perspective. Instead of viewing national laws or international regulations from a purely 'top-down' view, I argue that rights, rules and laws have to be claimed and applied locally. The concept of legal mobilization mirrors this approach. Second, I develop a theoretical framework that helps me to understand under which conditions legal mobilization attempts of local actors are likely to be successful. My research thereby provides a comprehensive picture of the possibilities and limits of national and international law in this field. Third, the empirical case studies provide further insights into causal mechanisms, differences, and commonalities between cases in two different countries. They also raise questions for future research, which will be discussed in the conclusion.

Apart from the research on large-scale land deals, the dissertations contributes to legal mobilization approaches and law and development research (Jacquot/Vitale 2014; McCann 1994; Vanhala 2012; Zemans 1983; McCammon/McGrath 2015). My conceptualization of the legal opportunity structure can map the options of local actors comprehensively. I thereby show how a weak national legal opportunity structure makes international law regulations all the more necessary. This conceptualization can be used in research regarding other legal issues. Furthermore, I understand the

concept of legal mobilization in a broad way, clearly going beyond litigation to include calling on institutions and administrations, legal claims in advocacy and legal representation. I thereby follow calls "that the study of legal mobilization should include not only impact litigation but also the use of law in lobbying, policymaking, and implementation, as well as other types of advocacy work that activists pursue" (Boutcher/Chua 2018: 5). Understanding legal broadly helps to open up the view for the influence of law in many social settings and especially in activism vis-à-vis foreign investors. This perspective helps to make the concept of legal mobilization usable in settings where litigation is more complicated or unlikely and thereby opens the idea to non-Western countries[5]. So far, most of the studies on legal mobilization have focused on the United States (Boutcher/Chua 2018: 8) and other "liberal democracies in industrialized countries" (Lemaitre/Sandvik 2015: 7). There is therefore a need to decenter the study of legal mobilization to include the Global South (Lemaitre/Sandvik 2015: 8). This dissertation does so through providing a framework that is flexible enough to work in many different contexts and by providing empirical case studies from developing countries, with a less well functioning administrative and judicial system than many Western democracies.

Through focusing on Sierra Leone and the Philippines, my findings furthermore add to the law and development field, which asks about the relationship between the two concepts (Moerloose 2017). In many cases, investment in agriculture is regarded as a way to promote rural development; however, one can find a "frequent disconnection between the law, broadly understood, and its development objectives" (Moerloose 2017: 185). My findings underline the need for better national laws and regulations while not denying the difficulties that exist in their implementation.

Apart from legal studies, my dissertation also provides new perspectives for the social mobilization and business management literature. While the legal mobilization literature was largely inspired by research on social movements (Hilson 2002; McCann 1994), the social mobilization literature has not dealt with the role of law in a more general way. In this regard, my dissertation provides a new perspective: Through the lens of a broad legal mobilization concept, the role of the law for local activism becomes visible. The focus is thereby not on broader social movements for societal change (even though activism often links to broader movements)

5 However, this does not mean that there is no court litigation in developing countries, litigation in cases involving social and economic rights have been on the rise in these countries (Gauri/Gloppen 2012: 497).

but instead on particular local demands raised by affected smallholders. The research thereby resembles the idea of 'rightful resistance', which describes a middle ground of social mobilization:

> "It [is] neither as institutionalized as most political participation nor as uninstitutionalized as the 'politics by other means' that social movement scholars usually studied. The contention we were hearing and reading about was more noisy, public, open and consequential than James Scott's (1985) 'everyday forms of resistance', yet still fell short of rebellion or revolution" (O'Brien/Li 2008: xii)

The concept of 'rightful resistance' was developed using these observations from rural China but helps grasp actions undertaken by local actors in my case studies. In consequence, my empirical research mostly fits this middle ground, which has not received that much explicit attention by social mobilization research yet.

When it comes to the business management literature, my dissertation fits in with trends to connect social mobilization and business management approaches in explaining successful outcomes of activism vis-à-vis companies (King 2007; Waldron et al. 2013). My research does not only add empirical examples from the Global South but also links this activism with the existing legal contexts in which firms operate. I argue that the legal structure not only provides opportunities for claims-making but also influences how companies react. In this way, my thesis also contributes to ongoing debates about corporate social responsibility (CSR) and, more specifically, the element of corporate accountability (Garvey/Newell 2005). It provides theoretical and empirical considerations of how local actors try to hold companies accountable.

Apart from the academic literature, my research contributes to policy debates as well.

The first and most obvious contribution is the debate about international regulation of large-scale land deals. As described, legal reforms and new regulations on land tenure and foreign investment in land are regarded as an important tool in the fight against land grabbing. Consequently, the question under which conditions local communities might successfully use legal means is of high practical importance. International organizations, especially the FAO, non-governmental organizations and development agencies allocate resources to implement new guidelines and to train local authorities and communities. To get a systematic view on chances and challenges for local communities in using legal measures can be useful

for civil society actors and policy makers alike. At the same time, it seems essential to have realistic expectations on how far legal reform in itself leads to change.

More concretely, my findings point to the importance of binding legal instruments, which provide local smallholders with an effective veto right. This underlines the need for a right to land, which needs to be interpreted through the lens of free, prior and informed consent (FPIC) if it is supposed to be effective. I thereby support long-standing demands by civil society actors (Brot für die Welt 2018), who routinely claim FPIC for local smallholders in advocacy campaigns around large-scale land deals.

In addition, my findings show the importance of legal support for local actors and therefore provide further evidence for legal empowerment projects. This fits with ongoing international efforts to promote legal empowerment as a critical element of development (Commission on Legal Empowerment of the Poor 2008) and a growing number of civil society initiatives in this field (Goodwin/Maru 2017). My findings show that it would be beneficial if actors who provide legal support also have competences in creating inner-group consensus to deal with the multiple voices within affected communities. Finally, my findings concerning the role of local and national elites point to the issue of corruption, which needs to be dealt with in the context of large-scale land deals, but is, of course, a much larger problem (De Schutter et al. 2016).

1.4 Outline of chapters

The dissertation will proceed as follows:

Chapter 2 provides the background of the issue of regulating large-scale land deals and concretizes the existing research gap. I will go into detail into the phenomenon of large-scale land deals in developing countries since the early 2000s, and discuss international responses, which focused on creating new regulations. I will discuss different opinions about the usefulness of new regulation for affected communities and show that existing research is not conclusive in this regard.

Chapter 3 introduces the analytical framework, which will help me to answer my research question under which conditions local actors will be able to achieve their goals vis-à-vis investing companies through legal mobilization. My framework uses a basic bargaining model in combination with three theoretical perspectives to derive three core conditions. Follow-

ing a configurational approach, I formulate logical relationships between the conditions.

Chapter 4 discusses my research design, which is based on a qualitative small N case study approach, comparing two cases of large-scale land deals in two different countries: Sierra Leone and the Philippines. Apart from discussing the methods used for analysis and my case selection, this chapter also describes my field visits, conducting of interviews and other data sources used.

Chapter 5 and 6 contain the analysis of Sierra Leone and the Philippines. Both analytical chapter follow the same structure through providing some country specific background and analyzing the national legal opportunity structure first. Legal mobilization attempts are then analyzed in two cases of large-scale land deals, before they are compared within the country.

Chapter 7 goes on to compare findings from Sierra Leona and Philippines. Country-specific differences but also similarities will become clear. On an abstract level I will use my findings to specify and extend my analytical framework, which can be used in future research on company-community relations.

Chapter 8 finally summarizes my research, discusses implications for the existing debates and reflects limits and further research desiderata.

2. Large-scale land deals: overview and debates

Foreign large-scale land deals have received an enormous amount of attention since they were observed as a new global trend in 2008 (GRAIN 2008). The diagnosed new 'land rush' ushered a 'literature rush' (Oya 2013a) with a plethora of reports by non-governmental and international organizations as well as a significant interest by academics. While early publications were characterized by an alarmist tone and were often based on a 'finding out fast' approach (Oya 2013a: 505) more recent research has focused on the complex interplay of a variety of actors from local elites, national governments (Keene et al. 2015) to the role of international financial institutions. Apart from the studies on the causes and consequences of foreign large-scale land investment, research has emerged on the resistance to this trend on the global (Margulis et al. 2013) and the local level (Borras/Franco 2013). I will draw on this existing literature to describe the general trends, causes and consequences of foreign large-scale land deals in chapter 2.1.

The global interest in farmland has not only triggered a lot of literature but has also gained the attention of policymakers and civil society organizations. Debates about the right way to deal with 'the global land grab' developed: from demands on a moratorium on large-scale land deals (FIAN 2011) to different initiatives to create guidelines for investment in land (FAO et al. 2010; De Schutter 2009; CFS 2012). Most observers agree that there need to be better mechanisms in place to ensure proper participation of the local population and the protection of their rights. Essentially legal regulation and reform is seen as the major way forward. In chapter 2.2 I will give an overview of these initiatives undertaken on the international level.

As these steps to rein in land grabbing were taken in different international settings, academics and civil society actors alike debated the suitability of these efforts. A lot of skepticism was formulated using different arguments about why legal reforms would not suffice to protect local populations. At the same time, knowledge on the implementation and use of legal instruments is rather thin. I will describe this research gap in chapter 2.3.

2.1 Foreign large-scale land deals in developing countries – an overview

Much of the 'landgrabbing' literature points out that large-scale land investments are by no means a new phenomenon (White et al. 2012: 623; Mollett 2016). They have rather existed throughout history, especially during colonial but also post-colonial times. Nonetheless, there has been a significant increase of large-scale land deals for agricultural use since the early 2000s. In the following, I focus on the specificities of this 'new' wave of land deals, its trends, causes and consequences.

2.1.1 Global trends

As described in the introduction, the term large-scale land deals refers to the purchase or leasing of large tracts of land – more than 200 or 500 hectares – through foreign companies. In the following, I will give an overview of these land deals that are focused on agricultural use. What are the characteristics of these deals? Where do they take place? Who are the investors and how are these deals closed?

Numbers on the global phenomenon of large-scale land deals are not easy to come by (Oya 2013a). Figures of a total size of up to 227 million hectares of land acquired globally have been floating around in NGO and media reports (Scoones et al. 2013: 473). However, more realistic estimates for the time period between 2000 and 2016 range between 26.7 (Nolte et al. 2016: vi) and 30 million hectares (GRAIN 2016: 4).

The Land Matrix, which contains the most comprehensive data compilation, recorded 1004 land deals with a size bigger than 200 hectares. In this dataset, an average foreign large-scale land deal has a size of 10.000 hectares. In Africa, the vast majority of land deals consist of leases, whereas in the Americas most deals are actual purchases, pointing to differences in legislation and land tenure systems.

The lease periods were only known for 327 deals, but over 90 % of them lasted for 20 years or longer, up until 99 years. 44 % of the globally leased area is used for the production of oilseeds, mainly oil palm and jatropha, followed by cereal (20 %) and sugar crops (10 %) (Nolte et al. 2016: 8–11).

When it comes to the buying prices and lease rents, the picture remains blurry, mainly due to missing data for individual land deals. However, rent payments, especially in the poorer countries, are quite low, with prices often ranging from 1 to 10 dollars per hectare per year (Nolte et al. 2016: 41).

The number one target region is Sub-Sahara Africa, in terms of numbers of contracts but also in terms of hectares. As of 2016, the Land Matrix recorded 10 million hectares and included data on another 13.2 million hectares of intended deals (Nolte et al. 2016: vi). Large-scale land acquisitions appear very concentrated. The data shows that the 20 top target countries account for the size of over 80 % of all land deals, with Indonesia, Ukraine, Russia, Papua New Guinea and Brazil being the top 5 in total size (Nolte et al. 2016: 17).

However, the total size does not tell us much about the size in relation to the agricultural land available in country. Older data calculated by Rulli et al. (2013) show that in relation to their size, countries like Uruguay, the Philippines, Sierra Leone and Liberia are top host countries. However, it is not just the mere size of a land deal that is relevant but also its previous use (Edelman 2013: 498; Cotula 2012: 655): Has it been cultivated before? How fertile and profitable is the land? How many people live on the land? Research indicates that only one third of the land deals occur in sparsely populated forest land, while one third of the deals take place in areas with densely populated croplands (Messerli et al. 2014: 453).

On the country level, Nolte et al. (2016) included socioeconomic data in their analysis and show that there are essentially two groups of target countries: One the one hand countries with a low prevalence of hunger and low relevance of agriculture for the GDP (such as Russia, Uruguay, Ukraine). And on the other hand, countries with a high prevalence of hunger and at the same time a high relevance of agriculture for the GDP (such as Sierra Leone, Ethiopia or Laos). Most commentators are especially concerned about the second group of countries and the possible adverse effects land deals might have on food security (Havnevik 2011; Kress 2012). These are the cases I deal with in the rest of the dissertation. As outlined in the introduction, I focus on large-scale land deals in developing countries.

Investors mainly originate from Western Europe and the United States, as well as South-East Asia and the Middle East; though, it is often challenging to determine the country of origin due to the complex structure of transnational corporations. Some companies can be traced back to tax havens like the British Virgin Islands and offshore structures are common (GRAIN 2016: 7). Contrary to commonly voiced narratives, there is no evidence that China plays a bigger role in the 'new scramble for Africa' than European or South-East Asian actors (Nolte et al. 2016: 22–25; Ayers 2013). Most investors are private companies accounting for 71 % of all land investments in agriculture. State-owned entities only cover 6 % of all land deals, while private investment funds are the primary owners of 9 %. How-

ever, these numbers might underestimate the role of investment and pension funds as they often appear as tertiary shareholders (Nolte et al. 2016: 26). Furthermore, national and international developmental banks have become an important investment partner for many land investing companies (GRAIN 2016: 7).

During the process of closing a land investment deal, national governments but also local communities and their elites play a considerable role. The first step for TNCs planning to invest in agriculture is to get in contact with the host government – oftentimes special investment promotion agencies. In many instances, the government and the investor sign an agreement (e.g. Memorandum of Understanding = MOU), which outlines the planned investment and benefits as well as duties on both sides.

Under this rather broad agreement, a more specific land lease agreement is then signed with local authorities and with landowners (Vermeulen/Cotula 2010: 906). However, when it comes to the consultation of affected communities, who live on the leased land, evidence shows that consultation procedures are often insufficient. Quantitative data is not readily available, but the Land Matrix contains information for 161 cases. In 41 % there was no consultation, some consultation in 43 % and an FPIC (Free Prior and Informed Consent) process in 14 % of the cases (Nolte et al. 2016: 40). However, these numbers are difficult to interpret and reporting bias might be either overly positive or overly negative.

Even if consultations take place, they are often considered "as a one-off event rather than an ongoing interaction through the project cycle" (Cotula/Vermeulen 2011: 44). Furthermore, meetings often only include village elders and local elites, lack proper recording and do not necessarily give local communities the realistic option to veto an investment project (Cotula/Vermeulen 2011: 44). Generally, these insufficient consultations processes and the subsequent disregard for the interests of the local population are regarded as highly problematic and often lead to the use of the term land grabbing.

Summing up, the data shows that foreign large-scale land investments are a major issue in a limited number of countries, where previously used land is targeted. Large-scale land deals usually involve a considerable degree of land-use change (Borras/Franco 2012). At the same time, some of the top host countries are among the poorest and food-insecure countries in the world, while investing TNCs usually originate in high-income countries.

2.1.2 Drivers

The literature discusses different causes and drivers for the sudden rise in large-scale land investments. Global political-economic drivers are identified as an overall push to this kind of investment, while certain host country characteristics function as pull factors to attract investment. Furthermore, a discourse about a specific type of development, global food security and the narrative of 'empty' lands enable and legitimize large-scale land investment deals.

On the global level, three main drivers are usually identified in causing the surge in large-scale land investment since 2007/2008: The food price crisis, the financial crisis and new policies subsidizing bioethanol production. The food price crisis occurred when prices for food stocks like rice, wheat or maize nearly doubled in comparison to the early 2000s (Akram-Lodhi 2012: 121). It did create not only unrest in many countries but also showed the vulnerability of food-importing countries. Reacting to the crisis, Saudia Arabia and other Gulf states, as well as South Korea and China issued programs that incentivized companies to produce food abroad for the home market.

The price volatility also signaled investors that substantial profit could be made within commodity markets at a time when much of the banking sector was in crisis (De Schutter 2011b: 516–517). As investors looked for new places to invest, the agribusiness market became increasingly important. Estimates of 9 billion people living on the planet in 2050 led to predictions that food prices will hike further in the future. Rising food demands in booming economies of Africa are regarded as a 'high-growth market' (Cotula 2012: 662–664). All of a sudden, investing in large-scale agriculture became an attractive investment option, despite high risks (Li 2015).

Last but not least, the 'oil peak' and subsequent government policies in subsidizing biofuels in the European Union but also the US added another incentive to invest in land and use it for the production of oil seeds like sugar cane or oil palm especially among energy and biotech companies (Cotula 2012: 663).

These three interrelated tendencies led to a strong push to invest in land. And while the trend has subsided a little in comparison to the initial 'rush', it is ongoing (GRAIN 2016).

Apart from the global push factors national pull factors are also identified. The number one factor is probably the active strategy of developing coun-

tries to attract foreign investment in agriculture to increase foreign exchange reserves (Cotula et al. 2014: 915). Also, many developing countries face a huge problem of rural poverty, food insecurity and marginalization of subsistence farmers. Since development assistance and national subsidies in agriculture have been cut in the 1980s, agricultural sectors in many countries have been in dire need of investment (De Schutter 2011b: 509–512). Governments try to attract these investments through advertising their agricultural land and granting tax and tariffs exemptions (Cotula 2012: 669).

Aside from this active role of host states, weaknesses in governance can also be a factor for large-scale land investments. In a World Bank study, Deininger and Byerlee (2011) show that, contrary to the doing-business index assumptions, low levels of rule of law and investors' security increased the interest in farmland investment by foreign investors. Furthermore, rural tenure security was negatively correlated with foreign land investments, showing that less secure tenure made land deals more likely (Deininger/Byerlee 2011: 54–55). These correlations are confirmed by case study evidence, which suggests that post-conflict countries are attractive to foreign investors wanting to secure themselves cheap access to land (van der Haar/van Leeuwen 2013; Shanmugaratnam 2014; Takeuchi et al. 2014: 245).

In addition to these push and pull factors, researchers point to the relevance of enabling discourses that legitimatize the investments. The neoliberal global food security discourse argues that massive investment in agriculture is needed to feed the world in the future and that this investment is best achieved through agribusiness and open markets. In this view, commercialized agriculture is the only way to close the diagnosed 'yield gap,' and small scale farmers who are being pushed out of the market are better off looking for wage labor. In this way, large-scale land investments are regarded as a way to 'feed Arica' (Nally 2015: 343–346; Baglioni/Gibbon 2013: 1571). At the same time, climate change is alluded to, to legitimize large-scale investments in biofuel production, which is supposed to help bring down greenhouse gas emission, while at the same time creating local jobs (Boamah 2011: 163). These narratives are furthermore linked to a broader discourse of development, which regards commercialization as an important element of development and believes that this can best be achieved through foreign investment (Schoneveld 2017: 127). From a postcolonial perspective, these discourses have strong underpinnings of saving the 'savagery' through 'civilization' (Mollett 2016). In the end, these over-

lapping discourses serve to enable and legitimize large-scale land investments in developing countries.

In conclusion, macro-economic push factors have caused a rising interest in investing in land while state-specific pull factors make some countries more attractive for investors. At the same time, legitimizing discourses around global food security, climate change and development are further enabling the deals.

2.1.3 Consequences

Benefits and risks of large-scale land investment deals are difficult to capture as they might vary significantly depending on the individual investment project, the people concerned and the kind of dimension studied – be they economic, social or ecological (Boamah 2014). At the same time, the necessary baseline data, indicating living conditions prior to a land investment, is usually missing (Cotula et al. 2014: 919). I will nonetheless give a short overview of the mentioned effects of land deals on the local level.

A lot of the research points out negative economic consequences of large-scale land investments. As locals lose access to land, they lose their livelihoods which are based on small-scale farming, herding or collection of products such as firewood and charcoal, building materials, fruits and herbs. Additionally, access to water might also be inhibited. As a consequence, food security might decline as well as the ability to deal with economic shocks (as income becomes less diversified) (Schoneveld 2017: 120). Furthermore, the promise of the creation of new jobs often falls short of expectations (Li 2011). New employment opportunities usually consist of casual labor – often only during certain seasons or mainly in the start-up phase. The number of jobs created fluctuates between different crops, with grains and cereal plantations creating the least amount of employment (Nolte et al. 2016: 43–46).

Nonetheless, wage labor is created, which might be favored by parts of the local population, who for example might not have had access to land (Gilfoy 2015). Also, in cases where wage labor is already an existing form of income, bigger foreign-owned plantations are found to pay higher wages than smaller local businesses (Cramer et al. 2008). Apart from the employment created, other economic benefits expected from foreign investment in agriculture is income through lease rents, increased tax base, technology transfer, market access for local farmers, improved agricultural

productivity and an increased availability of food commodities on the national level (Görgen et al. 2009: 21; Hallam 2011: 94).

Concerning the social dimension of large-scale land investments, different effects have been pointed out, the most obvious one probably being dispossession and expulsion from the land. The Land Matrix dataset mentions displacement in 57 out of 89 cases for which this kind of information was available. In seven cases, over 10,000 people were reportedly displaced by the respective projects (Nolte et al. 2016: 42). However, these seem to represent rather extreme cases; case study evidence shows that frequently people are not physically relocated through the investment project; even though many might relocate over time due to economic pressure (economic displacement). In many cases, a considerable amount of people remain on the land and serve as wage laborers.

Despite not being displaced, these communities often face a rise in conflicts – within but also between communities, with the company or government officials and within households. Most of these conflicts revolve around being for or against the deal, but also about benefit- and income-sharing and existing land rights (Alden Wily 2009: 30; Hall 2011; Borras/Franco 2013; Millar 2015).

When it comes to positive social effects, corporate social responsibility measures are usually cited. Apart from constructing new infrastructure like roads, housing for employees or electricity grid, investing companies often promise to build or support local schools and health centers, support local farmers with machines or capital and provide skills training and capacity building (Nolte et al. 2016: 46).

Another issue brought up in the literature pertains to social power relations, most importantly gender relations. Yet, again there are two different positions on this issue. One side argues that large-scale land deals can empower women – especially when the investment creates new economic possibilities for them (through wage labor but also through selling produce or cooked meals to workers). The opposite position refers to the circumstance that women are often disadvantaged in tenure systems leaving them without compensation or lease money and therefore making women even more vulnerable to large-scale land deals (Doss et al. 2014; Daley/Pallas 2014; Behrman et al. 2012).

Environmentally, most commentators agree that large-scale land investments are most likely to have negative impacts, such as deforestation and increasing erosion. Agribusiness can result in declining soil quality due to the use of chemicals, reduction of biodiversity through monoculture and possible unintended consequences on local ecological systems through the

introduction of new plant varieties (Görgen et al. 2009: 24). However, measures can be taken by investing companies in reducing the negative environmental impact as much as possible. Government regulations and oversight are needed to enforce strong standards. At the same time, large-scale investment projects in agriculture can also have positive effects on the environment such as the introduction of less damaging production methods, which could be taken up by the local population (Görgen et al. 2009: 24).

Discussing the economic, social and ecological consequences of large-scale land investments made one thing clear: Positive changes for the local population are not easily delivered. The literature points to a plethora of issues that need to be adequately addressed. At the same time, foreign agricultural investment can provide a chance for the local population and should not be wholly rejected. Nevertheless, even proponents of large-scale land deals agree that there needs to be strong regulation and oversight for these deals to deliver on some of the development promises made. I will discuss these calls for regulation and the actual action taken on the global level in chapter 2.2.

2.2 Global responses to foreign large-scale land deals

The GRAIN report, "Seized! The 2008 land grab for food and financial security", published in 2008, ushered substantial interest in the issue of large-scale land deals. Numerous media and NGO reports followed and warned of the dire consequences for the local population if the trend continued. Calls for regulation of foreign large-scale land investments followed by civil society, international organizations and research institutes.

With the food price and subsequent hunger crisis in 2007/2008 fresh on their minds, international organizations and global governance fora acted quickly in creating new principles and guidelines. At the same time, heated debates about the right form of regulation ensued. I will take a closer look at the discussed ideas focusing on the issue of how affected local actors should be involved in a large-scale land deal.

In a first step, I will describe the differences between a human rights and a market-based approach towards large-scale land deals and land more generally (chap 2.2.1). In a second step, I will describe international instruments, created to address the land rights issues around large-scale foreign investments (chap 2.2.2). Finally, the analysis of these instruments reveals a

considerable gap in the regulatory framework when it comes to veto rights for local smallholders (chap 2.2.3).

2.2.1 Human rights versus market-based approaches towards large-scale land deals

International actors varied in their approaches towards large-scale land deals. While there was recognition by various actors that regulating large-scale land deals was desirable, the underlying ideas and connected demands diverged. A human rights approach focuses on the rights of affected people and demands their protection. In the market-based approach land is a valuable commodity and regulation can help to create more efficient land markets and mitigate risks for affected populations (Narula 2013). I will discuss these differences further; however, it should be noted that I will do so in an idealized manner – in many real-world examples traces of both approaches can be found.

The basic idea of a human rights based approach to large scale land deals is "that individuals are entitled to specific rights guarantees that cannot be traded away in the context of large-scale land deals" (Narula 2013: 126). In this way, agricultural land investments should not infringe on either ownership or land use rights but also food security and economic development. Even more, land is seen as a "gateway to the realization of numerous human rights" (Narula 2013: 127), such as the rights to food or development. To enable the fulfillment of these rights for as many people as possible, equal land distribution should be favored over free land markets. Furthermore, the human rights approach argues for the protection of customary tenure, especially in terms of use rights.

A human rights approach does, however, not imply the creation of individual land titles (Narula 2013: 149). In the context of large-scale land deals, a human rights perspective means an effective veto right by local smallholders: "In order to be meaningful, consultations must be undergirded by the ability of affected communities-both legally and politically-to withhold their consent." (Narula 2013: 152).

As this approach takes rights as a starting point, there are duty bearers, who are obliged to ensure that rights are kept. These duty bearers are first and foremost host governments but also companies and countries of origin of investors. Affected people are regarded as right-holders, who can make legitimate and enforceable claims (Narula 2013: 126–127). A human

rights approach does not rule out large-scale investments as such; it instead sets precise boundaries for investment projects.

One proponent of a human rights approach towards large-scale land deals was the acting Special Rapporteur on the Right to Food, Olivier de Schutter. Drawing on existing human rights standards, he developed eleven principles, which were supposed to serve as a baseline for future discussion. The principles clarified that large-scale land investments have serious human rights implications, which need to be addressed as such (Claeys/Vanloqueren 2013). The most obvious is the right to food, which would be violated if a state agreed to a land deal which would be "depriving local populations from access to productive resources indispensable to their livelihoods, unless appropriate alternatives are offered" (De Schutter 2009: 5). Apart from food security, freedom from forced eviction and workers' rights have to be guaranteed. Besides, local people have the right to participate in the decision-making process based on their right to self-determination regarding natural resources and their right to development (De Schutter 2009: 5–12).

Based on these human rights De Schutter recommended that negotiations for large-scale land investments need to be transparent and ensure the free, prior and informed consent (FPIC) of affected communities. States should furthermore take provisions to protect informal tenure rights and consider possible alternatives to large-scale agribusiness investments. Impact assessments need to be carried out as well as ongoing monitoring of companies' commitments (De Schutter 2009: 14–15). Even though only a few actors (states and civil society) endorsed the Principles, they formed the basis for a human rights perspective on large-scale land investments (Claeys/Vanloqueren 2013).

In contrast to a human rights approach, a market-based approach focuses on the reduction of risks for affected populations and investing companies. The focus lies on good governance, which should make foreign investments easier and secure. As such, the rights of affected people are just one risk element that has to be weighed against long-term macro-economic gains: "short-term costs may very well be justified by these long-term gains" (Narula 2013: 137). In this view, market-based solutions such as private investments are the most important driver for economic development. Government regulation should only play a role in mitigating risks for local actors and investors and not be too restrictive. Land is seen as an economic commodity, which should be put to its most efficient use for the overall greater good of economic growth (Narula 2013: 121). This is achieved by

creating secure land markets based on individual land titles, which should enable land allocation to those with the most productive means. As a consequence, land concentration is not per se regarded as problematic (Narula 2013: 148). Overall,

> "[t]he market[…] approach assumes that robust land markets, coupled with community consultations and good governance measures, can help mitigate the risks and deliver the benefits of large-scale land transfers" (Narula 2013: 151)

In this approach, large-scale land deals are regarded as something positive, while it is admitted that some basic rules have to be applied to mitigate negative effects.

Table 1 Human rights vs. market-based approach to land

	Human rights approach	**Market-based approach**
Underlying idea	Land as a means to fulfill human rights and secure livelihoods	Land as a means to create macro-economic growth
Existing land rights	Protection of all forms of tenure systems and use rights	Formalization and privatization of land titles
Land distribution	Equal land distribution to ensure livelihoods of smallholders	Land distribution according to maximum efficient use
Decision making processes in large-scale land deals	FPIC of all affected land owners and users	Consultation of affected land owners and users
Accountability of investors	Binding and enforceable mechanisms	Codes of Conduct

(Source: own compilation based on Narula 2013; Toft 2013)

A comparison of the two approaches shows that there are considerable overlaps when it comes to demands for regulation. Both perspectives agree to "principles of transparency, accountability, and participation" (Narula 2013: 131) as well as the idea of respecting existing tenure rights. Nonetheless, there are considerable differences between the approaches when it comes to underlying ideas about the socio-economic meaning of land, ex-

isting land rights and the role of land distribution. A human rights approach demands FPIC of local actors, while a market-based approach emphasizes consultations. Furthermore, a human rights approach implies that rights can be claimed and are enforceable. In contrast, a market-based approach wants to limit state intervention and favors a more loosely regulatory regime in the form of codes of conduct (Toft 2013: 1185–1187). Table 1 summarizes these differences between the two approaches. However, it should be noted that this presents an ideal-typical characterization of the two approaches. Most international regulatory instruments contain traces of both approaches as will be discussed in the next chapter.

2.2.2 International instruments for regulating large-scale land deals

In this chapter, I will review the most important international instruments regarding large-scale land deals[6]. I will thereby focus on newly created instruments by international organizations such as the Voluntary Guidelines on the Governance of Tenure and the Principles for Responsible Agricultural Investment. I will also take a look at initiatives by the private sector, exemplary the IFC Standards and two Roundtables (Roundtable on Sustainable Biofuels and Roundtable on Sustainable Palm Oil). I will introduce each instrument in a general way but then focus on specific stipulations made in regard to tenure rights and decision-making processes, as this is my main research interest[7]. The table at the end of the chapter provides an overview of these instruments.

The instrument regarded as an important response to large-scale land deals from a human right perspective was the Voluntary Guidelines on the Governance of Tenure (VGGT), adopted by the Committee on World Food Security (CFS). Through extensive participation rights in this forum, civil society groups pushed for the creation of the VGGT, which were to become the first-ever agreed-upon standards on the global level regarding

6 I will only include instruments, which make specific reference to land tenure issues in relation to foreign investment and are usually discussed in the context of large-scale land deals. Other frameworks exist, which might be of relevance in the broader context, for example the UN Guiding Principles on Business and Human Rights or the OECD Guidelines for Multinational Enterprises. In addition, I leave out regional instruments such as the African Union Framework and Guidelines on Land Policy in Africa.

7 I do not discuss the implementation or empirical effectiveness of individual instruments.

the governance of tenure (Duncan/Barling 2012; McKeon 2013). The process included various regional and stakeholder meetings as well as extensive intergovernmental negotiations. The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (full title) were adopted in 2012 and were applauded by governments and civil society actors alike (Seufert 2013; Paoloni/Onorati 2014). Despite their voluntary nature, the guidelines are regarded as highly relevant due to their high legitimacy (Seufert 2013: 184) as well as their references to binding human rights frameworks (Golay/Biglino 2013: 1643).

In regard to investment in land, the guidelines make a number of stipulations: They demand the consultation and participation of people, "whose tenure rights, including subsidiary rights, might be affected" (CFS 2012: para 12.9). This right to consultations does not include a veto right as it does for indigenous people; nonetheless, the principle of consultation and participation of affected people and the provision of information and support to these groups is a step forward (von Bernstorff 2012: 31).

Furthermore, "[s]tates should ensure that existing legitimate tenure rights are not compromised by such investments" (CFS 2016: para 12.10). The guidelines advise that states should recognize and provide instruments to protect customary tenure systems and collective land rights (CFS 2012: para 9.). Besides, the guidelines suggest that states should create new regulations and policies to regulate large-scale land investment for example, on deciding on maximum sizes or for including parliaments in decision-making (von Bernstorff 2012: 32). In the same vein, investors are asked to respect the rule of law and provide sufficient information on a planned land deal:

> "Contracting parties should provide comprehensive information to ensure that all relevant persons are engaged and informed in the negotiations, and should seek that the agreements are documented and understood by all who are affected." (CFS 2012: para 12.11)

The VGGT furthermore put an emphasis on the protection of human rights and the duty of states to ensure beneficial outcomes for the local population. Land investments should not threaten an adequate standard of living, especially food security (von Bernstorff 2012: 33–37). Besides the host states, who are the primary guarantors of human rights, private businesses are named as being responsible. Also, if states actively support an investment project or they become an investor abroad, they are obligated to "the protection of legitimate tenure rights, the promotion of food security

and their existing obligations under national and international law" (CFS 2012: para 12.15). This recognition of states' extraterritorial duties, when financing and supporting investment in foreign countries, was a remarkable step and the first time this principle was mentioned in an internationally negotiated document (von Bernstorff 2012: 41).

Prior to the VGGT another document had been created by the World Bank, the FAO (Food and Agriculture Organization), IFAD (International Fund for Agricultural Development) and UNCTAD (United Nations Conference on Trade and Development). The Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources (WB PRAI) were created in 2010 and received considerable criticism as a typical market-based instrument. In fact, the WB PRAI emphasized the role of best practice and codes of conduct in dealing with issues around large-scale land deals:

> "Arguably, the magnitude of the present phenomenon and the hazards involved warrant a broader effort to build on ongoing initiatives that involve some mix of guidelines, codes of good or best practice, and perhaps even independently verifiable performance standards coupled with benchmarking." (FAO et al. 2010: 1)

Nonetheless, the seven principles spell out issues that should be addressed during large-scale agricultural investment projects such as respect for existing land rights, food security, transparency and consultation of contracts, good business practices and social and environmental sustainability (FAO et al. 2010). Furthermore, "all those materially affected" (FAO et al. 2010: Principle 4) should be consulted in land investment deals. As such, the World Bank PRAI suggest that all forms of land rights, also informal rights, should be respected and that governments should create legal frameworks that create clear rules for land transferals. In this way, the World Bank PRAI do emphasize the need for national regulatory frameworks.

The principles were endorsed by the G8 and the G20, but were met with harsh criticism from the UN Special Rapporteur on the Right to Food and civil society organizations (The Global Campaign for Agrarian Reform/ Land Research Action Network 2010). They argued that the principles would simply legitimize the ongoing trend of land grabbing and connected human rights violations. Additionally, the non-inclusive top-down process in which the WB PRAI were developed was criticized (Stephens 2013). In a quite remarkable move, the Committee on World Food Security

(CFS) decided to only take note of the principles without adopting them, further delegitimizing the World Bank principles (Duncan 2015: 174).

The CFS later developed its own principles for responsible investment (CFS-PRAI). The Principles for Responsible Investment in Agriculture and Food Systems (CFS-PRAI) aim to create investments which "contribute to food security and nutrition, thus supporting the progressive realization of the right to adequate food" (CFS 2014: para 10). The ten principles stipulate, for example, that investment should increase food security and lead to development or that grievance mechanisms and transparency measures should be set up (CFS 2014). The principles acknowledge that large-scale land investments are sometimes impossible to design in a responsible manner und should not take place in those situations. Furthermore, they specifically include financing institutions as being responsible for the human rights record of the investments made (Johnson 2016: 77–78). At the same time, the CFS PRAI recognize the role of smallholders as the ones realizing most of the investments in agriculture:

> "Farmers should be recognized as key contributors to food security and nutrition and as major investors in the agricultural sector, in particular taking into account those family farms that invest their own capital and labour in their agricultural activity." (CFS 2014: para 5)

Furthermore, the principles build on existing human rights norms and existing CFS guidelines (CFS 2014: para 19A). Accordingly, decisions about large-scale land deals should involve participation and consultation with affected rights holders in line with the VGGT (CFS 2014: para 25).

Aside from intergovernmental governance fora and international organizations, the private sector reacted to the surge in large-scale land deals and the surrounding criticism. They suggested modifications of existing principles and roundtables. The instruments regarded as most relevant to large-scale land acquisitions, are the IFC Performance Standards (as part of the Equator Principles) and biofuel certification schemes, most notably the Roundtable on Sustainable Biofuels (RSB), and the Roundtable on Sustainable Palm Oil.

The Equator Principles were set up as a 'risk management framework' in 2003 to guide large investment projects in countries with poor regulatory capacities. To fulfill the Equator Principles, the IFC Performance Standards on Environmental and Social Sustainability have to be followed. In 2012, the IFC Standards were updated to include "very specific standards about land use and access, as well as guidance for investors and financiers

on how to best interact with affected communities" (Goetz 2013: 201). IFC Performance Standard 5 specifies that involuntary displacement (defined as physical or economic displacement without the consent of affected people) should be avoided; or if not otherwise possible, negative impacts should be minimized through compensation and livelihood improvement (IFC 2012: 5.1 – 5.3). In doing so, "clients are encouraged to use negotiated settlements meeting the requirements of this Performance Standard, even if they have the legal means to acquire land without the seller's consent" (IFC 2012: 5.3).

The principle of consent of affected people is only inscribed in regard to indigenous people, for which FPIC is required. In other cases, the Standards do not provide any restrictions, meaning that investment projects can be implemented against the will of affected people. In consequence, the IFC standards have received criticism for not going far enough (Goetz 2013: 201).

Other private sector initiatives, mainly roundtables and attached certification schemes, were created by companies, often in collaboration with civil society actors. The Roundtable on Sustainable Biofuels (RSB) is the most far-reaching when it comes to setting standards in regards to land tenure and consideration of local interests (German/Schoneveld 2012: 771). Founded in 2007, the Roundtable established 12 principles for certification for sustainable biofuel production. The RSB principles clearly state that no involuntary resettlement should take place (Goetz 2013: 202). A lease agreement should furthermore only enter into force when all existing land conflicts, including with land users, have been settled following the FPIC principle. This provision is far-reaching as it includes people who might not have ownership rights but are traditional land users, for example, tenants or pastoralists. The RSB also makes provisions in regards to compensation of and creating development for the local population (Fortin/Richardson 2013: 146–147). The RSB principles stick out against other biofuel certification schemes, which only cover the issue very superficially (German/Schoneveld 2012: 772) or focus on environmental concerns and thereby omit socio-economic consequences (Bracco 2015: 138).

However, it is feared that it is precisely this ambitious approach that might make the RSB principles less effective:

> "Unfortunately, due to its comprehensiveness (and associated cost and complexity), the RSB is likely to attract only those companies that are already largely compliant with RSB principles and can therefore benefit from related reputational gains at limited cost" (German/Schoneveld 2012: 776)

This fear might be realistic, especially against the background that the RSB has to compete against other biofuels certification schemes, which are less comprehensive (Ponte 2014: 267). As of February 2019, only 36 operators (producers and traders) worldwide ever received RSB certification, of which several certifications had already terminated (RSB 15/02/2019).

Another roundtable that is worth considering is the Roundtable on Sustainable Palm Oil (RSPO), as oil palm is one of the main crop grown on new plantations developed through foreign investment (Nolte et al. 2016: 11). The RSPO was founded in 2004 as a response to growing criticism and consumer boycotts due to the alleged unsustainability of palm oil production (Nesadurai 2013: 515). While the initial focus was on environmental issues, NGOs pushed for the inclusion of socio-economic criteria, amongst others, an emphasis on land rights. They were successful in introducing FPIC for local smallholders as one criterion (Pesqueira/Glasbergen 2013: 299–300). In consequence, criterion 2.3 reads: "Use of the land for oil palm does not diminish the legal, customary or user rights of other users without their free, prior and informed consent." (RSPO 2013: 2.3).

The RSPO is similarly far-reaching when it comes to land rights protection as the RSB principles. At the same time, more companies are certified. With 82 growers and 373 palm oil mills (RSPO 15/02/2019) RSPO certified members produce 19 % of the global palm oil production according to information by the roundtable (RSPO).

Table 2 International instruments regulating large-scale land investments

Instrument	Drafting actors	Addressees	Bindigness	Decision making in large-scale land deals
VGGT	CFS (FAO, governments, civil society, private sector)	Primarily states; also: companies, third party investors (amongst others)	Voluntary; bindingness through implementation into national law	– State as primary guarantor of human rights and responsible investment – Principle of informed consultation and participation of "those whose tenure rights, including subsidiary rights, might be affected" (CFS 2012: para 12.9)
World Bank PRAI	World Bank, FAO, IFAD, UNCTAD	Private sector	Voluntary; best practice approach	– "All those materially affected are consulted, and agreements from consultations are recorded and enforced (FAO et al. 2010: Principle 4)
CFS PRAI	CFS (FAO, governments, civil society, private sector)	States, companies, civil society (amongst others)	Voluntary	– "legitimate tenure rights" should be respected (CFS 2014: para 25) – "Business enterprises should respect legitimate tenure rights in line with the VGGT" (CFS 2014: para 51)
IFC Performance Standards (basis Equator Principles)	IFC (of the World Bank Group) and other development banks	Clients of 94 Financial Institutions (many development banks)	Binding for clients of financial institutions ascribing to IFC standards	– consultation of affected people is advised: "clients are encouraged to use negotiated settlements meeting the requirements of this Performance Standard, even if they have the legal means to acquire land without the seller's consent" (IFC 2012: 5.3)
RSB Principles and Criteria	Industry members, producers, NGOs, intergovernmental organizations	Producers and traders of biofuels and other biomaterials	Binding for companies which undergo certification	– "Free, Prior, and Informed Consent shall form the basis for all negotiated agreements for any compensation, acquisition, or voluntary relinquishment of rights by land users or owners for operations" (RSB 2016: 12b)
RSPO Principles and Criteria	Small- and large scale producers and NGOs	Oil palm growers and oil mills	Binding for companies which undergo certification	– "Use of the land for oil palm does not diminish the legal, customary or user rights of other users without their free, prior and informed consent." (RSPO 2013: No 2.3)

Through comparing the discussed instruments, two issues become visible:

First, most instruments contain traces of a human rights and a market-based approach and end up demanding similar safeguards in regards to large-scale land deals. There are, for example, considerable overlaps between the VGGT and the IFC Performance Standards (Windfuhr 2017).

> "[T]he Performance Standards have not been written explicitly within a human rights-based approach. However, they reflect implicitly the content of several human rights standards, and help to avoid infringement of human rights […] the institutions that apply the IFC PS […] already cover essential core elements of the VGGT" (Windfuhr 2017: 10–11)

At the same time, the VGGT also contain market-based elements and do, for example, fall short of a human rights approach in calling for consultations and not for FPIC as guiding principle. This is a result of international negotiations, in which the demands for veto rights made by civil society members were met with resistance from market-friendly actors (von Bernstorff 2016: 59). In the Roundtable on Biofuels and the Roundtable on Palm Oil, civil society was more successful and managed to introduce the element of FPIC into the principles and criteria. In this way, the roundtables contain details that represent a human rights perspective, even though they are per se grounded in market-based ideas.

Second, when focusing solely on the issue of consultation or consent rights of locally affected communities, an interesting picture appears: Globally oriented standards like the VGGT, the World Bank PRAI and the CFS PRAI only demand participation and consultations and are furthermore non-binding. The IFC Standards are binding for clients of banks that subscribe to the Equator Principles and therefore have considerable reach. However, they probably contain the softest language 'encouraging' negotiated settlements. Finally, the two roundtables include FPIC. However, their scope is the smallest – only being binding for companies that aim for certification.

There is, therefore, a considerable gap in international regulatory frameworks when it comes to decision-making power for local communities in large-scale land deals.

2.2.3 Gaps in international regulation and the question of a right to land

The previous chapter showed that different international actors created several instruments to regulate large-scale land deals. However, none of these instruments grants local smallholders the right to veto on the global level. This gap has not gone unnoticed and has let to numerous calls for the creation of new human rights – most specifically, a right to land. I will discuss this development, which culminated in the UN Declaration on the Rights of Peasants and Other People Living in Rural Areas (UNDROP), which was adopted by the General Assembly in December 2018.

So far, a human right to land has not been formally recognized as a right in itself by international human rights regimes. The right to property, which could potentially protect smallholders from unlawful eviction, presents one possibility to indirectly claim a right to land (De Schutter 2010: 315). However, it depends to a considerable degree on national legal frameworks, which often define the conditions of what constitutes 'lawful' eviction broadly – often to the detriment of local populations (Diergarten 2019: 4). More often, a possible right to land is linked to the right to food, as land is an essential avenue for fulfilling this right for significant parts of the world's rural population (De Schutter 2010: 305). Yet, due to the different ways in which a right to food can be interpreted, this can be problematic:

> "Relying on other human rights to get at the land issue is a risky strategy. […] The interpretation of the right to food for example leaves open whether people feed themselves through direct cultivation of lands or through an income and food distribution system. This flexible interpretation has been misused to justify removing people from their lands because they are not using land 'sufficiently/ efficiently/sustainably'" (Künnemann/Monsalve Suárez 2013: 139)

One way forward would be the creation of a right to land, as it has been accorded to indigenous people through ILO Convention No 169, the UN Declaration on the Rights of Indigenous Peoples and several regional human rights bodies (De Schutter 2010: 311–313). In these frameworks, indigenous people are granted far-reaching rights when it comes to their land, most notably the principle of FPIC in the case of any kind of investment or development project on their domain (Diergarten 2019: 9). Usually, these rights are based on "the cultural attachment that indigenous and tribal peoples have with their territory" (Diergarten 2019: 2), something which is difficult to apply to all smallholders. Nonetheless, the indigenous

land rights regime provides important lessons in terms of showing that customary and collective land use rights can be protected without necessarily creating individualized land titles (De Schutter 2010: 314).

To address this gap in international human rights law, civil society actors, most prominently La Via Campesina, have demanded the recognition of peasant's rights of which land is an important element. In 2008, the organization drafted a Declaration on the Rights of Peasants and focused its advocacy on the UN Human Rights Council to take up the issue (Claeys 2015: 125–126). Subsequently, the Council formed an intergovernmental working group in 2012 and adopted the final text in 2018, which was later confirmed by the UN General Assembly. UNDROP is the first intergovernmental document, which formulates a right to land for smallholders:

> "Peasants and other people living in rural areas have the right to land, individually and/or collectively, […] including the right to have access to, sustainably use and manage land" (UN General Assembly 12/17/2018: Art. 17.1)

Article 17 of the declaration furthermore specifies that states should protect existing customary and informal tenure systems and carry out agrarian reform to ensure equal access to land 'where appropriate' (UN General Assembly 12/17/2018: Art. 17). The declaration follows the VGGT in providing regulations in regards to investment in and exploitation of resources used by peasants and other people living in rural areas. It demands:

> "(a) A duly conducted social and environmental impact assessment;
> (b) Consultations in good faith, in accordance with article 2.3 of the present Declaration;
> (c) Modalities for the fair and equitable sharing of the benefits of such exploitation that have been established on mutually agreed terms between those exploiting the natural resources and the peasants and other people working in rural areas." (UN General Assembly 12/17/2018: Art. 5.2)

However, the declaration falls short of providing smallholders with a direct veto right. Article 2.3 formulates the principle of "active, free, effective, meaningful and informed participation" (UN General Assembly 12/17/2018: Art. 2.3).

Overall, UNDROP presents a next step in the development of a right to land and has certain consequences for large-scale land investments, such as the necessity to conduct social and environmental impact assessments. Yet, the gap of a general right for peasants and other people living in rural areas

to veto a possible investment or development project has not been closed. Furthermore, the declaration is non-binding and it remains unclear how it will be taken up and used in practice.

2.3 Debate: How does the law help?

While the appropriate form of regulation in regards to large-scale land deals was debated, a lot of skepticism appeared in terms of the usefulness of new international regulation for the local population. Some civil society actors and academics feared that the new standards would lead to a mere legitimation of large-scale land deals instead of changing anything for the better for the local population. Others argue that new rules would remain ineffective if they were not legally binding. Again, others were more optimistic, claiming that the regulations could work if implemented in the right way. I describe these three lines of argumentation in more detail in the first part of this chapter (chapter 2.3.1), before I turn to existing empirical evidence in chapter 2.3.2. So far, the empirical evidence is mainly anecdotal and missing a clear theoretical background.

2.3.1 Theoretical arguments

The global governance responses to issues concerning large-scale land deals outlined in chapter 2.2 triggered different kinds of reactions by civil society members but also academics. While the Voluntary Guidelines received generally positive feedback, market-based measures such as the World Bank PRAI and private-sector mechanisms were criticized more heavily. Despite different perceptions in regards to specific instruments, I can identify three over-arching arguments[8]: First, there is the radical position, which argues that no large-scale land investment has positive effects for the local population. More regulation is, therefore, not helpful as long as it does not stop and roll back land deals (Borras et al. 2013: 170). The second critical position focuses on the type of international law created: Only binding regulations based on human rights can make a change on the

8 I identify these arguments based on underlying ideas raised by actors. It is not a classification of individuals, activist groups or academics into categories, even though actors might overall tend towards certain positions.

ground. The third optimistic position expects new rules to have a positive impact on the local population.

The *radical* position developed from a perspective that generally denounces the ability of large-scale agriculture to feed the world and create sustainable economic development. The debate about large-scale land investments is understood as a fight between transnational agribusiness corporations and small-scale family farms. Large-scale land deals are regarded as expressions for the expansion of predatory capitalism. In this view, they destroy the livelihoods of the rural poor, exploit them for cheap labor and expand TNC's control of the food chain. Only international regulation, which stops and rolls back large-scale land deals is regarded as desirable (Borras et al. 2013: 170–171). The most influential civil society advocate of this position is the global peasant movement La Via Campesina. To counter the current focus on agribusiness they suggest the concept of food sovereignty, which aims to bring control over agricultural production back to the local level (Borras et al. 2013: 170–171; McMichael 2015).

Apart from the food sovereignty movement, other civil society actors as well as academics raise this fundamental critique about global regulation of large-scale land investments. The critique focuses on two linked arguments: First, global governance efforts legitimize large-scale land investments without questioning the underlying neoliberal logic. Goetz (2013) describes this for the private sector driven Equator Principles and RSB:

> "[..]both instruments engage in the construction of an understanding of sustainability (e.g. biofuels, risk) that frames debates around how investments shall take place, while removing from consideration the far-reaching questions of whether these investments should occur at all." (Goetz 2013: 204)

Similar fears were raised in regards to the World Bank PRAI (Stephens 2013) as well as the CFS RAI (Gaarde 2017: 70). Considering the human rights-based VGGT there are fewer critical voices, although the same fear is raised. The Civil Society Mechanism (CSM) of the Committee on World Food Security voiced some disappointment with the VGGT:

> "We deeply regret the fact the guidelines do not explicitly challenge the untruth that large-scale investments in industrial agriculture, fisheries and forests are essential for development." (CSM 2012)

This disappointment is echoed by some researchers who point out that the VGGT can be interpreted in many different ways, which might open the

door for more large-scale land deals (Borras et al. 2013: 172; Paoloni/Onorati 2014: 396).

The second argument posits that global regulations do not only legitimize large-scale land deals but even make them easier, as they help to create land markets. The NGO GRAIN argues: "[T]he main objective of regulatory processes is still to formalise land markets and titles, which experience tells us will lead to further concentration of land in the hands of few" (GRAIN 2016: 3). In this view, policies that aim at enhancing tenure security through formalization commodify land and make it easier for investors to acquire. Due to the socio-economic inequalities between investors and small-scale land-holders fair negotiations are not possible and would in the end only foster further dispossession (Borras/Franco 2012: 54; De Schutter 2011a: 268–270).

Essentially, advocates of this radical position fear that regulatory efforts will only change the manner of large-scale land investments, which will still be against the interests of rural populations (Borras et al. 2013).

The second, *critical* position looks at international regulation more optimistically. New global instruments are regarded as a step forward to protect local interests. However, it is regarded as problematic that the regulations are not binding and largely depend on the goodwill of companies and national governments for implementation. In this view, a human rights-based approach is regarded as the better option and existing instruments are criticized for lacking accountability.

The most criticized instruments in this regard are the market-based World Bank PRAI and private-sector mechanisms, which are based on the logic of voluntary self-regulation by the companies themselves (The Global Campaign for Agrarian Reform/Land Research Action Network 2010: 7). Certification schemes can provide some kind of accountability but only from corporations who voluntarily undergo certification (Johnson 2016: 80). In contrast to these private-sector mechanisms, the VGGT target nation-states as primarily responsible. Even though the guidelines are voluntary, they are indirectly obligatory as they are rooted in human rights, which nation-states are supposed to guarantee (Golay/Biglino 2013: 1643). As states are supposed to translate the guidelines into laws and policy programs, bindingness can be created. "Regardless of these contributions, the VGGT itself lacks accountability mechanisms, as no actors need to account for actions they take in line with the VGGT and no actors have agreed to be bound by its provisions." (Johnson 2016: 77). The implementation of the voluntary guidelines depends on the goodwill and capacities of states.

These processes can easily get co-opted by transnational corporations and national elites and the question remains if new laws and regulations can be efficiently enforced (Claeys/Vanloqueren 2013: 196; Narula 2013: 151).

The missing bindingness of global governance instruments to regulate large-scale land investments is regarded as especially problematic in light of the strong legal protection investors are guaranteed under current international investment law, usually in the form of Bilateral Investment Treaties (BITs) signed between states. These BITs contain clauses on protecting investors not only from expropriation but also from new laws and regulations. So-called umbrella clauses declare every breach of contract as a breach of the BIT, making it possible for investors to call on transnational tribunals. In consequence, the space for governments to change policies, for example, in the realms of environmental protection or land governance, is severely limited by these treaties (Brüntrup et al. 2014: 453–457). This investment protection regime creates a strong imbalance between investors and affected communities: While investors can easily call on an international arbitration system – which usually also work in their favor – local communities who might be adversely affected by an investment do not have such a right (Johnson 2016; Cordes/Bulman 2016). This imbalance can only be overcome with binding regulations and obligatory accountability mechanisms.

The third, *optimistic* position focuses on the positive effects new regulations can have, despite their shortcomings. There are generally two arguments made in this regard:

First, civil society actors can use new governance instruments to push for favorable policies and to build up pressure vis-à-vis companies. The VGGT suggest that multi-stakeholder platforms are created on the regional and national level to discuss ways of implementation. These provisions are an entry point for NGOs and peasant representatives to demand participation in law-making processes. Furthermore, the clear anchoring of the VGGT in human rights language provide civil society actors with strong arguments when making demands vis-à-vis a transnational corporation (Paoloni/Onorati 2014: 398; McKeon 2013: 118; Seufert 2013: 185). In a similar vein, private sector certification schemes can function as a reference point. They have the potential to increase the transparency of land deals as auditing is obligatory and reports are made public. Civil society actors can use a company's membership in a certification scheme as leverage to have their claims heard (Fortin/Richardson 2013: 153–154).

Second, states but also International Financial Institutions (IFIs) can translate voluntary guidelines into binding law and regulations, which can

then be used by local actors. The biggest chances for implementation and usefulness for the local population are ascribed to the Voluntary Guidelines. Their provisions should be translated into national law with the participation of all relevant groups in the country (CFS 2012: para 26.2). National legal frameworks for improved tenure security can potentially provide economic leverage for right-holders (Vermeulen/Cotula 2010: 900). Commentators also ask International Financial Institutions to use the VGGT to reform their obligatory conditions for companies who rely on their funding (Paoloni/Onorati 2014: 384). In essence, the hope is that national laws and regulations by IFIs can turn voluntary agreements into binding rules, which can then help the local population to protect their interests.

These three different positions are not mutually exclusive. Seufert, for example, notes that small-scale food producers were disappointed that the VGGT did not wholly rule out large-scale land investments (radical position). However, given the reality of global governance, they did have the feeling that they achieved a vital document they can use for their struggles (optimistic position) (Seufert 2013: 185). Often commentators do seem to believe in the usefulness of new global governance instruments (optimistic position) – especially of the Voluntary Guidelines – while they simultaneously argue that these instruments would have a more significant impact if they were binding (critical position).

At the same time, it is often not clear what the empirical basis for the underlying assumptions is. What do we know about the usefulness of legal instruments – be they international or national – for the local population?

2.3.2 Existing empirical research

Empirical research on the actual use of international as well as national law by the local population affected by large-scale land investments is rather sparse. Most of the empirical literature focusing on legal aspects of large-scale land deals point out the shortcomings of national law or the missing implementation of existing laws. Apart from this top-down approach, a few studies focus on how affected people actually make use of legal mobilization from a bottom-up perspective. I will present these perspectives in the first step, before I make a short excursion into the broader literature on local resistance against large-scale land deals. Several gaps will appear, which I will discuss in a third step.

When it comes to a top-down view on the effectiveness of existing or new regulations, national legislation and policies are often at the center of analysis. In Ethiopia, for example, the process of negotiating large-scale land deals was highly centralized, giving the state the power to make decisions irrespective of customary land use rights (Mulleta et al. 2014). Legal deficiencies were also found in other Sub-Saharan African countries, such as lacking recognition of customary land rights, missing procedures of land demarcation and unclear provisions in regards to benefit-sharing (Schoneveld 2017: 124; Polack et al. 2013: 19–21). At the same time, some countries included provisions for Environmental and Social Impact Assessments "modeled after international best practices" (Schoneveld 2017: 125). Yet, capacities for implementation are often missing, a study of Schoneveld showed (Schoneveld 2017: 126). Existing differences in the land tenure system between different countries (Nigeria, Ethiopia, Zambia, and Ghana) did not change the situation on the ground:

> "This study shows that despite profound differences in especially land laws, local land users are systematically dispossessed of valuable livelihood resources without redress. This highlights that regulatory frameworks relevant to land tenure have limited bearing on outcomes." (Schoneveld 2017: 129)

However, the study noted that none of the four studied countries did provide affected smallholders with the right to withhold consent (Schoneveld 2017: 124).

When it comes to the issue of local participation through consultations or consent, existing legal frameworks often only grant minimal participation rights to affected communities (Polack et al. 2013: 30). Yet, even when progressive laws are in place, they might not have the desired outcome. Comparative case studies from Sub-Sahara Africa find that even when 'best practice' legislation is in place, community consultations and decision-making processes were insufficient for protecting local rights. The reasons are a lack of proper implementation due to missing capacities of state actors but also the power of customary authorities, who did not make decisions in the interests of the local population (Vermeulen/Cotula 2010; German et al. 2013). Legal provisions and the actual practice are often far apart (German et al. 2013; Nolte/Väth 2015). And, better protection of tenure rights might simply not be sufficient in itself to protect the interests of affected people, who are in a weak position to negotiate with the companies (Vermeulen/Cotula 2010).

> "This raises the question of whether legal frameworks are of limited effectiveness due to deficiencies in design and enforcement, or whether similar outcomes occur through diverse pathways." (German et al. 2013: 14)

On a positive note, some authors suggest that large-scale land investment deals can be a driver for legal innovation, either through creating pressure on national legislators (Nolte/Väth 2015; Alden Wily 2014) or through a subsequent questioning of customary authorities (Bottazzi et al. 2016). Despite these possible positive legal innovations, research in this field leads to skepticism about the decisive role of legal reform for smallholders affected by large-scale land deals.

This top-down view on the law and its effects for local actors should be complemented with a bottom-up perspective:

> "Ultimately, much depends on how legal frameworks are appropriated and used by citizens in their accountability strategies. Promising legal entries may remain underutilised – or citizen action may push the boundaries of applicable law." (Polack et al. 2013: 30)

On the one hand, it is noted that local actors often lack the capacities to claims their rights and involve the judiciary system (Schoneveld 2017: 128). On the other hand, several case studies show that local actors are taking measures to claim their rights through litigation, calling on administrations to enforce the law or using customary rules. Grajales (2015) describes how activists called on the Constitutional Court of Colombia as well as the Interamerican Human Rights Court and Commission in the case of large-scale land investments in Colombia. The courts acknowledged that agribusiness investors had greatly profited from forced displacement through militias, a finding which was useful for further mobilizing efforts of displaced people and civil society (Grajales 2015). Research on mobilization efforts by the Q´eqchi´ indigenous people in Guatemala shows the importance of forming alliances for strategic litigation. The resistance against oil palm and sugar cane investors included a variety of support strategies from different allies:

> "Strategic litigation involves grounded practices of resistance exerting pressure 'from below', together with politico-juridical advocacy 'from above', and support from research and social communication 'from the sides'." (Alonso-Fradejas 2015: 506)

Other cases show how legal argumentation was part of the resistance strategy of local actors towards an investing company. In Laos, a village affect-

ed by a Chinese rubber plantation used legal argumentation and channels to state officials alongside other resistance mechanisms such as withholding labor or sabotage. The cooperation with state actors was regarded as highly relevant by the observing researcher: "By working within state structures rather than by open confrontation or acts of violence, the Khmu have thus far been able to stall the establishment of the plantation on their lands." (McAllister 2015: 834). This might be especially relevant in a context like Laos where open protests are difficult to organize (McAllister 2015: 828). Customary law can also play a role: In a case in Madagascar a local politician was sanctioned with exile (which was later revoked) after having signed land away without having consulted relevant customary leaders (Gingembre 2015: 572). The evidence from these case studies shows that legal mobilization by local actors does take place; however, success conditions were not at the center of analysis of these studies.

Apart from single case studies, Polack et al. (2013) put together a review of cases in which legal mechanisms – they refer to accountability mechanisms – were used by local actors and their allies. They looked at 16 cases from 12 different countries across Sub-Sahara Africa, relying on media and NGO reports. They describe a range of actors who are involved in citizen action: National and international NGOs were key supporters for affected people, while peasant movements mainly played a role in francophone West-Africa (Polack et al. 2013: 34). Local actors used a range of strategies – most notably, the writing of letters of complaint and petitions aimed at state authorities. In two cases, civil society actors called on the grievance mechanism of the Round Table on Sustainable Palm Oil (RSPO), while five cases were brought in front of a court. These formal mechanisms did accomplish marginal improvements but also failed at times: In one of the RSPO cases, the company simply withdrew from the Roundtable and forwent certification (Polack et al. 2013: 40–41).

Overall, the success of the action undertaken by local actors remains somewhat unclear in the review. In three cases, renegotiations with the company took place; however, the outcome unknown. Three investment projects were abandoned, though this was explained by economic difficulties and not necessarily resistance by locals. In this regard, the review could not provide explanations, but rather pointed out a gap in the literature:

> "The literature that documents citizen action has not systematically analysed the actors action-outcome chain of causation. This desk-based study does not therefore attempt to draw conclusions on causal relations between specific actors or strategies and outcomes, which more

> in-depth comparative field research methods would tackle more effectively." (Polack et al. 2013: 31)

While the literature which focuses specifically on the role of legal arguments, representation or legal institutions in large-scale land deals is rather sparse, more research exists around resistance more generally (Hall et al. 2015). Parts of this literature builds on conceptualizations of peasant resistance (Moreda 2015; Kandel 2015; Martiniello 2015) and focuses on forms of 'everyday resistance'. The term describes little uncoordinated acts of individual defiance, for example, foot-dragging, pilfering or slander (Scott 1985: 27). Yet, these local and often spontaneous acts are often not visible to outsiders (Borras/Franco 2013: 1725).

When organized forms of collective contention appear, local actors are often linking to national and international allies, many times NGOs or transnational agrarian movements (Rocheleau 2015; Temper 2019). These processes and possible difficulties developing the cooperation with NGOs are further studied (Larder 2015; Gilfoy 2015). Yet, the literature usually does not systematically inquire about the conditions under which these mobilizations are successful. Nonetheless, effective networks (Rutten et al. 2017) are usually mentioned as well as economic pressures on companies:

> "Activism against companies has shown to be most successful when it impacts upon profit or previsions of future profit (often related to reputation with specific audiences), scaring investment and increasing risk for investors." (Temper 2019: 202)

So far, only one case study specifically focused on the role of the company in explaining its reactions to critique (Salverda 2018). The European investor in Zambia studied, was highly aware of the 'land grabbing' debate, tried to avoid potentially contentious behavior, and applied the VGGT. The case shows that 'the countermovement' to large-scale land deals can have positive effects on investors, who might over time "feel 'obliged' to respond and/or may become even more open to (some of) the concerns raised" (Salverda 2018: 13). However, in order to understand variation between different responses, "much more investigation on the ground is needed" (Salverda 2018: 14).

Reviewing the arguments made in regards to international regulation and the existing empirical evidence presented in this chapter gaps become visible.

First, existing evidence seems to indicate that legal improvements in regards to local rights in large-scale land deals do not automatically lead to

better outcomes for affected communities. At the same time, case studies find that local actors can successfully pursue their goals by claiming their rights through administrations, courts or other state institutions. It, therefore, becomes clear that the most relevant question is not whether new laws and regulation provide local communities with better outcomes, but rather under which conditions this can happen. This is the research question this dissertation addresses (as discussed in chapter 1): Under which conditions can local actors successfully pursue their goals through legal mobilization?

Second, the literature that uses a bottom-up perspective on local actors employing legal means, focuses on individual cases and does not, apart from the overview by Polack et al., include systematic comparisons. The review by Polack et al. does provide evidence from several cases; however, these are not theorized systematically. As pointed out earlier, they are not able to provide causal explanations. There is, therefore, a need for a systematic comparative analysis, which is able to identify some causal relations.

Third, the broader literature on resistance against large-scale land deals points to the importance of civil society networks for successful campaigns in influencing the investor. Yet, most of the studies do not focus specifically on explaining success or failure of resistance. Furthermore, there is only one study that analyses the responses of a company more closely. Differences in company reactions have not been analyzed by this literature, which is another gap this dissertation will address.

The remainder of this dissertation will deal with these three gaps through creating a heuristic framework, which will then guide a systematic case comparison. The framework will consider three perspectives: A legal, a social mobilization and a business management perspective. As there is no linear relationship between existing laws and better outcomes for local communities, a configurational approach, which considers causal complexity, seems especially fitting. I will further elaborate on this framework in the next chapter.

3. A multi-perspective framework on legal mobilization success

This chapter develops a multi-perspective framework that will help me to answer my research question. The framework and core concepts should be broad and flexible enough to be usable in different empirical contexts but provide some first suggestion for explanatory conditions. As I ask a y-centered research question (how the outcome can be explained), I am faced with a myriad of possible conditions. To narrow possible conditions down, I view my research question through the lens of a simple bargaining model and three theoretical perspectives: A legal, a social mobilization and a business management perspective. In this way, I integrate different research fields, which – I argue – is necessary to understand the dynamics between local actors and foreign companies.

At the outset of my framework, it is necessary to clarify my metatheoretical considerations (chap 3.1). In the next step, I construct company-community relations as an ongoing bargaining process, which sheds light on the asymmetrical power relations that are often at play in interactions between local actors and foreign investors (chap 3.2). Chapter 3.3 then introduces the three theoretical perspectives on answering my research question and central models discussed in the respective literature. Chapter 3.4 finally combines these three perspectives into one framework and suggests central conditions. Finally, chapter 3.5 summarizes the framework, discusses its limits as well as its reach.

3.1 Metatheoretical considerations

Before starting to map out my analytical framework, I will discuss two basic assumptions and meta-theoretical considerations. First, (chap 3.1.1), my framework assumes that social actors act according to what is rational for them. I employ the concept of bounded rationality, which for me has two implications: First, actors always act in spaces of imperfect information and second, what is rational is defined by cultural socialization of actors. In consequence, what is rational behavior for a company might not be rational for an affected local community. Second (chap 3.1.2), my theoretical framework rests on the idea of configurational causality: While I do as-

sume that causal mechanisms can be identified, I believe that relevant conditions appear in different configurations, which can lead to the same or different outcomes.

3.1.1 Bounded rationality

My research question deals with human behavior: What do local actors do? How do they use legal mobilization? What does the company do? Do they give in or ignore claims of affected communities? Consequently, I need an underlying idea of how social behavior can be explained. I use the concept of bounded rationality, which assumes that actors act according to what is rational to them, even though that might not follow purely maximum utility assumptions.

The concept of bounded rationality was introduced as a more realistic version of the utility-maximizing understanding of rationality:

> "Bounded rationality is simply the idea that the choices people make are determined not only by some consistent overall goal and the properties of the external world, but also by the knowledge that decision makers do and don't have of the world, their ability or inability to evoke that knowledge when it is relevant, to work out the consequences of their actions, to conjure up possible courses of action, to cope with uncertainty (including uncertainty deriving from the possible responses of other actors), and to adjudicate among their many competing wants." (Simon 2000: 25)

For my dissertation, it is not necessary to go into more detail about the various ways in which bounded rationality and behavioral choice theories have been modeled, theorized and studied empirically (Jones 2003; Gigerenzer/Selten 2002). Instead, I rather use the concept to think about two boundaries of maximum optimizing decision-making in cases of large-scale land deals: Insufficient information processing capabilities and the socio-cultural socialization of actors.

All human decisions are made in settings of insufficient information, as actors do usually not hold universal knowledge about their complex environments. However, even if they possessed the most relevant information to make a cost-benefit calculation, cognitive constraints will keep actors from doing so in a rational-maximizing way. First, actors might simply lack the expertise and the knowledge to interpret available information and draw conclusions. Furthermore, people often follow 'wishful think-

ing' and ignore information that counters their preferences and wishes for the future. Essentially, "[w]e see what we want to see" (Skovgaard Poulsen 2015: 17). In addition, actors often chose 'default options' over alternatives, which might be more beneficial but more complicated to achieve. Overall, instead of carefully weighing pros and cons, social actors often take cognitive shortcuts, which might result in less favorable outcomes (Skovgaard Poulsen 2015: 17–25).

These dynamics can undoubtedly be found in large-scale land deals: They are often closed in a hasty manner, miss transparency and affected communities often only receive insufficient information (Cotula/Vermeulen 2011: 44). In many cases, locals lack full awareness of the implications – both positive and negative – when signing large-scale land deals. Furthermore, rural communities in developing countries often lack 'viable economic alternatives' (Rutten et al. 2017: 8) and the legal and economic expertise to judge an investment. As a consequence, they might sign a land deal to get the lease money even though it might not be high enough to cover the value that is lost through leasing the land (Millar 2015: 1708).

Cognitive shortcuts also apply to companies' decision-making. A high number of failed agricultural investment projects (GRAIN 2018) and projects, which are struggling financially[9], shows that investing companies often fail to make proper cost-benefit calculations themselves. Problems are caused, among others, by host country policies, missing infrastructure, missing access to finance, land disputes and management issues (World Bank 2014: 17). Studies show that "from the perspective of the investor, land acquisition is unlikely to be the most profitable business model" (Liu 2014: iv), yet companies pursue them. A purely rationalist-optimizing view on human behavior would therefore not be able to explain both the behavior of investors and affected communities.

If people use cognitive shortcuts to make decisions, how are these shortcuts shaped? One crucial element is cultural socialization. In this context, culture can be understood as:

> "[T]he ideas, values, beliefs, behavioral strategies, perceptual models, and organizational structures that reside in individual brains, which can be learned by other individuals through imitation, observation,

9 A study surveying 39 mature agricultural investment projects in Africa and Southeast Asia companies found that 55 % were not profitable in financial terms (World Bank 2014: 17).

> (plus inference), interaction, discussion, and/or teaching" (Henrich et al. 2002: 344)

Oftentimes, groups share a similar culture, but we can also find subcultures and differences among groups. At the same time, culture is nothing fixed but can evolve and change over time. Cultural socialization leads to individuals taking certain cognitive shortcuts, which are in line with their distinctive cultural norms when making decisions (Henrich et al. 2002). Frequently, culture is linked to geographic spaces. However, certain narratives or assumptions can also be found transnationally. Severine Autessere for example showed that interveners, who work in peacebuilding interventions often follow the same or similar assumptions about how peacebuilding is supposed to work, regardless of their country of origin. They have been socialized into a specific work environment (Autesserre 2017: 120).

For the context of large-scale land investments, this means that not only the different cultures of origin and host country meet but also the different cultures found in a transnational corporation versus the way an investment is understood locally. Foreign agricultural investors often believe in the superiority of agribusiness over small-scale farming (Schönweger/Messerli 2015; Neef 2014: 195) and in their ability to contribute to development in poorer countries through economic rationality and technology (Calvano 2008: 798). Local communities, on the other hand, usually interpret transnational corporations and the promises made according to their cultural framework. Through ethnographic research in a large-scale land deal in Sierra Leone, Gearoid Millar showed that affected communities interpreted their relationship with the company through the lens of the existing patron-client system. Local people perceived the transnational investors as one of the patrons, who will 'help' them, and expected all kinds of benefits (Millar 2014: 72–78). In many instances, transnational corporations are perceived by local communities as being "insensitive to their non-economic needs" (Calvano 2008: 798). The meeting of different 'cultures' with their underlying norms, ideas and assumptions, poses a considerable challenge to investor-community relations and can easily lead to misunderstandings.

Overall, my concept of bounded rationality is built on the finding that humans use cognitive shortcuts in decision-making. One decisive factor for how an actor evaluates a situation is their cultural socialization containing certain norms and assumptions about the world. At the same time, this does not mean that outside factors and the environment do not play a role. I assume that causal conditions can be identified as relevant for certain choices. Yet, the concept of bounded rationality does show me that I have

to consider the characteristics of social actors when theorizing about their decision-making.

3.1.2 Configurational thinking

Configurational thinking, also referred to as set-relational, is often the basis of qualitative research, even if it is not made explicit (Ragin 2010: 2). On the most basic level, it rests on the assumption that social outcomes can be explained by a number of interrelated conditions, which can work differently in different contexts. Using this line of thinking in my dissertation enables me to identify causal mechanisms, while at the same time taking seriously the various settings in which large-scale land deals take place.

Configurational understanding of causation developed in differentiation to dominant quantitative research. Central to quantitative thinking is the idea of independent causal factors, which can be analytically separated (Ragin 2010: 112), and, which have a symmetric correlatory effect: "an increase in the independent variable prompts an increase in the dependent variable and […] a decrease in the independent variable coincides with a decrease of the dependent variable" (Rohlfing 2012: 47–48). In contrast, a configurational approach is interested in how conditions produce different outcomes in different combinations and contexts (Ragin 2010: 114). Additionally, symmetry is not assumed: Just because a condition causes a particular outcome, does not mean that the outcome would not be there if the condition would be absent (Ragin 2010: 15).

The underlying assumptions of configurational thinking can be summed up (Blatter/Haverland 2012: 80):

- "almost all social outcomes are the result of a combination of causal factors;
- there are divergent pathways to similar social outcomes (equifinality); and
- the effects of the same causal factor can be different in different contexts and combinations (causal heterogeneity)."

By focusing on the complexity of individual cases, configurational thinking is more holistic and more focused on 'how' things take place (Ragin 2010: 109). Instead of speaking about variables, configurational thinking uses the terms conditions and outcomes.

As such, configurational thinking helps me with my research question, which is somewhat exploratory. As outlined in chapter 2.3.2, existing em-

pirical research is not conclusive under which conditions a more favorable legal situation can help local actors in protecting their interests. There is no linear relationship between legal reform and better outcomes for local actors, even though policymakers and academics assume some kind of link. At the same time, the contexts and the characteristics of large-scale land investments vary considerably. Identifying central success conditions and their combinations, which might play a different role in different settings, seems to be fitting. It enables me to point out relevant factors, which should be taken into consideration by other researchers as well as by policymakers, without making overly simplistic predictions and denying the social complexity of each case (Berg-Schlosser et al. 2009: 6).

In consequence, my research does not aim to identify the 'net effect' of a factor but instead focuses on 'causal complexity' (Ragin 2010: 6). Overall, the aim of my research is to identify "different contexts and conditions that enable or disable" (Ragin 2010: 5) local actors in successfully using legal mobilization vis-à-vis TNCs.

The final objective of a configurational approach is to identify "the causally relevant conditions that combine to produce a given outcome" (Ragin 2010: 109), also referred to as the configuration. These configurations can be expressed through formulas, but can also be depicted in so-called truth tables.

In many cases, configurational thinking implies the use of Qualitative Comparative Analysis (QCA). However, instead of applying QCA in my analysis, the configurational approach supplies me with a causal logic and a language, which will help me to systematize my empirical findings.

3.2 A bargaining lens towards company-community relations

My framework rests on the assumption that local actors and transnational corporations investing in their land find themselves in an interactive and ongoing bargaining situation (Rutten et al. 2017; Shohibuddin et al. 2016). This chapter will introduce this approach (chap 3.2.1) and discuss the consequences such an approach has for answering my research question (chap 3.2.2).

3.2.1 Background: bargaining theory

This chapter provides a short overview of bargaining theory. I use the theory as a heuristic tool that provides me with a particular lens on community-company relations; therefore, I do not go into details on bargaining strategies or game-theoretical modeling. Instead, I focus on the conceptualization of bargaining power and asymmetrical bargaining situations, which is most relevant for thinking about large-scale land deals. Instead of only looking at actual negotiations, I use the bargaining approach to describe the whole situation.

Generally, a bargaining situation emerges between two parties who need to negotiate about something to achieve the desired outcome. Central to the definition of a bargaining situation is the interdependence of two actors, which can take the form of competition over scarce resources (Lewicki et al. 1997: 31). Yet, these situations are also an "opportunity to collaborate for mutual benefit" (Nash 1950: 155).

In the literature, the classic example to describe simple bargaining situations is a buyer-seller setting, where two actors bargain for a price (Lewicki et al. 1997: 32; Hopmann 1998: 56). Speaking in abstract terms, actor A (the buyer) prefers a price at point a, whereas actor B's (the seller) optimal outcome would be price b. However, both actors would be able to agree on a different price, but only to a certain point – the resistance point. These are marked with a` and b` along the issue dimension.

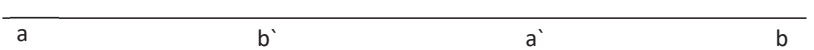

Figure 1 Basic bargaining situation

(adapted from Hopmann 1998: 55)

The resistance point is determined by the Best Alternative To a Negotiated Agreement (BATNA), meaning the point at which no agreement would be more favorable for an actor than agreeing to any kind of outcome. Fisher and Ury, who coined the term, argue that knowing one's BATNA is vital in protecting actors against deals, which harm them. In these instances, leaving the negotiations is a better option (Fisher/Ury 2012: 99–102). All agreements between a and a` would be an acceptable outcome for A, while all points between b and b' would leave B better off than without an agreement. The space between b' and a' is the bargaining space in which a

mutually beneficial agreement can be reached. The bargaining process itself is then described as a process of offers and concessions until the two parties reach a settlement point, which is (ideally) located in the bargaining space, therefore leaving both parties better off than without an agreement (Fisher/Ury 2012: 32–33).

This model is overly simplistic in two regards: First, issues are usually far more complex and might not easily fit on a continuum (Hopmann 1998: 76). Second, the model implies rational choice actors, for whom we could objectively identify a mutually beneficial arrangement. However, as described in chapter 3.1.1, actors usually decide in situations of imperfect information and according to their own cognitive biases. Nonetheless, I can use the model as a lens for viewing relations between local actors and companies and reflect upon their bargaining power.

From a bargaining perspective, power is relational and based on dependence. In this relational understanding, the power actor A has over actor B is the dependence B has on A in fulfilling its goals (Emerson 1962). Balanced relationships are those relationships in which the dependence on each other is more or less equal, while a difference in dependence marks asymmetrical relations. In line with my bounded rationality approach, social actors cannot have an objective understanding of how much power they have over another actor; instead, they have perceptions about their power relations. At the same time, material factors still play a role (Zartman/Rubin 2000: 13). Essentially, perceived power is essential for actors' behavior but is also linked to the material reality of the world. Power perceptions usually build on considerations about the distribution of capabilities and resources (Rubin/Zartman 1995: 350).

Research shows that power differences usually have important implications. It is generally accepted that more powerful parties are more likely to have their interests addressed, while the demands of the weaker party are not considered. Strong actors are less incentivized to care about the interests of lower-power parties, which in turn are more reluctant about voicing their views (Wolfe/McGinn 2005: 4–7). Nonetheless, there is some evidence that weaker actors are at times able to change the power relations and might reach a favorable agreement (Rubin/Zartman 1995: 357). In some cases, ideologies of resistance (weapons of the weak), in which the weaker party acts assertively and forms coalitions with other weak actors, can help to overcome power imbalances (Rubin/Zartman 1995: 352). Besides, awareness for interdependence enhances the motivation to search for mutually beneficial agreements. Actors realize that it will help their

prospects if they help the other party to achieve their goal (Wolfe/McGinn 2005: 15).

Overall, the research shows that power imbalances often result in a better outcome for the powerful party; however, power relations and their perceptions are not set in stone and can be changed throughout a bargaining process.

3.2.2 Local actors – TNC relationship: an interactive bargaining process

A bargaining lens helps me to theorize the relationship between local actors and foreign investors. It makes visible power potentials but also power asymmetries between the two parties. However, the notion of a bargaining situation implies two preconditions: First, there needs to be actual possibilities for interaction between local actors and transnational corporations. Second, interdependence between the two actors has to exist. I will show that these two preconditions are met in most cases of large-scale land deals before I discuss the issue of bargaining power.

The first precondition is usually fulfilled, even though in some cases only at later stages of the investment when operations have started. Local actors, even though it might only be a minimal number of people, are usually consulted at some point of a large-scale land deal (Vermeulen/Cotula 2010: 907). These consultations are often not very inclusive, fair or broad (Cotula/Vermeulen 2011); nonetheless, they can present a window of opportunity in which local actors can actively negotiate for a better lease agreement or deny the signature.

Even when there are no or only limited consultations before a lease agreement, more interactions are inevitable once the investor starts operations. Local communities often live on or close to the plantations. They are a source of labor, but they are also affected by the plantations in terms of pollution, reduced access to land and water sources. Contestation against company operations, inter or intra-community conflicts as well as community-government conflicts occur in many places (Borras/Franco 2013: 1730). Companies usually make changes to their initial plans and try to adapt to the local conditions. Rather than seeing large-scale land investment deals as a fixed deal, which is then simply implemented, it makes more sense to conceptualize them as an interactive and ongoing bargaining process (Shohibuddin et al. 2016: 109).

The second precondition, interdependence between the two actors, is mostly met as well: Transnational corporations depend on the cooperation

of local actors not just to gain access to the land, but also to keep a plantation running. When starting consultations with local actors, TNCs have usually invested considerably in a project. They have, in many cases, already signed an agreement with the host government about a particular area, and have started exploration. The more the company has invested in a proposed investment, the more 'location-dependent' (Cotula 2009: 79) they are on local actors, who could, in some way or the other, deny them access to land. Local actors can potentially sabotage plantation equipment or infer considerable reputational costs through national and international campaigns. Even more, investing companies rely on the active cooperation of the local population to recruit labor or to combat bush fires.

Local actors often strive to profit from rents, jobs and corporate social responsibility projects (Borras/Franco 2013: 1735). At times, they also want the investor to leave. For both goals, they are dependent on the actions of the transnational corporation. In most instances, local actors do not have the option of choosing between different investors, weakening their bargaining power (Vermeulen/Cotula 2010: 913). Still, both sides are dependent on each other in fulfilling their goals. A large-scale land investment can consequently be conceptualized as a bargaining situation between a transnational corporation and local communities (Rutten et al. 2017), even if it often is a asymmetrical one.

The described interdependence between local actors and investing firms shows that both sides hold some degree of bargaining power. Companies are dependent on the local population for land, labor and the functioning of the plantations. In contrast, local communities are dependent on the financial investment, jobs and other development opportunities represented by the company. Yet, in reality, the power is usually distributed asymmetrically. Local populations affected by foreign large-scale land investments are usually marked by socio-economic or political marginalization. Despite the trend of urbanization worldwide, most of the world's poorest and food-insecure people live in rural areas (Borras 2009: 6–7). It is in this context that many land deals in developing countries emerge.

Local actors often welcome investors initially, as they are desperate for any kind of investment and financial capital. However, local understandings of lease or contract growing agreements and their consequences are often limited (Cotula/Vermeulen 2011: 44). At the same time, TNCs come equipped with international legal advice (Vermeulen/Cotula 2010: 913) and usually the backing of national elites (Keene et al. 2015). In these situations, community members often feel that they do not have the option to reject a proposed lease agreement, even when they are consulted (Gingem-

bre 2015: 566). They express that they might simply not be powerful enough to fight for their interests as this account of an Ethiopian smallholder shows: "We cannot wrestle with these rich investors… we know that they have a link with and support from the government. If we wrestle with them, it is obvious that we will lose" (Ethiopian smallholder cited in Moreda 2015: 527). This view represents many accounts of large-scale land deals, in which local smallholders do face a powerful outside investor.

By constructing large-scale land deals as a bargaining situation, the emphasis is put on opportunities for local actors to improve their position, while at the same time considering the existing power differences. Rather than seeing local communities as mere victims of neoliberal expansion into rural spaces, their agency is stressed. They become central actors, who hold considerable power but are often not able to translate the power into a more favorable outcome. Against this theoretical background, my research question can be read in a new light: How do local actors use legal mobilization as a way to increase their bargaining power vis-à-vis companies?

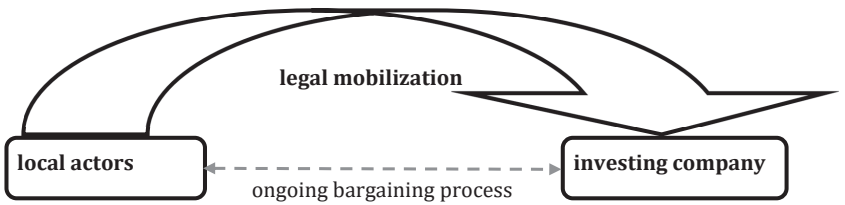

Figure 2 The research question

In order to answer the question, I will now turn to three different perspectives on this question.

3.3 Three theoretical perspectives

Three theoretical perspectives follow the basic bargaining model and my research question. As I am interested in legal mobilization, a legal perspective is the most obvious choice. This perspective suggests that a favorable legal opportunity structure should translate into legal mobilization success for local actors (chap 3.3.1). However, this rather static view needs to be complemented by taking the agency and interaction of local actors and investing companies into account. I consequently discuss a social mobiliza-

tion perspective on the characteristics and activities of local actors (chap 3.3.2), before I introduce a business management perspective with the use of the stakeholder salience model (chap 3.3.3).

3.3.1 Legal perspective

The first and probably most apparent perspective is on legal norms. Viewed from such a perspective, local actors should be successful in their legal mobilization attempts if the law is on their side. Laws that protect formal and informal tenure rights, grant smallholders veto power and ensure that contracts are none-exploitative should lead to investments that are more favorable to the local population and help local actors in achieving their goals. I use the term legal opportunity structure (LOS) from the legal mobilization literature to refer to the opportunities presented by laws and regulations. After introducing the term, I will offer a conceptualization of the LOS, which will help to describe the potential 'menu' for the legal mobilization attempts of local actors.

The concept of legal opportunity structure (LOS) draws heavily on the concept of the political opportunity structure (Vanhala 2012: 526–527). The general idea behind the political opportunity structure is that an open political system creates more opportunities for societal actors to influence state policies than a more closed system (Hilson 2002: 242). Similarly, "the LOS represents the degree of openness or accessibility of a legal system to the social and political goals and tactics of individuals and/or collective actors" (Vanhala 2012: 527). It asks "what may be litigated, who can litigate and where and when such litigation can occur" and focuses on "the practical and strategic situation within which groups decide whether or not to become active in the legal arena" (Vanhala 2012: 526–527). Studies of legal opportunities suggest that a favorable LOS makes it more likely for social movements to choose legal measures instead of other strategies (Hilson 2002; Fazio 2012) and can potentially help marginalized groups advance their political interests (Wilson/Rodríguez Cordero 2006). Different studies have different understandings of the legal opportunity structure. Some use the term broadly to include a movement's identity (Jacquot/Vitale 2014), the strength of one's own allies, the strength of the opponent and existing cultural and legal framings and counter-framings (Andersen 2009). In contrast, I use a narrow approach to LOS representing the legal norms in a country, its statutory law, customary law, policies and legal decisions.

Even though I only include legal elements in my understanding of the legal opportunity structure, I still follow a broad understanding of legality, as outlined in chapter 1.1. This comprehensive understanding of legality enables me to not only focus on national laws but also to include customary and local regulations, which might not be formalized but are understood locally as binding rules. Furthermore, I can add 'non-state soft law' (Olsson 2013: 190), which is necessary if I want to consider the potential role of private-sector driven regulation like certification schemes. In this way, I follow a pluralistic understanding of the legal setup:

> "[T]he legal order is pluralistic rather than monolithic. Not only is official state law a maze of diverse, indeterminate, and often contradictory legal traditions, but in addition a multitude of relatively autonomous 'indigenous' law traditions contend for preeminence within the many subculture and institutional terrains of society" (McCann 1994: 8)

The following categorization is only one possibility to get some order into these overlapping webs of legal norms. I will use two dimensions to do so: the degree of formalization and the different levels of law.

The degree of formalization considers the legal nature of the source of law. In international law, this differentiation is often referred to as 'hard' and 'soft' law (Blutman 2010). Treaties between states are considered hard law, as they are a *"form of legal source recognized by international law"*[10] (Blutman 2010: 606). In contrast, soft law refers to norms that might be of legal relevance, which are, however, not expressed in a formal legal source such as a convention (Olsson 2013: 185).

However, even international binding mechanisms are not necessarily 'hard law' in a very narrow sense, because "in the international realm, even binding judicial channels typically lack effective enforcement authority" (Graubart 2008: 33). A clear distinction between hard and soft law is consequently often difficult and it makes more sense to think of the differentiation as a continuum rather than as a dichotomy.

Generally, private governance initiatives by companies, the financial sector or civil society actors are not highly formalized, as they are typically not globally obligatory. Some refer to these initiatives as 'non-law', as they are not adopted by states; however, there seems to be an "increasingly blurred boundary between the public and private domains" (Olsson 2013: 190),

10 Usually this is understood to mean the sources officially listed by art 38(1) of the Statute of the International Court of Justice (Olsson 2013: 185).

making the distinction between international 'law' and 'non-law' problematic. An example of hybrid forms of governance are the private sector driven sustainability standards like the RSB and the RSPO principles. They are among several certification schemes, which are accepted by the European Union to import biofuel. While companies, who want to import biomass to the EU, can choose from a number of certification schemes, certification is obligatory. The combination of the private sector initiatives and the EU regulations make up a public-private hybrid regime (Schleifer 2013). In consequence, I do not exclude private sector driven regulatory frameworks but simply think of them as less formalized rules.

I use the dimension of formalization not only for the international level but also for the national and sub-state level.

Using the degree of formalization for the national realm has the advantage that I do not solely focus on statutory laws, which might not contain regulations for foreign investment in land. Instead, it is often other policy documents such as investment policies, which do formulate rules for foreign investors, for example, regarding local consultation procedures, rent payments or tax exemptions (Cotula/Vermeulen 2011: 41–45). These regulations might be exact and even obligatory to a certain extent. However, they are usually less formalized.

On the local level, using a broad understanding of law allows me to include customary law, which locally governs land tenure issues in many countries, especially in Sub-Sahara Africa (Peters 2013). Customary tenure rights are often not formalized, meaning that the state does not officially recognize them. Nonetheless, they might be highly institutionalized within local social relations and provide locals with local security of tenure (FAO 2002: 11). It consequently makes sense to include these locally understood rules in regards to land rights in the conceptualization of the legal opportunity structure – while at the same time making clear that they are less formalized than national statutory law.

Overall, large-scale land-based investments cut across these different levels of law, which are often interconnected in complex ways. Typically, a contract about the land concession is closed with the national government but has to be specified in agreements with local authorities or landowners. Different government authorities might play a role in the negotiation and implementation phases such as special investment promotion agencies, land and trade ministries, environmental oversight offices as well as local or chiefdom authorities (Cotula/Vermeulen 2011: 42).

In order to systematize the existing complexity, I suggest the following table, which captures both the level of regulation (local, national, international) as well as the degree of formalization (high-low).

Table 3 Conceptualization of the legal opportunity structure

		Degree of formalization		
		high formlization ⟷ low formalization		
Level of law	International		Human rights conventions	Voluntary standards (through IOs or private sector)
	National	National statutory law	National policies and guidelines	
	Local		Local customary law	

As a heuristic tool, the table helps to get an overview of the potential for legal mobilization. Here, first gaps might already appear in many instances. For example, so far, "[n]o African country has established in its national legislation the principle of free, prior and informed consent" (Cotula/Vermeulen 2011: 46). At the same time, missing institutional opportunities on one level could potentially be compensated by referring to another level (Hilson 2002: 239). "In other words, groups employ international law when using local laws is not enough. International law, then, provides extra political leverage to domestic social movements" (Massoud 2006: 10). However, if local actors are able to mobilize international law depends, of course, on additional factors – first and foremost, the mobilization capacities of local actors, which I will deal with in the following chapter.

3.3.2 Social mobilization perspective

A social mobilization perspective focuses on the capacities of local actors to access and use the legal opportunity structure. The perspective denies an overly simplistic legal view that the existence of particular legal norms automatically has an inevitable outcome. Instead, "laws are interpreted, disputed and implemented by numerous state and non-state actors at multiple levels, beginning with the very local" (Franco 2008a: 992). The existence of favorable laws does not imply that social actors are automatically able or willing to apply them (Vanhala 2012: 528). To the contrary, there are considerable barriers to using legal mobilization – such as missing knowledge and missing resources. I discuss these challenges in the context of large-scale land deals before I turn to the mobilization of networks as a way to overcome these barriers. I will introduce the boomerang model as a specific way to conceptualize the role of support networks.

The first and probably most apparent barrier to accessing legal norms is knowledge. If you don't know about the laws, regulations and procedures, you cannot refer to them. The concept of legal empowerment, which describes "the process through which the poor become protected and are enabled to use the law to advance their rights and their interests" (Commission on Legal Empowerment of the Poor 2008: 26), contains information and education as a central cornerstone. However, many people lack education about the rights themselves or the necessary background education to understand laws. People usually need a 'rights consciousness' to be able to use the laws.

Illiteracy and missing language skills add to the problem. In many developing countries, legislation is written in the official language, which might not be spoken locally (Commission on Legal Empowerment of the Poor 2008: 32–33). These language issues can be found in many large-scale land-based investments as the lease agreement is usually in the official language – often in English, French or Portuguese. Consequently, the local population often fails to understand the plans of investors. Socio-legal studies show that higher education generally increases the likelihood of using legal measures. However, legal knowledge can also be obtained informally, for example, through self-education.

Last but not least previous experiences with legal norms play a considerable role as well (Gallagher/Yang 2017). In the case of communities affected by large-scale land-based investments, it can be decisive if they hold this

expert knowledge, which can be gathered through previous experience (Gingembre 2015: 572).

The second barrier is the availability of material and organizational resources. "In most cases, pursuing a legal campaign is a lengthy, costly and risky process" (Vanhala 2012: 526). Socio-legal studies show that actors with better financial and organizational resources have better chances in litigation cases, acknowledging that the courtrooms do not present equal playing fields for all (Epp 1998; Galanter 1974). Getting legal counsel, developing a legal strategy, financing supportive research or generating publicity for a case all require substantive resources (Epp 1998: 19). However, population groups affected by large-scale land-based investments are often among the poorest in their countries and certainly in the world economy. Legal advice before signing the lease contract, or accessing international arbitration institutions, which are typically located outside the host countries (Cotula 2011: 41), are not affordable to these actors. Foreign investors, on the other side, come equipped with extensive legal advice and financial resources (Vermeulen/Cotula 2010: 913).

One way of overcoming these barriers and advancing a legal mobilization strategy is through social networks. Personal networks can be helpful, for example, in gaining legal expertise through informally connecting to a lawyer (York Cornwell et al. 2017). In addition, networks are essential for securing funding, exchanging ideas and know-how, but also for building alliances in common struggles (Epp 1998: 19; Andersen 2009: 209). If these alliances are formed with actors on a higher level – such as national and international civil society actors, they can be conceptualized according to the boomerang model.

In its original version, the boomerang model was developed to capture the cooperation between national NGOs from developing countries, who use their connections to transnational civil society actors and NGOs from other states to indirectly pressure the government of the original country (Keck/Sikkink 1998: 12–13). The assumption behind the model is that "international contacts can amplify the demands of domestic groups, pry open space for new issues, and then echo back these demands into the domestic arena" (Keck/Sikkink 1998: 13). These contacts are especially necessary in cases in which domestic governments are not responsive or local actors are somehow blocked from pressuring their governments directly (Keck/Sikkink 1998: 12).

The boomerang model is broad enough to be applied to local-national dynamics (Kraemer et al. 2013) as well as companies as the main addressee (McAteer/Pulver 2009). Adopted to my research question, this means that

networks could help local actors in gaining access to legal mobilization strategies, which they can then use to directly or indirectly influence the company. In many cases, these networks will consist of civil society organizations like farmers' associations, local, national and international NGOs, but also members of the diaspora, journalists, researchers, local authorities or politicians (Polack et al. 2013: 32–39). Personally knowing political or administrative officials who have the authority "to provide and enforce land rights, influence land policies, mediate in conflicts over land deals and the terms of inclusion" (Rutten et al. 2017: 16), can provide an important starting point for enforcing one's rights. In consequence, networks are a valuable source to practically gain access to legal institutions for communities affected by large-scale land-based investment projects.

Networks, which are helpful for local actors, can be pre-existing organizations such as farmers' associations or NGOs, working in a region. In many instances, networks between local smallholders and civil society actors need to be created in the face of an incoming investor or raising grievances. These might either happen through local actors reaching out to national and international NGOs, or through NGOs approaching affected communities and offering their support. A critical literature on transnational NGO advocacy has rightly pointed out that many local groups do not get the attention and support of transnational civil society and have to sell their cause in a certain way to appeal to the logic of international NGOs (Bob 2005). In the realm of large-scale land deals, support from international NGOs might be more readily available as the civil society mobilization around the issue has been immense since it appeared on the agenda in 2008. However, this does not mean that the goals of civil society organizations and local actors are necessarily the same, which might lead to misrepresentation of local demands by NGOs (Gilfoy 2015; Boamah 2011). Consequently, local actors need to be aware of the risks of paternalistic behavior of supportive organizations (Schramm/Sändig 2018).

Yet, while the cooperation with civil society actors can be problematic for local actors in some cases, I argue that some kind of support network is necessary for local actors to access the LOS.

3.3.3 Business management perspective

Finally, a business management perspective focuses on the investing companies and explains their reactions to local demands and their legal mobilization attempts. Stakeholder salience models try to understand why firms

listen to certain outside actors and not to others: Actors that are regarded as 'relevant stakeholders' are given more attention. In the following, I will explain this approach by focusing on a revised stakeholder salience model (Ali 2017), which uses the three attributes of power, legitimacy and organization to differentiate the 'salience' of actors.

From a business perspective, managers face the "empirical reality that virtually anyone can affect or be affected by an organization's actions" (Mitchell et al. 1997: 854). So, whom or what should they pay attention to? The stakeholder salience model, first developed by Mitchell et al. (1997) and later revised and refined by others, represents practical advice as well as an analytical frame for understanding companies' decisions. In its revised version by Ali, the combination of the three attributes power, legitimacy and organization[11] of actors helps to understand their 'salience' for the company. I use this model as an analytical tool to understand companies' reactions to local demands. In consequence, the attributes are not 'objective' characteristics of potential stakeholders, but rather subject to the judgment of the respective management of a company[12].

Figure 3 Stakeholder salience model following Ali (2017: 163)

11 In the original version, Mitchell et al. include 'urgency' instead of organization (Mitchell et al. 1997). However, the ability to create a certain urgency can be subsumed under the factor of power, leading Ali to abandon this factor and instead introducing the factor of organization (Ali 2017: 154).

12 This is not the approach taken by Ali, who aims to create a normative model of stakeholder salience (Ali 2017). I rather follow Mitchell et al. who emphasize the cognitive dimension of the model.

Power is probably the most obvious. An actor who holds considerable power over the company, for example, in terms of funding or being able to incur high costs, is more likely to be taken seriously. Corporate power is often defined in line with a dependence perspective described in the chapter on bargaining theory (chap 3.2.1). "When stakeholders control access to some needed resource, the stakeholders have the ability to put those resources at risk and thereby endanger the firm's survival." (King 2007: 24). This power is not necessarily stable but can change over time (Mitchell et al. 1997: 866). One way in which social actors try to influence a firm is, for example, through reputational damage, which might discourage investors and lead to falling stock prices (King 2007: 40). Power can, therefore, be exerted indirectly. At the same time, companies differ in their vulnerability to these types of collective action due to their funding structure, but also the respective industry[13], their main markets or their country of origin (Garvey/Newell 2005: 397–398).

The factor of legitimacy is more difficult to grasp. Mitchell et al. rely on Suchman in their definition in which legitimacy is "a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions" (Suchman 1995 cited in Mitchell et al. 1997: 866). This definition shows that legitimacy is not only a matter of perception but is incrementally linked to the cultural and normative mindset of managers who ascribe legitimacy to claims or not. In consequence, the attribute of legitimacy does not reflect some independent normative assessment but instead follows the impressions of high ranking company staff (Ali 2017: 164). Against this background, the demands of local communities might not be automatically regarded as legitimate by TNCs. Transnational corporations often think of development in purely technical and economic terms. They view low-wage jobs as a benefit for the local population. In consequence, some companies regard demands and complaints by local communities as ungrateful (Calvano 2008: 798).

13 Generally, companies whose economic success relies a lot on 'branding' such as typical in the footwear or apparel industry are more vulnerable to reputational damage than other non-branded industries (Spar/La Mure 2003: 84–85). However, most cases of large-scale land deals are not part of the branded industries and the products such as crude palm oil or bioethanol are not directly bought by the final consumer but are usually further processed along the value chain. Classic consumer boycotts are therefore not a realistic option in the many cases of large-scale land deals.

Yet, companies have different approaches to local communities. These views are often linked to different corporate cultures and company identities (Waldron et al. 2013: 401).

> "The distinct histories and cultures of firms also shape their perceptions of their responsibilities to the communities in which they invest; […] The stance of corporations on these issues ranges from a position of non-engagement to reactive responses to demanded spaces through to more explicit commitments to formal 'invited' spaces for community participation." (Garvey/Newell 2005: 398)

In consequence, different companies may ascribe different degrees of legitimacy to local actors and therefore respond differently to their demands.

The third attribute, organization, is linked to the recognition "that stakeholders who have mobilized themselves, created coalitions, initiated collective actions, and improved their position in the social network will have access to more resources, and will have more power over the target firms." (Ali 2017: 161). Groups may have legitimate claims and might even have some potential power; however, if they are not organized into a collective voice their interests might simply not be heard (Ali 2017: 162). Just as power and ascribed legitimacy, the degree of organization can change over time.

In combination, the three attributes present the stakeholder salience model, as depicted in figure 3. Actors who are perceived to have all three attributes will be ascribed the highest salience (Ali 2017: 164). Their claims will trigger some reaction by the company. However, as has been described in chapter 3.2.2 local communities often lack decisive power resources and might furthermore lack the legitimacy in the eyes of business managers. Michell et al. refer to this type as 'demanding stakeholders'. They "are the 'mosquitoes buzzing in the ears' of managers: irksome but not dangerous, bothersome but not warranting more than passing management attention, if at all" (Mitchell et al. 1997: 875). However, when legitimacy is added, this might well open up "access to decision-making channels" (Mitchell et al. 1997: 870). Consequently, the stakeholder model is not static and can help to conceptualize changes in stakeholder salience of actors and the subsequent responses by companies.

3.4 Explaining legal mobilization success

Looking at the three perspectives, certain overlaps and relationships become visible. I will discuss these relationships through the lens of bargain-

ing power (chap 3.4.1), which will inform my understanding of three core conditions, which I will conceptualize in a second step (chap 3.4.2).

3.4.1 Bringing the three perspectives together

All three perspectives make valid assumptions about the conditions under which local actors will be able to s pursue legal mobilization successfully. The legal perspective emphasizes the role of the legal opportunity structure. In contrast, a social mobilization perspective reminds us that local actors usually need some kind of support to access the LOS. The business management literature finally stresses the role of company characteristics, such as the corporate culture, in reacting to claims made by locals. I will integrate these three perspectives into one framework through discussing interactions and overlaps between the approaches using the lens of bargaining power.

Figure 4 Three theoretical perspectives

The starting point is the legal opportunity structure. It presents locals with different options for framing their claims and calling on institutions on different levels. When adding a social mobilization view, it becomes apparent that not all levels are accessible in the same way. Local actors are, for example, most likely to hold knowledge about local and customary regulations. Local authorities might be within reach and community members might have contacts with local officials and politicians, which can help to enforce rights and procedures. Locals, therefore, have more access to customary law than to the national or international level. For these levels,

they are more likely to depend on the support of national and international civil society actors. In consequence, the availability of a support network becomes more critical for access to legal norms on the national or international level.

At the same time, one can link different levels of the legal opportunity structure to the business management perspective. According to the stakeholder salience model, companies are most likely to react to efforts that exert considerable power or legitimacy. In consequence, companies are most likely to react to formalized law, as legal sanctions and negative court decisions can considerably hurt business or even lead to a complete failure of the investment (Eesley/Lenox 2006: 772). Consequently, hard law provides local actors with considerable bargaining power vis-à-vis TNCs.

Less formalized forms of rules and regulations can still present opportunities for local actors through legitimizing their claims and demands. International norms and principles are likely to be more effective in this regard than customary rules, as company managers do not usually have a good understanding of local customary law and might not consider claims made in this regard as legitimate. It consequently seems likely that legal mobilization attempts based only on customary law will fail. This consideration underlines the need for support networks that are necessary if local actors want to use national or international soft and hard law. If referring to international soft law principles is helpful for local actors depends on the receptivity of the company to these issues. If the company's corporate culture and identity is defined through adhering to certain international norms, managers will regard credible claims based on these norms as more legitimate and are consequently more likely to act upon them. Besides, some international norms can also provide local actors with considerable indirect power: For example, in the case of the IFC standards, future funding of a company might rely on its compliance with the standards. Local actors might be able to use this indirect power to exert pressure on the company and improve their bargaining situation. However, once again, they are likely to rely on civil society support to do so.

These considerations show that there are different ways in which local actors can improve their bargaining power through legal mobilization. On the one hand, a favorable legal opportunity structure that provides them with hard law can help them to make legitimate and powerful claims. On the other hand, soft law can give local actors leverage, especially if a company is receptive to such claims, either because of the corporate culture or their funding mechanism. In both cases, local actors are likely to rely on some outside support network.

3.4.2 Conceptualization of core conditions

To make the three perspectives usable for my empirical research, I conceptualize three conditions: the national legal opportunity structure (NLOS), support networks of local actors (NET), and the company's receptivity (REC). Rather than defining single indicators, I discuss different ways in which a condition can be fulfilled[14]. As the context of cases and legal mobilization strategies can vary considerably, the conditions can take various forms. My conceptualization here, therefore, only provides some guiding questions instead of measurable indicators for my case studies.

The first condition derived from the legal perspective is the favorability of the *national legal opportunity structure (NLOS)*. As discussed in the previous chapter, hard law can provide local actors with the most bargaining power. Legal norms that are precise, obligatory and delegated to an authority for implementation and enforcement can be used to force companies to change their behavior. In these cases, just the threat of action can be quite effective. Research showed, for example, "that tight environmental regulation causes manufacturing firms to attach more importance to environmental activist groups and adopt more preventive approaches to pollution management" (King 2007: 37).

I argue that only national law provides this kind of hard law hook in the case of large-scale land deals. None of the international regulatory efforts discussed in chapter 2.2 are legally binding for companies and states and most of them lack accountability mechanisms[15] (Johnson 2016). While human rights treaties are higher formalized instruments than the CFS-RAI, the VGGT or private sector principles, locally applying human rights can be very difficult due to "the realities of a technical culture of rights-application" (von Bernstorff 2016: 72). In order to identify a right to food violation through large-scale land deals, detailed baseline data and extensive data gathering efforts are most likely needed. Some investments might present apparent human rights violations, for example, forceful displacement of people; many cases – especially in democratic countries – are, however, in a grey area where the breach of social and economic rights is

14 Blatter and Haverland describe these as functional equivalents, which can often only be defined in the context of the individual case study (Blatter/Haverland 2012: 64).

15 The certitifcation schemes might provide some accountability; however, as discussed they only apply to companies who actively decide to adhere to the principles.

an issue of interpretation. In consequence, in most cases of large-scale land deals, international regulation does not present the power of hard law, which can only be provided by national legislation.

Therefore, identifying if a legal opportunity structure is favorable to local demands is mainly tied to national law. How helpful the national legal opportunity structure is for local actors depends on the demands they are making and is specific to the issue area. The NLOS could be favorable in labor rights protection but unfavorable when it comes to environmental concerns. As my main research interests lie in land rights protection and processes of negotiating land deals, I will focus on legislation in this regard. Following the bargaining logic, a favorable NLOS would provide local actors with a veto position over a land deal. The power to withhold consent can be used to achieve one's goals; yet, as described in chapter 3.2.2 the negotiation process if often perceived as very asymmetrical and local actors might lack the expertise to make fully informed decisions. Therefore, a favorable NLOS should contain further provisions to protect the interests of smallholders, who can then call on these regulations.

In addition, the land tenure system needs to be included in the analysis, as it might provide some actors with a veto right. Others, who might have customary rights, might not have them formally acknowledged by the state. These issues link back to debates about the regulation of large-scale land deals presented in chapter 2.2.

I will analyze the NLOS not on the case level, as I will do for the other two conditions; instead, I will evaluate the NLOS on the national level for each of the case study countries. To ensure that the findings from my empirical analysis link back to debates about international regulation, I will construct a 'collective optimum' (chap 4.1.1) through referring to human rights-based approaches to regulation. I will then use this collective optimum to evaluate national legal opportunity structures in the empirical analysis.

The second condition derived from the social mobilization perspective is the *strength of the support network (NET)*. There are different options of what a strong support network might look like. In the case that the national legal opportunity structure is favorable towards local goals, local actors still need help to claim their rights and trigger the enforcement of existing rules. One possibility would be direct or indirect links to those state officials, who are powerful enough to enforce existing laws and are open to helping local actors (O'Brien/Li 2008: 13). In other cases, local actors might rely on the help of a lawyer or civil society organization to under-

stand their rights and legal options or to access legal institutions. Civil society pressure might also help to pressure government agencies in enforcing regulations and finding solutions for local problems.

In the case of an unfavorable NLOS, a strong network can help local actors in framing their claims according to international norms and principles. International campaigns can provide visibility and legitimation for local claims. In the case that the company commits to international voluntary guidelines, network actors can help local actors in accessing complaint or grievance mechanisms and in generating pressure through holding the company accountable to self-subscribed standards. 'Naming and shaming' is a well-known strategy to draw attention to companies ignoring industry standards or human rights.

These are different ways in which networks support local actors in their legal mobilization attempts. How strong or weak the network support is, can, therefore, not be identified on an abstract level but only in the concrete empirical situation.

The third condition *receptivity of the company (REC)* is derived from the business management perspective. It focuses on the characteristics of the investor that define its openness to local actors as relevant stakeholders. If the two conditions, NLOS and NET, remain stable, different companies react differently, as many empirical examples show (Ali 2017: 156). What kind of actors and what kind of claims a company regards as legitimate, largely depends on the corporate culture of the enterprise. The literature suggests various differentiations such as reactive/defensive versus accommodative/proactive (Ali 2017: 156), corporate egoist versus corporate moralist (Waldron et al. 2013: 402) or socially responsible versus conventional (McLachlan/Gardner 2004). While emphasizing different aspects, the idea behind these differentiations is that some companies form their corporate identities around social responsibility, whereas others first and foremost have the economic value in mind.

However, even managers following a corporate egoist logic might employ social corporate responsibility instruments as long "as it contributes to the externally perceived economic value of their firms" (Waldron et al. 2013: 402). The existence of some form of CSR measures or claims by the company to adhere to best practice principles alone can, therefore, not be regarded as a sufficient indicator for the receptivity of the company to local claims. Instead, broader company behavior and communication have to be taken into account. Possible indicators could be the amount of efforts put into community relations and grievance mechanisms, open and

transparent communication vis-à-vis local communities (Jahansoozi 2006) or previous behaviors from other projects (King 2007: 36). Furthermore, statements made by company personnel in regards to their general opinion of local actors can provide further insights into their perception of the legitimacy of claims made (Clarkson 1995: 97). Commitment to independent social auditing such as through private sector certification schemes or due to funding from banks following IFC rules can also be a sign for a more serious dedication to international principles than the mere mentioning of best practices. Companies that seek certification or receive funding from IFC regulated banks can be pressured through these instruments, as they can cause the company considerable economic costs.

Overall, there are two factors, which can be decisive for the receptivity of a company: A corporate culture that puts a lot of emphasis on being receptive to local demands or a corporate structure that provides additional leverage to local actors.

Table 4 Conceptualization of core conditions

Condition	Guiding questions for empirical research
NLOS favorab ⟷ unfavorable	Do local smallholders have the right to veto a large-scale land deal? Does the legislation protect customary land rights? Are there government regulations protecting local actors from entering into unfair contracts? (see further in chap 4.1.1)
NET strong ⟷ weak	Are local actors connected to administrative staff with the ability to enforce regulations and laws? Are local actors connected to lawyers who support them with legal advice or litigation? Are local actors connected to civil society actors who provide knowledge and resources to help them access legal arguments and institutions? Are local actors connected to civil society actors who create a broader campaign to pressure other actors such as governments, their agencies or banks to exert pressure on a company?
REC receptive ⟷ unreceptive	Does the corporate structure make the company vulnerable to economic pressure (through certification schemes or funding from IFC banks)? How open and transparent is the communication of the company vis-à-vis local communities? Do statements of company's managers imply an unreceptive or a receptive corporate culture? Are there previous examples in which the company acted unreceptive towards local demands?

The table summarizes my conceptualization of my three core conditions. As my concepts need to be broad enough to accommodate a variety of empirical observations, the guiding questions only serve as a first orientation. In the case studies, additional context-specific information might indicate a condition as well and will be included in the research. For simplicity's sake, the conditions are presented as dichotomous; however, it makes sense to perceive them as continua, for which the threshold is not easily objectively defined.

3.5 Summary of the framework

This chapter will shortly summarize my framework and discuss its reach and limits.

Overall, my analytical framework incorporates a multi-perspective view on large-scale land deals. The underlying assumption is that local communities and investing TNCs find themselves in an interactive and ongoing bargaining process even though power relations are often asymmetrical to the advantage of investors. Legal mobilization in this relationship can be viewed from three perspectives: a legal (focusing on the structure), a social mobilization or a business management (focusing on either local actors or the respective company) perspective. Bringing the perspectives together enabled me to deduce three core conditions: the favorability of the national legal opportunity structure, the strength of support networks and the receptivity of the company. These core conditions will serve as the basis for my empirical analysis, which will specify the relationship between them and add possible additional conditions.

My analytical framework has the advantage that it is broad enough to be adaptable to a variety of empirical cases. I developed it with smallholder rights in large-scale land deals in mind, but it can be easily adapted to fit other issue areas such as environmental or labor concerns. Even more, the framework should also work in other kinds of company-community relationships, as long as some sort of interdependency between the actors is there.

The framework is based on the premise of the rule of law in a country. While this does not imply that laws get implemented automatically, it does assume that administrations or courts will respect legitimate claims based on legal rules and regulations in the respective country. Consequently, the framework might be of limited use in authoritarian systems.

Apart from the adaptability of the framework, it is also able to accommodate new conditions. Additional theoretical perspectives or empirical research can add conditions. My three core conditions can be seen as a starting point. My empirical analysis will point to additional conditions, which can be included in future research.

While my analytical framework is broad enough to apply to many empirical contexts, it does have limits in regards to causal mechanisms and predictability of outcomes. First, my three conditions can be linked through different causal pathways, some of which I discussed in the previous chapters. In other words, my framework does not describe the processes that are linking the three conditions in a generalizable manner. Instead, this is what my empirical research intends to do through tracing the processes in individual cases. Second, my framework has limited predictability due to the context-specificity and the interdependence of the three conditions. However, it is not the aim of the framework to be able to predict outcomes but rather to provide a systematic way of explaining the outcomes of legal mobilization attempts of local actors, without neglecting the empirical complexities of each case.

4. Research design

The theoretical framework provides me with some first ideas of how the legal opportunity structure is linked with a successful outcome for local actors in achieving their goals. Now, empirical research is needed to specify the relationships between my core conditions and identify possible additional conditions. The empirical analysis will follow a three-staged approach, including an evaluation of the NLOS on the national level, process tracing in four individual cases of large-scale land deals, followed by a comparison of the findings within and across countries. These methods will be explained in a first step (chap 4.1), before describing the case selection (chap 4.2) and the data collection (chap 4.3). I end this chapter by giving an overview of the course of the analysis (chap 4.4).

4.1 Methods

I combine three methods to apply my framework. My choice of methods is guided by my research objective as well as my theoretical framework. I take a rather pragmatic approach to these methods as their value "lies in their usefulness in engaging with the real world" (Guthrie 2010: 45). In a first step, I need to evaluate the NLOS of a country. As my primary research goal is to contribute to the debate about regulating large-scale land deals, it makes sense to include suggestions made during this debate in the evaluation criteria. I construct a 'collective optimum', which can then be used to evaluate the NLOS of a country (chap 4.1.1). In a second step, causal process tracing (CPT) will be applied to find out how the NLOS of a country enables or restricts local actors for successful legal mobilization in combination with the other two conditions of support networks and the receptivity of companies (chap 4.1.2). In this step, the focus shifts from a top-down institutional view to a bottom-up lens focusing on the agency of local actors and their networks. While the process tracing serves to show the relationship of the three core conditions in practice, a cross-case comparison will add further validity to central findings (chap 4.1.3). The following three chapters will shortly introduce each method.

4.1.1 Evaluating the national legal opportunity structure

How can we find criteria against which to evaluate an institutional setup? One suggestion made in the literature is to use a 'collective optimum', the best possible outcome:

> "Using potential achievements as our point or reference, we would define a 'perfect' solution as one that accomplishes all that can be accomplished given the state of knowledge at the time." (Underdal 1992: 231)

Underdal suggests turning to "independent expert advice" (Underdal 1992: 236) to create such a collective optimum. I will use my considerations from chapter 3.4.2 and expert opinions – the 11 principles of the Special Rapporteur on the Right to Food and the VGGT – to create a collective optimum for the NLOS. This 'optimum' NLOS will consequently reflect a human rights approach.

As noted in chapter 3.4.2, the possibility to veto a foreign investment in land is decisive for having bargaining power vis-à-vis foreign investment. This assumption is shared by the 11 principles formulated by the former Special Rapporteur on the Right to Food Olivier de Schutter: "In principle, any shifts in land use can only take place with the free, prior and informed consent of the local communities concerned." (De Schutter 2009: 13–14). As discussed earlier, the FPIC principle did not make it into the VGGT but is used as a yardstick by civil society actors and others to assess a large-scale land deal. I, therefore, use the right to give or withhold consent to a land deal as the most important criterium for a favorable national legal opportunity structure. A veto right can be fulfilled via two ways: First, formalized tenure rights provide affected smallholders with a de facto veto position vis-à-vis investors. Second, countries can pass laws and regulations in regards to large-scale land investments in which a veto right is granted to affected communities or individuals (e.g., tenants or land users without ownership rights) whether their tenure rights are formalized or not.

Consent is specified in the FPIC principle as being free of force, prior to the investment and informed. The need for information and possibly assistance through the state is also acknowledged in the VGGT:

> "States and other relevant parties should inform individuals, families and communities of their tenure rights, and assist to develop their capacity in consultations and participation, including providing professional assistance as required." (CFS 2012: 12.9)

Part of the information is the conducting of independent social and environmental impact assessments. Both the principles of de Schutter and the VGGT suggest impact assessments "on the potential positive and negative impacts that those investments could have on tenure rights, food security and the progressive realization of the right to adequate food, livelihoods and the environment." (CFS 2012: 12.10). Smallholders entering into contracts with investing companies should, therefore, be informed about their rights, receive professional assistance if needed and learn from impact assessments about the possible benefits and risks of an investment project.

Apart from FPIC, the recommendations of de Schutter and the VGGT more generally demand that land is used to fulfill human rights to food or development more broadly. Contracts should "prioritize the development needs of the local population" (De Schutter 2009: 14). These regulations have to be country-specific of and could for example be laws protecting smallholders from exploitative contracts or ensuring that a certain amount of local people are employed or trained. Such regulations could potentially provide smallholders with legal arguments in case an investment did not turn out to be as beneficial as expected.

Last but not least, oversight and grievance mechanisms should be defined through the NLOS and be available for affected populations:

> "States should take corrective action where necessary to enforce agreements and protect tenure and other rights and provide mechanisms whereby aggrieved parties can request such action." (CFS 2012: 12.14)

Overall, these four elements, veto rights, information rights, protection of economic rights and the installment of oversight and grievance mechanisms, make up the ideal NLOS in the context of my research question[16].

16 As mentioned before environmental protection or labor rights are not at the focus of this dissertation and consequently not part of my 'ideal' NLOS.

Table 5 Collective optimum for the national legal opportunity structure

Elements of a collective optimum
1. NLOS grants smallholders a veto right through – the existing formal land tenure system or – special regulation in regards to investment projects
2. NLOS aims to ensure that smallholder can make informed decisions through – providing information on their rights and possibilities – providing expert assistance – social and environmental impact assessments
3. NLOS aims to ensure that large-scale land deals are beneficial to the economic development of the affected population
4. NLOS aims to ensure oversight of large-scale land deals and grievance mechanisms for affected populations

The collective optimum presents an ideal type for a favorable NLOS. A threshold for real-world cases has to be somewhat lower. In terms of a bargaining approach, the first and second element are the most important ones as they help local actors to make informed claims vis-à-vis investors. I, therefore, regard an NLOS as favorable if it provides smallholders with a veto right (first element) and provides some assistance to them when negotiating with foreign investors (second element) or safeguards in regards to an investment being economically beneficial to locals (third element). The degree to which the different items are fulfilled can vary and, as mentioned earlier, the favorability of the NLOS should be regarded as a continuum. Nonetheless, this calibration helps me to identify if the national legal opportunity structure tends towards being favorable or unfavorable.

4.1.2 Causal process tracing

After evaluating the legal opportunity structure of a country, I will use causal process tracing (CPT) in two cases of large-scale land deals each, in order to establish the causal relations between the core conditions. Causal process tracing helps me to create internal validity – essentially providing evidence for the causal connections between the conditions outlined in my theory. Also, the process-tracing method helps identify additional conditions as the different causal steps are retraced as carefully as possible

(George/Bennett 2005: 207). Finally, process tracing takes the complexity of empirical cases seriously, while enabling me to create a causal story.

In using causal process tracing, I follow Blatter and Haverland (2012), who link causal process tracing to a configurational approach:

> "Configurational thinking, especially the assumption that explanations should begin with the assumption that a plurality of causal factors work together to create an outcome, is the first basic characteristic of the causal-process tracing approach." (Blatter/Haverland 2012: 81)

Another assumption configurational thinking shares with a CPT approach is the fact that "causality plays out in time and space" (Blatter/Haverland 2012: 81). To this end, a large number of observations that are usually interdependent are included in the analysis to tell a convincing story (George/Bennett 2005: 207). In consequence, the researcher has to do some "thorough 'soaking and poking'" (Blatter/Haverland 2012: 105) to gather the relevant material. His or her role can best be compared to that of a detective (Blatter/Haverland 2012: 105; Gerring 2007: 207) who tries to reconstruct the sequences of events, decisions and motivations. CPT does not aim to analyze the net effect of factors but rather to understand how different conditions work together.

Three elements are used in causal process tracing: a comprehensive storyline, 'smoking guns' and 'confessions'. A comprehensive storyline gives an overview of the overall story and the main events in a case. "A major goal of these comprehensive storylines is to differentiate the major sequences of the overall process and identify the critical moments that further shape the process" (Blatter/Haverland 2012: 111). As such, it sets the stage for 'smoking gun' observations – observations, which provide strong evidence for causal inference. Central for these observations are temporal and spatial contiguity, as well as additional information that provides further evidence. 'Smoking gun' observations usually refer to critical moments when particular decisions were taken or certain actions took place, which led to a specific outcome (Blatter/Haverland 2012: 115–116). Another tool to support a convincing causal storyline are 'confessions' of actors, who explain or reflect on their motivations in their statements. However, as a researcher, one needs to be careful not to "take them at face value" (Blatter/Haverland 2012: 118), as people usually want to present themselves in a particular light as well as rationalize their behavior ex-post. Nonetheless, 'confessions' can be important complementary evidence in causal process tracing, "because they reduce a problem of drawing causal

inference on the basis of temporal succession" (Blatter/Haverland 2012: 117).

In my analysis, CPT will mainly serve to connect the legal opportunity structure with legal mobilization processes and their outcomes. An emphasis is placed on the relationship between the NLOS, local actors and their support networks and the characteristics of companies. I thereby put the conditions from the theoretical framework into a convincing comprehensive storyline, and support their relevance with 'smoking gun' observations and were possible with 'confessions'. In addition to illustrating the theoretically deduced conditions, I identify the individual mechanisms in the specific settings, as well as additional conditions, which might be relevant in other contexts too.

4.1.3 Case comparison

While I use causal process tracing to identify causal relations within individual cases, cross-case comparisons focus on showing the external validity of the different conditions across cases (Blatter/Haverland 2012: 211).

In my analysis, I will employ CPT as described in the previous chapter in four cases of large-scale land deals – two each in two countries. I will then use the findings of the CPT to compare the cases within each country. In this way, a most-similar setting (George/Bennett 2005: 165) is created in regards to the national legal opportunity structure, which allows me to focus on the conditions of the support network and the receptivity of companies. In a second step, I will compare these findings between the two countries, which will have differing legal opportunity structures.

In this way, the NLOS is the only condition I can control for, as I analyze it on the national level. The support network and the receptivity of the company vary from case to case. In this regard, my empirical research remains exploratory – providing further insights into the characteristics of support networks and companies and their interactions with one another.

Overall, the choice and combination of my research methods allows me to keep a balance between accepting case-specific contingencies but draw some generalizations, as well as between illustrating my pre-identified conditions and identifying new possible causal factors. Additionally, my "combination of cross-case and within-case analysis greatly reduces the risks of inferential errors that can arise from using either method alone" (George/Bennett 2005: 236). My revised analytical framework, which will be de-

veloped through my empirical findings, can, therefore, be regarded as highly valid.

4.2 Case selection

The case selection is guided by my theoretical framework and my methodological considerations. However, there are serious limitations to a systematic case selection due to missing data on legal mobilization attempts and their outcomes. Besides, networks supporting local actors as well as the companies themselves are highly diverse and vary from case to case. Therefore, my approach to case selection consists of a pragmatic compromise between controlling for similarities and differences and a certain degree of randomization. I will identify two case study countries first (chap 4.2.1) before I find two cases of large-scale land deals within each country (chap 4.2.2).

4.2.1 Choosing case countries

I use the database of the Land Matrix as my starting point for case selection. Even though there are biases in reporting due to different regions, countries, investors or sectors (Nolte et al. 2016: 5), it is the best available source when it comes to global data on large-scale land deals. I treat the database as my universe of cases, which I will reduce down based on theoretical and practical considerations.

First, as mentioned in chapter 1.1, I limit my research to developing countries, defined as low income and lower-middle-income countries, as categorized by the World Bank. I furthermore only include transnational land deals, meaning that at least one foreign investor is somehow involved in a land investment project.

In a next step, I limit my possible case selection to democracies[17] for two reasons. Theoretically, I have not considered state repression and missing civil liberties, which would, however, be limiting to the legal mobilization of local actors. At the same time, there are also practical considerations, which support my choice to focus on democracies. Large-scale land deals

17 To identify 'democracies' I use the 'Combined Polity Score' of the Polity IV Index. All countries with a score of 6 or higher are therefore categorized as democratic, using the latest available scores from 2017.

are a highly political issue and researching them in repressive surroundings can make access more difficult, as well as cause danger for potential interviewees and research assistants (Schoenberger/Beban 2018).

In the last step, I only chose countries with at least 12 large-scale land deals and which have English as one of their official languages. Both decisions have rather practical reasons: Countries with a higher number of large-scale land deals are more likely to have debates and civil society mobilization around this issue. I also need a number of deals to choose from for my within-country comparison. English as an official language provides me with a greater thickness of data oberservations, which is important for causal process tracing (Blatter/Haverland 2012: 102).

Table 6 Possible case study countries

Target country	No. of deals
Ghana	50
India	15
Kenya	20
Liberia	26
Nigeria	29
Pakistan	12
Philippines	38
Sierra Leone	32
Zambia	45

After making these limitations, the countries listed in table 6 remained. From the choice of the nine countries, I chose Sierra Leone and the Philippines. Sierra Leone is known for its problematic national laws when it comes to land tenure as well as a coexistence of customary and statutory rules governing land tenure. This makes the country a 'typical' case (Gerring 2007: 91) for a weak national legal opportunity structure, which can also be found in other Sub-Saharan African countries such as Liberia, Zambia or Ghana. The Philippines then serves as a 'diverse' case (Gerring 2007: 97) with a national legal opportunity structure that is very different from Sierra Leone. In the following paragraph, I describe similarities and differences between the two countries in more detail.

Overall, national legislation in Sierra Leone is extremely weak in regard to land tenure. Land tenure laws date back to colonial times and the land sector is described as "not only chaotic but also becoming increasingly unsustainable" (Government of Sierra Leone 2015: 1). There are no legal provisions so far for the consultation of people affected by a foreign land lease or for investors to respect customary tenure rights, which account for the majority of Sierra Leoneans (Davies 2015: 17). These weaknesses led to Sierra Leone becoming one of the pilot countries for the implementation of the VGGT and encouraged the government to adopt a new land policy.

In the Philippines, the constitution covers many provisions of the VGGT, especially with legal recognition of tenure rights and issues around the transfer of rights (Quizon/Pagsanghan 2014: 21). The constitution furthermore demands the reduction of social, economic and political inequalities and asks the state to "regulate the acquisition, ownership, use, and disposition of property" (Republic of the Philippines 1987: Art XIII) to this end. These provisions for social justice are mirrored in demands for agrarian reform and limits for land lease sizes. Several laws concretizes the provisions of the constitution for different sectors (Quizon/Pagsanghan 2014: 23). At this first glance, the national legal opportunity structure of the Philippines is therefore favorable for affected people. In contrast, the NLOS of Sierra Leone has to be regarded as unfavorable for local actors.

Apart from the national legal opportunity structure, a view on the functioning of the judiciary and administrative institutions makes sense, as laws have to be implemented and rights get claimed. To get a general overview in both countries, I use the Rule of Law Index, which aims at measuring the rule of law 'in practice' through representative household surveys. The table below presents some of the core scores relevant to my research question (The World justice project 2016: 15).

Table 7 Rule of law in the Philippines and Sierra Leone

	Philippines	**Sierra Leone**
Rule of law combined score (1.0 being the optimum)	0.51	0.45
Absence of corruption (1.0 being the optimum)	0.48	0.30
Regulatory enforcement (1.0 being the optimum)	0.51	0.35
Civil justice (1.0 being the optimum)	0.45	0.40

Source: Rule of Law Index 2016 (The World justice project 2016)

The rule of law combined score shows that both countries are far from having a high degree of rule of law, while the situation in the Philippines is better than in Sierra Leone. A similar picture emerges regarding three specific factors. Both the absence of corruption and regulatory enforcement are highly relevant when it comes to the implementation of existing laws and administrative regulations. Both factors are very weak in Sierra Leone and point to high levels of corruption and weak state capacities. The factor of civil justice refers to the degree to which "ordinary people can resolve their grievances peacefully and effectively" (The World justice project 2016: 12) with the help of the judiciary system. This factor is similarly low in both countries with a score of 0.45 in the Philippines and of 0.40 in Sierra Leone. Calling on courts might not be the best option for local actors in both countries. Compared to other countries in the respective income group, both countries are fairly average: Sierra Leone for low-income countries (The World justice project 2016: 133) and the Philippines for lower-middle-income countries (The World justice project 2016: 125). I, therefore, regard the two countries as typical for their income level.

Apart from the national legal opportunity structure and the rule of law there are more differences in the countries' contexts but also some similarities. Table 8 gives an overview of some basic statistics related to poverty and the agricultural sector.

Table 8 Poverty and Agriculture in the Philippines and Sierra Leone

	Philippines	**Sierra Leone**
General		
Total land area in sq km	298,170	72,180
Total population	103 million	7.2 million
Rural Population in % of total population (2016)	55.7 %	59.7 %
GDP per capita, PPP, constant 2011 international $ (2016)	7236$	1369$
Poverty		
Poverty headcount ratio at $1.90 a day (2011 PPP) (% of population)	8.3 % (2015)	52.3 % (2011)
Poverty headcount ratio at $3.20 a day (2011 PPP) (% of population)	33.7 % (2015)	81.3 % (2011)

	Philippines	Sierra Leone
Prevalence of undernourishment in % of population (2015)	13.8 %	30 %
HDI rank (2016, total of 185)	116	179
Agriculture		
Agriculture value added in % of GDP (2016)	9.6 %	59.4 %
Agricultural employment in % of total employment (2017)	27.7 %	68 %
Agricultural land in % of total land areas (2015)	41.7 %	54,7 %
Agricultural land in hectares (2015)	12.4 million	3.9 million

Source: Data retrieved from the World Bank Database: World Development Indicators, 16/04/2018

Sierra Leone ranks among the last countries in the Human Development Index and has an average GDP per person about one 5th of the GDP of the Philippines. However, the Philippines also has a substantial ratio of poor people with 33.7 % living with less than 3.20USD a day. And while fewer people are undernourished in the Philippines than in Sierra Leone the country is far from food secure, with 13.8 % of the population being undernourished. In the Philippines, the macro-economic impact of the agricultural sector has diminished and now only makes up 9.6 %. Nonetheless, agriculture still employs about one third of the population and therefore remains an essential source of income for many Filipinos. In Sierra Leone, the majority of the people depend on agricultural activities for their livelihoods and the sector contributes a significant share to the GDP.

Both countries have a considerable amount of small-scale farmers. However, the Philippines has had a long history of large-scale plantations, as Spanish colonizers set up a hacienda economy similar to the one in Latin America (Larkin 1982: 599). Even though the land reform of 1988 redistributed a lot of agricultural land, transnational food corporations like Del Monte, Dole, Chiquita and Sumitomo exert considerable control over land, especially in regards to high-value export crops (Lockie et al. 2015: 125). In consequence, the Philippines has longstanding experience with mechanized farming and agribusiness corporations. Sierra Leonean agriculture is largely non-mechanized with a bush fallow system for non-tree

crops (Unruh/Turray 2006). There is hardly any precedence for large-scale agribusiness, especially through foreign investors.

Despite these differences, both governments adopted policies to attract foreign investment in agriculture with a focus on biofuels. To these ends, both countries set up specialized agencies: the Sierra Leone Investment and Export Promotion Agency (SLIEPA) and the Philippine Agricultural Development and Commercial Corporation (PADCC). So, while the agricultural contexts in which large-scale land deals take place in Sierra Leone and the Philippines are quite different, the driving forces and government support for foreign investments in agriculture are similar. I will discuss these backgrounds in both countries in more detail in the empirical analysis.

4.2.2 Choosing cases of large-scale land deals

For choosing the two case countries, I was able to rely at least on some macro-level socio-economic data. Choosing cases within the two countries was more difficult. Information on land deals, for example, if investments ever went into production or are in operation made case selection extremely difficult. Two pragmatic criteria guided my selection process in the end.

First, I narrowed the search down to investments for biofuels or crops that can potentially be used for the production of biofuels such as oil palm or coconut. This focus helped to reduce context complexity, while at the same time increasing similarity between cases. There is often specific regulation in regards to biofuels production, while different laws might cover food crops. At the same time, investments targeting biofuel or oil palm usually need a large amount of land – often in the thousands of hectares. As these investments include the construction of a processing mill or refinery, a significant amount of crops are needed to use the processing facilities to the maximum.

The second criteria was defined by methodological considerations:

> "There is one overarching methodological principle that should guide the selection of cases if the major technique for drawing descriptive and causal inferences is process tracing: accessibility." (Blatter/Haverland 2012: 102)

Good access to the cases and as many different sources as possible was the second guiding principle for the selection of cases.

For Sierra Leone the Land Matrix listed 32 cases out of which 25 cases saw the closing of a contract. Twelve of those deals intended to produce biofuels or grow crops that are suitable for biofuels such as palm oil or sugar cane. Looking into additional material from NGOs, media and companies two investments stick out: The sugar cane investment of Addax Bioenergy and the palm oil plantation of Socfin Sierra Leone. Representing the biggest plantations in the country – with around 12,000 ha each – both investment projects received a lot of civil society attention but have also been subject to academic research. I consequently have a considerable amount of background information, which cen help me to triangulate my interview data.

The search for two suitable cases proofed more difficult in the Philippines. The Land Matrix reported 38 deals, of which only 14 were listed as having concluded the negotiations. However, information on these investments was often extremely scarce – including among civil society actors in Manila. I had to just 'go and see', leading me to include a case in my original research design, which was in reality no longer in existence.

I initially chose two cases of foreign investment deals from the Land Matrix, the case of Green Future Innovations Inc. (GFII), with the involvement of a Japanese investor, and the case of Bio Energy Northern Luzon Inc. (BENLINC), with a Japanese-British investor. Both cases fulfilled the selection criteria and targeted the production of biofuel through sugar cane or coconut. However, in the case of BENLINC upon arriving in the region, where there should have been a coconut plantation at least the size of 1000 hectares, I found out that the project had been abandoned a long time ago. The case shows the difficulty of getting accurate data not just on deals closed but even more so on the actual stage of implementation and hectares under operation.

As the case of BENLINC was not usable for my purposes, I finally chose the case of Agumil Philippines. It was cited to me by various interviewees in Manila (interviews PH7, PH28) and I discovered quite some extensive reporting on the case. I was furthermore able to verify the existence of plantations through satellite imagery. However, the case did not show up in the Land Matrix database, even though it did fulfill the criteria of the database. For pragmatic reasons, I decided to include the case nonetheless. The following table gives an overview of the basic facts of these investment deals. I was able to identify legal mobilization efforts in all four cases. There was one success and one failed case in each country.

Table 9 Selected cases of large-scale land deals

	Addax	**Socfin**	**GFFI**	**Agumil**
Deal(s) closed in	2010	2011	2009	2007
hectares (under production)	12,000	12,500	3,000	6,500 -10,000
crops	sugar cane	palm oil	sugar cane	palm oil
No. of people affected[18]	13,500	25,000	-	-
Type of arrangement	lease	lease	lease, out-grower	lease, out-grower
Legal mobilization	success	failure	success	failure

It should be noted that the case selection does contain a bias: The criterion for sufficient material from different sources implies that only cases were chosen that received considerable attention. These are more likely the more problematic cases. The case studies in this dissertation should, therefore, not be regarded as representative of all large-scale land deals.

4.3 Empirical material

My empirical material used for the analysis stems from field visits to both countries and documents such as NGO and media reports, company statements, lease agreements, protest letters but also existing academic research. I will discuss how I addressed challenges posed by field research and during interviews first (chap 4.3.1), before describing the text material used (chap 4.3.2).

4.3.1 Field visits and interviews

Field research is an incremental part of my empirical analysis. It helped me to reconstruct and understand past events, relationships between local ac-

18 As no social impact assessments were conducted in the two cases from the Philippines, I do not have numbers of affected people. In the Sierra Leonean cases, these numbers refer to the amount of people who were directly affected by the plantations through losing access to land or living in close proximity.

tors and their support networks as well as local dynamics such as the role of local elites. As large-scale land deals often miss transparency, interviews with various actors from the government, local authorities, companies, civil society as well as local actors are an important aspect of getting relevant information. These interviews also served to verify other data sources, such as NGO or media reports. Last but not least, the field visits gave me the chance to observe local conditions first hand. To experience the vastness of individual plantations, the way the company presented itself locally or the reactions of bike riders or taxi drivers when I talked about my research interest provided me with invaluable impressions. I will use these impressions occasionally in my analysis, even though the main focus is on the content of the interviews.

Two visits were undertaken to both countries, totaling a time of 10 to 12 weeks spent in each country between November 2016 and November 2018. Interview partners were selected according to their organization's role in mobilizing around large-scale land deals and later on, also through snowballing. National government agencies were targeted for interviews later during the stay when specific questions arose. Research assistants helped in facilitating community visits through organizing transport, undertaking exploratory visits and translating during the interviews (Temne, Mende and Krio for Sierra Leone, Tagalog for the Philippines). Apart from community visits interviews with local civil society groups, the company and local authorities in the wider region were conducted.

Especially in Sierra Leone local protocol had to be followed in order to do the research: a visit to the Paramount Chief or his deputy, the Chiefdom Speaker, was mandatory before speaking to other locals. In some villages, we talked to the village headman or section chiefs, whereas in other cases, we met with individuals, we had previously contacted. Interviews, therefore, took quite different forms, from individual private conversations to village meetings in which several people spoke and many listened. Apart from village elders, local activists were the focus of the interviews, as the primary research interest was their mobilization, their strategies used and their relationships with outside actors. Nonetheless, I also spoke to other groups like women, youth or company workers, who were selected randomly.

In the Philippines, local settings were different: Instead of whole communities, individual farmers, who had some kind of relationship with the company, or local activists were interviewed. Their homes were more dispersed and snowballing was a vital instrument to find new potential interviewees.

Apart from the field visits, a few interviews took place via Skype with international civil society actors or former company staff. Overall, I conducted 54 interviews in Sierra Leone and 48 interviews in the Philippines (see Appendix A).

My field research strategy paid attention to ensuring my independence. Foreign large-scale land deals are a highly politicized topic on the global level as well as in many countries. This can lead to biased research trough implicit assumptions, for example, about the 'bad' outside investor versus the 'good' local community (Oya 2013a: 515). At times, NGOs are involved in framing land deals as 'land grabbing' and presenting local communities as unitarily against an investment. For researchers, there is, therefore, the danger of getting the 'NGO tour' – only being introduced to certain community members (Gilfoy 2015). At the same time, an intense politicization can complicate field visits, from being denied access to receiving threats by local actors or companies (Cramer et al. 2015).

To avoid partiality, I did not cooperate with NGOs to facilitate my visits to local communities. The visits were organized by myself and my research assistants, who I had found through contacts at local universities. None of my research assistants had previous knowledge of the visited communities, but they knew local customs and the language. We did use contacts provided by NGOs to find local activists but additionally found interview partners spontaneously.

4.3.2 NGO reports, media articles and additional documents

Documents such as NGO reports, media articles or company material were systematically collected and served several purposes.

First, an initial browsing through NGO and media reports gave me some idea of the issues around specific land deals and helped me in my case selection.

Second, these documents provided me with a rough timeline of events, which helped me to put interviews in context. As some of the events, I was asking about, happened more than five years before the interviews, it was at times difficult to establish the exact chain of events. Establishing the chain of events is an essential element of a comprehensive storyline in process tracing approaches (Blatter/Haverland 2012: 81).

Third, documents from different sources help to corroborate claims made and stories told during interviews and therefore served the goal of

triangulation (Guthrie 2010: 46). Information gathered through interviews can be skewed by selective memory, social expectedness or outright lies to protect one's standing. At the same time, media or NGO reports are not necessarily more objective. As NGOs usually aim to advocate for a specific policy change, they tend to paint a rather drastic picture and focus on negative aspects of an investment. The opposite is usually true for the company, who is keen on praising the benefits. Both, NGOs as well as companies, use media articles for their aims. In these settings, data triangulation with different sources becomes all the more relevant.

To source the relevant documents, searches were conducted through search engines, farmlandgrab.org, a website collecting NGO and media reports on large-scale land deals through crowdsourcing, and the most important newspapers in the country (Awoko in Sierra Leone and The Inquirer in the Philippines). Additional documents provided through companies' and NGOs' websites included MOUs, impact assessments, protest letters, official state documents but also statements and letters from the companies. The document search covered the time period between the first news about the planned investments up to the periods of field research – for Sierra Leone April 2017 and for the Philippines November 2018 – and therefore do not contain information on later events.

The following table gives an overview of the numbers of documents found. It should be noted that the documents, especially the media reports, were of varying relevance for the analysis and therefore did not all play a significant role. Furthermore, many materials did not contain detailed information on the legal mobilization attempt but were helpful in understanding the overall investment.

Table 10 Documents used for the analysis

	Media/ internet articles	**NGO reports/ press releases**	**Additional documents**	**Academic articles/ reports**
Addax Bioenergy	183	19	22	11
Socfin Siera Leone	154	15	78	2
Green Future Innovations	22	4	10	5
Agumil Philippines	28	9	18	5

4.4 Course of action of the analysis

Overall, the empirical analysis tries to strike a balance between advancing the theoretical framework and providing case studies that are in themselves an empirical contribution to the literature. The selected cases have been subject to scholarly research to a varying degree; however, none of the published studies focused on reconstructing instances of legal mobilization.

The analytical chapters will proceed in the same way for the two countries and for all four cases of foreign large-scale land investments. The country chapters will begin with a general overview of the issue of large-scale land deals in the country. I will provide input on numbers and trends as well as the government policies attracting foreign investment in agriculture. The chapter will furthermore provide an overview of the civil society actors and their responses to the rise in large-scale land deals in the country.

The country-specific background is followed by the first part of the analysis: The evaluation of the national legal opportunity structure against the criteria formulated in chapter 4.1.1. I will take into consideration the general tenure system in the country before looking specifically into regulations regarding decision making about foreign land investment deals.

The next two chapters then contain the specific case studies. All four case studies will be structured into five sub-chapters: The first one providing some general information on the investment and the process leading up to the lease or out-grower agreement. Against this background, the second sub-chapter contains the comprehensive storyline about the specific instance of legal mobilization and its outcome. The following two chapters are then dedicated to explore further the conditions of the company's responsivity and the contribution of the support network. The fifth and last chapter will then summarize central findings in regards to the conditions identified in the theoretical framework and discuss additional issues relevant to the specific case study.

The country sections end with chapters comparing and discussing the findings from the two case studies within the country. Apart from the three conditions identified in my analytical framework and additional relevant conditions will be discussed. Additional conditions are factors that are relevant for explaining success or failure in individual cases but can be described on an abstract level and fit in my analytical framework. Other issues, which showed up in my case studies but are not directly related to answering my research question, will be discussed as 'additional issues'.

They point to possible limits of my framework and further research desiderata.

The analysis will be finalized in chapter 7 with a comparison and discussion of findings between the two countries.

5. Analysis I Sierra Leone

The first empirical chapter deals with Sierra Leone. The small West African country is thinly populated, with an estimated 7.2 million people living on 72 thousand km^2 (World Bank 2018b). The country is divided into the Western Area, making up the peninsula around Freetown, and four Provinces – the North-Western, Northern, Eastern and Southern Provinces. They are, in turn, made up of 16 districts, which are divided into 190 chiefdoms – the lowest administrative level in the country. Historically, the Western Area was a full colony of the British Empire, while the Provinces had the status of a Protectorate. This division had consequences for the regulation of land tenure, which plays a decisive role until today (Conteh/Yeshanew 2016; Sturgess/Flower 2013; Maru 2006).

Local land conflicts are endemic in the country (Sturgess/Flower 2013; Moyo/Foray 2009) and are regarded as one driving force for the 11 years of civil war between 1991 and 2002 (Unruh 2008: 99). The civil war left considerable devastation and the country still counts as one of the poorest in the world, ranking 179th out of 185 countries of the latest Human Development Index (UNDP 2016: 200). However, the political system seems to be stabilizing: Since the end of the war in 2002, four rounds of parliamentary and presidential elections (2002, 2007, 2012 and 2018) have taken place, including peaceful transferals of power. While political tensions are high around elections and a cause for violence at times, "the nation state's legitimacy is currently not questioned in principle by any relevant group in Sierra Leone" (Bertelsmann Stiftung 2016: 6).

Before I apply my analytical framework, I will first provide some background information on large-scale land deals in the country (chap 5.1), including the agricultural background, government policies attracting these deals and reactions by the civil society. In a next step, I will begin with the first part of the analysis looking at the national legal opportunity structure in the country (chap 5.2). I will show that from a human rights perspective, local populations are insufficiently protected. This is mainly due to the outdated nature of land legislation in the country, which leads to a gap between customary and statutory law.

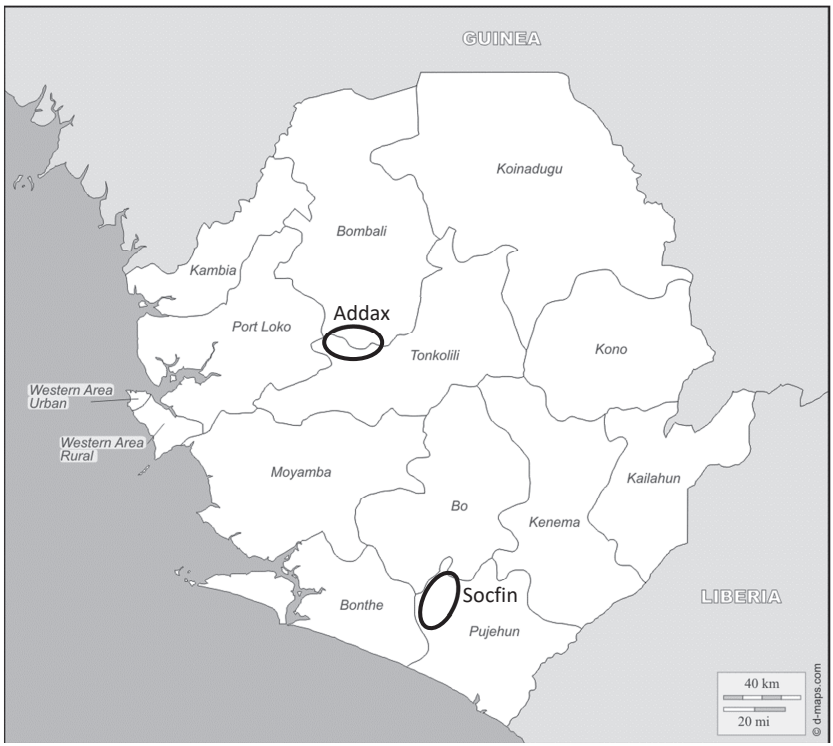

Figure 5 Map of Sierra Leone (with districts)

(source of basic map: http://d-maps.com/carte.php?num_car=4922&lang=en, last visited 15/12/2017)

In the two following chapters, I will show the consequences of this weak legal opportunity structure and the possibilities local actors still have in two cases of large-scale land deals.

The investment of Addax (chap 5.3) is located in the districts of Bombali and Tonkolili and involved 12,000 hectares of sugarcane plantation as well as a bioethanol plant. When they started the investment, the company hailed it as sustainable development and was certified by the Roundtable for Sustainable Biofuels. My research suggests that this background made the company more willing to listen to local demands, which they did in the case of one community, which had the support of a pro-bono lawyer.

The second case is the investment of Socfin (chap 5.4), located in Pujehun district, in the South of the country. The company created an oil palm

plantation covering 12,500 hectares in Malen chiefdom. Protests against the conditions of the land deal appeared early on in the project and local actors appealed to the Sierra Leonean Human Rights Commission to intervene. However, their mediation attempt failed as well as international advocacy campaigns. The case shows how difficult it is to influence a company, which is not receptive to soft law arguments and has the support of the local as well as the national government.

Finally, I will discuss overall findings for Sierra Leone (chap 5.5) by comparing results from both cases.

5.1 Large-scale land deals in Sierra Leone

In this chapter, I will start by looking at the overall trends in large-scale land investments in Sierra Leone (Chap 5.1.1). Chapter 5.1.2 takes a closer look at government policies behind the investments, while chapter 5.1.3 gives an overview of the response by civil society actors in the country.

5.1.1 Current trends and agricultural background

According to 2016 Land Matrix data, 24 concluded and seven intended deals were recorded since the year 2000, with a spike in interest in the years 2010 and 2011. While the number of deals closed per year has decreased since 2011, interest in farmland by foreign investors remains unabated in Sierra Leone (interview SL32).

The size of the land deals varies greatly with 11 deals smaller than 5,000 hectares, while three deals range between 120,000 and 130,000 hectares. Ten deals reach a size between 10,000 and 80,000 hectares (Land Matrix 2016: 3). However, only half of the concluded land deals entered into an active production phase and the size currently under production is smaller than the original leases. Investors come from 16 different countries with companies from the UK being the most active – accounting for six investment projects. Sierra Leonean companies were involved in none of the concluded deals (Land Matrix 2016: 5).

30 % of the land under lease is for palm oil production followed by forestry (24 %), agrofuel (23 %) and food crops (19 %). Investment in food crops usually entails smaller surfaces, whereas palm oil and forestry deals cover bigger areas (Land Matrix 2016: 6). Former land use was only recorded for 11 of the concluded deals and was mainly subsistence agriculture.

Data for community negotiations, compensation paid, employment or community benefits were mostly missing.

Table 11 No. of intended/concluded deals in Sierra Leone

year	No. of deals
No year	5
2003	1
2006	1
2007	1
2008	1
2009	1
2010	5
2011	12
2012	2
2013	1
2015	1

(Source: Land Matrix 2016)

The existing agricultural system in Sierra Leone is primarily based on smallholder farms with sizes ranging between 0.5 and 2 hectares. The primary staple foods grown are rice and cassava followed by sorghum, maize, millet, groundnut and sweet potato (Asenso-Okyere/Workneh Kebede 2012: 60). Sierra Leone was self-sufficient in rice production up until the 1970s; however, the agricultural sector suffered from government policies that led to an underprizing of local products while subsidizing cheap imports (Maconachie/Fortin 2013: 259). Structural adjustment programs fostering the privatization of the agricultural sector in the 1980s did not improve the situation, as prizes for farm products remained low and smuggling escalated (Keen 2005: 23). Rice production was profoundly affected during the civil war and considerably reduced food security. After the war, rice production rates increased but are not able to cover the consumption in the country (Asenso-Okyere/Workneh Kebede 2012: 53–54).

Most of the farmers in Sierra Leone are subsistence-based, usually without any kind of mechanization[19] and often lacking access to credit, seeds and fertilizers (PRSP II 2008–2012: 26). A bush fallow system is used for non-tree crops; however, the time in between planting one field declined – leading to a decrease in soil fertility. Other challenges include missing expertise on planting and stock-keeping methods, making the introduction of new crops a challenge (interviews SL3, SL12, SL32). Against this backdrop, the need to support agricultural development in the country becomes apparent.

Sierra Leonean agriculture is mostly based on smallholder farming and does not – unlike the Philippines – have a lot of historical experiences with bigger plantations. That does not mean that there are no plantations by foreign investors. The best-known case is probably the Magbass Sugar Complex set up as a Chinese development project in the 1970s. The farm of 1,800 hectares of sugar cane and a sugar processing factory faced a multitude of problems, including economic sustainability and conflicts with local communities. Up until today, the project depends on financial and technical aid from China (Cheng/Taylor 2017: 76–84). Consequently, the Magbass Sugar Complex is usually regarded as a negative example for foreign investment.

Overall most Sierra Leoneans do not have previous experience with large-scale agricultural plantations by foreign investors. Encounters with transnational companies usually stem from the natural resources sector, mainly iron ore, rutile, gold or diamonds. The experiences with these companies are typically mixed: On the one hand, communities are excited about the economic opportunities. On the other hand, environmental pollution is often drastic, working conditions difficult, local livelihoods are not improving and conflicts are simmering (Wilson 2013; Zulu/Wilson 2012).

The previous paragraphs show the following: The number of large-scale land investments closed in the last decade means an unprecedented influx of foreign investors in the agricultural sector in Sierra Leone – something the population as well as the government does not have much experience with. Apart from one or two exemptions, most experience with foreign investors stems from the natural resource sector, where the benefits for the local population are at best mixed. Set against this background, the

19 Tractors are sometimes available for hire, but remain out of reach for most smallholders. Reports indicate that this was different in the 1970s, when the government provided the technical infrastructure (Unruh/Turray 2006: 16).

question of how the government manages the large-scale investments in agriculture and how the population reacts to it gains relevance.

5.1.2 Government policies to attract foreign investment in agriculture

Agriculture is regarded as a central element for economic growth and poverty reduction in Sierra Leone. The second Poverty Reduction and Strategy Paper (PRSP) for the period 2008 to 2012 explicitly made agriculture one of its four top priorities (energy, transport and human development being the other three). Support for commercial agriculture – be it small or large-scale – is seen as crucial for increasing productivity for the domestic market as well as for export (PRSP II 2008–2012). In line with these priorities, the Government of Sierra Leone (GoSiL) adopted the National Sustainable Agriculture Development Plan for the period 2010–2030. The Plan contains different sub-programs – among them support for small-scale farmer commercialization, but also improving the investment opportunities for medium and large-scale agriculture through a review of land and investment policies. The overall idea is to encourage commercialization through linking small-scale to large-scale agriculture, which is supposed to open access to markets (NSADP 2010–2030: 29–33).

The two central actors in implementing these policies are the Ministry of Agriculture Forestry and Food Security (MAFFS) and the Sierra Leone Investment and Export Promotion Agency (SLIEPA). The MAFFS formulated the vision to "[m]ake agriculture the 'engine' for socio-economic growth and development through commercial agriculture" (Ministry of Agriculture Forestry and Food Security 2009). To fulfill this vision, it created incentives and rules for private investment in agriculture. Investors who provide a Five-Year-Investment Plan are eligible for exemptions from import taxes and duties for agricultural inputs as well as a general tax holiday for five years. In individual land deals, more generous tax exemptions can be granted, as I will describe in more detail when introducing the concrete cases.

The MAFFS also determined the lease rent of 5 USD per acre per year, which is then divided among landowners (50 %), district councils[20] (20 %), local administration (20 %) and the national government (10 %). In the end, a landowner gets 2.50 USD per year per acre (Ministry of Agriculture

20 District Councils govern on the district level and are composed of elected officials and the Paramount Chiefs of the district.

Forestry and Food Security 2009). Apart from these incentives, the MAFFS also sets rules for the investors, which I will describe as part of the legal opportunity structure in chapter 5.2.2.

The Sierra Leone Investment and Export Promotion Agency (SLIEPA) is another central actor, as this often is the first government agency in contact with investors. The agency was founded in 2007 with support from the World Bank. It acts independently of the ministries, even though it is formally attached to the Ministry of Trade (Oakland Institute 2011a: 13–14). SLIEPA heavily advertises investment in agriculture by emphasizing the availability of 5.4 million hectares of arable land, favorable climatic conditions and duty-free market access to the European Union and the Unites States[21]. SLIEPA promises a first-mover advantage as well as "[e]asy access to land with smooth facilitation process" (SLIEPA website 2018).

More specifically, investment in palm oil and sugar cane are advertised by emphasizing high government support combined with low costs for land and labor. Furthermore, both commodities are suitable for energy production – another focus of government policies, as only a small share of the electricity needs in the country is met so far (SLIEPA 2010a, 2010b). Apart from promoting investment in Sierra Leone, SLIEPA provides information and support in the land lease process as well as predefines possible concession areas (Oakland Institute 2011a: 14).

In 2010, a report commissioned by SLIEPA, claimed that agribusiness investments would create income for 50,000 families, make the country self-sufficient in electricity production and increase average household income by $250 per year (Thomas 2/15/2010). The report further claimed that 3 million hectares of land could be leased to investors without risking food security in the country (Thomas 2/15/2010). These numbers show the enormous expectations government authorities linked with large-scale land investments, while concerns about food security were minimalized.

Critique of these government policies comes from civil society and academics.

First, critics question the availability of unused land. They point out that the numbers used by the government are unreliable and do not mirror current cropping systems. For many crops, a field rotation system is used in which soil is left fallow for up to 25 years. During the fallow period, the soil restores itself but is used, for example, for gathering building materials or as hunting grounds. It is estimated that fallow periods reduced consider-

21 Granted to Sierra Leone as a least developed country.

ably in the last decades (Oakland Institute 2011a: 16–17; Melsbach/Rahall 2012: 5) (interview SL3). In consequence, the narrative about 'unused' land is questioned.

Another, more general critique is the emphasis of the GoSiL on top-down commercialization and the promotion of agribusiness in the agricultural sector. This focus on the private sector is criticized as ensuring profit for big business but not smallholder farmers. In this context, the role of the World Bank is described as pushing for a pro-investment climate, land privatization and investor protection (Oakland Institute 2011a: 14–15). In fact, "[t]he Bank ranks Sierra Leone as number two in Africa and number 27 worldwide for investor protection" (Oakland Institute 2011a: 15). Other authors link the government agenda to the 'liberal peace project', which expects a 'trickle-down peace' through free markets and macro-economic growth (Castañeda 2009: 237; Millar 2016: 570).

5.1.3 Civil society responses and network formation

The first civil society actors to warn of the detrimental effects of large-scale land deals were international NGOs active in the country. Most likely influenced by the global outcry about the massive increase in large-scale land deals globally, development NGOs started to pay attention to this issue in the country. In some cases, their work was directly impacted by land deals, as was the case for the German Welthungerhilfe, who was not able to implement a planned livelihood project due to the Socfin land deal (interview SL6). In other cases, NGOs learned about land investments from their local counterparts (interview SL11) or reached out to local actors because they were from the country of origin of the investor (interviews SL51, SL53). This is the case for the Swiss organization Bread for all, or the Belgium section of FIAN International (FoodFirst Information and Action Network). In addition, internationally specialized civil society actors like the American Oakland Institute, a critical policy think tank that publishes extensively on land grabbing, got interested in Sierra Leone.

Locally, these international actors cooperated with Sierra Leonean development or human rights organizations, which already existed but usually did not have a specific land rights focus (interviews SL19, SL34, SL51). The Freetown based environmental organization Green Scenery became one focal point for collaboration between international and Sierra Leonean civil society actors (interview SL2). Several fact-finding missions and reports (Melsbach/Rahall 2012; Rahall/Schäfter 2011; Oakland Institute 2011a; Ac-

tion Aid 2013; Christian Aid 2013) were produced by these national and international organizations. The criticized missing transparency, insufficient community consultations, inadequate compensation, broken promises and warned of detrimental socio-economic effects, especially on food security.

In the beginning, cooperation between local Sierra Leonean civil society actors and activists was limited. As land rights had not been a central issue, there was no preexisting civil society network in that regard. Eventually, local actors and organizations were brought together in April 2012 for the first 'Land Owners and Land Users Conference', which was organized by Green Scenery and the Sierra Leone Network on the Right to Food (SiLNoRF) and financed by the Oakland Institute. The conference led to a joint communique and the foundation of the 'Action for Large Scale Land Acquisition Transparency' (ALLAT) Network (Oakland Institute 2012). The network comprises both national Freetown-based NGOs as well as locally-focused organizations throughout the country. Since its inception, the network, which was set up as a watchdog for large-scale land deals, has evolved considerably. (interview SL6). Funding comes from international donors such as the Welthungerhilfe (through the German Ministry for Economic Cooperation and Development), Search for Common Ground or Christian Aid (interviews SL9, SL33). The network is regarded as an important way to exchange information, expertise and experience (interview SL9). Regular national land conferences that provide space for sharing stories and disseminate information have taken place in the last years (interviews SL2, SL6). At the same time, the network funds project of individual organizations that work on large-scale land deals and land rights issues (interview SL9, SL19, SL48).

Most importantly, the network is regarded as a way to amplify the voice of single organizations and to make issues around specific large-scale land deals known to the national and international public (interview SL6).

> "For us we think ALLAT came really at the right time. It's a blessing for us. Because the government is taking us seriously now, because we are together – a network. The companies are taking us seriously now because they know, I mean, our voice does not only stay at the community level." (interview SL33)

Apart from specific advocacy in regards to large-scale land investment, Sierra Leonean civil society organizations and the ALLAT network more specifically are involved in two interrelated policy processes: the implementation of the Voluntary Guidelines on the Responsible Governance of

Tenure (VGGT) and the development of a new land policy. Sierra Leone was chosen as a pilot country for the VGGT (Koch/Schulze 02/12/2017). The process, which is led by the FAO in cooperation with five Sierra Leonean ministries, grants civil society actors a permanent space for participation with three seats in steering committees and working groups (interview SL4). This access opens up a direct communication channel to relevant ministries for the civil society (interview SL33).

Apart from the VGGT, a process to develop a new land policy has been going on since 2009. This land policy is regarded as an essential step to reform outdated land legislation and create a coherent system for land governance. Civil society actors, as well as the VGGT working groups, were able to comment on the drafts. Many of the suggested changes were accepted by the government. In consequence, the National Land Policy, which was launched in 2017, received a lot of positive feedback from civil society actors. The new policy provides CSOs with a new advocacy tool and is currently promoted extensively in the country (interviews SL4, SL19, SL26).

The issue of large-scale land deals seems to have fostered civil society activism around land rights in Sierra Leone. Funded through international NGOs, a broad network, including local and national-level organizations, has developed. Civil society actors do not only organize around specific land deals but also support the implementation of the VGGT and advocate for a change of laws and policies on the national level.

5.2 National legal opportunity structure in Sierra Leone

The existing land governance system in Sierra Leone has received considerable criticism. The new National Land Policy, which aims to reform the system, describes it as "not only chaotic but also becoming increasingly unsustainable" (Government of Sierra Leone 2015: 1).

This chapter will first take a closer look at the land tenure system with a particular focus on the right to transfer use rights (chap 5.2.1). It will become clear that national statutory law and customary law are not in line, which leaves customary landowners without formal legal protection. In a second step, I will turn to specific laws and regulations concerning large-scale land deals (chap 5.2.2). The last subchapter (chap 5.2.3) will then use this information to assess the NLOS against the criteria formulated in the methods chapter. The current national legal opportunity structure has to be regarded as mostly unfavorable to local concerns, a situation the new National Land Policy tries to remedy in the future.

5.2.1 Existing land tenure system and central laws

The land tenure system in Sierra Leone is usually described as bifurcated or pluralistic (Conteh/Yeshanew 2016; Sturgess/Flower 2013; Maru 2006) being ruled by statutory law and private land ownership in the Western area, and by customary law in the Provinces. As all large-scale land deals in the country are located in the Provinces, I will focus on the tenure system and the relevant laws regulating land transfers there and exclude the Western area from my discussion.

The Sierra Leonean constitution does not make any reference to the governance of land or the function of land in the socio-economic context of the society (Republic of Sierra Leone 1991). Socio-economic human rights such as the right to an adequate standard of living or the right to food are not mentioned in the text, even though the country is party to all major international human rights treaties. However, the protection of property from unlawful expropriation is in the constitution (Davies 2015: 4–5). The constitution does, however, acknowledg that the state should "place proper and adequate emphasis on agriculture in all its aspects so as to ensure self-sufficiency in food production" (Republic of Sierra Leone 1991: para 7.d). However, this stipulation is only meant to guide the government and does not imply any rights or enforcement in court (Republic of Sierra Leone 1991: para 14). Furthermore, the constitution acknowledges existing customary regulations, which are mostly unwritten, as law of the country but does not make any further provisions, for example, in case of conflictive contents (Republic of Sierra Leone 1991: para 170). In consequence, the constitution has to be regarded as weak when it comes to the protection of land rights in general and, in particular, of customary land rights.

The silence of the constitution on land issues is filled by the Provinces Land Act Cap 122, which governs land transactions in the Provinces. The law was signed in 1927 under the colonial administration and was simply taken over by the independent Republic of Sierra Leone 1961. The law defines that "all land in the Provinces is vested in the Chiefdom Council who hold such land for and on behalf of the native communities concerned" (Cap. 122: Preamble). Regarding land transactions, it is then the Chiefdom Council[22], under the chair of the Paramount Chief, who decide about rent-

22 ""Chiefdom Council" means paramount chiefs and their councillors [sic], and men of note, or sub-chiefs and their councillors [sic], and men of note" (Cap. 122: sec 2).

ing[23] land to 'non-natives', which is "any person who is not entitled by customary law rights in land in a Province" (Cap. 122: sec 2). Lease agreements can be up to 50 years with a possible extension of 21 years. These provisions of Cap 122 grant the main decision making power to the Chiefs, making no provisions for the consultation of other stakeholders in the case of foreign land investments (Davies 2015: 17). At the same time, the law contains far-reaching competencies for the president of Sierra Leone[24], such as the right to fix the "settlers' fees", to prescribe "the terms to be embodied in leases" or to define how the rents are distributed (Cap. 122: 16.).

Officially a concessions Act Cap 121 was put in place in 1931, regulating land concessions larger than 5000 acres; however, it was never used and is not applied today (SLIEPA 2010c: 4). The Provinces Land Act is, therefore, the only statutory law regulating land transfers in the Provinces.

The Provinces Land Act largely ignores realities on the ground. Customary 'landowning families' control land in the Provinces. 'Outsiders' or 'land users', who are not a member of a landowning family, have to seek permission to use a piece of land and usually pay rent in the form of parts of the yield. The chiefdom authorities typically have to approve these arrangements; however, their degree of influence over these questions varies from region to region. Despite this variation, a household survey in seven districts shows that in most regions, the central authority to control land lies with the landowning families. In six out of the seven districts, the respondents ascribed landowners more than 70 % of the power over land (Conteh/Yeshanew 2016: 5–6). So, while the Paramount Chief has to approve all land matters, the main decision-making power lies with the landowning families:

> "The way it works under the customary tenure system is the following: If I, as a stranger, want to use land, I go to the landowning family. I have to meet the head of this family and sign an agreement with them. The PC will then sign the agreement as well. It is a sort of control function." (interview SL36)

In this way, statutory law, as instilled in the Provinces Land Act, clearly contradicts customary norms and disregards customary ownership rights. Yet, even more, land users' rights are neither mentioned by Cap 122 nor

23 Purchase of land is not allowed in the Provinces.

24 The law itself actually speaks about the "Governor in Council" referring to the President today (SLIEPA 2010c).

do they receive much protection in customary law. Land users make up between 20–40 % of the population in the chiefdoms and their use rights vary considerably from region to region (Unruh 2008: 102). Sometimes they are banned from making permanent improvements to the land such as growing tree crops (Unruh 2008: 102). Similarly to land users, women have relatively little control over land in many regions, even if they belong to landowning families (Conteh/Yeshanew 2016: 6).

Local grievance mechanisms in the case of tenure disputes do exist. In most cases of local land conflicts, the population calls on the chiefs to mediate and arbitrate[25]. Yet, the fairness of these processes is regularly called into question (Conteh/Yeshanew 2016: 23–24). A formalized mechanism are local courts, which use both customary and statutory law and are part of the formal judiciary in the country (Conteh/Yeshanew 2016: 8). However, the jurisdiction of local courts is limited to 'native' parties, excluding cases against companies (Kabbah 2014). If local actors have complaints about large-scale land deals, they can not file it with a Local Court but are restricted to chiefdom or district authorities.

5.2.2 Regulations regarding foreign land investments and grievance mechanisms

Apart from the characteristics of the land tenure system in the country, specific laws and guidelines exist regarding foreign investors in agriculture. The most relevant law is the Environmental Protection Agency Act, which creates an oversight agency equipped with authority. Other policies create some guidelines for investors but are not clear in their consequences. The new National Land Policy, sets out an ambitious reform of the land tenure system, but has only been developed lately and not yet been implemented.

One of the laws relevant for large-scale land deals is the Environmental Protection Agency Act of 2008, which created the Environment Protection Agency (EPA) and defined its mandate. The act requires investing companies to conduct an Environmental Impact Assessment prior to the investment, for which the EPA will then provide a license (Davies 2015: 17). The EPA can react to complaints and investigate individual cases. It does have the power to change or withdraw a license in the case of environmen-

25 Other customary means of solving land disputes are the calling on family heads, religious leaders, or secret societies, which receive high respect in rural Sierra Leone (Conteh/Yeshanew 2016: 23–25).

tal misconduct (Conteh/Yeshanew 2016: 16). The agency, therefore, has possibilities to sanction companies, making these provisions ard law according to my definition. Yet, these competencies only refer to environmental issues (Conteh/Yeshanew 2016: 16).

In addition to hard laws like the EPA Act or the Provinces Land Act, soft law policy documents formulate rules specifically for foreign large-scale land-based investments. Especially interesting are the investment policies formulated by the Ministry of Agriculture Forestry and Food Security (MAFFS) and the guidelines for investors by the Sierra Leone Investment and Export Promotion Agency (SLIEPA).

Apart from describing investment incentives, the document of the MAFFS makes some recommendations for large-scale land-based investments, which are meant to ensure socio-economic benefits for the local population. For example, land targeted for biofuels production should not be land used for food growing, investment plans should contain provisions for youth employment, 5–20 % of company shares should be offered to Sierra Leoneans and every investment should contain an out-grower scheme (Ministry of Agriculture Forestry and Food Security 2009). However, it is not clear how these provisions are implemented, translated into technical procedures or monitored. In fact, it seems that investors simply ignore these recommendations (Kaindaneh 2015: 73).

In addition, the policy of the MAFFS describes the option that the Government can act as an intermediary and lease land from the communities for the investors (Ministry of Agriculture Forestry and Food Security 2009: para 7). Interestingly, the consultation of local communities or even just of landowning families is not mentioned in the policy[26]. Overall, the policy has the main aim to attract investors and only contains some provisions in regards to ensuring socio-economic benefits for local communities. Yet, those provisions remain unspecific and enforcement unregulated.

In contract to the MAFFS policy, the guidelines for investors by SLIEPA go into more detail about the actual leasing process: They specifically mention landowners and recommend that they be included in the lease process. The document furthermore spells out that the Environmental, Social and Health Impact Assessment (ESHIA) requires that the process is adapted to the needs of the communities whose free, prior and informed consent (FPIC principle) is necessary. In making these provisions, the docu-

26 The only time agreement of communities is mentioned is in regards to the development of social responsibility packages (Ministry of Agriculture Forestry and Food Security 2009: para 14).

ment refers to the Equator Principles. However, the far-reaching FPIC principle only applies to the ESHIA process and not the lease agreement, which is supposed to be signed with the Chiefdom Council and 'representatives' of landowners (SLIEPA 2010c). The SLIEPA guidelines, therefore, go further than the MAFFS policy when it comes to the inclusion of landowners and other community members. Especially the ESHIA is regarded as a way to inform and receive the consent of affected communities. However, the process is suggested as 'best practice' and does not present enforceable rules (SLIEPA 2010c).

Overall, both policy documents are designed to attract investors and the provisions they provide for the protection of the local population seem to be mere guidelines with no oversight and enforcement procedures.

Another policy document, which is a lot more far-reaching, is the new National Land Policy, which was adopted in 2015 and officially launched in March 2017. The process of developing the new policy was very inclusive (interviews SL4, SL26). The document mirrors many recommendations of the VGGT and is therefore not only described as a significant step for land reform in Sierra Leone but also a best practice example for the implementation of the VGGT (Koch/Schulze 02/12/2017). The Land Policy suggests substantial changes such as streamlining statutory and customary law, protecting customary tenure rights and creating land committees on the national, district and local levels (Government of Sierra Leone 2015).

Regarding foreign land investment, the National Land Policy limits the lease for non-citizens to 50 years and a size of 5000 hectares. Local land banks are supposed to be developed with the participation of the local population, to identify suitable land for investment. The Land Policy furthermore demands that the *"free, prior and informed consent of communities, land owners and users"* (Government of Sierra Leone 2015: 67) has to be obtained for a planned land investment. Also, legal assistance should be made available to local communities through a special fund. Grievance mechanisms should be set up by the company but also by the government. Impact studies, including expected effects on food security, need to be conducted before an investment as well as monitoring of ongoing projects (Government of Sierra Leone 2015: 66–67).

The National Land Policy is undoubtedly an important step in the direction of better protection of local tenure rights; however, the implementation process is just beginning. While the Land Policy can play a role in the revision of existing leases (Government of Sierra Leone 2015: 67) in the

next couple of years, it was not yet of relevance in the cases studied in chapter 5.3 and 5.4.

From the discussion of the existing law and policy documents produced by the MAFFS and SLIEPA it becomes clear that formal grievance mechanisms for local actors affected by large-scale land deals are limited. The only hard law mechanism is the EPA and the possibility to file a complaint, which is then processed through an investigation and can lead to the imposition of fines or the withdrawal of the environmental license (Conteh/Yeshanew 2016: 17). The policy documents do not prescribe clear responsibilities and enforcement possibilities. In consequence, different government agencies do get involved in mediating or arbitrating in conflicts between local communities and companies, for example, the Ministry of Lands[27], the Office of National Security chaired by the President, the Human Rights Commission or District Councils (Conteh/Yeshanew 2016: 14–19). However, these agencies often act in an ad-hoc manner and are limited to mediation and fostering dialogue. In many instances, local complainants did not receive any responses from administrative officials (Conteh/Yeshanew 2016: 29). Overall, both formal, as well as informal grievance mechanisms, do not receive a lot of trust form large shares of the population, who regard them as unfair and corrupt (Conteh/Yeshanew 2016).

5.2.3 Evaluating the national legal opportunity structure

Set against the background of the previous two chapters, I will now turn to evaluating the national legal opportunity structure against the criteria formulated in chapter 4.1.1. It will become clear that Sierra Leone presents an unfavorable legal opportunity structure for local actors affected by large-scale land deals.

The first element of a veto right for smallholders is fulfilled neither through the statutory land tenure system, which omits customary rights in the process of land transfers, nor through additional policy documents specific to foreign investment in land. While the SLIEPA guidelines explain the importance of including customary landowners, they are not binding but rather 'best practices' for investing companies. Smallholders, be they members of landowning families or land users, do not have a formalized veto right.

27 Full name: Ministry of Lands, Country Planning and the Environment.

The second element of ensuring that smallholders can make informed decisions is only fulfilled to a limited degree. The EPA does require investors in land to submit an Environmental, Social and Health Impact Assessment (ESHIA) before they receive an environmental license. SLIEPA furthermore makes some recommendations on how the ESHIA process should be organized, including the translation into the local language (SLIEPA 2010c). Yet, affected communities usually do not receive any kind of legal advice or assistance in order to make an informed decision:

> "In fact, no relevant provision can be located in the legal framework on professional assistance to ensure that men and women are aware of their tenure rights and can participate in related consultation." (Davies 2015: 17)

The third element of ensuring that land investments are economically beneficial is nearly wholly absent. The policy document of the MAFFS makes some provisions as described in the previous chapter. Yet, as pointed out these provisions are not very specific and lack any kind of implementation and enforcement rules. Even more, incentives for companies as described earlier led to a situation in which the country can hardly profit at all:

> "There seems to be no government policy to ensure that the public captures benefits arising from changes in permitted land use. On the contrary, investors are given subsidies in the form of tax holidays. Agricultural investments benefit from 10-year corporate tax holidays and zero import duty. The country allows 100 percent foreign ownership of enterprise ownership in all sectors; there are no restrictions on foreign exchange, no limits on expatriate employees and full repatriation of profits, dividends and royalties." (Kaindaneh 2015: 71)

Similarly to the third element, the fourth element is mostly absent. Apart from the Environmental Protection Agency, which overlooks environmental concerns and has the mandate to enforce legislation in this regard, most government agencies and administrators only act on an ad-hoc basis. While these mechanisms are often easier and cheaper to access than the formal judiciary system, "these institutions do not have clearly defined processes for receiving and resolving disputes and have not consistently documented processes and outcomes" (Conteh/Yeshanew 2016: ix). At the same time, no ministry seems to have an explicit mandate for oversight over all large-scale land investments in the country and there are, for example, no official statistics about how much land has been leased in the Provinces (Kaindaneh 2015: 70).

Overall, the NLOS does not present favorable opportunities for local actors affected by large-scale land deals. Statutory land law does not explicitly recognize customary ownership and use rights and therefore does not give smallholders a possibility to veto an investor. Furthermore, there are no binding regulations that would ensure that the local population profits from an investment. Local actors, therefore, will have difficulties to draw on the law in achieving their goals. I will show this in the next two chapters, in which I analyze legal mobilization attempts in the case of the Addax and the Socfin investment.

5.3 Case I: Addax Bioenergy – success through legal representation

The large-scale land investment by Addax Bioenergy[28] was considered a big win in the attempts of the Sierra Leonean Government to attract foreign investment in biofuels. Its goals overlapped with the second PRSP (2008–2012) and the investment received widespread support as a private development project (African Development Bank Group 2011b). The investment was hoped to be a *"model for sustainable investment in Africa"* (Addax Bioenergy 2013) and the company went beyond national legal obligations in securing the consent of local landowners (Addax Bioenergy/FAO).

In the case study, I argue that this picture of a responsible and sustainable investment following international standards created some space for local actors to achieve their demands. One community – the community of Masethleh[29] – did so successfully. Nonetheless, they relied on outside support to get their voice credibly across to the company. The case, therefore, shows that international market-based instruments can create some leverage for local actors if locals have the necessary outside support. However, the case also shows the limits of these instruments. The degree of what the community was able to decide about, was minimal – mainly due to the insufficient national legal framework in place at the time.

In a first step, I will provide an overview of the investment of Addax Bioenergy with a focus on the consultation stage leading up to the signing

28 In 2016 the majority shares of the project were sold to Sunbird (Awoko 3/10/2016). However, as I focus on the phase leading up the signing of the lease agreements I refer to the investment project as the Addax case in my analysis.

29 In some reports the name of the village is spelled Masethele (Conteh 2015) or Masetheleh (African Development Bank Group 2011a: 20), I did however stick to the spelling used by the local NGO (SiLNoRF 2013), which corroborates the spelling my translator used.

of the agreements (chap 5.3.1). These elaborations provide the necessary background to understand the story of the community of Masethleh, which was able to negotiate their own agreement with the company (chap 5.3.2). In a next step, I will show the relevance of the conditions identified in the analytical framework. I argue that the company's reputation as a poster child for responsible biofuels investment in Africa and the standards set by development banks created a space for local agency (chap 5.3.3). However, support by NGOs and a pro bono lawyer was a necessary condition for local actors to make use of that space (chap 5.3.4). The case can be seen as an example of possible positive impacts of private soft law regulation, but also shows limitations of what can be achieved. I will discuss these chances and challenges in chapter 5.3.5.

5.3.1 Overview of the investment of Addax Bioengery

The Swiss company Addax Bioenergy invested 400–500 million USD[30] (Lanzet 2016: 27) in a 12,000-hectare sugarcane plantation, a bioethanol refinery and a power plant in the North of the country. The investment reaches across the three Chiefdoms of Makari Gbanti, Bombali Shebora and Malal Mara, located in the districts of Bombali and Tonkolili. The project intended to export bioethanol to Europe, produce electricity for the national grid and employ between 3000 and 4000[31] people (Memorandum of Understanding and Agreement 2010). The Environmental, Social and Health Impact Assessment prepared in 2011 estimated that about 13,500 people living in 60 villages were affected by the investment project.

While only 77 people needed to be directly resettled, other affected people faced economic displacement due to the loss of access to land (African

30 There are no exact numbers of how much money was invested by the company and its successor to date, however, it could be as much as up to 500 million USD (Lanzet 2016: 32) – a number which was also confirmed in an interview with a former staff member from the management level (interview SL54).

31 These numbers do of course vary and include different forms of employment. In 2015, 3850 Sierra Leoneans were employed of which 132 had fixed monthly salaries, 1472 had permanent contracts but were payed on a daily basis and 2243 causal workers, which were only contracted for three to six months (SiLNoRF 2016: 13). In one interview frustration was expressed about the way workers were counted: The official numbers were the total amount of people who got a contract throughout the year, even though most people only had short-term contracts and were not employed at the same time (interview SL13).

Development Bank Group 2011b: 7). To adequately compensate for the loss of farmland, the company set up a Farmer Development Program, which included the provision of land, seeds, farmer's training and farm services (African Development Bank Group 2011b: 11; SiLNoRF 2016: 14). Apart from these mitigation measures, the company implemented a stakeholder engagement program including village level committees, grievances and community liaison officers as well as a multistakeholder-forum. During forums meetings, senior management staff inform chiefdom councils and influential landowners about the company's actions (interview S15).

Despite efforts to create a 'socially responsible' project, the company received considerable criticism in regards to the consultation process (Action Aid 2013), insufficient compensation payments, unfair recruitment practices (interview SL15), lack of training and job opportunities (interviews SL13, SL14, SL17), problems with the Farmers Development Program (Action Aid 2013: 7) and issues around the change of watercourses and drinking water contamination (SiLNoRF 2016: 20–21). Addax reacted to criticism and usually tried to solve the problems, which was positively acknowledged by a monitoring NGO (SiLNoRF 2016: 12). Nonetheless, the project got under extreme pressure from international NGOs, and was labeled a 'land grab' by some (FIAN Österreich 2015; Action Aid 2013: 3).

Between 2009 and 2011, consultations and negotiations took place at the government level, with Chiefdom Councils and with local landowners leading to the signing of three types of agreements (African Development Bank Group 2011b: 2). In February 2010, a Memorandum of Understanding was signed with the Government of Sierra Leone, in which the project was roughly outlined and certain guarantees and tax incentives were granted. Apart from some vague language regarding possible benefits for the local population through the creation of infrastructure and jobs in the recitals of the contract, no obligations of the company towards the local population or in regards to customary land use rights were defined in the document (Memorandum of Understanding and Agreement 2010).

Besides the MoU, the lease agreement was signed with each of the three Chiefdom Councils, who are the decisive land authority as defined in the Provinces Land Act Cap 122 (as described in chap 5.2.1). Initially, 57,000 hectares were leased for 50 years, but Addax surrendered most of the land not needed in the first five years of the lease (African Development Bank Group 2011b: 2) and now holds 23,500 hectares (SiLNoRF/Bread for All 2017: 4). The rent was set at 5 USD per acre per year as defined by the recommendations of the MAFFS (Ministry of Agriculture Forestry and Food Security 2009). The lease agreement does not only cover land used for

plantations but the villages and surrounding environment as well. The agreement guarantees the company sweeping rights such as the right to change any watercourse or restrict access to certain areas (Land Lease Agreement: para 4.4 & 4.6).

In addition to the lease agreement, Addax also signed so-called Acknowledgement Agreements (AA) with landowners, thereby recognizing the customary tenure system. According to the company, "[t]his is the first time that landowners' rights are contractually confirmed by a company in Sierra Leone" (Addax Bioenergy/FAO: 3). In addition to part of the lease money, the landowners, who signed an AA with the company, receive some extra annual payments. The explanatory note of the lease agreement stipulates that the wishes of the landowners will be respected even though that is not guaranteed:

> "If a traditional landowner is unwilling to acknowledge ABSL's lease rights, then no amount will be paid directly to that landowner and it is likely that ABSL will surrender that area back to the Chiefdom Council (so no rent will be payable)." (Land Lease Agreement: explanatory note para 1.4)

Essentially, these three types of agreements, the Memorandum of Understanding, the Lease Agreement and the Acknowledgement Agreements (AAs), constitute the legal ground for the investment. In a next step, I take a closer look at the local consultations surrounding the lease agreements and AAs.

The company described the local negotiation and consultation process as follows:

> "The land lease draft was discussed and negotiated in several meetings over a period of eleven months. It was first introduced to the Districts and Chiefdom officials and traditional landowners, who in turn were tasked with discussing the document further with their communities. Meetings were subsequently held with affected villages. Invitations to meetings were sent out to landowners and transport costs were provided to attend meetings. During the period following the meetings, stakeholders were encouraged to send their questions and comments relating to the lease agreement to their lawyer for further discussion with Addax Bioenergy." (Addax Bioenergy/FAO)

This process seems very thorough at first sight. However, the actual process appeared more problematic. The mentioned lawyer was paid by Addax, which arose the suspicion of affected people that he would not work in

their interest (interview SL14). Some communities do not seem to have ever been in contact with the assigned lawyer (interviews SL13, SL14). In consequence, chiefdom authorities and landowning families did not receive proper legal advice (Conteh; SiLNoRF 2013: 14). At the same time, community members were told during village meetings that the government, as well as the chiefdom authorities, stood behind the investment project. It seems that the Member of Parliament for the region also made promises about boreholes, schools and clinics – something the company had never agreed on (SiLNoRF 2014: 6). This combination of a missing understanding of the details of the agreements and the social pressure built up through local elites seems to have led to a situation in which landowners often did not understand what they were signing. A member of the University of Makeni, who mediates between communities and the company, described the process in these words:

> "So communities looked at community leaders and ended up signing those documents without having a proper understanding. And, in some isolated cases, they would even be given instructions by members of parliament, or maybe the paramount chief. They said: go ahead and sign." (interview SL10)

Apart from the social pressure, the potential compensation paid as well as the outlook of having salaries was something that convinced local farmers to agree. However, they often had no clear understanding of how much value they generated for their own consumption through the land (Anane/Abiwu 2011: 37). In consequence, the process leading up to the signing of the lease agreements was criticized as not fulfilling FPIC standards by international NGOs (Action Aid 2013; Oakland Institute 2011b).

In the end, all communities signed the Acknowledgement Agreements without any further negotiation – apart from one: the village of Masethleh.

5.3.2 Legal representation for the village of Masethleh

The story of the village of Masethleh stands out in the overall investment project of Addax. Unlike all other communities, the landowners of the village refused to sign the Acknowledgement Agreement. Through the support of a pro bono lawyer organized by a local NGO, the community negotiated with the company and achieved the outcome they had wanted: The agreement contained a smaller portion of their land than initially envisaged.

The community of Masethleh consists of 66 houses and lies in the middle of the project area. The community name means 'enough' in Temne, the local language, and was given to the village, as food was abundant (interview SL14). When the company first approached the community, an Addax representative explained to them about the planned sugar cane plantation in two subsequent meetings in the village. Some of the villagers also attended outside meetings where community members from all three chiefdoms were present. In these meetings, the Paramount Chiefs told them that they had agreed to the investment and that the company would now be approaching the landowners.

At one particular regional gathering, the community members learned that a lawyer had been hired by the company to represent the affected landowners. According to one interviewee, this news was not well perceived as the community members did not believe that the lawyer would act in their interest, as the company paid him. They furthermore never had any personal contact with the lawyer (interview SL14).

In the meantime, the project went ahead with Addax using GPS to survey the land and identify landowning families, of which there are seven in the community (interview SL27). Company representatives tried to convince the landowners to sign by explaining to the community that they would pay lease for all of the land but only use a small part for the plantation (interview SL14). This arrangement was used in all communities: The whole land, including the villages themselves, was leased, while only parts of it were used for the actual plantation (interview SL54)[32]. However, this plan seemed to have made community members suspicious, and they decided not to sign.

One community member described the decision in the following way: "We don't have money neither education, all we have is the land. So if we see people are coming to take away the only thing we have, we would not accept" (interview SL27). The community was furthermore worried about the prospects of future generations, who would not have land left to work on. The villagers also consulted with community members living in the city and overseas. They advised them to lease only a smaller portion of the land (interview SL27).

At the same time, the company, as well as chiefdom authorities, repeatedly asked the community to sign. The people in the community felt that

32 According to an interview with a former company employee, this was done to make planning of surrounding infrastructure such as water-pipelines easier (interview SL54).

they could not wholly reject the agreement, as the government and the chiefdom authorities were behind the deal. They furthermore wanted to profit from the company in terms of jobs, the Farmer Development Program and other possible benefits (interviews SL14, interview SL27). However, they felt uncomfortable with what was presented to them. Through a radio show (interview SL 28) community members learned about the local NGO Sierra Leone Network on the Right to Food (SiLNoRF), which is based in Makeni and monitored the investment project right from the start (interview SL11). Staff members of the NGO came to the village to find out more about the issue and promised to help. In the meantime, all the other communities in the region had signed the agreements and Addax representatives revisited Masethleh to convince the community to agree and to pay them their lease money (interview SL14). Amidst this mounting pressure, SiLNoRF connected the villagers with a lawyer from the legal empowerment NGO Namati. The lawyer presented much needed legal support for the community:

> "We are not educated, so in that respect, we want somebody who is legally grounded to represent us. We have some issues of land with Addax and they have been all along asking us to sign an agreement with them; but we told them that we cannot just sign like that, we need to understand the details of the agreement before we sign, but unfortunately, none of us can read." (interview SL14)

SiLNoRF, together with staff from Namati, organized various community meetings. One aim was to find out what the community wanted and if the community was united in their opinion. Another aim was to educate the community about the content of the lease and the acknowledgment agreements and their rights (interviews SL26, SL28). Meetings were held with different groups within the community, such as women and youth, to include not only the landowners but everyone. NGO staff also tried to identify the possible impacts of the investment (Conteh 2015: 166). At the same time, the NGOs were aware of the legal limitations in this case:

> "We advised the community to give them something, because legally the company controls all the land in the whole area anyway – even the houses and the villages, legally it's all theirs and they know that." (interview SL29)

In the end, the community decided to lease 622 acres of their land instead of the envisaged 2622 acres the company had wanted (interview SL14). However, conflicts arose, as some of the leaders of the community, who

were also landowners, wanted to sign away more land. Leasing more land meant more lease money for the landowning families – and especially the elders in those families. This situation created considerable confusion as the lawyer of the community recounts:

> "You had some of the community leaders, who allowed the company to get through to them. […] after they would have agreed in the meeting that this is what we will do and then once we leave, come back to Freetown and go back to our offices, you would begin to hear complaints […] the Addax guy would call me: Your clients are not really sure of what they want." (interview SL51)

The NGO staff addressed this issue openly in a meeting with the whole community. Community members stood up against their leaders to defend the decision they had taken together:

> "[T]he community was quite forthright in addressing those leaders: 'Listen, what we've agreed on here is the way forward, and if you don't like it we'll remove you as the leader, because you're not seeking the interest of the community […].' So that was quite amazing, the fact that the community could stand up, men and young folks, they actually said no, we do not want this, what we've said is what we've said." (interview SL51)

With all the back and forth, the negotiations had been dragging on for over two years, before the community of Maselthleh and Addax finally agreed on the lease area of 622 acres (interview SL14). The agreement was signed during a meeting in the village, witnessed by the lawyer from Namati and representatives from SiLNoRF. The lawyer read the deal to the present community members and showed a map of how the land would be accorded (Poindexter 3/14/2013). The landowners then thumb printed the agreement, and representatives from SiLNoRF signed as a witness (interview SL27). To this day, the community seems very content with the result of the negotiations. They were able to keep most of their land while profiting from the company through the Farmer Development Program as well as employment for some of the young men[33] (interview SL27).

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33 This does not mean that there were no complaints raised in the village. Village members demanded an extension of the Farmer Development Program beyond the three years, skills training, more jobs, a hospital and a school (interviews SL14, SL27).

The success of Masethleh in protecting their interests can be ascribed to two elements: First, it was the setup of additional Acknowledgement Agreements, which opened up the possibility for local actors to voice their interests. Even though in most cases affected communities were not aware of their option, the community of Masethleh used the opportunity to raise their concerns. Essentially, the AAs recognized local landowners as relevant stakeholders, something not done by national law. Second, outside supporters of the community did not only help to enter into negotiations with the company but also facilitated joint decision-making and unity within the village. The role of NGO staff was, therefore, broader than that of mere legal representation and included inner-community mediation.

5.3.3 The Addax project: a poster child for responsible investment

Right from the beginning, the project was supported by the African Development Bank, which meant that AfDB's environmental and social policies were applied as well as IFC Performance Standards. Fulfilling these standards was essential to secure further funding from developing banks, which covered over half of the initial financing (FIAN Österreich 2015: 2). A total of seven development banks issued individual loans of up to 25 million Euros, and two banks, the Swedfund and the Dutch FMO, even became shareholders (Lanzet 2016: 27).

Together with national laws, IFC standards presented the framework for the Environmental, Social and Health Impact Assessment (ESHIA) (African Development Bank Group 2011b) and the Comprehensive Resettlement Policy Framework (African Development Bank Group 2011a), the two documents outlining the Social and Environmental Management Program of the investor. One of the main socio-economic concern was the "loss or reduced access to livelihood assets" (African Development Bank Group 2011b: 10). To mitigate against the issue of land loss and possible economic displacement, the Acknowledgement Agreements, which include direct payments to landowners, were regarded as one instrument. Together with the Farmers Development Program, skills training, lease payments and crop compensation the AA payments were hoped to "adequately deal with impacts related to food and livelihood security" (African Development Bank Group 2011b: 19).

The idea for the Acknowledgement Agreements arose when company managers had concerns about the district authorities' capacities to pay out the lease shares to landowning families properly. In consequence, Addax

decided to make direct payments to landowners in the communities, for which they needed a legal basis (interview SL54). In a way, the AAs represent the company's willingness to take seriously IFC Performance Standard 5 for the mitigation and compensation for possible loss of livelihood and economic displacement (IFC 2012: 33).

Similarly to the funding from development banks, the certification of the Roundtable on Sustainable Biofuels required the company to keep certain standards. As discussed in chapter 2.2.2 the RSB principles demand that all land rights, including land-use rights, need to be determined before an agreement is closed, for which the FPIC principle needs to be applied (RSB 2016: principle 12). Addax Bioenergy fulfilled the first part by surveying and mapping the land of all affected communities and landowners (African Development Bank Group 2011b: 2). As described in chapter 5.3.1 the company also led extensive community consultations. Even though it remains doubtful whether the process of signing the lease and acknowledgment agreements included the full free, prior and informed consent (FPIC) of all landowners and users, the project received certification by the RSB in February 2013 as the first African biofuels project (Awoko 1/3/2013).

The local NGO SiLNoRF and the Swiss NGO Bread for all launched a complaint against the RSB certificate amongst others on the grounds that FPIC had not been present (SiLNoRF/Bread for All 2013). The complaint led to a follow-up evaluation, which was, however, not able to find enough evidence to verify the accusations. As a consequence, the certificate was upheld[34] (Sierra Express Media 12/5/2014).

International standards did play a considerable role in the way the company tried to handle community relations and let to the picture that Addax was doing a lot more than other investors. A former international staff member put it this way:

> "[…] but the idea that all investors are bad guys doesn't hold. The difference between Addax and other investors is that they had all these DFIs pouring all over them the whole time. And they had the RSB as well to watch out for." (interview SL54)

34 The follow up evaluation in 2014 was limited by the Ebola outbreak and noted the need for further verification in future on-site visits (SCS Global Services Report 2015). Based on the report the certification was extended until March 2017 when it expired. The operation under Sunbird has not been certified yet according to the RSB website (RSB 2019).

The former employee voiced considerable frustration about the 'bad press' the investment project got and the criticism raised by international NGOs, even though social affairs were managed 'by the book' (interview SL54). Similarly, a local staff member pointed out that the investor went beyond national law, which need to be changed:

> "We were expecting the civil society to have mounted pressure on the policy makers, rather than on the business people. What is available as a legal instrument is what the country will go by. But if the legal instruments are so old [...], what do you expect the investor to do? […] So what we have done on our own, it's far more what the NGOs are even expecting." (interview SL15)

The picture of Addax being rather cooperative was repeated by local civil society members (interviews SL10, SL11). The main difference, for example, to mining companies in the country was better communication:

> "My own personal opinion is that the relationship of Addax and the community is better than with those mining communities. That's my own opinion. […] several companies are even not talking to people [...]. They tell you I have relationships with the government, and not you. (interview SL10)

Addax also tried to regularly share information and numbers with SiLNoRF, the leading local critic of the company (interview SL54). The transparency was appreciated by the NGO, whose relationship with the investor improved as a consequence[35].

All in all, the central characteristics of Addax Bioenergy incentivized the company to introduce the Acknowledgement Agreements. First, the company relied largely on funding from development banks to make the investment possible. It had to comply with IFC standards. Second, export to the European market had been a goal of the investment right from the start, which led Addax to seek RSB certification. Third, the company was regarded from outside actors but also identified itself as a poster child for responsible investment. There were, therefore, financial, economical but also ideational incentives for the company to go beyond national law and introduce the Acknowledgement Agreements. Once they had been put in

35 However, this more cooperative relationship was disturbed by the scale-down and sale of the project. At the time of research, the relationship with the new investor seemed less open and cooperative, possibly because the new investor blames SiLNoRF for the failure of the project (interview SL29).

place, it would have been impossible to simply ignore the missing consent of the community people of Masethleh.

5.3.4 The support network: SiLNoRF and Namati

Without the support of SiLNoRF and Namati, the community would not have been able to enter into negotiations with the company on an equal footing. At the same time, the NGOs' interventions seemed to have helped in solving within-community conflicts and creating unity among community members. It, therefore, makes sense to take a closer look at these two organizations and their contribution to the negotiation success for Masethleh.

The Sierra Leone Network on the Right to Food was founded in 2008 as a response to the global food price crisis. The impetus to form a network on the right to food came from the 2007 World Social Forum in Nairobi, where civil society organizations decided to create an African Network on the Right to Food. The focal point for Sierra Leone then became the national coordinator of what became SilNoRF. The organization is both a network with local member organizations as well as its own NGO (SiLNoRF 2018). Interestingly the first funding came in 2011 from the Swiss NGO Bread for All (interview SL11), which had followed the investment of the Swiss company right from the start (Bread for All). The development of SILNoRF can, therefore, be in part explained by the Addax investment. Other funding comes from Bread for the World, Cordaid and Action Aid as well as capacity training through organizations like FIAN. These trainings seemed to have immense influence on the work of SiLNoRF:

> "We too – I have to be honest – had very little knowledge about food and land rights issues at the time. […] But the workshops and seminars we attended at the international level actually paved the way […] for us to get a better understanding of what was actually going on in the country and that pushed us into the advocacy we are doing today." (interview SL11)

With this support, SiLNoRF started to monitor the investment project of Addax (SiLNoRF 2012, 2013, 2014, 2016) and built up relationships with communities, company representatives as well as politicians and government officials. The organization tries to keep in touch with all the commu-

nities affected by Addax through identifying focal points[36]. Apart from training and supporting local communities, advocacy on the national level is done in cooperation with other civil society actors and the ALLAT network. In the last years, SiLNoRF grew considerably from 4 to 15 staff members (interview SL11).

Similarly to SiLNoRF, the Sierra Leonean office of Namati worked on foreign large-scale land deals right from its inception. Namati is a legal empowerment NGO with headquarters in the United States but originating from an earlier Sierra Leonean organization – Timap for Justice. The NGO is funded by various foundations and donor organizations, amongst others Open Society Foundation, DFID or UNDP (Namati). Even before the founding of Namati in the country in 2012, the later director was already involved in the Addax case. Bread for All had asked him to do a legal audit of the draft lease agreement and present it to the investor in Switzerland. However, even though the company's CEO promised to address some of his concerns, this was not done and the final lease agreement was pretty much the same as the draft (interview SL51).

Namati itself mainly works with paralegals who are based throughout the country and are in regular contact with communities. They engage primarily in cases where foreign investors come in for agriculture or mining. At the same time, the organization only starts acting once landowning families have agreed to be legally represented by them. The preferred mode is dialogue; litigation rarely takes place (interview SL26). The aim of the work of Namati is legal empowerment:

> "We go to radio stations, we hold community meetings. In every meeting we hold, we have to pass on our education. That's what we stand for. We are not just voicing out things to people. We want – wherever we work – that by the end of the day the people are empowered, that they know the law and that they are prepared to take actions and decisions for themselves." (interview SL26)

Both NGOs developed considerably due to international funding to support their work around supporting local communities affected by foreign

36 However, not everybody in the regions seems to appreciate the work of the NGO: While community members in Masethleh and other communities were appreciative of SiLNoRF (interviews SL27, SL17), chiefdom elders in one of the affected chiefdoms were rather skeptical: "They don't do anything for us here, they just try to sabotage the company" (interview SL13). These were however chiefdom authorities, who profit substantially from the lease payments which go in part directly to them.

investments. Both organizations helped the village of Masethleh to negotiate with the company successfully. Two elements seemed relevant for their success:

First, SiLNoRF and Namati provided the necessary information about the lease and acknowledgment agreements as well as potential benefits and costs of the investment project (interviews SL26, SL28, SL29). This enabled community members to decide what they wanted to do.

Second, the NGOs included everybody in the community in the decision-making process and intervened when there were signs of some leaders going behind the back of the community. They helped community members to hold their leaders accountable. What seemed to have been crucial in that phase was to have regular phone contact with different community members, not just the leaders:

> "Long periods of no communication can create openings for companies to negotiate bad deals with communities or for leaders to make decisions that are not in their community's interest. If advocates have an ongoing relationship with a diversity of community members, including women and youth, it is possible to receive more frequent and more representative updates on a community's situation" (Conteh 2015: 168)

Also, the engagement of the NGOs and especially the lawyer from Freetown might have helped the community to be taken seriously by company representatives. That was at least the impression left behind in the community:

> "We benefited a lot from them [referring to SiLNoRF and Namati], and we believed Addax did other things as a result of their involvement. Had it not been for them, Addax would have treated us the way they wanted." (interview SL27)

Community members also recounted that company representatives accused the NGOs of negatively influencing them, which they were adamant in denying. One of the interviewees in Masethleh emphasized their agency in making decisions about what and when to sign: "We were the ones who used to tell them [the NGOs] what we wanted – out of which they advised us or guided us" (interview SL27).

Summarizing the role of the NGOs in the Masethleh case, two elements stick out. The NGOs did not only provide needed information and education but also facilitated the unity of the community. Both aspects were central for the success in the negotiations as they enabled the community

to make an informed decision about what they wanted, but also to be taken seriously by the company.

5.3.5 Discussion and additional issues

The case of Addax investment in general, and the community of Masethleh in particular, show the relevance of all three core conditions identified in my theoretical chapter as well as a couple of additional issues.

First, the case shows the limitations of the Sierra Leonean national statutory law regarding land. As discussed in chapter 5.2.1, only the chiefdom authorities have to agree to a large-scale land deal; the customary landowners are entirely excluded from this arrangement. Only because the company introduced the Acknowledgement Agreements did the landowning families get an indirect voice. At the same time, there was no possibility for landowners to negotiate, for example, the lease price, which was set according to MAFFS guidelines, or set concrete limits for the company in terms of land use. The negotiation in the village of Masethleh was, therefore, only about the amount of land which would be used by the company and no other terms.

Second, the best-practices approach by the company, which followed international soft law standards like the IFC standards or the RSB principles, led to the introduction of the Acknowledgement Agreements. They, in turn, opened the space for community members to voice their concerns. Nonetheless, negotiations with landowning families and land users about the actual terms of the lease were not expected – meetings seemed to have a rather consultative and informative character. Only the community of Masethleh had more extensive negotiations about one part of the agreement.

Third, outside support for the community of Masethleh was central for them to understand the lease and the AAs. Both Sierra Leonean NGOs are supported and funded by international partners. The NGOs did not only provide information but supported the decision-making process among different groups in the village and the creation of unity. This unity was essential in speaking to the company with one clear voice.

Apart from these findings regarding the three core conditions, two additional issues regarding the overall investment of Addax deserve some attention.

One issue, which has not been mentioned yet, is the distribution of the rent payments among landowners and land users. As described in chapter 5.2.1, landowning families have the right to allocate land for use to so-called land users. The lease money further engraved this differentiation. The elders of the landowning families receive rent payments, and it is up to them if and how they share it within the family but also with land users. Especially youth and women receive very little – between 10 000 and 30 000 Leone (1,20–3,60 USD) per year – which does not make a big difference for them (interview SL10). The land users who are not members of a landowning family can be even worse off:

> "If you are a stranger and a piece of land was given to you to work, no matter the number of years you have worked on it – if it happens that it is part of the land given to Addax you will not benefit from the lease fee paid by Addax for that piece of land. The money goes to the original owner." (interview SL16)

These accounts are confirmed by data from a household survey, which shows that the amount of lease money people receive varies considerably (Hansen et al. 2016: 14). This issue displays the limits of customary law when it comes to tenure rights of certain parts of the population – especially land users but also women, youth and others who are possibly marginalized by the heads of a landowning family. These findings show that relying on customary law to regulate large-scale land deals and distribute benefits can reinforce existing inequalities and power imbalances.

Another issue worth discussing is the economic failure of the initial investment project. While the investment project focused on getting social and environmental standards right, the commercial side went downhill. The company had to scale down production in the middle of 2015 and lay off significant parts of its workforce (SiLNoRF 2016: 28). The yields of the sugarcane had only reached one third of the initial projection. At the same time, infrastructural difficulties and theft had driven up the costs (interview SL54). Falling market prices for bioethanol might have also contributed to the decision of Addax Bioenergy to give up the project (Lanzet 2016: 30). In the following year, the takeover of 75,1 % of the operations by Sunbird Bioenergy Africa Limited meant the continuation of the bioethanol project (Awoko 3/10/2016). However, at the time of research (in spring 2017), the investment project did not seem economically stabilized yet. During a stakeholder meeting, the company described successful experiments using the elephant grass, which grows naturally in the region, to produce ethanol. Sunbird/Addax also had to delay lease payments. The

plan of the company was at that time to create a cassava out-grower scheme in which local farmers will produce the cassava and deliver it to the bioethanol plant (Sunbird Bioenergy Africa 01/07/2017).

Overall, the case study showed the usefulness of international private governance standards in incentivizing companies to go beyond what was required by national law. This opened up the possibility for local actors to raise their concerns. To do so, the local community needed the support of NGOs to understand their options and to facilitate negotiations with the company. However, the options of what could actually be negotiated were limited by the structure of the overall agreement defined by national law. The case study, therefore, shows the positive effects of international best practice standards but also shows its limitations. International standards furthermore do not pay attention to local distribution issues or possible safeguards for the case of economic failure.

5.4 Case II: Socfin Sierra Leone – unsuccessful legal mobilization

The investment of Socfin, located in the South of Sierra Leone, received a lot of attention, similar to the Addax case. The deal was closed around the same time – in spring 2011. The land investment in the Chiefdom of Malen, in the district of Pujehun, became well known for creating local conflict – especially between chiefdom authorities and the local population (interview SL36). A local protest group, the Malen Landowners and Users Association (MALOA), tried to use legal mobilization to enforce a renegotiation of the lease agreement as well as a stop to local oppression. They involved the Sierra Leone Human Rights Commission, who tried to mediate but failed to achieve an outcome (interview SL42). At the same time, supporters of the Socfin investment have used the legal system of Sierra Leone to stop the local protest group. The case, therefore, not only represents a case of unsuccessful legal mobilization but also shows how the law can be used to counter the activism of affected people.

I will start this chapter by giving an overview of the investment of Socfin (chap 5.4.1) before I turn to processes of legal mobilization (chap 5.4.2). I will then turn to the characteristics of the company (chap 5.4.3) and the role of the outside support network (chap 5.4.4) before discussing my main findings (chap 5.4.5).

5.4.1 Overview of the investment of Socfin Agricultural Company

In 2011, Socfin Agricultural Company Sierra Leone Limited (thereafter Socfin), belonging to the Belgian-Luxembourgian Socfin Group, leased an initial 6500 hectares of land in Pujehun district, in Malen chiefdom. SLIEPA had explicitly promoted the district of Pujehun as one of the areas fit for palm oil investment in the country (SLIEPA 2010a). In March 2011, a land lease was signed between the Paramount Chief, section chiefs and some landowners on one side and the Ministry of Agriculture, Forestry and Food Security (MAFFS) on the other side. The MAFFS subsequently leased the land to Socfin in a sublease[37]. The lease lasts for 50 years, and annual lease payment per hectare is 12.50 USD (five USD per acre) as recommended by the government. It was planned from the start to enlargen the lease later on (Melsbach/Rahall 2012: 11–12).

By 2016 12.000 hectares of land had been planted and the construction of the oil mill was finished. An estimated amount of 25,000 people live in Malen Chiefdom (Star Consults 2011: 129), which is mostly covered by plantations today, as can be seen in satellite imagery. Once in full operation the company employed 2460 seasonal and 1091 permanent workers (Socfin Agricultural Company Sierra Leone 13/04/2016). While exact numbers about the investment are not available, it seems that at least 300 million USD were invested over the years (Fofana 1/19/2015). In the beginning, an out-grower scheme had been planned but did not materialize to the time of research. The company promised and fulfilled many social responsibility projects such as building toilets in all communities, solar streetlights in the main town, the extension of the local hospital, an ambulance, a mosque, water wells, school furnishing and a scholarship program (interview SL37) (John 2/20/2014). Nonetheless, severe criticism and local conflict arose around the investment.

Soon after the start of the project in spring 2011, criticism was raised by affected locals and civil society actors, who argued that local consultations and information about the project had been insufficient. The German NGO Deutsche Welthungerhilfe paired up with the Sierra Leonean NGO

37 Even though the land was officially leased by the government, they do not seem to have been involved in the local process leading up to the lease. Furthermore, the rent payments are not channeled through the government but are made directly to local people. It appears that the arrangement through the government was mainly made on paper, whereas the company was in direct communication with local authorities.

Green Scenery to conduct a fact-finding mission (Rahall/Schäfter 2011) and an in-depth study (Melsbach/Rahall 2012). The findings from both reports, as well as findings from my interviews, drew a rather problematic picture of the local consultation process: Some early meetings took place in 2010, during which the Paramount Chief informed people living in the chiefdom about an investor coming to start a plantation.

However, it seems that most people had not been aware of the size and the extent of the investment. Many thought that it concerned mainly an earlier palm oil plantation, which had been run by the state-owned Sierra Leone Production and Marketing Board and included about 1200 hectares of land (Melsbach/Rahall 2012: 12). The experiences with this previous plantation had been positive and were mentioned as a point of reference (interviews SL38, SL40, SL41). After the 50 years lease had expired, the used land had been returned to the landowning families, who saw the new investor as a chance to repeat the experience. However, the size of the investment of Socfin was wholly different and today covers almost the whole chiefdom. It seems like most landowners only started to understand the extent of the deal during a chiefdom meeting in February 2011. Landowners reportedly refused to give up all their land, which is used in this region for cash crops such as palm oil, cocoa, coffee, groundnuts and kola nuts (Melsbach/Rahall 2012: 10).

The Paramount Chief (PC) reacted with threatening people that their land would be taken anyway, whether they give it up voluntarily or not (Rahall/Schäfter 2011: 7). In the end, the lease agreement was signed by the Paramount Chief as well as section and town chiefs, who could have been dismissed had they not followed the order of the PC (interview SL41).

During the meeting for the signing of the lease agreement on March 5th, 2011, company representatives presented the first rent payments for the whole chiefdom on a table – an amount of 40 000 USD, 173 million Leones at the time. Armed forces guarded the money, a situation that seems to have intimated landowners further (Melsbach/Rahall 2012: 14; Rahall/Schäfter 2011: 7).

After the signing of the lease agreement, landowners and users received a one-time compensation of one Million Leones per acre of planted land, an amount which was considered too low to make up for the lost income accumulating over the years (interview SL41). At the same time, considerable confusion and conflict developed over who would receive lease money. Some critical landowners never received any rent money (interviews

SL38, SL41), while it seems that other people profited. An interviewee described the process:

> "There was no consultation; there was no transparency, no accountability. They just did this because they have the political power or influence. They did it with force. […] According to the protocols, you have to consult the family. We have to call family meetings and do other things, consult our elders, consult those who are outside. But what they did […]. They came at night, fish out some people, take them to the headquarter, give them an amount that they had never had before. […] A lot of people, who signed these agreements are not landowners. They are not even the heir of their families." (interview SL41)

Comments like these, as well as the NGO reports, show that the land deal was closed with insufficient consultations and transparency.

Faced with the criticism raised by locals and the NGOs, the Paramount Chief and his speaker assured that sufficient consultations had been held and that all landowners had received enough information (Melsbach/Rahall 2012: 13). They instead blamed the Member of Parliament (MP) for the region for being behind the accusations and for instilling disgruntlement among the people (Moiguah 5/4/2011).

However, even looking at formal documents it looks like consultations were at best superficial. The Environmental Social and Health Impact Assessment (ESHIA) prepared for the company recorded one public disclosure meeting in the main town of Malen chiefdom in November 2010 attended by 30 people. The ESHIA report, which also includes data gathered from three neighboring chiefdoms[38], further mentioned that people were excited about the prospect of the investment. They agreed that "as long as adequate arrangements are reached with local authorities and landowners, the project can take off" (Star Consults 2011: 94). There seems to have been initial excitement about an investor coming in; however, even in the early stages, locals demanded proper customary procedures, which should have been part of the overall consultation process.

The ESHIA, which was published in January 2011 – before the actual signing of the lease agreement – does not make any provisions on how

38 The project was originally planned to eventually include a size of 30 000 hectares in four Chiefdoms. The ESHIA conducted three group discussions in each Chiefdom (Star Consults 2011).

consultations with communities should take place. Instead, the report refers to the Provinces Land Act Cap 122:

> "It is important to note that the Act makes no express reference to land owners; therefore a lease under the Act must be made between the chiefdom council and the non-native. SAC in this case is considered as the non-native. The general public approval of the project appears to cover all segments of the communities including the Chiefdom Councils which provide good prospects that the current land negotiation between SAC and the Malen communities in progress, at the time of this study, will be successful." (Star Consults 2011: 185)

This quote shows two things: First, despite referring to international guidelines, the relevant legal framework identified in the ESHIA is national land law: In the end, only the chiefdom authorities matter. Second, some general approval about welcoming an investor in the region by three communities visited in the Chiefdom during the ESHIA process is equated with consent to the specificities of the investment by Socfin. This shows a rather broad understanding of what consultations mean.

Apart from the ESHIA consultancy company and the customary authorities, company staff had communicated directly with communities in the Chiefdom since 2009. According to company information, landowners had the option not to lease their land (Environmental Resources Management 2015: 6); however, I couldn't verify this information. At the same time, there are reports that Socfin tried to buy off critics of the investment. The local MP, who had warned people of accepting the deal, claimed company representatives offered him 2000 USD if he would stay quiet (Melsbach/Rahall 2012: 13). Other critics of the investment supposedly did drop their resistance after they had received jobs at the company (interview SL42). While it is unclear what role precisely the company played in the process leading up to the signing of the agreement, it seems as if they did not take a lot of effort to ensure a transparent and open consultation process.

To this day, the investment of Socfin in Malen is overshadowed by the missing consent of local landowners. The project has gained prominence as a case in which an investment has created local conflict and led to the oppression of activists. Other Sierra Leonean communities who are faced with incoming investors cite it as a negative example that they do not want to happen to them (interview SL36).

5.4.2 Calling on Sierra Leonean legal institutions – whose side is the law on?

As described in the previous chapter, criticism about missing local consent and transparency ensued as soon as the lease agreement was signed. The dispersed voices by critical landowners were united in autumn 2011 when the Malen Affected Landowners and Users Association (MALOA)[39] was created. On October 3rd, landowners and community members blocked the road to the nursery and halted operations of Socfin. They demanded renegotiations of the lease agreement, higher compensation and more social programs (Bah 7/10/2011). After a failed mediation attempt by the District Council Chairman, the blockage was dispersed by the police and 39 people were arrested (Akam 12/10/2011). Fifteen protestors were charged and remained in custody for weeks (interview 42).

The incident can be seen as the starting point of the mobilization efforts of MALOA. They began to organize themselves under the leadership of the local MP, mentioned in the previous chapter (interview SL38). The MP later became the spokesperson of the group, which is organized by an executive committee, a chairperson, a secretary and section and village speakers (interview SL34). The group has about 1300 (interview SL2) to 2000 (interview SL38) individual members. Apart from some early protests and resistance vis-à-vis the company, the main activity of the group is the writing of complaint letters to different levels of the administration (interview SL38). The goal of MALOA is the renegotiation of the land lease agreement with the proper inclusion of all landowners and users. They are not against the investment per se, as this female member of the organization summarizes it:

> "We do not want the company to leave because it is development. We only want to sit and dialogue with them on an agreement that will make us and them happy. […] We want them to put demarcations between the palm trees, […] to revisit the agreement and to give us some portion of the land for our private farming." (interview SL38)

MALOA's activism was answered harshly by chiefdom authorities, which prohibited the group from holding any meetings inside the chiefdom. Group members have been imprisoned on several occasions and complain about harassment by the local police and chiefdom authorities (interview SL33, SL34, SL42, SL43). There are reports that people were sacked for

39 It seems that the name of the organization in the beginning only included landowners, 'users' were added later.

criticizing the company vis-à-vis NGOs or the media and there seems to be an atmosphere of fear of the company and the chiefdom authorities (interview SL53). While it is challenging to verify different accounts, Table 12 gives an overview of all cases of police presence and arrests, which were recorded in NGO or media reports and were related to the conflict around the Socfin investment.

Table 12 Overview of police incidences in Malen Chiefdom related to the investment

Date	Incidence	Sources
10/2011	Police disperses roadblock and arrests 39; 15 people are charged for 'causing public disorder'	(Akam 12/10/2011; Melsbach/Rahall 2012: 15)
2012	Police arrests four persons, who fought company workers in trying to protect their land; the accused are fined 200 USD or jail time	(Green Scenery 10/15/2013)
06/2012	Police oversees the destruction of local plantations to make way for a road	(Green Scenery 6/27/2012)
10/2013	Six high-ranking members of MALOA are arrested for allegedly destroying oil palm seedlings; they are sentenced to high fines in 2016	(Green Scenery 10/15/2013; Jenkins 5/2/2016)
12/2013	Police fires shotguns into a protesting crowd of people, who the police claims were armed; 57 people are arrested	(Rahall/Kainyande 2014; Human Rights Commission of Sierra Leone 2014: 42)
01/2015	11 MALO members are arrested after 2 international employees of Socfin have been attacked	(Fofana 1/17/2015; International Federation for Human Rights 26/03/2015)
09/2015	Arrest of 7 MALOA members for "writing down names of people in the town without the knowledge of the chiefs"	(International Federation for Human Rights 09/02/2016)
2016	Clashes between community members and security personnel of Socfin over the alleged theft of palm oil kernels	(Green Scenery 18/08/2016)

The overview shows that MALOA members were targeted by the police on a number of occasions. The incidence that stands out the most, is the case of the 'MALOA 6' – six high-ranking members of the organizations who

were sentenced to high fines under dubious circumstances. The six activists, among them the spokesperson and the secretary of MALOA, were arrested in October 2013 for allegedly having destroyed 40 palm trees. In what seems to be a politically motivated process, the six were found guilty of conspiracy, destroying the plants and incitement by the High Court of Sierra Leone (Green Scenery 10/03/2016). The fines added up to 36,000 USD or half a year of imprisonment each. The penalties followed the evaluation of the company and seemed exceptionally high:

> "Despite the fact that Socfin only paid 1 million Leones (less than $200) for each acre of 60 palm trees including the land on which they grew, they valued the 40 destroyed trees minus the land at 200 million Leones ($36,000). What can I say? I have the feeling, the rules of the game have been made by someone else." (spokesperson of MALOA in Green Scenery 10/03/2016)

Through national and international fundraising by Sierra Leonean and international NGOs the money was raised and all six convicted MALOA members could be freed after spending weeks in prison (FIAN Belgium 16/06/2016b). Nonetheless, the organization continues its work and meets either in secret or outside the chiefdom (interview SL34, SL43).

In the following, I will go into detail into one example of legal mobilization by the group by calling on the Human Rights Commission of Sierra Leone.

In December 2012, MALOA wrote a letter to the Human Rights Commission of Sierra Leone (HRCSL) demanding its intervention. The letter shows the legal references used by MALOA to argue their case. They claim that their land hand been taken unlawfully and that their human rights had been violated, as the letter starts:

> "I hereby write for and on behalf of the land holding families of Malen Chiefdom […] to complain to you about the blatant disregard and abuse of our fundamental human rights to wit unlawful occupation of our family land by the Socfin agricultural Company" (MALOA 2012)

Two issues are emphasized in the letter: One, it is made clear that the customary landowners had not given their consent to the lease agreement and that the operation of Socfin is therefore unlawful. While it is not explicitly mentioned, this clearly refers to customary law and not to national statutory law as discussed in chapter 5.2. Second, the group lists cases of police harassment and intimidation of MALOA activists by the Paramount Chief.

Both, the taking of the land and the repression of activism, are framed as human rights violations and the Commission is asked to intervene. Attached to the letter are three resolutions signed by 80 people. In the resolutions, MALOA members distance themselves from the lease agreement and announce their resistance to the investment project: "[…] we shall no longer allow the Socfin Agricultural Company personnel and or their machines to enter upon and operate on our land" (MALOA 2012). In the final resolution, MALOA reiterates its willingness for dialogue. Overall, the letter, therefore, not only contains accusations towards chiefdom authorities and the company but also justifies the landowner's actions of resistance, while at the same time calling for dialogue.

In a first step, the legal mobilization attempt of MALOA was successful: The Human Rights Commission did intervene with an effort to mediate between the different parties: MALOA, chiefdom authorities and the company. The Human Rights Commission visited the Chiefdom on three fact-finding missions between January and May 2013 before holding a two-day mediation meeting in June. "Representatives from MALOA, SOCFIN Agricultural Company, the Paramount Chief and his Chiefdom Council, the Police, CSOs and other stakeholders attended the meeting at the Malen Chiefdom Court Barry" (Human Rights Commission of Sierra Leone 2014: 36). During the meeting, 19 issues were discussed and solutions were found for 14 of them. The HRCSL decided to come back for a second round of negotiations to resolve the outstanding five issues and sign a final agreement (interview SL42). However, when the next meeting took place in November 2013, the Paramount Chief, the Minister of Agriculture and the Minister of Justice, who were all supposed to attend, never showed up, leading to the failure of the meditation attempt (Human Rights Commission of Sierra Leone 2014: 36). Without the Paramount Chief, as a central figure to the conflict, no agreement was possible. A member of MALOA recalls from the meeting:

> "I think, that was going to be the final day and things were going to work out in other ways of what he [the Paramount Chief] wanted. So, he kept himself out. Like the agricultural minister too. The land minister came and declared himself […]. According to him, he has got no documents in his office concerning the land issues for this company. That he declared openly." (interview SL42)

It seems telling that the Minister of Agriculture as the one having signed the lease agreement with the chiefdom authorities was not present and that the Minister of Land openly admitted to have no documentation of

the lease. The Ministry of Land should generally be involved in all land investment projects by foreign investors (interview SL32).

For the mediation attempt by the Human Rights Commission the meeting in November 2013 meant the end. A MALOA member claims that the HRCSL wanted to continue its efforts in resolving the issue but was stopped 'from above'[40] (interview SL42). However, I was not able to verify this impression.

In the end, the legal mobilization attempt by MALOA was not successful. They were not able to change the general conditions of the lease agreement, nor did they get any of the land back. Nonetheless, members did acknowledge the benefits of legal arguments:

> "They don't listen to us. Socfin doesn't listen to us – personally. Except when we infer rights, anything legal […] like the Human Rights Commission. They worked together with us for peaceful negotiation." (interview SL42)

Essentially the case of MALOA and the mobilization of the Human Rights Commission of Sierra Leone shows two things: On the one hand, even though the statutory law is not on the side of the landowners, they had a formal institution to call on with the HRCSL. Human rights, therefore, served as an entry point to create space for possible renegotiations with local authorities and the company. On the other hand, the case clearly shows the influence of customary authorities and state officials in stopping local legal mobilization efforts, especially in a rather soft-law process such as the mediation attempt by the HRCSL. The Paramount Chief (and most likely the Minister of Agriculture) were able to derail the process by simply not showing up. Furthermore, the PC regularly uses his power to suppress local mobilization efforts. Overall, Socfin seems to rely on local and state-level officials to silence critics, instead of dealing with them in an open dialogue.

5.4.3 Socfin, the chiefdom authorities and the Sierra Leonean state

Unlike Addax, the investment project of Socfin did not receive funding from any DFIs and was not certified by any private sector scheme. I argue

40 However, the HRCSL still follows the case, regularly includes updates in their general reporting and calls on the government to help resolve the conflict (Human Rights Commission of Sierra Leone 2017: 48).

that in regard to the land lease process and proper consultations with local communities, the company only pays lip service to international standards. Instead of engaging with critics, they resolve to delegitimize them or using legal measures to silence them. The company relies on customary authorities to ensure the smooth setup and operation of the plantation. They thereby condone repression of local activists and possible human rights violations. Finally, the company enjoys the support of high-ranking Sierra Leonean government officials – at least to a certain degree.

Socfin Sierra Leone is part of the Socfin Group, which manages nearly 200.000 hectares of palm oil and rubber plantations in 10 developing countries. It regularly emphasizes its commitment to sustainability standards (Socfin Group 2018: 14). One of its subsidiaries, the Indonesian based Socfindo is a member of the Roundtable on Sustainable Palm Oil (RSPO) and has all its plantations there certified. The Socfin Group plans to certify all other estates in the future – including the one by Socfin Sierra Leone (Socfin Group 2018: 22). However, at the time of research it has not been certified.

Socfin frequently assures its compliance with international standards. In the ESHIA, several standards are listed, among them the RSPO and IFC principles, as well as the United Nations International Covenant on Economic, Social and Cultural Rights and the United Nations Declaration on Rights of the Indigenous Peoples (Star Consults 2011: 39). However, while the ESHIA lists these international standards and conventions, it is not clear how it applied them in detail to the land leasing process. The RSPO Principles, for example, are clear on requiring a documented FPIC process (RSPO 2013: No 2.2 & 2.3); yet, the ESHIA does not even mention the principle of free, prior and informed consent in regard to the lease agreement[41].

In 2015, the IFC seemed to have considered funding Socfin's operations in Sierra Leone as they commissioned a report identifying gaps in regards to both IFC as well as RSPO standards. The report listed several gaps but did not go into more detail regarding the land lease process[42], as the com-

41 The principle is briefly mentioned in the context of possible resettlement activities (Star Consults 2011: 187). However, nobody was resettled over the course of the project so the provision was never applied.

42 The report makes it clear that it is not a full impact assessment nor a proper audit, but rather "an evaluation of the Company's current and planned environmental and social management practices" (Environmental Resources Management 2015: 20).

pany did not intend to lease additional land (Environmental Resources Management 2015: 6). Nonetheless, concerns seem to have been big enough at the IFC, as it has not funded the investment project so far. As of today, no independent audit in regards to the IFC standards or the RSPO principles has taken place and the commitment of the Socfin Group to international standards seems unclear. In the case of the Cameroonian subsidiary SOCAPALM, a complaint was filed with the OECD National Contact Points of France and Belgium due to environmental and labor rights concerns. However, the process was not successful due to the unwillingness of Socfin to cooperate and fully implement a negotiated agreement (OECD Watch). The Socfin Group does not have a positive track record that would show a commitment to international voluntary standards.

Locally, the company's reactions to the criticism raised by MALOA and civil society actors ranged from denial and emphasizing social projects to delegitimizing and openly accusing NGOs of destroying the country's economy and threatening legal measures. Criticism is usually discredited as being untrue, while numerous newspaper articles list the social responsibility projects of the company (John 2/20/2014). From the perspective of the company, protesting activists only represent a minority (Akam 12/10/2011) and are politically motivated:

> "We're seen as land grabbers, but it was actually all done through consent. […] There will always be some opposition, like Sama [the local MP] and his followers, but those are muddy water because he has political motives" (Socfin Manager cited in Acland 3/29/2017)

While officially, the company argues that only a few people were against the investment, they did seem to feel threatened. When the country manager of Socfin left the country in summer 2016, he was bitterly pitted against national and international NGOs involved in the case. He mentioned that a loan he had secured from a bank failed because of complaint letters written by the NGOs (Daramy 5/7/2016). He subsequently blamed civil society actors for destroying the Sierra Leonean economy through discrediting the country:

> "The NGOs are destroying this country…No serious investor in the agribusiness sector will come to Sierra Leone again…The government has allowed NGOs (like Green Scenery and FIAN-Belgium) to give the country a bad name…" (Socfin Country Director cited in Daramy 5/7/2016)

Representing himself as the victim of denunciation, he ends with what seems to be a call for limiting the space of civil society: "I hope that in the long run the government will review the NGO policy and make it more responsible" (Socfin Country Director cited in Daramy 5/7/2016).

The backlash against NGOs and local activists is not refined to Sierra Leone but also reaches NGOs abroad. FIAN Belgium, the Belgian branch of the FoodFirst Information and Action Network, has been threatened with a lawsuit for denunciation on a couple of instances (interview SL52). This is not an unrealistic threat, as the Socfin Group, together with Bolloré, a major shareholder of the company[43], has filed a total of 20 defamation lawsuits against various journalists and media outlets reporting on operations of the Socfin Group between 2009 and 2018. One complaint was filed in Sierra Leone against the Sierra Leonean NGO Green Scenery as well as the American Oakland Institute (GRAIN 25/01/2018).

Attempts to delegitimize and stop critics can also be found on the side of local chiefdom authorities. In many instances, the attempts are based on the accusation that MALOA and involved NGOs do not represent the interests of affected communities as this citation shows:

> "[…] Chief Moiguah was also cheerful to make known to the public that the so-called Malen Affected Land Owners Association (MALOA) does not have any recognition in the chiefdom, and the public should give them deaf ears. '80 % of this individuals posing to be land owners are not, they are doing monkey business in the chiefdom'" (Showers 4/15/2014)

The chiefdom authorities furthermore warned of the Sierra Leonean NGO Green Scenery, which supports MALOA:

> "[…] the local Chiefs are left with no option but to call on all law abiding residents of Malen Chiefdom to henceforth stop from attending meetings and doing business with Green Scenery with the view of putting an out all end to illegal activities perpetrated by Green Scenery […]" (press release local chief in Socfin Agricultural Company Sierra Leone 05/04/2014)

Criticism of NGOs was not only raised through media reports but also through a protest as well as a petition by local chiefs, who warned Green Scenery and FIAN Belgium to stay out. In photos of the rally, posted on

43 According to their own data the Bolloré group holds 38.8 % of the Socfin Group (Bolloré).

Facebook by the company, people were holing up signs, which read "To FIAN Belgium and Green Scenery Stop Interfering in our Business" (Socfin Sierra Leone 2016/06/27). However, the protest seemed to be orchestrated: During my interviews in Malen Chiefdom, most people, including the chiefdom speaker had never heard of FIAN.

As another strategy, the Paramount Chief formed a local organization, the Malen Youth and Development Union, to counter MALOA and to represent it as the voice of the people in Malen Chiefdom (interview SL38, SL45, SL52).

Overall, the chiefdom authorities seem to follow a strategy of delegitimizing MALAO, intimidating people from collaborating with NGOs and inhibiting the activists from meeting and organizing. All these strategies show that the chiefdom elites are highly supportive of Socfin. At the same time, chiefdom authorities cooperate closely with the company: The Paramount Chief is, for example, the chair of the grievance committee through which affected people have the possibility to channel complaints to the company (Environmental Resources Management 2015: 7). The PC is furthermore reportedly the one choosing other members for the grievance mechanism (interview SL48). At the same time, the Paramount Chief and section chiefs control the lease money and seem to decide who receives what (interviews SL43, SL53). In return, the PC received a car from the company as "he had to move and talk to people if there were any issues" (Socfin manager cited in Acland 3/29/2017). Therefore, the Paramount Chief seems to profit personally to quite a considerable extent from the investment.

In addition to local chiefdom authorities, Socfin also enjoys the support of the Sierra Leonean government. Right from the start, acting president Koroma repeatedly underlined his support for the investment (Awoko 9/18/2012), as well as for the Paramount Chief[44] (Sama 12/29/2017). Government support also became visible when a fact-finding mission to the district of Pujehun of Green Scenery and FIAN was stopped by order of the Sierra Leonean police in March 2016. As a formal reason a visit of the president to the region and the risk of international terrorism was named;

44 The Paramount Chief belongs to the same party as President Koroma, the All People's Congress, which is traditionally rather weak in the South of the country, which is usually dominated by the Sierra Leone People's Party. The PC was at the time also a member of parliament as he held one of the 14 seats reserved for traditional leaders.

however, no clear conditions for future travel plans were ever formulated (interviews SL2, SL52, SL53).

At the same time, government officials[45] do not seem to want to support Socfin at all costs. In 2017, the new Minister of Agriculture called for a review of the agreement. He suggested that lease payments were not high enough and that it could be a possibility for the company to share some proportion of their profits with the local population (Awoko 12/6/2017). The statement came, as attempts of the Office of the President were underway to mediate in the conflict, which did however not result in any tangible outcome (interview SL52).

Summing up, the company seems only to pay lip service to international standards instead of making provision for an FPIC process. The company does react to criticism by local activists and NGOs by discrediting their legitimacy or threatening legal procedures. It seems that as long as Socfin has the support of Chiefdom elites and the government, this will not change. The company, therefore, has to be regarded as mainly unreceptive to local claims.

5.4.4 The support network: Green Scenery and FIAN Belgium

As mentioned in the previous chapters, MALOA has the support of the Sierra Leonean NGO Green Scenery and several international NGOs, among them FIAN Belgium. I will take a closer look at the contributions of these two actors to the activism of the local group. I will, however, take a quick look at the capacities of MALOA itself first.

MALOA was able to establish itself as an important critic of Socfin because of the leadership of Shiaka Sama, who was a Member of Parliament until 2012[46]. He was the initial person to connect MALOA to Green Scenery (interview SL34) but also to bail out some of the imprisoned members (interview SL38) and get a lawyer for the group (MALOA 2012). At the same time, he was well known in the Chiefdom and was able to mobilize people and consequently acted as the spokesperson of the group. While the role of the MP was crucial in setting up MALOA and in connecting the group to outside support, his role as a politician made it easier for the chiefdom authorities and the company to question the legitimacy

45 It is also likely, that different people in different ministries and in the parliament also have different opinions on the investment.

46 He was re-elected as MP in 2018 after my field research was already finished.

of the group. Yet, apart from Shiaka Sama, there are a couple of other leading figures within MALOA who are well educated. Right from the start, the group wrote letters to different levels of authority and asked for their intervention (MALOA 2011, 2016). In addition, the organization was formally registered in Freetown as a community-based organization (interview SL43). MALOA showed considerable capacities in reaching out to officials in the administration; nonetheless, outside support was necessary in terms of resources, capacity training and bringing advocacy efforts to the national and international level.

One of the biggest supporters of MALOA is the Sierra Leonean NGO Green Scenery, based in Freetown. Initially founded in 1989 to fight deforestation, they focused on peacebuilding in the post-war years and started working on the issue of large-scale land deals in 2010 when a number of massive deals became known in the country (interview SL2). Green Scenery supported the local MP and MALOA right from the beginning. Green Scenery supports MALOA in various ways: First, local activists are regularly invited to civil society workshops, trainings and conferences in Freetown or other cities in the country (interview SL2). Second, The NGO regularly pays lawyers for the defense of imprisoned activists, most notably for the 'MALOA 6'. Third, Green Scenery acts as a link between international NGOs and the local group. During the hot period of the 'MALOA 6' campaign, regular skype calls with updates took place between Green Scenery and international civil society actors such as FIAN Belgium, GRAIN or the Oakland Institute (interviews SL2, SL53). Fourth, Green Scenery engages in advocacy on the national level, regularly putting out reports and press releases on the Socfin case and the MALOA activism (Green Scenery 18/08/2016; Rahall/Schäfter 2011; Green Scenery 10/15/2013). Apart from the specific case of Socfin, the NGO is heavily involved in the process of formulating and disseminating the new land policy (interview SL2, SL4). In this context, Green Scenery works closely with the Ministry of Lands, where employees value the inputs and expertise of the organization (interview SL 50).

A number of international NGOs have supported MALOA, especially during the case of the 'MALOA 6', when 42 international civil society organizations submitted a letter to the Sierra Leonean president (FIAN Belgium 2016). Nonetheless, there are only a few central players who have continuously supported MALOA – the most important one probably being FIAN Belgium. The NGO first took up the case in 2012 as they were looking into large-scale land investments with the involvement of Belgian companies. They heard first reports about local conflicts and got in touch

with Green Scenery, who connected them with MALOA (interviews SL52, SL53). As FIAN always commits long term to activist groups, they support MALOA in an ongoing process (interview SL53) through a variety of methods. First, they provide information to the public through releasing press statements on the situation of MALOA and background information on the case on its website (FIAN Belgium 20/03/2017, 16/06/2016a). Second, FIAN Belgium engages in advocacy vis-à-vis the Sierra Leonean government, European governments or banks in order to garner support for the case of MALOA. Third, the organization stages public protest events in front of Socfin headquarters and invited the spokesperson of MALOA and the director of Green Scenery to Europe, where they talked to a number of institutions. Fourth, FIAN Belgium does not provide direct funding to either MALOA or Green Scenery; however, they helped both actors to receive funding from other institutions such as the International Federation for Human Rights or the European Union (interview SL53).

Overall, the support by NGOs is highly appreciated by MALOA members:

> "I mean it's very important because we do not have resources. And members cannot pay membership contribution because things are very difficult. So, for example FIAN Belgium raised funds for us to travel and we gained a lot from travelling meeting people. And we are getting training and capacity building from Green Scenery and from ALLAT. So, and whenever we are arrested the partners will put up with an action alert." (interview SL34)

The collaboration in raising the fine for the 'MALOA 6' is regarded as the biggest success of the coalition between the organizations. The money was raised locally, on the national and the international level, making it a transnational effort (interviews SL2, SL8, SL34). After the failed mediation attempt of the Human Rights Commission, the international civil society coalition tried to revive the dialogue process in a letter to the President:

> "[…] the mediation work on the case initiated in 2013 by the Human Rights Commission of Sierra Leone (HRC) could be revived and serve as starting point. However, given the previous difficulties experienced in the mediation process, we believe that the work of the HRC needs to be reinforced in order to ensure sufficient capacities and strong independence of the procedure." (FIAN Belgium 2016)

This passage shows the role of international civil society in supporting the process from the outside and encouraging international involvement in the process. However, so far, these calls have been left unheard.

Summing up, MALOA itself has some capacities in formulating complaints and reaching out to lawyers. Yet, they are also dependent on outside support, especially when it comes to finding resources and raising international awareness. One of the main contributions of national and international civil society actors it to help keep MALOA members out of jail, such as the fundraising efforts for the fines of the 'MALOA 6'. However, the support has not changed the situation in favor of the local landowners and users represented through MALOA.

5.4.5 Discussion and additional issues

The case of Socfin and the failed legal mobilization attempt by MALOA show a number of things. I will first take a look at the three core conditions derived from my theoretical chapter before discussing additional inhibiting factors that could be relevant beyond this case.

First, the case shows, once again, the weak legal opportunity structure presented by Sierra Leonean statutory law. Landowners, who should have had the option to give or withhold their consent according to customary law, were not systematically involved in the consultations to the lease agreement. The process did follow statutory law, which gives the Paramount Chief as the custodian of the land the right to make the decision. The Sierra Leonean legal system, therefore, only offered limited options for the affected local population, who did end up calling on the Human Rights Commission of Sierra Leone. In this way, human rights provided an entry point for MALOA to call on the intervention of a state institution. However, in the process, the Commission seemed to miss the backing of some parts of national state and local authorities, which derailed the process.

Second, the operation of Socfin Sierra Leone has not undergone any independent auditing. The company has neither received any funding from the IFC nor been certified by an international roundtable. Company's public commitments to these standards have, therefore, to be treated with caution. At the same time, Socfin receives considerable support from local authorities who help them in delegitimizing and silencing dissent. While it is difficult to determine what kind of role company managers play in the oppression of activists, they do at least condone it. Also, so far, the investor

has enjoyed the support of the Sierra Leonean government. This backing by both local and state authorities has possibly reinforced an unreceptive position by the company.

Third, MALOA itself possesses considerable capacities, for example, in terms of involving state authorities; however, they also have a strong civil society network with national and international links. This network was crucial, for example, in raising funds to free imprisoned activists. In consequence, I consider the support network as strong.

The Socfin case hints to one additional condition that needs to be discussed. As described in the previous chapters, the chiefdom authorities played an essential role in this case. They were the ones who signed the lease agreement without sticking to proper customary procedures. Furthermore, they tried to silence local contestation through repression and delegitimizing strategies. At the same time, they control which complaints by locals get channeled to the company through the grievance mechanism. Finally, the Paramount Chief was able to derail the mediation process by the HRCSL by not showing up.

The case, therefore, demonstrates the power customary authorities, especially Paramount Chiefs, have in Sierra Leone in the shaping large-scale land investment deals. This observation was shared by some of my interviewees, who describe the problematic role of some chiefs in the country:

> "They just do not want people to be educated about their own rights. When you educate people, their dubious deals will be unearthed. Some chiefs just want the money and they don't want to talk to their own people." (interview SL36)

This finding is in line with existing research from Sierra Leone, which emphasizes the power of customary authorities over many community matters (Acemoglu et al. 2014). The issue deserves further attention as a possible addition condition. I will discuss this on a more abstract level in chapter 5.5.

Another somewhat related issue is the negative role the legal system plays in this case. The case of the 'MALOA 6' showed the use of the Sierra Leonean judiciary system to the disadvantage of local activists. The imprisonment and the high fines seem to have been politically motivated (Green Scenery 10/03/2016). As this was not the only case in which MALOA members faced prosecution (International Federation for Human Rights 09/02/2016), it seems like legal measures are used as a threat to intimidate activists and to stop local mobilization activities. This form of legal repres-

sion (Ellefsen 2016: 444) can substantially hamper local actor's activities and question their legitimacy in the eyes of outsiders. So far, the repression was not able to stop the mobilization by MALOA; yet, their activities in the Chiefdom are severely limited (interview SL42). In consequence, the question remains what would have been possible without the oppression. The long term effects of legal repression are certainly an important point for future research (Ellefsen 2016).

Overall, the case of Socfin represents a case in which the company is not receptive to local demands and is protected through local customary authorities and, to a certain degree, the government. In consequence, the legal mobilization attempt of the local protest group MALOA failed. The national legal opportunity structure did not provide them with laws that sufficiently protected their customary ownership and use rights.

5.5 Within country comparison and discussion of findings

I now turn to compare the two cases in regard to the three pre-identified conditions and additional issues, which appeared during the research (chap 5.6.1). Chapter 5.6.2 will then provide a summary of my findings and discuss them on a more abstract level.

5.5.1 Comparison between the cases of Addax Bioenergy and Socfin Sierra Leone

In this chapter, I will discuss commonalities and differences between the two cases, Addax Bioenergy and Socfin Sierra Leone. I will take a closer look at the three core conditions identified in the theoretical framework and how they played out in the two different investment projects. I will not only draw on the evidence described in the two case studies but also on some data from a comparative survey. Apart from the three core conditions, I also discuss one possible additional condition and other issues identified in the case analyses.

The problematic legal opportunity structure for local smallholders in Sierra Leone became apparent in both cases: Landowners and land users had no veto possibility concerning the investment. Legally binding lease agreements were signed with the respective Chiefdom Councils. However, in the case of Addax, additional agreements with landowners opened a space

for negotiation for local communities. These acknowledgment agreements were legally not necessary but were the result of the company's commitment to international best practice standards. In the case of Socfin, most landowners and users were not consulted and did not have any possibility to influence the signing of the agreements. They, therefore, called on the Human Rights Commission of Sierra Leone to interfere. Yet, the involvement of the HRCSL was not able to solve the conflicts. In consequence, both cases show the limited possibilities of local actors to achieve their goals through legal mobilization, even though small gains could be made in the case of the company receptive to local demands.

Support networks played an essential role in both cases. In the case of the community of Masethleh, who entered into negotiations with Addax, the support of a local NGO and a pro-bono lawyer were important conditions for them to understand the agreement and identify their goals. In the case of Socfin, the local network MALOA itself has considerable capabilities for voicing demands and getting authorities involved in the case. However, they also profit from national and international NGO support, especially when it comes to defend local activists and keep them out of jail. Both cases, therefore, fulfill the condition of strong support networks.

The biggest difference between the two cases was the role of the companies, which vary in their approach towards local communities. Addax, on the one hand, was committed to international best practice principles and presented the investment as a 'development' project. In consequence, they put a lot of effort and resources into developing a good relationship with communities and, at times, also with civil society (interviews SL10, SL15, SL54). Socfin, on the other hand, claims to keep international standards; however, this seems to be mere lip service. The primary response to criticism seems to be the delegitimization of critics and the use of legal threats against them. Interestingly, the company fulfilled several social responsibility projects such as the extension of the health center, the construction of toilets for all communities or the overhauling of water wells. Yet, these CSR projects do not seem to be able to replace proper grievance mechanisms and transparent negotiations.

A comparative survey between affected populations of large-scale land investments, including both the Addax and the Socfin project, provides some interesting data in this regard (Bandabla 2014). Over 80 % of the respondents in the Socfin case mentioned the construction of toilets as a CSR project, compared to only 2 % in the Addax case (Bandabla 2014: 9). At the same time, 80 % of Socfin affected respondents answered that the Paramount Chief made the decisions about which community projects to

implement. In communities affected by Addax, only 7 % gave that answer. In comparison, 65 % mentioned community meetings (7 % in the Socfin case) and 54 % needs assessment surveys (0 % in the Socfin case) (Bandabla 2014: 31), showing the different approaches towards CSR projects and community participation by the two companies.

When asked about land conflicts, 95 % of people in Pujehun (Socfin case) reported hearing about them in the last three months, whereas this number is 49 % for Bombali (Addax case). Most of the reported conflicts were between communities and investors (Bandabla 2014: 24). These numbers underline the findings that the investment by Socfin was more contested and conflictive than the Addax project. Finally, impressions on grievance mechanisms also diverged considerably between the two projects: 66 % of respondents in Pujehun versus 9 % in Bombali thought that platforms "to ensure citizen's participation in the decision making process" (Bandabla 2014: 30) were not functioning.

Overall, these comparative findings underline the company's approaches towards local communities: Socfin mainly deals with the Paramount Chief and surrounding elites, whereas Addax tries to involve communities directly[47]. In consequence, local actors in the Addax case have better chances to have their demands heard and responded to.

In addition to the three core conditions, one possible additional condition and additional issues came up in both cases.

One possible relevant condition is the role played by local elites. In the case of Socfin, local authorities considerably support the company and profit from it at the same time. They oppress and delegitimize local activism and therefore protect the company from having to reply to criticism. Yet, it is difficult to estimate the extent of this 'protection'. Would Socfin react positively to local demands if these were not delegitimized and suppressed by the Paramount Chief? My data does not show Socfin as very receptive to local demands generally, but would they have to give in if they lost support by local and national authorities? Unfortunately, evidence from Addax is not helpful in that regard. As the company decided to interact with landowners and the affected communities directly, chiefdom authorities did not play such a big role. Nonetheless, chiefdom authorities strongly supported the investment as did the national government.

47 This does not mean that the survey did not raise critical points in regards to the Addax investment too. For example 76,5 % of respondents felt that the compensation system was not functional (90 % in the Socfin case) (Bandabla 2014: 29).

Provisions of rent sharing by the government further increase the power of customary authorities. According to MAFFS guidelines, district councils and chiefdom authorities each receive 20 % of the rent payments, which amounts to large sums considering the large sizes of land rented. And while the MAFFS guidelines demand that these sums should be spent for 'community development initiatives' (Ministry of Agriculture Forestry and Food Security 2009: para 9), it seems to be unclear in most cases how the money is actually used. In the case of the Addax investment, one interviewee, for example, voiced considerable frustration about chiefdom elites, who in his view profit personally from the payments:

> "He [member of the Chiefdom Council] is one of the people who eats the money, which Addax has given for the chiefdom. That is why he was praising Addax […] he was defending Addax because that is how he is enjoying the proceeds that are coming from the company." (interview SL16)

In essence, the rent sharing of the MAFFS guidelines creates considerable incentives for district and customary authorities to support companies even against the will of the local population (Melsbach/Rahall 2012: 19).

Aside from the possible additional condition, other issues appeared in the case studies. In the Addax case, I noted the problem of differences between landowners and land users in customary law. The case shows the difficulty of using customary rules for the allocation of lease money. While the arrangement ensures that customary owners do receive a share of the rent, it further engraves existing inequalities and marginalizes land users. This shows the complexity in setting up 'socially responsible' investments in contexts that have not previously seen this kind of monetarization of land.

The differences between landowners and land users also affect relationships in the case of Socfin. However, in that context, both landowners and land users lost land and are equally dissatisfied with the negotiation process. Their interests therefore align, and both landowners and users are members of MALOA. However, the question arises how the differences would be dealt with in the case that a deal with the company would be struck. Would the interests of land users be respected, for example, through receiving a share of the rent money?

The second issue noted in the case of Addax was the issue of the economic failure of the company. This does currently not apply to Socfin. However, the Addax case can provide a lesson for the formulation of future national laws and international guidelines of what should happen in such a

case. If the legal provisions would be in place, this situation could, for example, be an opportunity for communities unhappy with the current agreement to renegotiate the deal.

Another issue shown by the Socfin case is the use of legal measures against local actors. The case shows the negative side a legal system can have for local activists. So far, I only portrayed the law as providing local actors with opportunities; however, on the downside, the legal system can and is often used by companies to stop or intimidate criticism[48] (Garvey/Newell 2005: 396). The short and long-term effects of such tactics should be scrutinized further. Interestingly, legal action was never threatened by Addax against its critics and can be understood as one indicator for a willingness to listen to and deal with criticism.

Summing up, the two cases from Sierra Leone underline the need for legal reform in the country. The discrepancy between customary and statutory law leads to a situation in which most smallholders do not have a say in large-scale land deals, let alone a veto right. In consequence, legal mobilization attempts can only be based on soft law regulations, or on general norms such as human rights. In consequence, legal mobilization was only successful in the case of the company open to such arguments. However, one additional condition could be relevant in explaining the outcome: Local and national level support for Socfin might not make it necessary for the company to respond to local demands.

5.5.2 Summary of findings from Sierra Leone

Overall, my findings from Sierra Leone illustrated the usefulness of my analytical framework and created new insights. I will shortly summarize this analytical chapter before I will discuss my results and the possible additional condition on an abstract level.

This chapter started by giving an overview of the issue of large-scale land deals in Sierra Leone. It became clear that the influx of a number of foreign investments in agriculture was a new phenomenon in the context of Sierra Leone. This rush for land in the country was not only caused by global drivers but also by incentives and promotion activities set by the

48 Strategies of companies to intimidate critics through lawsuits, even if those might not be successful, have been described as SLAPP tactics: Strategic Litigation Against Public Participation (Garvey/Newell 2005: 396).

government. Civil society activities, funded through international NGOs, formed quickly around the issue and a network of different organizations helped to link local to national and international actors. In this way, the issue of large-scale land deals brought the topic of land rights on the political agenda and highlighted problems with the land governance system.

The legal system around land tenure issues has been notoriously problematic in the country. The main Sierra Leonean law regulating land transfers in the Provinces has bestowed the decision making power on Chiefdom Councils, omitting customary land ownership and use rights. Other elements of the collective optimum formulated in chapter 4.1.1 were not fulfilled either, showing the unfavorability of the national legal opportunity structure in the country when it comes to the rights of smallholders.

The two cases of Addax and Socfin then demonstrated the effects of an unfavorable NLOS: In both cases, only the Chiefdom Council under the chair of the Paramount Chiefs had to agree in principle to the lease agreements. Yet, in the Addax case, the company also signed additional agreements with landowning families and thereby opened up the space for maneuver for local communities. This opportunity was taken up by one community, which negotiated successfully with the company. In the case of Socfin, local actors mobilized to no avail. The local activist group MALOA called on the Human Rights Commission of Sierra Leone to intervene. However, their mediation attempt failed due to the behavior of the Paramount Chief and national politicians.

Breaking the findings down into a truth table summarizes the two cases on a very abstract level.

Table 13 Empirical truth table Sierra Leone

	national LOS	**network support**	**company**	**outcome**
Addax	unfavorable	strong	receptive	success
Socfin	unfavorable	strong	unreceptive	failure

Viewed in such a way, the relevance of the receptivity of the company becomes apparent under the same legal circumstances and similarly strong support networks. However, the relevance of another condition needs to be discussed: The role of local and national elites in hindering legal mobilization attempts and suppressing local dissent. On an abstract level, the question is how such a condition relates to the receptivity of the company: Does it change the receptivity of a company? Does it make the condition of

the receptivity obsolete? Or is the role of local authorities only relevant in certain contexts? The material from the Socfin case is not conclusive in this case, as local authorities and the company seem to cooperate closely. It could be that unreceptive companies, who are supported by local and national authorities, become even less receptive towards local demands. This would be in line with the following observation from a Sierra Leonean civil society member:

> "But we also have very stubborn companies. Yes, they think, because they have connections, they have powers from above, so they think they are so protected, so fearful, so big that they do not need to listen to us." (interview SL26)

This quote shows that unreceptive companies tend to use their connections to not have to answer to local demands. However, what about the receptive companies? As discussed in chapter 5.5.1 Addax also enjoyed the support of local and national authorities, yet the company did choose to communicate directly with landowners because they wanted to fulfill international best practices. They, therefore, did not purely rely on local authorities to deal with customary right-holders. This would imply that the receptivity of the company made the behavior of local authorities less relevant for the specific case of individual communities negotiating with the company. It could be that the role of political elites (local and national) becomes more relevant in the case of unreceptive companies.

6. Analysis II Philippines

The amount of arable land in the Philippines is rather small. The country is spread across over 7000 islands with mostly mountainous interiors and is densely populated (Quizon/Pagsanghan 2014: 18). Administratively, the country consists of 81 provinces, which are subdivided into municipalities. The smallest administrative form is the barangays, of which there are over 42.000 (Loewen 2018: 83).

Historically, land has been distributed highly unequal – the causes dating back to Spanish colonialization (Borras 2007: 147). Since then, land distribution has been a highly contested issue in the country, from early peasant revolts against the colonizers (Borras 2007: 147) to the armed conflict in Mindanao (Vellema et al. 2011) and countless civil society campaigns (Curry 2013). The Comprehensive Land Reform of 1988 tried to address the distribution issue, but if its outcome should be regarded as success is highly debated (Borras 2006). Transnational companies investing in agriculture are not a new phenomenon in the country. Yet, the government policies of the early 2000s encouraged a lot of interest by additional investors. However, several intended land deals did not materialize – I will argue partly due to the legal system, which tries to protect local land ownership. Nonetheless, there are also a number of deals that were closed successfully – many of them through contract growing systems. I will take a closer look at two of those investments: Green Future Innovations in Isabela, located in Northern Luzon and Agumil in Palawan.

I will start this chapter by taking a closer look at large-scale land deals in the Philippines on a national level (chap 6.1). My discussion will include the agricultural background, including the agrarian reform, government policies to attract investment as well as civil society responses. In a second step, I will focus on the legal opportunity structure in the country (chap 6.2), which means reviewing the land tenure systems as well as specific regulations in regards to foreign investors.

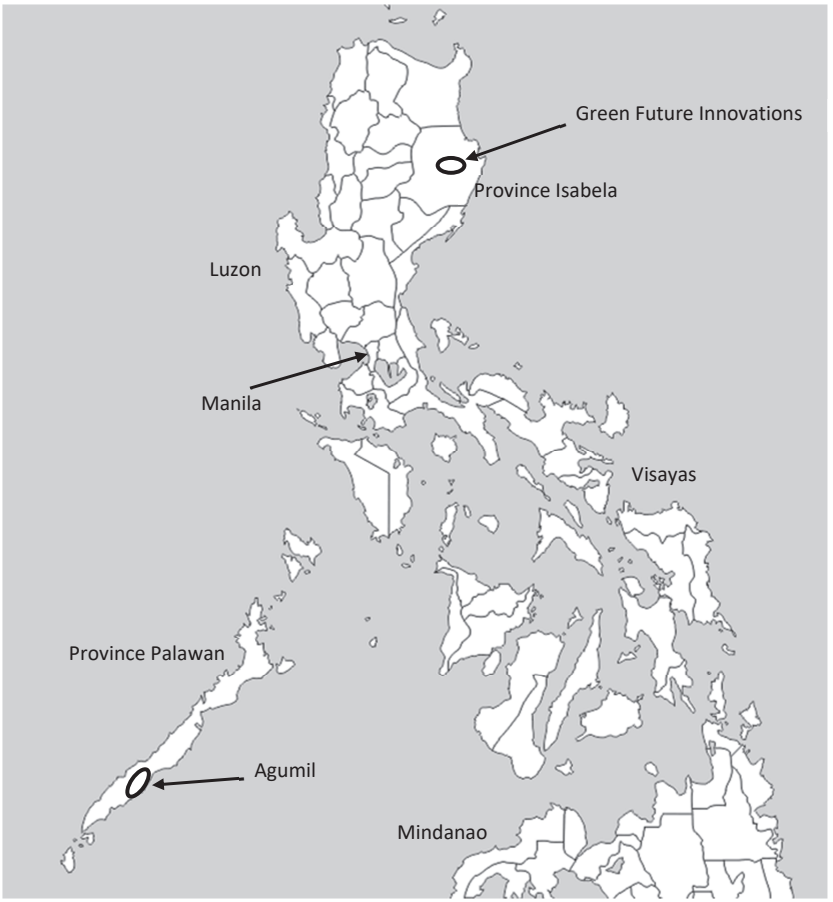

Figure 6 Map of the Philippines (Cutout)

(source of map: http://d-maps.com/carte.php?num_car=5600&lang=en, last visited 15/06/2018)

The first case (chap 6.3) considers the investment of Green Future Innovations in a sugar cane plantation in Isabela. Initially, the joint-venture company acquired land through lease in different barangays in San Mariano; however, it turned out that some of the property leased was contested in its ownership. Through national networks local smallholders called on the Provincial government but also on Congress to intervene. These calls were

seconded by an attack of a national rebel group active in the region. It seemed that this mix of strategies led to a successful solution of the issue.

The second case study (chap 6.4) looks at an investment in palm oil by Agumil through lease and contract-growing. The project was set up in a way that put most of the economic risk on cooperatives, who had signed contract-growing deals with the company. As the debts started to accumulate, the cooperatives realized their problematic situation and were able to initiate a congressional investigation. Yet, at the time of research, no solution had been found. The case points to a failure of existing support and oversight mechanisms and the missing civil society support for the cooperatives.

Overall, the two cases show the difficulties of implementing and using an existing favorable legal opportunity structure and the relevance of varying networks. I will discuss these findings in chapter 6.5.

6.1 Large-scale land deals in the Philippines

Large-scale land deals with the involvement of foreign investors have not reached the same dimension in the Philippines as in Sierra Leone. This is mainly due to a large amount of agreements that did not materialize so far. Nonetheless, large-scale land deals have received considerable attention and contestation (de la Cruz, Rosselynn 2011: 6). The debate about them has to be regarded against the background of the extensive agrarian reform covering more than half of the country's agricultural land (Borras 2006: 80).

I will first describe the current trends set against the historical background (chap 6.1.1) before I turn to government policies attracting foreign investment (chap 6.1.2). The last part of the chapter will focus on the civil society involved in agrarian issues in the Philippines (chap 6.1.3).

6.1.1 Current trends and agricultural background

In this chapter, I will describe current trends of foreign large-scale land-based investment by taking a closer look at the data provided by the Land Matrix. These numbers by the Land Matrix provide some impressions about the role of foreign investors. However, it should be noted that a lot of direct investment in plantation agriculture in the country comes from national companies, even if they often cater to and are closely linked with

global brands such as Dole, Del Monte[49] or Cargill (Lockie et al. 2015: 125; Salerno 2015). Furthermore, smallholders in the Philippines are often threatened by investments by local businesspersons, which are smaller than 200 hectares and are therefore not covered by the Land Matrix database (interview PH3). The focus on foreign large-scale investment consequently only covers one particular aspect of the agrarian system in the country. It is, therefore, important to situate information on large-scale land deals in the broader agricultural context of the country and the extensive land reform.

Table 14 No. of intended/concluded land deals in the Philippines

year	Biofuels*	Food crops**
2005	1	
2006		1
2007	5	2
2008	6	2
2009	2	2
2010	1	2
2011	1	1
2012		2
2013		1
No year	7	2
Total	**23**	**15**

(Source: Land Matrix 2018)

Looking at the data of the Land Matrix, the high number of failed agreements stands out. Out of 38 planned large-scale land-based investment intended for a size of 4,8 million hectares, contracts were closed in only 14 deals covering around 610 000 hectares (Land Matrix 2018). It is not clear why many of these deals never materialized, but public contention and legal concerns played a role, at least in some of the most prominent cases. A one-million-hectare concession for a Chinese investor was, for example,

49 These companies do also have their own plantations; however, those are usually a lot older and have been established before the year 2000, the starting point for the Land Matrix.

canceled by the Philippine Department of Agriculture "following massive public outrage, a series of Congressional inquiries and a case filed before the Supreme Court raising grounds of unconstitutionality." (de la Cruz, Rosselynn 2011: 6). It is not clear how many cases failed because of existing land laws. As I will discuss in chapter 6.2, land legislation is regarded as rather progressive in the country and it could well be that legal concerns weighed too heavy when more concrete plans for investments were negotiated.

Another explanation for the failures could be that envisaged projects were driven by a 'rush mentality' and were not always rooted in realistic economic and managerial decisions. There were, for example, two intended deals with a size of one million hectares each – one with a British, one with a Malaysian investor. In both cases, the deal never materialized. There is a spike in interest in land between 2007 and 2008, which seems to be mostly driven by an interest in biofuels investment, as the table 14 shows (interest in food production seems to remain rather constant). The Biofuels Act was passed by Congress in 2006, explaining the sudden interest. Investors rushed in quickly to secure themselves a 'first-mover' advantage, which did not, however, lead to successful investment projects.

Still, even though many deals never materialized 11 out of the 14 'concluded' contracts reported by the Land Matrix had plans to produce biofuels mainly through sugar cane (Land Matrix 2018).

The original plans to use 4,8 million hectares for large-scale land deals have to be understood against the availability of land. Only 12.4 million hectares of the approximately 30 million hectares landmass is agricultural land (World Bank 2018b), and practically all of it is used. Rice, corn, coconut and sugarcane are the major crops in terms of used area, while some other high-value crops such as banana, pineapple and mango are essential as export commodities but take up less land (Philippines Statistics Authority 2017).

Even though rice is the number one crop in the country, the Philippines imports rice to cover the needs of the population. The missing self-sufficiency in the national staple food is explained, among other reasons, by limited land resources in the country (Koirala et al. 2016: 372).

The amount of land available for investment in other crops, including rubber and palm oil, is not at all clear – official numbers range between 100,000 and nearly 9 million hectares of 'idle' land (Montefrio/Dressler 2016: 120). This discourse of plenty 'idle' lands, which should be put to productive use, seems to be one of the driving forces for the interest of

many foreign investors. However, it is questionable if this discourse paints a realistic picture of the highly populated island state (Montefrio/Dressler 2016).

Agriculture plays a vital role in the country in terms of poverty reduction, as it employs about one third of the workforce in the Philippines. It continues to play a big role in the lives of the rural population, which accounts for nearly half of the total population (World Bank 2018b). At the same time, poverty remains at high levels in rural regions. Farmers are poorer than the average population, with 34,3 % living below the national poverty line (Philippines Statistics Authority 30/06/2017). The high prevalence of rural poverty is associated with historical path dependencies in land ownership started during colonial times:

> "The current agrarian structure can be traced from this period when landownership started to become concentrated in the hands of Spanish conquestadores, the mestizos, their local Filipino collaborators, and the Roman Catholic Church. More and more local people lost their formal claims of ownership, control or rights, over these lands, and have become share tenants, landless rural (semi)proletariat, and (sub)subsistence farmers. As late as the 1980s, it was estimated that about 70 percent of the peasant population work on lands that were not theirs." (Borras 2007: 147)

This situation of a highly unequal agrarian system with wealthy landowning elites and a poor landless workforce was to be changed by the agrarian reform of 1988, which has not been fully completed to this day. Anchored in the post-Marcos constitution of 1987, the Comprehensive Agricultural Reform Programm (CARP) sought to redistribute land to those who worked on it (Curry 2013: 68). Landlords, having more than five hectares, were compensated for the land they could give up voluntarily or which would eventually be expropriated. Peasants who received land had to pay a subsidized price, which was to guarantee 'affordability' (Borras 2001: 551–552).

Especially in the first years, implementation of the reform was slow and highly contested, leading to an extension in 2009 for another 5 years but also to the downgrading of expectation of areas covered (Adam 2013: 234). As of today, 4.8 million hectares have been redistributed to 2.8 million beneficiaries according to official numbers (Cahiles-Magkilat 1/21/2018). However, if the agrarian reform should be considered as success is highly debated and depends on the criteria used (Feranil 2005; Adam 2013; Borras 2006; Vista et al. 2012). Even though reform beneficiaries do now have ac-

cess to land, they are struggling to survive as farmers because of missing support systems, for example, in terms of agricultural inputs (interviews PH3, PH6). Furthermore, in many cases, agrarian reform beneficiaries (ARBs) struggle to pay the amortization rate for the land they received.

Considering the background of the extensive land reform is important in order to understand foreign large-scale land investments and mobilization around them. I can make three observations:

First, civil society actors fear that large-scale land deals might reverse some successes of the land reform. There are reports about CARP beneficiaries being approached by companies to lease their lands, which might be tempting given the oftentimes-precarious economic situation that they are in. At the same time, creating new large-scale plantations will exactly lead to land concentration or new dependencies – essentially those dynamics that the land reform tried to tackle (de la Cruz, Rosselynn 2011: 10).

Second, institutions, rules and dispute resolutions mechanisms created during the land reform are also relevant for the setup of large-scale land deals. The Department of Agrarian Reform (DAR), for example, has to be informed about lease agreements of reform beneficiaries (Government of the Republic of the Philippines 2008: chap. 3, sec. 2.3) and is an important institution for land tenure dispute resolution (Franco 2008a).

Third, the civil society in the agricultural sector in the Philippines has mobilized extensively around the land reform. NGOs and local peasant organizations cooperated in many occasions to fight adamant landlords (Franco 2008a; Diprose/McGregor 2009). At the same time, CARP revealed substantive differences within the civil society between organizations engaging with the state to implement the reform and those who opposed the land reform completely (Curry 2013).

6.1.2 Government policies to attract foreign investment in agriculture

As mentioned, part of the rise of foreign interest in farmland in the Philippines was driven by government policies encouraging biofuel production in the country. This policy is part of a broader plan of green economy development (Montefrio/Dressler 2016). I will take a look at these policies before addressing the government agencies involved in large-scale land deals.

In 2006, the Philippine Congress passed the Biofuels Act, which requires that all gasoline sold in the country contains 10 % of bioethanol. To this

end, incentives such as tax exemptions and financial assistance are granted to bioethanol producers (Republic of the Philippines 7/24/2006: sec. 6). The rationale behind the law was to reduce dependence on imported fuels, develop renewable energy, decrease greenhouse gas emissions while increasing employment in the rural regions (Republic of the Philippines 7/24/2006: sec. 2). At the same time, the Biofuels Act had been pushed by a strong business coalition (Montefrio/Sonnenfeld 2011: 37–38).

In 2008, final implementing rules and regulations were laid out through a joint administrative order by numerous government agencies. The administrative order exempts land areas under 25 hectares used for biofuel production from the land reform (Government of the Republic of the Philippines 2008: chap. 1, sec. 3). This exemption incentivizes bigger landowners to invest in bioethanol as a means to protect their land from redistribution (interview PH3). Overall, the Biofuels Act and its implementing guidelines are just one part of the broader policy project of achieving 'inclusive green growth', which is regarded as a tool to curb rural poverty as well as fight climate change (Montefrio/Dressler 2016). These 'green economy' policies have pushed plans to develop up to 8 million hectares of 'idle' land for bioethanol production and attract foreign investors to support this development. Since then, the area planted for palm oil or rubber has grown substantially (Montefrio/Dressler 2016: 119). As another consequence interest in foreign large-scale land deals for the production of biofuels increased – especially in the years 2007 and 2008 – as shown in table 14 in the previous chapter.

Different government agencies are relevant for the facilitation of large-scale land deals in the country. The Philippine Agricultural Development and Commercial Corporation (PADCC) was founded to attract investors, to identify available land and facilitate land deals between investors and local governments (de la Cruz, Rosselynn 2011: 7; Aquino 2011: 2). According to interviewees from a national NGO, the PADCC had identified about one million hectares for biofuels production and was overseeing all foreign investments in biofuels. However, records such as the Memoranda of Understanding with the Philippine government were not accessible (interview PH3). In 2014, the PADCC was dissolved due to corruption by a presidential order (Esguerra 3/3/2014).

The PADCC had been housed at the Department of Agriculture (DA), which still plays a central role in facilitating investments. Investors leasing land for biofuels production need to obtain certificates from the DA, the Department of Agrarian Reform (DAR) and the Department for Environ-

ment and Natural Resources (DENR) as well as from the National Commission on Indigenous Peoples. This complicated process was supposed to be simplified by the creation of a one-stop-shop housed at the National Biofuels Board (Government of the Republic of the Philippines 2008); however, it seems like this one-stop-shop never materialized. In consequence, a plethora of actors is involved in facilitating, closing and overseeing foreign investment in biofuels production – making retracing of land deals difficult. At the same time, local government units play an important role in facilitating land deals and connecting companies to possible lessors, adding another layer of complexity (delos Reyes: 1). On civil society member described this confusing picture:

> "[…] there's no clear mechanism where these investments would be discussed. I mean, investors can directly go to a local government or to the community or to a Philippine private entity.[…] So, given all these things happening, it's really difficult to know what is really going on." (interview PH4).

6.1.3 Civil society networks

The Philippines has not only a strong history of peasant mobilization, dating back to colonial times but also a passionate, vibrant and broad NGO community. Civil society activities in response to large-scale land deals are usually undertaken by those actors, who were engaged in or campaigned against the agrarian reform program. Similar networks are used and act with similar strategies around large-scale land deals. At the same time, the civil society in the agricultural sector is marked by an ideological divide between center-left and radical-left networks.

Peasant revolts have had a strong history since Spanish colonial rule: Since one of the first peasant uprisings against unjust land distribution took place in 1745 (Curry 2013: 66), the country has experienced multiple waves of peasant revolts. The Philippine government had made only small concessions, so "unrest remained an important part of rural politics throughout the twentieth century." (Borras 2006: 79). During the 70s and 80s, these peasant insurgents became part of the National Democratic Movement led by the Communist Party of the Philippines, one of the main opposition groups against the Marcos dictatorship (Borras 2001: 560). The Peasant Movement of the Philippines (Kilusang Magbubukid ng Pilipinas = KMP) became the biggest and most well-known peasant organi-

zation of the far-left. Apart from the peasant movement, worker unions, church-based organizations and city-based civil society groups formed a broad coalition against the autocratic rule and overthrew the Marcos regime in the 'people power' revolution – also referred to as the EDSA[50] revolution – in 1986.

The civil society actors involved in the revolution were so heterogeneous that the coalition quickly fell apart (Loewen 2018: 157–158). The same was true for the peasant movement, where the ideological differences became apparent during the Comprehensive Agricultural Reform Programm. More moderate groups campaigned for a reform of the reform and later helped in the implementation, whereas the KMP stayed in total opposition[51] (Borras 2001: 560–561). This pattern was repeated when center-left peasant organizations, NGOs and church actors campaigned for the extension of the land reform beyond 2009. The radical left, foremost the KMP, dismissed this campaign and instead demanded their own model of a 'Genuine' Agrarian Reform Program (Curry 2013: 70; Feranil 2005: 269). This main division between center-left and radical left organizations, does not only lead to non-cooperation between the groups (interviews PH8, PH28), but also to different strategies in dealing with conflicts around land.

The center-left coalition involves a number of organizations that work in close collaboration. The central peasant movement organization in this bloc is PAKISAMA (Pambansang Kilusan ng mga Samahang Magsasaka). The organization represents the interests of agrarian communities on a national level, supports local struggles of local peasant organizations and provides services for its members (Curry 2013: 72). PAKISAMA is a member of the Asian Farmer's Association and the network organization AR Now!. Both network organizations have taken up the issue of large-scale land deals and published reports on it (Bernabe 2010). These membership-based organizations cooperate with the NGO ANGOC (Asian NGO Coalition for Agrarian Reform and Rural Development). ANGOC has been one of the main actors of implementing the VGGT and produced a number of studies on the issue (Quizon 2017; Quizon/Pagsanghan 2014). Other actors in the network are legal aid organizations such as KAISAHAN, which fo-

50 EDSA (Epifanio de los Santos Avenue) is the most important city highway of Manila and was the main location of the mass protests.

51 During the process the communist National Democratic Movement as well as parts of the KMP themselves split into different ideological groups (Borras 2001: 561).

cuses on legally supporting potential agrarian reform beneficiaries (interview PH6).

These are just some of the biggest organizations. Still, many more can be counted to this center-left part of the agrarian civil society, especially at the regional and local levels. These networks link local peasant organizations to national advocacy and legal aid NGOs and are regarded as an important component for the partial success of the land reform with examples from all over the country (Borras 2001: 563–566; Feranil 2005: 272–278). The main strategies used by local peasant groups involve pickets, demonstrations but also dialogues (Borras 2001: 565). National organizations support them through "making public statements; calling on support groups, encouraging student activism, building advertising campaigns, lecturing, and conducting workshops, as well as teaching requisite entrepreneurial skills" (Curry 2013: 72). At the same time, rights-based campaigns and the use of legal avenues to push the implementation of CARP are important strategies for these networks:

> "It took an encounter with a rights-advocacy organization willing and capable of (re)interpreting state agrarian reform law as a potential resource for excluded groups in hostile farms for the peasants to move beyond inertia and individualized resistance, toward collectively claiming their rights." (Franco 2008a: 1013)

Another important strategy are congressional inquiries. Civil society actors closely work with senators and house representatives to have specific land deals discussed in congressional committees:

> "In the Philippines, the congressional inquiries are an effective tool. Either to push advocacy or to prevent or to stop or to delay. In recent experience, we utilized congress in three things: First, to advance our advocacies. Second, if we want to investigate or to stop, or to delay certain programs or deals that will affect the farmers. Third, to influence or to pressure the Executive through legislative inquiry to act on specific land cases." (interview PH27)

While congressional inquiries do not create binding decisions, reports are used to pressure administrators of different departments and local politicians into taking action in favor of local farmers (interview PH27). In many instances, civil society actors cooperate with and support local DAR officials, who are often blocked in their work by powerful local politicians (interview PH27). Overall, these center-left civil society organizations combine moderate street actions like demonstrations with classic advocacy and

political-legal strategies. At the same time, they often collaborate closely with national and local officials to ensure the implementation of the agrarian reform and related programs.

Civil society actors that are associated with the radical left follow similar strategies, but also go one step further through including militant forms of action. One of the central actors of this bloc is the above mentioned KMP, which claims to represent 1,3 million rural people through 65 provincial chapters (KMP). The peasant movement organization closely associates itself with the far-left wing of Philippine politics, referred to as Bayan, while at the same time distancing itself from the revolutionary National Democratic Front (interview PH8). The National Democratic Front is linked to the National People's Army (NPA), a maoist-communist rebel group with an estimated 4500 members throughout the country (Walch 2018: 342). Despite efforts to distance itself from the NPA, the KMP frequently gets associated with the rebel group (Jimenez 2003: 282).

The central goal of the KMP and other far-left organizations is a 'Genuine Agrarian Reform', which would force the redistribution of all land for free. The existing CARP is described as 'bogus' and 'fake' and consequently not supported (interview PH8). Instead, the organization undertook a number of land occupations, especially in the beginning of the land reform process (Borras 2001: 560). Apart from land occupations, rallies and camp-outs are a part of the militant action of the organization (interview PH8) and often take somewhat confrontational forms (Jimenez 2003: 236). Nonetheless, the KMP also uses advocacy, fact-finding missions and campaigning to push their issues on the political agenda. Furthermore, they cooperate with sympathetic congressional representatives such as from Anakwapis, the associated party list (interview PH8). Overall the radical left wing strongly defines itself in its opposition to CARP and its more 'militant' forms of actions. At the same time, they do employ 'traditional' forms of advocacy and campaigning and are connected to sympathetic politicians.

Apart from the differences in ideology and strategies employed, international support networks vary between the two blocs. Support from NGOs and International Organizations is mainly channeled to the moderate left bloc of the civil society through project-based funding. Donors include Oxfam, Misereor, various development agencies, the European Union, the FAO, and the International Land Coalition, of which a number of organizations are a member (interviews PH2, PH3, PH4, PH6). Projects often focus on research reports, local capacity building and advocacy campaigns.

The far-left bloc around the KMP is mostly funded through its members and local fundraising efforts (interview PH8). However, they also have international links to other militant peasant organizations and anti-globalization movements (Jimenez 2003: 253–254). The KMP is a founding member of the biggest global peasant organization La Via Campesina; however, it does not engage with La Via Campesina anymore, due to ideological differences (Borras 2008: 278). Instead, the KMP focuses on the Asian Peasant Coalition, of which it hosts the secretariat. Through the Asian Peasant Coalition, KMP members also participate in international fora such as the Civil Society Mechanism of the Committee on World Food Security (interview PH8)

The standing of civil society activists in the Philippine state seems to have two faces: On the one hand, activists often work closely with the political and administrative system. Furthermore, staff members of NGOs but also farmer's movements frequently find their way into government positions (Lewis 2013). A remarkable example in this regard is the appointment of a former chairman of the KMP as Secretary for Agrarian Reform by President Duterte, even though Congress later rejected the appointment (Jesus 6/9/2017). On the other hand, farmer-, environmental- or human rights- activists, lawyers and journalists are regularly targets of repression and considerable violence. Private militias and the Philippine army are considered to be behind killings of activists, which often happen with impunity (Franco et al. 2014: 7). In the year 2017 alone, the international NGO Global Witness reported the killing of 48 land and environmental defenders in the country (Global Witness 2018: 15). Land rights activists, therefore, often oscillate between cooperating with authorities and being targets of violent repression and retaliation by state and non-state actors.

6.2 National legal opportunity structure in the Philippines

The Philippines has a number of laws and policies that regulate foreign large-scale land deals, leaving the country better off than other Southeast Asian countries. At the same, time the land governance system is fractured, which creates complicated tenure relations on the ground. Yet, I argue that for smallholders, especially agrarian reform beneficiaries, the national legal opportunity structure can be regarded as favorable.

In a first step, I will take a look at national-level legislation, including provisions made by the constitution as well as specific laws regulating land ownership (chap 6.2.1). In a second step, I focus on national policies gov-

erning foreign land investments, concentrating specifically on the rights of agrarian reform beneficiaries (chap 6.2.2). In a final step, I use this information to evaluate the national legal opportunity structure (chap 6.2.3) with the help of the criteria developed in chapter 4.1.1.

6.2.1 National land laws and tenure system

Access to land as a means for social equality plays a vital role in the constitution of 1987. Laying out the basic principles of the Philippine State the constitution requires the state to "promote social justice" (Republic of the Philippines 1987: Art. 2, Sec.10) and to this end "promote comprehensive rural development and agrarian reform" (Republic of the Philippines 1987: Art. 2, Sec.21). Against this background, the constitution recognizes that "[t]he use of property bears a social function" and is "subject to the duty of the State to promote distributive justice and to intervene when the common good so demands" (Republic of the Philippines 1987: Art. 12, Sec.6). The reduction of social, economic and political inequalities should be given the highest priority to ensure human dignity through regulating "the acquisition, ownership, use, and disposition of property and its increments" (Republic of the Philippines 1987: Art. 13, Sec.2).

These broad provisions of the constitution, which demand equal distribution of property to ensure social justice, are concretized in subsequent laws such as Indigenous Peoples Rights Act, the Fisheries Code and the Comprehensive Agrarian Reform Law (Quizon/Pagsanghan 2014: 22). Taken together with the Forestry Code and the Civil Code, these laws create the basis for the land tenure system, which is rather complicated.

On the most basic level, there are two different categories of land in the Philippines: Alienable and Disposable (A&D) land and protected forestlands, which both make up roughly half of the 30 million hectares of land. 65 % of A&D land is privately titled. The rest is publicly owned (but often informally used). While in principle all A&D land is open for private ownership, the category of forest land is formally owned by the state and administered by the Department of Environment and Natural Resources (DENR) (Koirala et al. 2016: 372). Forestlands can, however, be leased and used by small-scale farmers. Farmers and communities, who have cultivated this category of land for an extended period cannot be evicted and can apply for different certificates – some awarded individually, some awarded to community-based organizations. These certificates are usually awarded for 25 years and include agreements on forest use, agriculture and environ-

mental protection. A special certificate is the Ancestral Domain Title, which is awarded to indigenous communities and protects their land rights[52] (van der Ploeg et al. 2016: 150).

Generally, land ownership can be claimed through registered land titles, deeds of sale and certificates received during land reforms[53] or from the DENR. Taxes paid on land improvements are often also accepted as proof for ownership; it is, however, a less formal way. What gets accepted as a legitimate claim for ownership is highly dependent on the reference legislation used: Basically, the Agrarian Reform Law accepts ownership through cultivation. However, older legislation, specifically the Civil Code of 1950, only accepts formally documented proofs. As older laws are usually not repealed in the country, a situation developed in which different contradictory legislations exist (Quizon/Pagsanghan 2014: 23; Franco 2008a: 999). In consequence, solving conflicts around landownership can become a complex undertaking:

> "In practice, then, jurisdictional lines in agrarian reform and related disputes remain blurred even today, leaving it up to better-equipped litigants and individual judges to determine where and how a case will be processed." (Franco 2008a: 999)

Table 15 Tenure arrangements of Philippine farmland

Tenure arrangement	% of farmland
Formal ownership	48 %
Owner-like possession	17 %
Tenancy (shared or leased)	19 %
Other arrangements (certificates)	10 %
Lease	6 %

(based on Philippine Statistics Authority 2012: 39)

Looking at available numbers, the Agricultural Census of 2012 counted 5.6 million farm households with a total size of 7.3 million hectares (Philip-

52 As mentioned in the introduction I largely exclude indigenous people's rights from my analysis. I will therefore not go into more detail into the laws and regulations specific to indigenous communities.

53 Before the major land reform of 1988 certificates were handed out during earlier more limited reform programs and can still be used as claim of ownership (Koirala et al. 2016: 372).

pine Statistics Authority 2012: 11). Of the whole area, 48 % are formally owned, while 17 % are held informally in owner-like possession. 19 % are tenanted, while 6 % are leased and 10 % account for other arrangements such as different certificates[54] (Philippine Statistics Authority 2012: 39). In the local context, owner-like possessions are usually respected by surrounding communities and local officials:

> "Farmers know that they do not formally own the land, but informal land claims, so-called 'possessions', are generally respected, also on fallow land. Possessions are sold, mortgaged or temporarily leased to other farmers. Such transactions—'agreements'—are recorded by the Sangguniang Barangay, the elected village council." (van der Ploeg et al. 2016: 151)

Consequently, even informally closed rent agreements can provide local tenure security. Research shows that farmers equally invest and produce on informally leased land as they do on formally owned land, pointing to the stability of relational contracting in the rural Philippines (Michler/Shively 2015: 166). However, in the context of foreign investors coming into a region, this security is challenged. It seems likely that the categories of owner-like possession and tenant farmers are the most vulnerable in cases of outside investments, as their access to land is often based on informal and oral agreements.

As mentioned above, there are different ways to claim ownership or use rights to agricultural land through different government agencies. Agrarian reform beneficiaries (ARBs) usually have certificates from the Department of Agrarian Reform; others have certificates of the DENR, while only some have registered land titles. The payment of land taxes usually happens locally, so tax certificates are issued by Local Government Units (LGUs). While this system creates a number of opportunities to proof a legitimate title for land-users[55], it also creates a considerable degree of chaos – especially since there are no complete cadastral maps:

> "Several agencies and LGUs issue different tenure instruments, but there is no consolidated information on the tenure status of land

54 Percentages based on own calculation based on the numbers from the Agriculture Census (Philippine Statistics Authority 2012: 39).

55 Of course, this system is also susceptible to exploitation. In some instances people paying land taxes a are middle class families, who live in cities but want to secure themselves the access to land in villages (Franco/Borras 2007: 73).

> parcels; each agency maintains separate land records with different systems of recording and mapping." (Quizon/Pagsanghan 2014: 29)

In consequence, it can become challenging to identify the tenure status of a specific parcel of land. Overlapping land claims and unclear boundaries are, therefore, a considerable problem in the country. To solve this fractured approach to land governance a National Land Use and Management Act has been proposed in Congress but has not been enacted (Lopez/Demaisip 2014).

6.2.2 Rules and regulations regarding foreign large-scale land deals

No overall rules and guidelines have been developed for large-scale land deals specifically; they are, however, governed by "overall policies on land ownership and tenure" (Quizon/Pagsanghan 2014: 71).

The constitution does have a strong focus on protecting the country's economic independence and autarky (Loewen 2018: 71). It does not allow for foreign land ownership and requires corporations which lease public or private land to be at least 60 % Philippine-owned[56]. When corporations or individuals lease public land, they are not allowed to lease more than 500 hectares for longer than 25 years (Republic of the Philippines 1987: Art. 12). While this does not apply to privately owned land, these provisions set some considerable limitations to foreign large-scale land investments. Because of these regulations, investment projects usually consist of joint ventures between international and national investors and often revert to contract farming agreements instead of lease.

Apart from these constitutional rules, different regulations and agencies are responsible in different forms of tenure and types of investment. Registered land titles are probably the most straightforward, as it is the right of the owner to decide about the transfer and use of their land. Nonetheless, specific permits are needed, for example, if an investment requires the cutting of trees (interview PH33).

It becomes more complicated for the land of agrarian reform beneficiaries (ARBs), of which there are 2,8 million, as mentioned earlier. When ARBs enter into a formal agreement with a private investor, it is consid-

56 At the time of research there were plans by the government to abolish the restrictive provisions allowing for 100 % foreign ownership for investors in land as part of a bigger constitutional change (interview PH3).

ered an agribusiness venture agreement (AVA) and falls under the auspices of the DAR (interview PH46). While these AVAs can take different forms, the most common arrangements are leases and growership contracts (FAO 2016: 3). According to rules and regulations set out for AVAs in Administrative Order No. 9, the DAR is supposed to review and evaluate these agreements (Department of Agrarian Reform 2006: Sec.4.5). Local DAR officials should sign AVAs either as witness or as nominal party to the contract in cases where the ten years prohibition period, during which this land is not allowed to be sold, has not expired yet (Department of Agrarian Reform 2006: Sec.4.6). Approval of the DAR should only be provided in cases in which the AVA "guarantees the security of ownership and tenure of ARBs, and ensure[s] an increase of their income" (Department of Agrarian Reform 2006: Sec. 4.10).

The Administrative Order furthermore makes detailed stipulations on how AVAs should be set up:

> "The terms and conditions of the AVA contract shall be fully known to all parties. If warranted, the parties may translate the contract into the local dialect known to the ARBs. It shall be the responsibility of the concerned DAR field officials to ensure that the ARBs are made fully aware of and understand the options available to them, including rights and obligations under the AVA contract." (Department of Agrarian Reform 2006: Sec.4.7)

The DAR has the role to advise and support ARBs as well as monitor ongoing AVAs (interview PH46). It even has the power to end these contracts on various grounds such as "[w]hen the AVA is no longer financially and economically viable" (Department of Agrarian Reform 2006: Sec.19.3). In practice, this usually means that the company is asked to change the conditions of the contract so that ARBs can benefit from an AVA (interview OH46).

To enter into AVAs, the DAR recommends the formation of cooperatives or farmer organizations (interview PH46). Farmer cooperatives, in turn, fall under the responsibility of the Cooperatives Development Authority (CDA), which sets rules for the running of cooperatives. In the case of closing a contract with an investor, the General Assembly of the cooperative, consisting of all members, has to agree formally (interviews PH7, PH31). The CDA and related agencies on the provincial level furthermore provide cooperatives with managerial support and capacity training (interview PH31). Overall, these regulations of the DAR and CDA, therefore, go beyond ownership rights but aim to protect smallholders from unfair con-

tracts and to provide them with the necessary support to make informed decisions. However, these provisions are specific for ARBs; other tenure arrangements or informal tenure are not covered.

Apart from landowners, broader community consultations are only legally required in the case of land in question being part of a formally registered ancestral domain. In line with the national Indigenous Peoples Rights Act an FPIC process is required for any kind of investment in land that is certified as ancestral domain of indigenous people. Such a process is not necessary for communities not consisting of indigenous peoples (Quizon/Pagsanghan 2014: 27).

In addition, land investments affecting protected forest areas or investments in biofuel production sites need an Environmental Impact Assessment (Quizon/Pagsanghan 2014: 72; Government of the Republic of the Philippines 2008: Sec. 2). However, there are no general rules on risks and benefits sharing for investing companies with local communities (Eleazar et al. 2013: 36). Nonetheless, more significant investment projects are supposed to be discussed in periodic consultations with local administrations and civil society actors, according to the Local Government Code of 1991 (Neame/Villarante 2013: 212). However, this rather vague demand for consultations often seems to be unheard in the case of large-scale land investments:

> "A key issue especially in large-scale land transactions is the overall lack of a policy on information disclosure and access to information by the public, especially by communities whose tenure and livelihoods are likely to be affected. There are many cases where local communities are unaware, or else misinformed, about an investment or project that is likely to affect their tenure." (Quizon/Pagsanghan 2014: 71)

This lack of consultation seems especially problematic in cases where public land is leased and land users do not hold formal tenure[57].

Conflicts around land issues can be solved through various mechanisms. Locally, barangay captains and community level mediation are involved in resolving land issues and boundary conflicts. Barangay level conflict resolution has to be tried first before a land conflict can be lodged with a formal court (Eleazar et al. 2013: 32). However, local 'authoritarian-clienteles' elites – often large landowners, who managed to evade the agrarian reform – exert considerable control over the local population and local dispute

57 However, they are protected from forced eviction and have to be relocated adequately (Quizon/Pagsanghan 2014: 26).

resolution. This leads to a situation that is often detrimental to the rights and interests of the rural poor (Franco 2008b: 1864).

At the same time, formal court proceedings are often lengthy: In land cases, it can take up to 5 or 10 years to get a decision in a lower court, and if appeals go through to the Supreme Court, final decisions can take 20 or more years. The costs and extensive periods involved in these processes do not make formal courts an attractive way of dispute resolution (Eleazar et al. 2013: 32–33). In addition to the court system, government agencies, first and foremost the DAR, have quasi-judicial powers, for example, when it comes to the implementation of the agrarian reform and can be one accessible way for local smallholders to claim their rights (Franco 2008a: 999). Overall, there are, therefore, mechanisms to solve disputes and enforce laws, even if the formal way through the courts is often not the first choice.

6.2.3 Evaluating the national legal opportunity structure

I will use the background of the land tenure system and rules for foreign investment in land to evaluate the national legal opportunity structure according to the elements defined in chapter 4.1.1. It will become apparent that the national legal opportunity structure can be considered as favorable in the case of agrarian reform beneficiaries.

In regards to the first element, the veto right against foreign investors is mainly provided through the land tenure system. As shown in chapter 6.2.1, about half the farmland is used by farmers having formal ownership. In addition, 10 % is claimed via certificates, which is also a formal form of tenure. In the case of ownership like possession and tenancy, the picture is a little bit different. While these categories usually enjoy a lot of security locally, they are often based on informal and oral agreements, which could potentially be challenged or ignored in the process of land consolidation for outside investors. Yet, there are also several ways in which affected smallholders could prove their ownership even if it is not formalized. In consequence, many smallholders in the Philippines will have an effective veto against a foreign company investing in their land. However, this is certainly not true for all of them and depends on their individual tenure status. Furthermore, there is no requirement for broader community consultation, for example, in cases in which public land is affected. Element one, therefore, can be regarded as partially fulfilled.

The second element, which looks at support possibilities for smallholders making decisions on investments, is partially fulfilled as well. As discussed in the previous chapter, the provisions made in regards to ARBs are rather extensive. The DAR has the task to review agreements, to support ARBs in the decision-making process, and to oversee existing arrangements with companies. However, as mentioned, these regulations do not usually apply for non-ARB smallholders. Agreements between landholders and companies are regarded as private contract negotiations and, therefore, not subject to oversight through government agencies (Eleazar et al. 2013: 35). Furthermore, an environmental impact assessment is only needed in certain cases and does not require a social component. There is, therefore, no need for an independent social risk assessment.

The third element is, similar to the second element, mainly fulfilled for ARBs. The regulations on agribusiness venture agreements are clear that economic benefits and livelihood improvements have to be the aim of an agreement between an investor and ARBs. If an AVA does not fulfill these requirements, the DAR has the power to intervene on behalf of affected smallholders. General provisions of the constitution aim to protect the Philippine economy. Yet, in terms of benefit-sharing, there are no specific guidelines for ensuring that local communities benefit from large-scale investments.

The fourth element is again only fulfilled to a limited extent. There is no national inventory of large-scale land deals in the country and no clear responsibility in that regard. However, grievance mechanisms exist and judicial avenues are open to be used in cases of land rights infringements. Yet, especially calling on formal courts can be a lengthy and costly process. In the case of affected ARBs they can call on the DAR, which has far-reaching quasi-judicial competences as discussed.

Overall, looking at the national legal opportunity structure, a differentiated picture emerges: All four elements are relatively well fulfilled for agrarian reform beneficiaries, who therefore have a favorable national legal opportunity structure. For other smallholders, there is less support and oversight over their agreements with investing companies. However, it remains to be seen in the further analysis if the favorable legal opportunity structure for agrarian reform beneficiaries translates to better outcomes for them.

6.3 Case III: Green Future Innovations – success through combining strategies

The bioethanol project of Green Future Innovations was part of the biofuels frenzy, which set in after the new legislation in 2006. The investors planned to construct a bioethanol refinery and grow sugar cane through lease and contract grower agreements with the local population in the Province of Isabela, situated in Northern Luzon (Shohibuddin et al. 2016: 110). The central affected municipality is San Mariano, where the refinery is located.

Especially in the beginning, the project was contested by local far-left activists, who feared to lose access to their land. Local protests and land occupations escalated into an attack on company equipment, while a congressional inquiry and an international fact-finding mission raised national and international attention. The involvement of the Governor of the Province of Isabela solved the conflict and the company agreed to return a total of 2000 hectares of land. The mobilization efforts, of which legal mobilization was only a small part, can, therefore, be regarded as a success,

In this chapter, I will first give a short overview of the project focusing on the initial leasing process and problems associated with it before describing the current situation, which is rather beneficial for local smallholders (chap 6.3.1). In a second step, I will describe the mobilization efforts, among them legal mobilization through invoking international human rights and calling on the Philippine Congress and the Provincial Government to intervene (chap 6.3.2). Chapter 6.3.3 will then discuss the receptivity of the company to local concerns; however, this condition does not play an essential role in this case, and my data is not conclusive. More important was the effective mobilization organized through radical left networks, who were already in place before the investment (chap 6.3.4). In the last chapter, I will summarize the central findings and discuss open questions (chap 6.3.5).

6.3.1 Overview of the investment of Green Future Innovations Inc.

Green Future Innovations Incorporated (GFII) was founded in 2007 through Japanese, Taiwanese and Philippine investors. Encouraged by the biofuels legislation of 2006, the plan was to invest in sugarcane and to run a bioethanol refinery in San Mariano (interview PH12). A second company, Ecofuel Land Development Inc., was created in order to secure the land – an envisaged 11,000 hectares (Shohibuddin et al. 2016: 110). How-

ever, as both companies are closely related, I will not differentiate between them and simply refer to Green Future Innovations or GFII[58] in the following.

The leading investor in the bioethanol project was the Japanese Itochu Corporation, a company investing in a variety of business sectors worldwide, injecting 120 million USD in the project. The second Japanese company involved was the JGC Group, a company focused on engineering services such as the construction of industrial sites and plants (International Fact Finding Mission 2011: 11). Philippine investors were represented through the Philippine Bioethanol and Energy Investments Corporation, and the Taiwan-based holding firm GCO also participated in the project, however, as minor shareholders (Molina 11/1/2010). The planned bioethanol refinery was envisaged to be the "biggest biofuel enterprise in the country" (Molina 11/1/2010). Two thousand hectares were planned to be leased and managed directly by the company, and 9000 hectares of sugar cane were supposed to be covered by contract growers. The project enjoyed the broad political support of the Governor of Isabela and the Mayor of San Mariano (Burgos 7/2/2011).

In the initial phase, the company started leasing the land in 2007. Community meetings were held at the barangay level but mainly served the purpose of informing inhabitants rather than being open consultations about the investment.

> "[…]the nature of the project and its possible implications for the community were not explained to the villagers, and nor was their input requested with regards to the introduction of sugar cane into their areas." (Shohibuddin et al. 2016: 119)

Through the meetings, smallholders were approached to lease their land. Lease agreements covered a period of six years and rent payments ranged between 5000 to 10000 Philippine Pesos per hectare per year, depending on the accessibility of the land. Simple barangay certificates were accepted as proof of possession by the company (de la Cruz, Rosselynn Jaye 2012: 29–30). This simplified the leasing process and made the investment accessible for smallholders without formalized tenure claims; however, it also opened the door to land speculation and fraudulent land claims. As the rent money was paid as lump-sum in the early phase of the project, mon-

58 Ecofuel Land Developmen Inc. did not exist anymore at the time of research (2018). The company dealing with the sugarcane input is now called One Renewable Earth (interview PH12).

eylenders used the opportunity to convince their debtors to lease their land to the company to repay their loans (Alano 2015: 9). In these instances, the smallholders were more or less forced to give up direct control over their land in order to be debt-free. In addition, larger landowners bought up land from farmers with informal possession and in at least one instance expelled tenants from the land to use it for sugar cane production (Alano 2015: 12). In other cases, barangay captains, relatives of company employees and local political elites were claiming land that had been used by smallholder families without formal titles. These families faced displacement and the loss of their livelihoods (International Fact Finding Mission 2011: 16).

One such case took place in barangay Del Pilar, where the barangay captain had allowed the company to survey 700 hectares even though he did not hold possession of that land (interviews PH21, PH48). The company did seem to regard him as a legitimate representative of the actual landowners (interview PH48), who had allowed the barangay captain to temporarily used their fields as grazing land but did not agree to the investment (Aljibe 2015: 46–47). The affected farmers organized through the local farmers' organization DAGAMI (Danggayan Dagiti Mannalon ti Isabela), which belongs to the radical left KMP described in chapter 6.1.3. Through various strategies on the local, national and international levels, they stopped the company from including the 700 hectares in their plantations. I will take a closer look at the various avenues of mobilization in the next chapter.

Apart from these bigger cases, smaller land conflicts occurred and the company had to uproot already planted sugar cane or return leased land in several instances (Alano 2015: 10). The initial process of leasing land for sugar cane plantations was, therefore, not as smooth as planned and triggered conflicts and mobilization against the investment.

As a response to the initial problems and due to changes in management, the process of securing land for sugar cane plantations changed in later years. Land possession is now not only validated through the barangay captain but also through neighboring farmers, who are included in identifying the boundaries of parcels of land (interview PH20). Agreements with the company are only for three years and farmers can choose between three farming models: They can lease the land to the company[59], enter into a contract growing arrangement in which they receive all the in-

59 The rent payments were between 7000 and 12000 peses per hectare per year at the time of research in March 2018 (interview PH20).

puts from GFII, or become an independent planter only registering with the company as potential seller of sugar cane (interview PH20).

The small number of farmers I spoke to were satisfied with their options. Entering into a lease agreement is, for example, a way for them to make barren land useable, if they do not have the means to prepare it themselves. After three years, the company returns the land in a tilled state, giving the farmer the option to grow something else then (interview PH47). Farmers also entered into a contract grower arrangement as a step to eventually become independent planters and autonomous of the company (interview PH19). Independent planters enjoyed the freedom of being able to control their own farm (interview PH15) and were able to sell their sugar cane to another processing mill in a neighboring province when they offered a higher price than GFII (Alano 2015: 9). Most of the farmers seem to make a conscious choice to grow sugar cane but usually only do so as long as it is more profitable for them than growing other crops such as corn, the primary crop in the region (interviews PH14, PH18, PH21). While my own data gathering is in no way representative of all farmers, it does underline previous research that found that most smallholders entering into sugar-cane planting arrangements with the company had little complaints (Rutten et al. 2017: 11).

Even though the investment project is now well accepted in the region, the company has economic difficulties, as it is not able to secure enough land for sugar cane. At the time of research, in March 2018, 3000 hectares were used for sugar cane production, which meant that the bioethanol refinery was only running at half capacity (interview PH12). In 2016, a new management had taken over the company, which is now 100 % Philippine owned. The attempts of the new management to secure more land were not successful due to different reasons. First, the company wants to increase plantations with mechanized farming and therefore focuses on flat lands, which is rather difficult in the hilly area. Second, available land is often remote, making accessibility, especially during the rainy season, a big issue (interview PH20). Third, and probably most important, GFII has problems to convince farmers to grow sugar cane. One issue is that farmers do not have knowledge about sugar cane growing, as it had never been planted in the region before the investment. Furthermore, the conditions the new management is able to offer are not as attractive as earlier arrangements with the company, making it less profitable for farmers to participate (interview PH20). According to a staff member of the local DAR office, the net income from rice or corn is higher than from sugar cane. In

addition, ARBs are only allowed to divert lands to sugar cane that are not suitable for food crops such as corn or rice[60]. Last but not least, local farmers also benefit from government support programs such as the provision of tractors for the production of corn, cassava or rice (interview PH47), presenting them with viable alternatives to sugar cane.

Overall the investment of GFII presents a project which was initiated as part of the biofuel boom but has until now not been economically sustainable for the investors. For the local farmers, GFII represents one additional option and most of the smallholders growing sugar cane do not seem to have significant complaints about the company. However, this was different in the beginning, when some individuals used the opportunity to make quick cash in wrongfully leasing land to the company. In the next chapter, I will take a closer look at the multiple mobilization efforts that took place to get back the land and ensure the rights of land-using smallholders.

6.3.2 Escalating mobilization efforts from below and above

The main mobilization efforts took place in the first half of 2011 when people in Del Pilar but also other barangays in San Mariano feared that they would lose access to their land. I will describe these mobilization efforts in a first step before discussing the responses of government actors and the company that resolved the issue. It becomes clear that the legal mobilization of the Congress was just one element of broader mobilization efforts that involved mass protest and violent means.

Local mobilization efforts were organized by DAGAMI (Danggayan Dagiti Mannalon ti Isabela), a local member organization of the KMP with about 3000 members in San Mariano (interview PH21). DAGAMI seemed to be especially strong in Del Pilar, where the barangay captain wrongfully leased the land to the company. Apart from the instances of contested land claims, farmers generally feared the loss of their land through the investment project. The first protest against the bioethanol project took place in February 2011 in San Mariano with 400 participants (Burgos 7/2/2011). Two weeks later, DAGAMI cooperated with the KMP and other far-left organizations to undertake a national fact-finding mission and collect data

60 This policy was introduced by the DAR, as a response about the debate about bioethanol and food security in 2008 (interview PH46).

on problems around the bioethanol project (International Fact Finding Mission 2011: 14).

In the meantime, congressman Mariano of the KMP associated party-list Anakpawis sponsored a House Resolution demanding an investigation into the investment project "that would turn small owner-cultivators/farmer-tillers into tenants under a contract-growing scheme threatening farmers to lose their farmlands" (House of Representatives 2011). The resolution puts the investment into the broader context of "prevailing contract-growing practice in the Philippines" which "favors the foreign partner" and "drives many farmers to bankruptcy" (House of Representatives 2011). Therefore it was demanded that the arrangements between the company and the farmers are scrutinized and a full investigation be undertaken (House of Representatives 2011). The resolution was referred to the Committee on Energy, which made efforts to get inputs from different government agencies and furnished meetings with company representatives.

In the follow-up, a second fact-finding mission took place at the end of May 2011 with the participation of international civil society members such as from Friends of the Earth Japan, the Global Forest Coalition or the Organic Consumers Association – USA. The mission was organized by KMP, APC, IBON International, People's Coalition on Food Sovereignty and DAGAMI and contained visits to communities as well as meetings with the company, local administration, but also provincial government agencies and politicians (International Fact Finding Mission 2011: 3). The report of the international fact-finding mission claimed that the project was "exacerbating land grabbing conflicts and socio-economic inequities" (International Fact Finding Mission 2011: 1) and demanded that government agencies and the Itochu Group should withdraw their support for the investment. The report contained not only information on anomalous land titling processes in the shadow of the investment but also problematic labor conditions on the sugar cane plantations, a heightened military presence in Del Pilar. The report described expected adverse effects on the ecology as well as food security (International Fact Finding Mission 2011). The findings were used for national and international advocacy vis-à-vis Congress, national agencies and international institutions such as the UN Special Rapporteur on the Right to Food (interview PH8).

Apart from these national and international efforts, mobilization continued on the local and provincial levels. In April or May 2011, the conflict led to an attack on company equipment in Del Pilar and the burning of sugar canes in the municipality of Delfin Albano (interviews PH21, PH48). The attack was ascribed to the NPA, which is active in the remote moun-

tainous parts of San Mariano (interview PH12). The attack was perceived as a warning by the company:

> "Actually, it was a warning. A warning with a cost. There is a big cost; there is a big loss on our part, because the tractors are for our farms. When we don't have tractors, we cannot manage the farm [...] and the cultivation." (interview PH12)

After another rally, which took place in front of the company's office in Cauayan in June 2011, high ranking company officials met with leaders of DAGAMI. They agreed to halt the development of the land in question (interview PH48). In another dialogue that took place at the Provincial level, the Governor of Isabela intervened and called on all mayors to respect and ensure legitimate land claims. In turn, he asked the activists to provide mayors with evidence of fraudulent land claims, so they are able to resolve the conflicts (interview PH48). Subsequently, the mayor of San Mariano turned to the barangay captain:

> "He [the mayor] presented the evidence that they have. They give it to these captains, who are involved in this. And then, he told them a question […]: 'Why did you do this? There is this evidence that this land belongs to someone else. So, why did you do it?' That's the question. And then he ordered them: 'If you have no evidence that this is yours, you better stop it.'" (interview PH48)

In consequence, the barangay captain of Del Pilar informed the company that the land was not his own and it was returned back to the owners[61] (interview PH48). In neighboring municipalities, this did, however, not work and it took another rally – this time in front of the company headquarters in Metro Manila – and five more months before all the land was returned to the smallholders working on the land (interview PH48). According to a national KMP representative, a total of 2000 hectares were returned due to the actions of civil society (interview PH8). I, therefore, regard the mobilization attempts as a success.

61 These accounts about the involvement of the Governor were narrated by one interviewee only and I was not able to verify them through other sources. The meeting with the Governor was confirmed by others (interview PH47), who did however not participate and were therefor not able to help in establishing what was said during the meeting.

It is difficult to ascribe the mobilization success to individual instances such as the legal mobilization through the congressional resolution, the fact-finding missions or the NPA attacks. Instead, it makes sense to think about the different strategies working together to explain the outcome. It seems clear that the intervention of the Governor was an essential step in resolving the conflicts around certain lands. It is likely that he was pressured into doing so 'from below', by protests of DAGAMI as well as the threat of more violence by the NPA, and 'from above', by the activities going on at the House of Representatives. However, I do not have additional evidence to validate these points.

Other interventions seem less relevant, as they happened after the initial conflicts were resolved. In 2012, some leaders of DAGAMI traveled to Japan, upon the invitation of Friends of the Earth, Japan to meet with politicians and company officials (interviews PH21, PH48). In the same year, Olivier de Schutter, acting Special Rapporteur on the right to food and James Anaya, acting Special Rapporteur on the rights of indigenous peoples, formally addressed the Government of the Philippines to voice their concerns and gather information about the investment of GFII. Their letter summarizes findings from the international fact-finding mission and asks the government for clarification (OHCHR 2012). However, it seems like such an answer was never provided. It is also unlikely that the involvement of the two special rapporteurs made any difference, as the situation in San Mariano was starting to calm down. While there was another protest in front of the bioethanol plant in August 2012, which was mainly triggered by an unpleasant odor emanating from the refinery (Global Forest Coalition 30/08/2012), activists of DAGAMI seemed to change their mind about the investment. One of the central leaders of the protest later decided to grow sugar cane for the company himself (interview PH21). It seems that local critics of the project were convinced over the years that farmers do not lose their land and have another economical option now. It might even be that the relationship with government agencies like the DAR improved after the initial conflicts, as was described in an interview with different staff members at the local DAR office:

> "Interviewee A: And then it was proven beneficial and then later on this left group they just went silent. […] In fact, they are now our friends. They have acquired our program too!
> Interviewee B: Yes, and we were able to keep them silent because we have proven that [the project] is really beneficial to the persons within

> the area. And, they even extended their help! They help us in the conduct of our programs.
> Interviewee C: They are asking for a certification from our office, so that their back up land, their barren land will also be planted with sugar cane." (interview PH47)

This newfound cooperation seems rather remarkable as traditionally, the KMP regards the agrarian reform as 'bogus' and usually does not seek collaboration with the DAR. However, locally some activists seem to cooperate closely with government agencies and municipal administrators now (interview PH21).

Overall, mobilization against the unjust leasing of lands and the GFII investment more generally did take place not only locally, but also nationally and internationally. This combination of pressure from below and from above most likely encouraged the involvement of the Governor. Through reminding the mayors of affected municipalities to stop illegal land claims, the Governor helped to resolve the issue in barangay Del Pilar and other areas. In the end, general protests also died down when local activists realized that they are able to profit from the investment.

6.3.3 The company: complications of a joint venture business

The previous chapter showed that one of the decisive factors to solve the issue of the land illegitimately leased to the company was the involvement of the Governor, who made sure that local politicians do not sign and stop wrongful land claims. GFII and its foreign investors did not play a significant role in this context. Nonetheless, looking at some of the investment's characteristics provides some insights into the difficulties of foreign investment in land.

As described in chapter 6.3.1, the leading investors in GFII and the bioethanol plant was the Japanese Itochu Group, with an investment of 120 million USD. The Itochu Group has an extensive portfolio with investments in textile, food, information technology, metals, oil products, energy, insurance, finance and real estate (Gatdula 9/22/2009). The investment in bioethanol was a response to both Japanese government efforts to reduce greenhouse gas emissions (Gatdula 9/22/2009) as well as Philippine legislation for biofuels (Molina 11/1/2010). It was planned to register the project as Clean Development Mechanism under the UN Framework Convention on Climate Change (International Fact Finding Mission 2011: 11), which did, however, not happen. As a big international corporation, the

Itochu Group has a well developed CSR program, ascribes itself to uphold human rights, and joined the UN Global Compact in 2009 (Itochu Corporation). The international fact-finding mission, as well as Japanese NGOs such as Friends of the Earth Japan, directly addressed the corporation and demanded action to be taken (International Fact Finding Mission 2011: 43–44). Yet, it is unclear if the Japanese company was able to directly influence management decisions made on the ground in San Mariano.

Evidence from my interviews indicates that the relationship between the local, mainly Philippine management and the Japanese investors was rather tricky. One of the activists who went to Japan to talk to the investors, for example, claimed that the Japanese managers thought that the lease money was between 15000 and 20000 pesos and were surprised to find out that locally the rate paid was between 5000 and 10000 pesos (interview PH21). There were also stories that company employees regularly stole fuel or fertilizer and sold it for their private gains (interview PH21). The land leasing process, as was described earlier, was problematic. Especially in the first years, the company tried to acquire as much land as possible. However, it turned out that some of those lands were not even suitable for sugar cane growing, leading to unnecessary expenses (interviews PH12, PH20). Due to the economic difficulties and local mismanagement, the Japanese investors eventually pulled out in 2014:

> "Oh, their business partners here were not loyal to them. They were corrupt. […] So, the investment didn't [pay off]. There were no more investments that were coming and so, yeah, they had to shut it down." (interview PH48)

In consequence, GFII was sold to the Philippine investors and was acquired in 2016 by another Philippine business with experience in bioethanol production (interview PH12). In result, there have been two significant changes in management since the beginning of the investment, each bringing with them considerable modifications.

Despite some management problems, the company seems to be receptive to complaints made by farmers (interview PH19). At the same time, farmers have a good bargaining position, as they can simply quit the contract after three years.

However, overall I hardly have evidence on the company's receptivity for the years 2007 to 2011. At the same time, it did not seem too relevant for the solution of the problem, as the central conflict was between smallholders and some local elites who had used the investment to claim land.

6.3.4 Support network: the radical left

The organizers of the protest against the company were able to use preexisting network structures, which linked local actors with national and international civil society actors and politicians. I will discuss these links in the first part of the chapter before I will reflect on the risks that come with the support by the NPA.

When GFII started the investment project in the region, the farmers' organization DAGAMI already existed and had about 3000 members in San Mariano and up to 6000 members in the whole Province of Isabela (interview PH21). As such, it was easily possible for them to mobilize members for protests, such as in early 2011. As DAGMI acts as the provincial chapter of the KMP the organization is closely linked to national KMP activists who quickly got involved. Through their networks, they organized the international fact-finding mission, in which 13 national and international and six local organizations participated (International Fact Finding Mission 2011: 3). The international participation certainly created more publicity and Japanese NGOs were able to address the company in Japan. In addition, the KMP also provided the contact to the Congressman of Anakpawis, who was the former chairman of the KMP. In essence, through the KMP this whole machinery of mobilization strategies was started targeting different levels of government:

> "The legal strategy is, of course, the advocacy work. For example, negotiations with the local government unit is part of the legal strategy, right? And then we also seek help from progressive congressional parties, representatives, like Anakpawis. […]There is no legal court strategy because it is difficult. So we just use dialogues, advocacy. And also the international advocacy." (interview PH8)

The citation mentions the difficulty of court strategies, which is probably linked to the fact that they can take up years and therefore be very resource-intensive (as discussed in chapter 4.2.2). Instead, the strategy focused on influencing politicians in order to get them to act on behalf of affected smallholders.

At the same time, the organizations of the radical bloc also used the case of GFII to advance their case for genuine agrarian reform through linking the issues:

> "With the drive to develop new high-value export-oriented crops over the past decade, land grabbing in the Philippines has intensified and exacerbated land inequities. Small-scale food producers have been dis-

> placed, indigenous ancestral domain has been violated, and the urgent call of hundreds of thousands of rural families for genuine agrarian reform have been ignored." (International Fact Finding Mission 2011: 4)

In this way, the resistance of the KMP to investment projects such as GFII is based on the general belief that foreign investment in agriculture can never be beneficial for local farmers. In consequence, the national actors of the KMP remain in opposition to the bioethanol project (interview PH8), even though there are no more actions undertaken. Locally some members of DAGAMI have shifted in their opinion and are participating in the project as described in chapter 6.3.2. The case, therefore, shows how local farmers can use the support of the radical left network to create considerable pressure on the company as well as provincial and local politicians.

In addition to support from legal organizations from the radical left bloc, the farmers also received support from underground communist organizations, first and foremost, the NPA. The New People's Army has had a presence in the region since the early 1980s and the municipality of San Mariano was once home to one of the biggest rebel camps in the country (Persoon/van der Ploeg 2003: 458). The remote mountainous areas, which are part of the Northern Sierra Madres Mountain range, seem to provide space for the NPA to set up camps and run their operations. During my field research, it became clear that some remote parts of San Mariano are known locally as NPA stronghold (interviews PH12, PH21) and are avoided by some locals. The NPA has a history of attacking agricultural or mining investors who they deem to exploit the people and the environment; however, they also extort 'revolutionary taxes' from companies, so there might also be economic motives for attacks (International Crisis Group 2011: 18–19).

The attack on GFII tractors was regarded as support for the demands of DAGAMI (interviews PH12, PH21). However, this support came at a cost, as "the government suspected that DAGAMI and the NPA were connected" (interview PH21). In consequence, the leader of DAGAMI was questioned by the military and described himself as lucky in getting away with his life (interview PH21). As mentioned in chapter 6.1.3, extrajudicial killings of farmer activists are not unusual in the Philippines and the Province of Isabela is no exception. In 2011, the vice-chairperson of DAGAMI was killed in San Mateo (International Federation for Human Rights 30/03/2011) and another leader of the organization in Delfin Albano in 2016 (Cervantes 9/9/2016). Even though killings are often associated with private militias, they also take place through official policy or mili-

tary actions against supposed rebels. In consequence, the support through the NPA has to be regarded as ambiguous: While the attack might have helped to show the company and local politicians the seriousness of the situation, being associated with the rebel group can become dangerous for activists, like the members of DAGAMI.

Overall, my evidence shows that existing farmers' organizations played a decisive role in starting a fast and effective mobilization against the investment projects and wrongful land claims. The combination of local pressure with a credible threat for violence, critical questions asked on the national level and international civil society attention proved efficient in creating a favorable outcome for local smallholders.

6.3.5 Discussion and additional issues

The case of GFII sheds some light on how foreign large-scale land deals are affected and shaped by local conflicts and existing networks involving violent actors. Nonetheless, legal mobilization also played a role in this case, even though it was only one part of a broader set of strategies. I will first discuss my findings through the lens of the three core conditions before discussing open questions.

First, the national legal opportunity structure does provide local smallholders with some protection. The barangay captain of Del Pilar had planned to lease land that he did not own. In consequence, legitimate tenure holders could have brought the case to court. However, as discussed, in the Philippines, this is not the most efficient way to claim rights. Instead, the farmers invoked their rights vis-à-vis the Provincial Government and, through the help of the KMP, also vis-à-vis Congress. Paired with other forms of mobilization, most importantly protests, fact-finding missions as well as an attack on company property, the farmers were able to defend their access to land. Yet, it is not clear which role the legal mobilization played in comparison to other forms for explaining the outcome. I will discuss this question further below. Looking at the case through the lens of the NLOS, it also becomes clear that tenure rights need to be actively protected in cases of large-scale agricultural investments. While local farmers had secure tenure, this was put into question as the investor triggered a rush for land through providing quick cash. The case, therefore, shows how foreign investment can lead to new and intensified contestation around land.

Second, the receptivity of the company did not play a big role. Instead, the conflict developed between local smallholders and political elites, who leased the land illegally or certified false land claims. The company did play a certain role, as they did agree to stop the further development of the land due to considerable pressure from DAGAMI. However, the solution of the conflict came with the involvement of the Governor, who warned local politicians to follow the law and stop wrongful land claims.

Third, local farmers had a strong support network, which existed already and was able to go into motion quickly. The farmers mobilized locally through protests and were supported on the national level by the KMP, which involved the Congressman and undertook fact-finding missions. Most activities happened within a couple of months, showing the efficacy of the mobilization of the far-left network. At the same time, the involvement of the NPA has to be regarded as ambiguous. It seemed to have provided farmers with additional pressure but also means the danger of retaliation by state forces.

The main open question, in this case, is the effect of different types of strategies. As discussed in chapter 6.3.2, it was not possible to disentangle the effects of local protests, two fact-finding missions, the violent attack and the Congressional inquiry on the outcome of the efforts. As described, the involvement of the Governor seems to have been central in enforcing existing rules and protect the rights of smallholders. However, if the involvement of the Governor was triggered by questions asked by the Congressional Committee on Energy, local protests, the fact-finding missions or the NPA attack, is impossible to infer from my available data[62]. I am therefore not able to draw conclusions on the effectiveness of legal mobilization in comparison to other forms such as protests, fact-finding missions and violent attacks. Furthermore, I am not able to understand the role the violent attack played in this case. Was it interpreted as a sign for the company to pay off the rebels, which would have not necessarily warranted the engagement of the Governor? Or, was it a signal to the Provincial Government to take care of local conflicts in order not to endanger the investment, which was largely supported by the Governor? In other words, was the violence necessary for local actors to achieve their goals?

Overall, the case of GFII provides an example of a case in which local actors were able to push for the protection of their land rights and ensure

62 Unfortunately I was neither able to interview the Governor of Isabela nor the Mayor of San Mariano who were involved in solving the conflict.

their access to land. This was reached through a combination of strategies of which the legal mobilization of Congress and the Provincial Governor were just one element. The radical left network offered important support in this regard.

6.4 *Case IV: Agumil Philippines: Uninformed consent and the difficult struggle of local cooperatives*

The investment of Agumil Philippines Incorporated in Palawan, which started in 2007, received considerable attention as the first palm oil project on the island. Agumil invested in Palawan through leasing land and contract growing arrangements with 14 cooperatives. However, the risk of the investment was predominantly carried by the cooperatives, who had to take out loans from the Land Bank to finance the setup of the plantations. Most cooperatives ran into substantial financial problems, as they were not able to repay their loans, leaving them highly indebted. The case thereby shows the failure of government agencies to support local smallholders despite existing safeguards.

After several years, cooperatives were able to push for a Congressional Inquiry into the matter. The inquiry found the agreements with Agumil to be problematic and instilled a dialogue process on the Provincial level. As a consequence, an offer for a revised agreement by the company and the Land Bank was presented to the cooperatives. However, the cooperatives were divided on whether to accept the deal or not, which would essentially take away remaining control over the plantations. The legal mobilization attempt can, therefore, not be described as a success.

In the following, I will first give an overview of the investment of Agumil through focusing on the setup of the investment and the agreements signed with cooperatives (chap 6.4.1). In a second step, I will discuss the failure of various government agencies to provide support for cooperatives' members and scrutinize the agreements before they were signed. I also describe the legal mobilization attempts, which led to a congressional inquiry and a dialogue process at the provincial level (chap 6.4.2). In a third step, I will take a look at the Agumil and the Land Bank, which is responsible for the loans to the cooperatives (chap 6.4.3). In a final step, I focus on the support network of the cooperatives, which will reveal that they have hardly received any civil society support. Furthermore, I will address the issue of missing coherence among cooperatives, which probably further

weakened their position vis-à-vis the company (chap 6.4.4). Chapter 6.4.5 will then summarize and discuss my findings.

6.4.1 Overview of the investment of Agumil Philippines, Inc.

The investment of Agumil Philippines Inc. focuses on the production of crude palm oil through the operation of a palm oil mill located in the municipality of Brooke's Point in the South of Palawan. The investment involved Malaysian, Singaporean and Philippine investors. Formally, two companies were created: The Palawan Palm & Vegetable Oil Mills, Inc., which is 60 % Singaporean and 40 % Philippine owned and runs the oil mill, and Agumil Philippines Inc. (AGPI), which is 75 % Philippine and 25 % Malaysian owned and deals with the plantations[63]. However, both are part of the Agusan Plantations Group, based in Malaysia (Larsen et al. 2014: 3).

To create the necessary oil palm plantations, Agumil secured land for production either through leasing the land directly or through contract growing arrangements with 14 local smallholder cooperatives. In addition, two business-owned cooperatives grow oil palm independently of Agumil but have to deliver their fruit bunches to the Agumil mill, as it is the only one on the island (Larsen et al. 2014: 20). As the company does not provide official numbers, it is difficult to estimate the exact amount of hectares planted with oil palm in Palawan. Data from 2014 name a total area of over 6000 hectares (Department of Agrarian Reform 2017: 2), which could be up to 10 000 (interviews PH36, PH44) or even 15 000 hectares (Larsen et al. 2018: 9) by 2018. These numbers also include plantations by independently organized businesses; the amount planted by smallholder cooperatives is around 2900 hectares (interview PH43).

The investment was welcomed as a way to enhance economic development, create employment opportunities and tax gains (Larsen et al. 2018: 10). However, years after the growership agreements were signed, it became apparent that the investment was not beneficial but highly problematic for local smallholders. This is the issue I will focus on in the following; however, it should be noted that there are also significant issues around the encroachment on indigenous people's land, illegal logging and busi-

63 As the investor is usually referred to simply as 'Agumil' locally, I will refer to the company as Agumil in the remaining chapter. The contract signed with cooperatives refers to AGPI, which stands for Agumil Philippines Inc.

ness people buying up cheap land as an investment opportunity (Neame/Villarante 2013: 211).

To enable the investment, Agumil teamed up with the Land Bank of the Philippines, a government-owned bank with a focus on providing financial services to rural populations and encouraging economic development. The Land Bank provided loans to cooperatives that entered into a growership agreement with the company. Funding conditions of the bank required farmers to form cooperatives, as loans would not be granted to individuals. Furthermore, the Land Bank demanded the signing of two agreements – the Production Technical and Marketing Agreement (PTMA) and the Management Service Agreement (MSA) – between the cooperatives and Agumil, as a way to ensure that there would be a buyer's market for the fresh fruit bunches (FBB) (interview PH45). Fourteen cooperatives signed these two agreements and received subsequent loans with a 14 % interest rate[64]. However, as none of the cooperatives was able to present 20 % of the equity required for a Land Bank loan, the company put up the 20 % for the cooperatives. In consequence, the cooperatives also have a loan with Agumil (Palawan Council for Sustainable Development 2014: 6).

The PTMA regulates the relationship between the cooperatives and Agumil: The cooperatives commit themselves to using the land under contract exclusively for growing oil palm and delivering the fresh fruit bunches to the mill of Agumil for 30 years. The company provides seedlings and training for the cooperatives, while the cooperatives are obliged to follow the operating procedures set by the company. At the same time, Agumil has the right to take over the management of the plantation if "the plantation management was not carried out in accordance with AGPI's technical recommendations" (Production Technical and Marketing Agreement 2007: Art.II.7). In case of such a takeover, a 10 % management charge is billed to the cooperative, who nonetheless has to pay for inputs such as fertilizer. Costs advanced by the company are charged with a 14 % compounded interest rate to the cooperatives (Production Technical and Marketing Agreement 2007: Art.II.Art. 7). The terms and conditions for the takeover of the management of the plantations are detailed in the Management Service Agreement. In the agreement, the cooperatives agree to the management of the plantations by Agumil and the use of the loans by the Land Bank for these ends (Management Services Agreement 2007).

64 12 % interest rate in addition to a 2 % service fee.

The MSAs were signed together with PTMAs and, in some instances, entered into force right away. In consequence, some cooperatives managed their own plantations, while other plantations were managed by Agumil (interviews PH35, PH39, PH44). However, irrespective of their management, most cooperatives ran into serious problems when it came to the first harvests and the paying back of the loans after five years. Yields were a lot lower than initially projected (interview PH35, PH39), while costs for inputs such as fertilizers and transport had increased significantly (Neame/Villarante 2013: 219). Furthermore, the prizing arrangement with Agumil included a 15 % profit share for the company as well as an additional milling fee of 750 Philippine pesos[65] per metric ton of fresh fruits bunches, which added another 15 %. In consequence, about 30 % of the revenue went to the company in addition to the 10 % management fee, considerably reducing the profit margins of the cooperatives.

At the time of research in 2018, only 4 out of 14 cooperatives were able to pay their monthly amortization rates (interview PH45). Over the years, the cooperatives had accumulated 218 million Philippine pesos (over 4 million USD) of debt with the Land Bank (Committee on Cooperatives Development 2017), and compounded debt of 93 million Philippine pesos (1,7 million USD) with Agumil (interview PH41). Most cooperatives' members had hardly gained any income from the investment and would have had considerable higher profits had they planted other crops such as coconut or banana (interviews PH36, PH38, PH42, PH43). I will argue that this situation could have been averted had the smallholder cooperatives had legal advice and institutional support before the signing of the agreement. Before I take a closer look at the failure of different regulatory mechanisms, I will describe the process leading up to the signing of the agreements.

Various consultations on different levels preceded the setup of the oil palm plantations in 2007. In 2004, Agumil, which already had a presence in Mindanao, was invited by the then acting Governor to explore and develop palm oil production on the island of Palawan. The project, which was known as the 'governor's project' (interview PH36), was then discussed with different local government units and endorsed by different municipalities in the South of the island. The municipality of Brooke's point donated land for the nursery while the company started to inform landowners about investment possibilities (Palawan Council for Sustainable Devel-

65 At the time of research in November 2018.

opment 2014: 1). In some barangays and indigenous communities, meetings took place in which the investment project was presented:

> "However, when asked to describe these meetings participants stated that they were animated by all the positive information and the way the economic benefits of oil palm were pitched, such that there was almost no discussion of any possible negative impacts. In particular, participants pointed out the lack of discussion concerning wider social or environmental impacts, or on the impact of turning their land over for such a long period if the financials did not work out as planned" (Neame/Villarante 2013: 224)

At the same time, no environmental or social impact assessment was carried out, and the land was not surveyed in a participatory manner, which would have revealed land conflicts or illegitimate ownership claims (Neame/Villarante 2013: 224).

Agumil staff focused on convincing holders of land titles, many of them agrarian reform beneficiaries[66], to form cooperatives in order to enter into the agreement. Many cooperatives were formed solely for the purpose of the investment (interview PH35), while in other instances, inactive cooperatives were reactivated (interview PH39). Many landowners were excited about the opportunity to get rich:

> "In 2006 or 2007 there were Agumil employees from Mindanao who came here to Palawan. They went from barangay to barangay encouraging people to plant oil palm. They said that oil palm is one of the most productive tree crops. So, that's why many landowners were encouraged to join the plantation – because, actually, we were expecting to become rich." (interview PH44)

Stories about becoming a millionaire (interview PH36) or the prospect of owning a car (interview PH38) within a few years encouraged smallholders to agree to the investment.

The PTMA and the MSA were only signed by the chairpersons of the cooperatives, leading to a situation in which most cooperatives' members never saw the actual agreement (interview PH42). In addition, the growership arrangement with the PTMA, the MSA and the loan line agreement with the Land Bank was presented as 'take it or leave it' package, which did not leave room for negotiation (Neame/Villarante 2013: 225). Further-

66 Five cooperatives consist mainly of ARBs (Department of Agrarian Reform 2017: 2).

more, the company seems to have exerted some pressure to sign the agreements as quickly as possible. In one case, the agreements were signed at the side of the road (interview PH42).

The cooperatives did not have any legal representation nor legal advice. Even cooperatives consisting predominantly of ARBs did not receive support from the local DAR office, as there seems to have been not enough time (interview PH39). In the end, the cooperatives agreed to the contracts without proper understanding[67]: "Nobody explained the content of the documents. And, you know, most of us were farmers. We don't know legal terms" (interview PH39).

The cooperatives questioned the contents of the agreement only years later when they started to realize that they are not profiting, but rather losing money through the investment (interview PH39). The realization came with the first harvests:

> "[…] because of no consultation, I haven't seen the contract. So, I just presumed it's a good contract. But when the production started, there were already fresh fruit bunches from the plantation. I was really thinking: Why do we not have any profit from the plantation? […] That's when I started my own computation and research on the internet" (interview PH35)

Only then did the cooperatives seek legal advice through lawyers they knew through their personal networks (interview PH35) or the DAR (interview PH39). However, it was too late to change the parameters of the agreements:

> "When they asked the DAR for help we looked at all the documents; but the problem is, they are all legal. They are legal contracts, so we told them that they cannot breach the contract." (interview PH40)

When the cooperatives began to understand their situation, they started to mobilize and call on different institutions. I will further analyze these mobilization efforts in the next chapter.

67 However, there were also landowners who were skeptical of the offer and did not join (interview PH37).

6.4.2 The failure of institutional mechanisms and subsequent legal mobilization attempts by cooperatives

Several institutions and agencies were involved as the company started to set up their operations. However, they failed to provide legal support or advice to the cooperatives. I will describe this failure in the first part of the chapter before I consider legal mobilization attempts made by the cooperatives in the second part.

Looking at the agencies, who were or should have been involved during the planning of the investment project, it becomes clear that relevant actors either did not feel responsible for scrutinizing the growership agreement between Agumil and the cooperatives or were not engaged enough to do so. As described in chapter 6.2.2, the agencies, which would have the mandate to support local cooperatives through legal advice, were provincial and local DAR (Department for Agrarian Reform) and CDA (Cooperatives Development Authority) offices. While the DAR officials are responsible for the support of agrarian reform beneficiaries, the mandate of the CDA extends to all cooperatives. However, both agencies were not involved at the moment the agreements were signed.

The CDA works according to the principle of subsidiarity and therefore leaves the decision to enter into contracts with investors to the cooperatives. The provincial office was only consulted by the cooperatives, once the financial problems became apparent (interview PH31). Similarly, the local DAR office was not consulted by the cooperatives at the time of the signing (interview PH39). Later on, both the CDA and the DAR provided support to the farmers, either in the form of trainings (interview PH31) or through direct material support such as the provision of tractors and trucks (interviews PH39, PH40). However, both the provincial CDA and the local DAR offices regarded the legal situation of the cooperatives as a hopeless case (interviews PH31, PH40).

Apart from the DAR and the CDA, other agencies have oversight functions even though they might not directly concern the cooperatives. The Philippine Coconut Authority (PCA), for example, is mandated to oversee the production of palm oil. However, it seems that the agency in Palawan was not able to fulfill this mandate at the beginning of the investment, as they did not have guidelines for the production of palm oil at the time (Larsen et al. 2018: 6). Locally the PCA only became involved in the investment in 2017 when they started gathering information on the project. The PCA now supports the cooperatives with training, free seedlings and maybe also fertilizer in the future (interview PH43). Interestingly, all three

agencies, the DAR, the CDA and the PCA seek to support the cooperatives through training and resources, while the growership agreements and the role of the investing company are not principally questioned.

Two government authorities responsible for environmental protection, the Department of Environment and Natural Resources (DENR) and the Palawan Council for Sustainable Development (PCSD)[68], seem to have voiced some concerns in the beginning about the ecological consequence of the introduction of a new plant on the island. Nonetheless, they supplied the necessary certificates for the operation of the palm oil mill (Palawan Council for Sustainable Development 2014: 2). However, no complete Environmental Impact Assessment was done, as the company did not formally control the plantations:

> "On paper, they are different entities. So, somehow, they have circulated the law by doing that. If we call on a certain individual or cooperative, they would say: 'Well, we are not covered by your […] clearance system because we are just small scale farmers. My area is only five hectares, how would you regulate us?'" (interview PH30)

The certificate of the DENR sets environmental standards and requires the setup of a Multiparty Monitoring Team, which is supposed to address issues of concern (interview PH33). Monitoring Teams were set up on the municipal level with the participation of municipal officials; however, it is questionable how functional the Monitoring Teams ever were. Evidence from one municipality shows that grievances raised by cooperatives in these settings were not addressed by the company. Furthermore, in 2014, the quarterly meetings stopped altogether (interview PH36, PH39).

In one instance, the DENR filed a case against Agumil for illegal logging[69] (interview PH33); however, this happened only after an indigenous rights organization made them aware of what was going on (Community Environmental and Natural Resource Officer 2014). Overall, both environmental agencies were ready to give permissions to the company, while at the same time being limited in their monitoring role, which seems to be only fulfilled when civil society actors push for it. It, therefore, does seem fair to conclude that the company did receive 'preferential treatment':

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68 The Palawan Council for Soustainable Development is formally a national agency, which was created to implement the Strategic Environmental Plan, a national law, to protect the unique ecological system on Palawan.

69 Until the time of field research in November 2018 the case was not decided in court (interview PH33).

"The project proponents managed to sail rather easily through the bureaucratic system, navigate regulatory failures and benefit from ambiguities in project implementation" (Larsen et al. 2018: 19).

All five government agencies, the DAR, the CDA, the PCA, the PCSD and the DENR had (and have) some oversight function over the Agumil investment; however, none of them raised critical questions in regards to the agreements with the cooperatives or provided legal support to the smallholders entering into the project. Admittedly, not all of them had the mandate to do so, but there were several opportunities to scrutinize the investment, which remained unused.

As described in the previous chapter, it took around four to five years before the members of the cooperatives realized that the investment might not be as profitable as they had expected. Cooperatives tried to address their grievances directly to Agumil and asked for renegotiations, which were denied. Cooperatives also addressed complaints to the Palawan Provincial Board, the DAR, CDA provincial offices (Larsen et al. 2014: 30) and the PCSD (interview PH30). Initial responses of these agencies were somewhat limited, as they viewed the contract between Agumil and the cooperatives "as matters to be dealt with between private parties" (Larsen et al. 2014: 31). As a consequence, cooperatives united in the Association of Palm Oil Growers in Southern Palawan through which they filed complaints and communicated with the Provincial Government collectively (Larsen et al. 2014: 31). Yet, this cooperation was not sustained as different cooperatives had different interests and demands and the association later dissolved (interview PH39).

Other mobilization efforts came from indigenous rights groups who mobilized through the NGO ALDAW (Ancestral Land/Domain Watch). ALDAW had rung the alarm bells as early as 2010. They deplored the threat to biodiversity and local food self-sufficiency, the introduction of new pests and the "risk that members of local communities who have joined the so-called 'cooperatives' will soon become indebted with the oil company" (ALDAW cited in Schertow 14/11/2010). In the following years, ALDAW collected data on encroachments of oil palm plantations on protected forests and ancestral domain and addressed the issue to the DENR, the National Commission on Indigenous Peoples and the President of the Philippines. In 2014, ALDAW organized members of cooperatives, smallholder farmers and indigenous groups into the Coalition Against Land Grabbing through which they called on a moratorium on further oil palm extension on Palawan (Dressler 2017: 657). As the province-wide moratori-

um failed, ALDAW focused on getting moratoria passed on the municipal level (interview PH29). In their subsequent advocacy work, they mostly focused on ancestral domains and indigenous rights issues and did not provide further support to the cooperatives.

In the meantime, the Land Bank met with the cooperatives, who had failed to pay their amortization rates. It offered them a restructuring of the loans with a reduction of the interest rate from 14 % to 7 % and a waiving of the penalty fee of 3 %. Subsequently, the loans of six cooperatives were restructured, while the others did not agree (interview PH45). However, the restructuring did not principally change the situation, as the cooperatives remained indebted and hardly generated income. In the following years, the cooperatives mobilized to a varying degree: For example, in 2016 or 2017 five cooperatives worked together and dumped their fresh fruit bunches in front of the Land Bank in Palawan's capital Puerto Princesa as a way of protesting against the high interest rate for their loans (interview PH42)[70]. However, all these different mobilization attempts had limited effects. Some officials reacted sympathetically and their opinion turned against further oil palm expansion; yet, the agreement between cooperatives and the company was not changed or fundamentally questioned.

The agreements between the cooperatives and Agumil were for the first time officially challenged, when national CDA officials got involved and brought the case to Congress. After the Chairman of the Cooperatives Development Authority heard about the problems of the cooperatives in Palawan in 2015, he issued an investigation and called on Congress to interfere (interview PH7). In July 2016, House Resolution No. 120 was passed, calling on a congressional inquiry of the Committee on Cooperatives Development. The Resolution raised issues around the legality of the agreements based on various ground: First, the cooperatives had not been fully informed about the documents. Second, formal general assembly resolutions would have been needed for cooperatives to enter into the agreements, which was not always followed. Third, Agumil was accused of violating the contract as they took over some of the plantations from day one. It was furthermore reasoned that the cooperatives were not "operating on a cooperative basis" (House of Representatives 2016).

70 It is not clear, if the protest had an effect. The interviewee argued that the Land Bank subsequently lowered the interest rate. However, this information could not be verified. It seemed rather likely, that the Land Bank had lowered the interest through the restructuring of the loans.

As part of the congressional inquiry, two hearings took place, one in Quezon City (part of Metro Manila) in May 2017 and one in Puerto Princesa in August 2017, where all cooperatives were able to participate. During the process, different government agencies, especially the DAR and the CDA submitted their opinion on the investment.

The DAR clarified that no clearance had been provided by the Provincial Agrarian Reform Official. They also pointed out that the (quasi)-jurisdiction of the DAR and its Adjudication Board did not apply as the PTMA stipulated that only courts in Palawan could adjudicate contractual matters. The DAR reminded the company of its corporate social responsibility "to exercise positive dealing with the cooperatives" (Department of Agrarian Reform 2017: 6) and recommends the condonation of all interests and charges of the loans to help the cooperatives to overcome their debt (Department of Agrarian Reform 2017).

The CDA went one step further and demanded the rescission of the PTMAs and MSAs (House of Representatives 2018). This recommendation was taken up as one option for the cooperatives to decide in the final report submitted to the House of Representatives in January 2018. The report made a total of 11 recommendations, such as the condonation of the loans by the Land Bank, the technical and financial training of cooperatives, the construction of an independent oil mill and a temporary moratorium on further oil palm expansion. However, not all recommendations were considered feasible by actors involved. The Land Bank argued that a condonation of loans would set a bad precedent (Committee on Cooperatives Development 2018). The Provincial Government of Palawan was mandated to create a rehabilitation plan for the cooperatives through the formation of a task force with the participation of Agumil, the Land Bank, the cooperatives and various government agencies (House of Representatives 2018). Subsequently, the matter was dealt with by the task force in Puerto Princesa.

The provincial task force met a couple of times throughout 2018 to essentially scrutinize a take-out deal, which had been developed by Agumil together with the Land Bank as a reaction to the congressional inquiry. The deal foresees that a new company, associated with Agumil, will take over all outstanding loans of the cooperatives with the Land Bank and the company. In turn, the cooperatives are supposed to lease all existing plantations to the company through a new lease agreement. The respective landowners would receive a rent payment of 3000 PHP (around 50 USD) per hectare per year, which will increase over the years to 4600 PHP (76 USD), in addition to a profit share of 200 PHP (3 USD) per metric ton of

fresh fruit bunched produced (interview PH45). In addition, a 15 000 PHP (250USD) sign in bonus was promised. Basically, all debts of the cooperatives would be paid and their contracts be changed to leasehold with a profit-sharing agreement.

During task force meetings, this proposal and demands made in turn by the cooperatives were discussed. However, for the cooperatives, it seemed like there was no room for negotiation, as their demands were not heard. They perceived that there was no space for compromise (interviews PH35, PH39, PH44). The cooperatives demanded higher rent and profit share payments in addition to a higher sign-in bonus, while the company maintained that meeting these demands would be financially impossible for them. An official from the Land Bank commented on the demands: "there was also a counteroffer, offered by the co-ops, but their numbers were not supplemented by figures or projections." (interview PH45). The missing ability of cooperatives to show evidentiary data in their favor made it difficult to counter the company's proposal, which was again a 'take it or leave it' offer. Essentially, cooperatives can decide if they want to take the new deal or stay with the initial contracts. At the time of research in November 2018, it was not clear how many cooperatives wanted to join the take-out deal and opinions about the deal varied greatly between cooperatives.

If cooperatives wanted to take the offered deal depended on the individual situation of the cooperatives. For the cooperatives, which were able to pay their amortization rates, the new arrangement might not make a lot of sense. By the time they will have fully repaid their loans, their profits from the plantations will be higher than the amount offered by the new deal (interview PH44). One the other side, some cooperatives signaled their willingness to enter the deal, as they were happy to finally escape the debt and have a stable income (interview PH34). Others simply considered the lease money to be too small:

> "The negotiation failed because they wouldn't grant us the 7000, our cooperative, we only wanted 7000. […] You cannot live of 3000 per hectare per year, that's 250 pesos per month. […] we cannot live of that." (interview PH35)

While the deal would have been acceptable for this cooperative with a lease payment of 7000 pesos, another cooperative asked the company also to refund the amount of the amortization that they had repaid to the Land Bank. This specific cooperative had already paid 9 million pesos and regarded the refunding the sum as a matter of fairness: "So, some of the co-

operatives agreed, but who? They agreed because they had not paid even a single peso to the bank." (interview PH39).

Some considerable frustration and the feeling of being cheated were voiced and at least four cooperatives did not want to take the deal. At the time of research, they were debating about bringing the case to the court, which they hoped would nullify the contracts and award them damages. The cooperatives hoped to use the findings of the congressional inquiry in court to show the one-sidedness of the contract (interviews PH35, PH42). In consequence, I cannot define the current outcome as a success for the cooperatives, even though the congressional inquiry did bring considerable movement in the case and suggested a solution to the debt problem. However, while the take out-deal would redeem all the debts of the cooperatives, it would also mean that the smallholders would have to give up control over their land and lease it to the company.

6.4.3 Agumil and the Land Bank

When it comes to the investment of Agumil, not only the company itself but especially the role of the Land Bank is central for understanding the problematic setup of the investment and the failure of subsequent legal mobilization attempts of smallholder cooperatives. While I do not have a lot of information on Agumil[71], I have anecdotal evidence that the company has not been acting transparently towards the cooperatives as well as government agencies. At the same time, the Land Bank, the main funder of the project, puts the blame of the financial failure on the cooperatives themselves. Both the missing transparency and the ongoing support for the company by the Land Bank make it difficult for the cooperatives to achieve their goals.

Agumil Philippines Inc. was founded in 1993 as Malaysian-Singaporean-Philippine joint venture in order to invest in the growing palm oil industry in Mindanao. In 1998, the company set up its first palm oil mill in Agusan del Sur. Two more mills were constructed, one in Bohol and one in Maguindanao (Habito 2012: 13–14). The palm oil mill in Palawan is the fourth mill of the company. All plantations together were estimated to

71 Agumil does not share any information on the internet and acts rather secretive towards outsiders. Information gathered here therefore relies on secondary sources and interviews with cooperatives and government agencies.

amount to 28 000 hectares across the country in 2013 (Land Bank of the Philippines 2013: 42–43). In Mindanao, the company encouraged ARBs to enter into growership agreements and sought the help of the Land Bank in providing financing to smallholders (Habito 2012: 14). The investment in Palawan was modeled after the project in Mindanao (interview PH45). While there is some evidence that yields in Mindanao are higher than in Palawan and some cooperatives can make a living of the palm oil plantation (Nozawa 2011: 24), there are still similar stories of cooperatives being trapped in debt, leading to decreasing production:

> "The priority of the cooperatives is to pay the amortization, thereby reducing costs through decreasing the amount of fertilizer, which results in decreasing yields the following year. If the oil palm trees are neglected for several years, rehabilitation of the oil palm trees is necessary, incurring further financial assistance." (Hambloch 2018: 21)

In Mindanao, there are additional problems with growers diverting the FBB to other mills and rebel group actions impeding access to plantations (interview PH45). In Palawan, the economic situation seems tense as well. According to one interviewee, the mill was running on less than 50 % of its capacity (interview PH45).

Agumil did not pledge to any industry guidelines or principles (Larsen et al. 2014: 6), nor are the plantations certified by the RSPO or any other scheme. Furthermore, it seems like there are no policies for ensuring a clear and transparent communication with the cooperatives or government agencies.

Right from the beginning, the communication between the company and the cooperatives proved difficult –, especially around financial management. Agumil essentially controls all the funds of the cooperatives, as they have to sign off on all expenses as a third party to the loans provided by the Land Bank. In essence, the cooperatives, therefore, do not have full decision-making control over the use of their own funds even though they are the ones bearing the risk.

> "The cooperative has to pay the loans, not the company. It's like that: Agumil is the management of the cooperative, because of the MSA agreement. So, they became our management with the plantation. That's why they are the one holding the money, using the money for it." (interview PH39)

Especially in cases where the company took over the control, cooperatives often did not fully know or understand how their own loans were spent, as the company failed to provide detailed reports of expenses:

> "The ability of cooperatives to wrest documents from [Agumil] and obtain some degree of insight into the financial management of their operations appeared to depend partly on the technical competence and backgrounds of board members and managers: It was clearly an advantage when people had higher levels of education and regular employment, or contacts in government offices that they could use as leverage" (Larsen et al. 2014: 26)

Conflicts around how money should be spent seem to occur on a regular basis (interview PH41)[72]. Some individuals are extremely suspicious of the numbers provided by the company. They think that the company is cheating in regards to the pricing formula for FBB through claiming lower prices at which they sell the crude oil (interview PH35). As there is no independent audit of the pricing process and no agency which sets prices for oil palm, the cooperatives depend totally on the information given to them by the company (Larsen et al. 2018: 13). The missing trust was also voiced concerning the new deal:

> "You know, they failed in the management although you were [trusting] them again and they say you will be earning big. Now they are giving us three thousand per hectare per year. So how can you believe them? Nobody believes them" (interview PH35)

As there is no functioning grievance mechanism, it is difficult for the cooperatives to address their concerns to the company in a timely manner and smaller issues tend to lure on (interviews PH39, PH40 PH41).

In addition to the problematic communication with the cooperatives, government agencies and local officials also find it difficult to retrieve relevant information from the company. When local PCA officers started to gather information on the project, they did not receive relevant data from the company. In consequence, they had to undertake their own data gathering through the cooperatives simply to arrive at the amount of hectares

72 It should be noted that not all cooperatives did regard the requirement of all expenses being signed by an Agumil officer as problematic. Another interviewee from a different cooperative welcomed this arrangement as it secured cooperatives' members against possible fraud by the board of directors, which is often voted for based on family ties (interview PH44).

covered by oil palm (interview PH43). Similarly, municipal administrators hardly received any information on the company either, even though their municipalities are affected by the oil palm plantations (interviews PH36, PH37).

The difficult communication with cooperatives and missing transparency vis-à-vis government agencies and administrations paints a picture of Agumil as secretive and non-cooperative.

The Land Bank plays a central role in financing the cooperatives in Palawan but also provides a credit line directly to the company (interview PH45). Right from the beginning, the Land Bank has supported the investment project of Agumil in Palawan. As the government-owned bank and Agumil had already collaborated in Mindanao, the investment in Palawan was just seen as an additional project and did not undergo any independent feasibility study or critical examination by the Land Bank (interview PH45).

To ensure economic feasibility, the Land Bank required the smallholders to form cooperatives and the signing of the PTMA and MSA as a way to ensure the proper management of the plantations. At the same time, the contracts were regarded as private business between the company and the cooperatives and were not further scrutinized, for example, in regard to risk sharing (interview PH45). And while the Bank's mission is dedicated to "promot[ing] inclusive growth and improv[ing] the quality of life especially in the countryside" (Land Bank of the Philippines), it does not require social impact assessments nor social monitoring activities. Despite receiving funding from the World Bank, the Land Bank does not formally adhere to IFC Performance Standards (Neame/Villarante 2013: 204–205). Therefore, no mechanisms were in place that would have critically examined the contracts between Agumil and the cooperatives or the consultation process leading up the signing of the agreements.

However, it seems that even some existing rules were ignored. For example, usually, to apply for a loan, "[c]ooperative applicants must have one hundred members and a three-year track record, paid- up capital, complete core management, and other such requirements." (Palawan Council for Sustainable Development 2014: 6). It seems clear that this requirement was not fulfilled by most of the cooperatives, who were either newly formed or reactivated for the sole purpose of the investment. It, therefore, cannot be surprising that some of the cooperatives face serious managerial problems, which the Land Bank regards as the cause for the economic problems:

> "Actually, in all cooperatives, the key is to have good members. Otherwise some members are misusing the funds. Most of the […] past due amounts of Land Bank cooperatives are due to mismanagement. […] Sometimes when Agumil supplies fertilizer, instead of applying it to the oil palm they divert it to other grounds" (interview PH45)

In response to the mounting debt, the Land Bank has restructured the loans once and is ready for further restructuring. In the eyes of the Land Bank, it is not very likely that the smallholders will lose their land if they are not able to repay the loans, as the bank would rather write off the credits. Otherwise, "the farmers would go back to Congress" (interview PH45). However, at the time of research the Land Bank advised the cooperatives to opt for the take-out deal as all the debts would be taken over by Agumil and its new company: "That's our best offer" (interview PH45).

The evidence shows that the Land Bank puts the main blame for the debt problem on the cooperatives and not on the company. They are unlikely to cut any funding for Agumil, which has received numerous credits from the bank. Exerting influence on the company through the main financier is, therefore, not an option for the cooperatives.

Overall, existing evidence shows that the company is not very open or cooperative in their communication. The missing transparency causes distrust among cooperatives and aggravates their difficult bargaining situation. The cooperatives had difficulties in making their point in the technical task force meetings, as they were not able to support their demands with data. However, if the data is not available to them, it is clear that they cannot make an offer that would be considered 'realistic' by the Land Bank and Agumil. In addition, neither the company nor the Land Bank adhere to any voluntary industry standards. The Land Bank, as the main funder of the project, sees the responsibility of the debt problem with the cooperatives and therefore supports the current deal of Agumil. Against this background, the company has to be regarded as unreceptive.

6.4.4 Fragmented support and missing internal mobilization

Taking a look at the support network the cooperatives had available, a fragmented picture evolves. Especially around the time of the signing of the contracts, the cooperatives were clearly missing independent advice. In the following years, NGO support was selective and focused more on stopping further oil palm expansion than improving the situation of the cooperatives. Cooperation among cooperatives did emerge but remained limited,

as they had different goals. Nonetheless, the congressional inquiry was triggered – it seems through some personal contacts at the national level.

The interviewed cooperatives did not report any NGO support (interviews PH35, PH39). Nonetheless, there were some mobilization efforts by ALDAW, an indigenous rights organization, which was later renamed into Coalition Against Land Grabbing. As described in chapter 6.4.2, the organization mobilized the cooperatives to demand a moratorium on further oil palm expansion; however, the NGO does not focus on providing support for the cooperatives more generally. Other NGOs involved in the case, such as the Environmental Legal Assistance Center, focus on environmental concerns and do not support the cooperatives with their debt problems. In fact, there are certain tensions between different goals: If the cooperatives were able to solve their economic problems, civil society actors would lose one argument (besides environmental concerns) to convince political actors of a moratorium on oil palm.

> "[M]any cooperatives found it hard, if not impossible, to access support from NGOs in the province. These organizations have limited resources and a primary focus on indigenous land rights or environmental conservation, whereas the cooperatives were rather seen as part of the problem." (Larsen et al. 2018: 15)

The missing support might have limited the efficiency with which cooperatives tried to achieve their goals. While it is difficult to prove, some expert knowledge on financial or legal issues might have helped the cooperatives to boost their arguments in the technical task force meetings, for example, through providing their own research or impact assessment of the proposed deal. It seems that there was a considerable knowledge inequality, which could have been overcome with the support of an NGO. Besides, there was no advocacy campaign calling attention to the congressional inquiry or its findings.

In addition to the missing NGO support, the cooperatives had troubles to mobilize together, therefore not always speaking with one voice or making the same demands. Initially, they formed the Association of Palm Oil Growers in Southern Palawan, through which they formulated common positions (Larsen et al. 2014: 32). However, over time interests of different cooperatives diverged too much, complicating cooperation. This led to a situation in which cooperatives individually approached the company with their demands. As described in chapter 6.4.2 regarding the new deal, one cooperative asked that their paid amortization rates be reimbursed (interview PH39), while another cooperative focused on demanding higher lease

payments (interview PH35). At the same time, there is some communication and cooperation between a few of the cooperatives, as the example with the protest in front of the Land Bank showed (interview PH35). Yet, the cooperatives are not speaking with a unified voice, which does make it less likely that the company gives in to their demands.

Even more, unity is often absent within cooperatives as well, as different members have different interests. For example, older cooperatives' members, who regarded the investment as part of their pension, had higher interests in immediate returns, were more sympathetic towards the take-out deal of the company (interview PH39). Others believed in the long term returns once the credits are repaid (interview PH44) or wanted to continue the fight for a better deal with the company (interview PH35). There are several instances in which individual landowning members prohibited the cooperative or the company from entering their land anymore, as they were upset about the decisions made (interviews PH41, PH45). These internal conflicts pose additional risks to the economic situation of the cooperatives (interview PH45) and further complicate possible attempts to find common positions among cooperatives.

Despite the missing NGO support and difficult internal mobilization of the cooperatives, a congressional inquiry was triggered, which did lead to the new offer by the company and the Land Bank. The driving force behind the inquiry was the national chairman of the Cooperative Development Authority (CDA). He had met some of the cooperative members at a national conference in 2015 and subsequently visited the region (interview PH7, PH35). In addition, one chairman of a cooperative, who was a former local politician, used his contacts to make some congressional representatives aware of the case (interview PH35). These national contacts seemed pivotal in achieving an inquiry, which questioned the whole agreement between Agumil and the cooperatives.

Summarizing the findings, it becomes clear that the cooperatives did not receive legal or advocacy support from NGOs in the region to achieve their goals of negotiating a better deal with the company. Even though it is difficult to prove, I suspect that the provision of expertise and a concerted advocacy campaign could have exerted more pressure on politicians and the company alike, for example, during the task force process. Besides, a more unified voice with common core demands might have helped cooperatives in achieving their goals. However, this would have required substantial mobilization efforts among cooperatives and their members.

6.4.5 Discussion and additional issues

In this chapter, I will review my findings through the lens of the three core conditions in a first step. In a second step, I will discuss the open question of why the government agencies failed to scrutinize the investment project before the agreements with the cooperatives were signed. In a last remark, I describe how the company profited and continues to profit from government agencies and regulations that are supposed to profit smallholder cooperatives.

Focusing on the three core conditions, the following picture emerges:

First, the legal opportunity structure of the cooperatives was initially not bad, especially when it comes to soft-law regulations that are in place to ensure that small-scale farmers, especially ARBs, do not enter into detrimental business ventures. However, these regulations were not enforced, as the responsible agencies were not consulted and did not take action on their own. A window of opportunity to scrutinize and change conditions of the agreements between cooperatives and the company therefore passed. When the cooperatives ran into financial problems and were unable to repay their debt, the situation looked a lot more complicated. While it would have been possible for the DAR to interfere, this is often not done:

> "[…] from a strictly legal point of view, contracts which have not been approved by the DAR are null and void, in accordance with section 4.9 of DAR Administrative Order No 9 s. 2006, this provision has not been strictly enforced by DAR nor the parties involved." (FAO 2016: 13)

The missing involvement of the DAR was partly made up for by the CDA and its chairman, who were able to trigger the congressional inquiry, which found numerous problems with the contract grower arrangement. Yet, the report of the Committee on Cooperatives Development is not a legally binding document but rather contains recommendations on how to solve the debt crisis of the cooperatives. As of now, these legal mobilization attempts have not led to a satisfactory situation for all cooperatives.

Second, Agumil does not seem to be very receptive. Neither the company nor the Land Bank as the primary funding institution adhere to voluntary international standards, limiting possible arguments in this regard. Furthermore, the Land Bank blames the cooperatives for the economic failure and continues to back the company. Minimal communication and insufficient transparency on the side of Agumil further aggravate the difficult bargaining situation of the cooperatives.

Third, the support network of the cooperatives remains weak and fragmented. They did not receive legal advice or NGO support before signing the agreements with Agumil. And, while there was some NGO mobilization around the investment project, it did not primarily focus on the situation of the cooperatives. Personal networks of individuals did help to trigger the congressional inquiry; however, there is no public advocacy campaign nor expert advice for the cooperatives on how to best deal with the company and the Land Bank. I do assume that this missing support made it more difficult for local actors to achieve their goals. In addition, I suspect that the missing unity among cooperatives further complicated the situation. While this issue is related to the focus on networks, it focuses on internal mobilization among local actors, a factor I have so far neglected. However, it seems plausible that this plays an essential role for successful legal mobilization. I will, therefore, discuss internal unity as a possible additional condition in the discussion in chapter 6.5.

In addition to the three conditions, it is important to discuss one open question: Why did the government agencies fail in their oversight function and consequently not scrutinize the agreements between Agumil and the cooperatives? There are three possible reasons which probably played together.

First, the development of oil palm plantations on Palawan was completely new. Provincial and local authorities were missing the capacities to oversee the investment. It seems that agencies like the PCA did not have guidelines in regards to palm oil (Larsen et al. 2018: 6). At the same time, local agencies and government officials were probably not able to assess whether the projections of the company, who predicted enormous yields and profits, were realistic (interview PH37). They believed that the company was an expert for oil palm and did not anticipate problems with the plantations or the financing.

Second, the investment was the 'governor's project' (interview PH36), which probably led to government agencies turning a blind eye to possible risks. This sentiment was raised by local civil society actors (Coalition against Land Grabbing 13/10/2014) and elected politicians:

> "As a member of the provincial board expressed it, the provincial politicians are particularly concerned not to interfere in this matter since this would influence the potential to attract private investors to Palawan" (Larsen et al. 2014: 31)

Third, coordination issues between agencies and missing procedural guidelines probably posed a hindrance as well. The DENR or the PCSD both had to issue environmental certificates and were not directly responsible for the cooperatives. However, it seems that they did not coordinate with the CDA or the DAR to inform them about the investment. The CDA and the DAR most likely did not get involved, as they were not informed about the project by the cooperatives themselves. It seems that there are no clear guidelines over how the DAR or the CDA should assist cooperatives in entering into agribusiness venture agreements if the cooperatives do not directly ask them. The case, therefore, points to more general problems with implementing rules for AVAs in the country.

The beneficiary of the missing oversight by government agencies was Agumil, who profited indirectly from regulations and technical attempts to resolve the debt crisis of the cooperatives. The investment is set up in a way that takes advantage of rules that are supposed to support smallholders in the country. Through setting up the investment with out-growers, the company did not only get access to land but also access to credits, for which they did not have to bear the risks. "We [the farmers] were the ones helping Agumil to get the loan, providing them with the necessary capital for the plantation" (interview PH42). Besides, the company avoids paying higher taxes, as these have to be paid by the cooperatives, who, however, have to pay lower rates than the cooperation would have to (interview PH37). Furthermore, the setup with the cooperatives also helped Agumil to circumvent clearance for the plantations from the PCSD. While the rising debts of the cooperatives also created problems for the company, especially with the congressional investigation, they indirectly profit from technical support provided by government agencies. As seedlings, fertilizer or machinery are provided for free by the PCA and the DAR, profits for the company will rise as cooperatives improve their productivity. The lowering of the management fee and the possible takeover of the debts by the company are the only measures that make the company pay a share of the economic difficulties incurred by the cooperatives. Overall, this case shows how a company can make use of the cooperatives system in the Philippines and how difficult it is to make substantial changes to an out-grower system once it is in place – especially with a long term crop such as oil palm.

6.5 Within country comparison and discussion

In this chapter, I will compare the findings from the investments by Green Future Innovations and Agumil and discuss them against the background of existing research on the Philippines (chap 6.5.1). In the final part, I will describe my findings on an abstract level and discuss one possible additional condition (chap 6.5.2).

6.5.1 Comparison of Green Future Innovations and Agumil

To compare my findings from the case studies, I will use once again the lens of my three core conditions, before I discuss one possible additional condition. Apart from my case studies, I will use additional interview material as well as existing research to underline central findings.

As described in chapter 6.2, the national legal opportunity structure has to be regarded as somewhat favorable – especially for ARBs. They should receive support from the DAR when they enter into agreements with investors. However, both case studies showed that these rights have to be claimed and regulations have to be pushed to be enforced. In the case of Green Future Innovations, local farmers called on different administrative levels, such as the national and the provincial level. Through the quick mobilization, they were able to stop the wrongful land claims by local elites before substantive land development had taken place. This situation was more difficult in the case of Agumil, where farmer cooperatives entered into a contract with the company without fully knowing their rights or receiving support. Both cases, therefore, show the weakness of enforcement of laws and regulations in the Philippines (interviews PH3, PH27, PH29, PH37).

> "The law is good. But the problem is the law enforcement, the implementing agency. Why you do not implement according to the law? That's a problem, the implementing agency and the person, who is in charge to exercise power according to the law" (interview PH29)

In consequence, local actors and civil society networks have to push for the implementation of rules and regulations. In neither of the two cases were the courts invoked to interfere, even though some of the cooperatives in the Agumil case were thinking about a court strategy in the future. Instead, local farmers called on different agencies, administrative officials

and politicians to help them enforce the law. This behavior fits with the description of 'rightful resistance' in China:

> "They recognize that state power nowadays is both fragmented and divided against itself, and, if they search diligently, they can often locate pressure points where elite unity crumbles […]"(O'Brien/Li 2008: 14)

In the case of GFII, the decisive person seems to have been the Governor, who had both the authority and it seems the political will to solve the conflict. In the case of Agumil, a possible benefactor is the Chairman of the CDA, who helped get Congress involved, while other agencies such as the DAR stayed mostly inactive. Getting politicians and administrative officials on different levels on their side is an important aspect of successful legal mobilization in the country. This finding is in line with existing literature on struggles around agrarian reform implementation in the Philippines (Franco 2008a; Borras 1998).

When it comes to the support network, there were considerable differences between the GFII and the Agumil case. In the case of Green Future Innovations, local smallholders were able to mobilize through the existing farmers' organization DAGAMI and link to national actors through the KMP. The preexisting network provided links to international civil society actors who participated in the fact-finding mission as well as to members of Congress through the Anakpawis party list. The network created considerable attention for the investment in San Mariano within a couple of months and likely helped to build up enough pressure for the Governor to intervene. In the case of Agumil, there was a lot less outside support provided to the cooperatives. The KMP does not have a member organization in Palawan, and existing NGOs on the island focused on indigenous peoples' rights and environmental concerns. In consequence, the congressional inquiry and subsequent meetings at the Provincial level were not accompanied by a broader civil society campaign, which could have heightened the pressure on officials and the company to find a solution.

Experiences from other land struggles in the Philippines show that legal strategies usually need to be paired with political pressure to achieve a positive outcome for farmers (Franco 2008a: 1015). As an NGO staff member described it: "How the law is written is good, but the executive system is a lot out of balance […] drastic measures have to be taken to push the system" (interview PH27). She named hunger strikes, marches and camp-outs as essential elements and argued that a certain sensationalization and media attention is needed for campaigns to be successful (interview PH27). The case of the cooperatives indebted through the Agumil deal certainly

did not achieve this kind of attention, whereas the GFII case got a lot of attention through the fact-finding missions. The two cases, therefore, underline the need for a support network that is able to create a broader campaign to garner attention and pressure officials to get involved.

The third condition of the receptivity of the company did not seem to play a big role in both cases. While I was not able to determine the receptivity of GFII back in 2011 based on the broad questions formulated in chapter 3.4.2, Agumil does not seem to be a very receptive company. Nonetheless, comparing the two companies, one interesting issue emerges: Different crops can lead to different set-up of contract-growing agreements with important implications for smallholders. In the case of GFII, initial lease and contract-growing arrangements lasted six years and were later reduced to three years, the lifespan of a sugarcane plant (interview PH12). This allows farmers to decide after three years if they want to continue contracts or exit the arrangement. They can react to changing sugarcane prices or new alternative options. According to the bargaining logic, this arrangement makes it more likely that companies listen to local complaints, especially in the context of sugar cane shortages, such is the case in the GFII investment.

In contrast, oil palm is usually grown as a 25 years plant, making long-term contracts necessary. Fresh fruit bunches have to be processed within 24 hours to ensure high quality, making proximity to a mill a necessity (Hambloch 2018: 6). Even if farmers grow oil palm independently, they might not have many choices to sell the FBB. The industry's pricing practices in the Philippines, for which Agumil seems to be representative, lead to a buyer-driven value chain, in which oil palm growers do not have a lot of bargaining space (Hambloch 2018: 10).

The crop itself and the way an investment is set up, therefore, influences the power relations in the bargaining situation between local smallholders and companies. In consequence, it makes sense to include characteristics of investment projects and their respective industries as another indicator for the concept of receptivity.

One possible additional condition was the missing unity of local actors in the case of the Agumil investment. This was demonstrated by the differentiated reactions of the cooperatives to the take-out deal. Even though it is difficult to prove, I suspect that this dissonance makes it more difficult for individual cooperatives to achieve their goals. If all 14 cooperatives would make common demands and act in a unified matter, they would probably be able to achieve more. In the case of GFII, this unity was created through

the existing farmers' organization, which claimed to represent the farmer's in San Mariano. Even though the representativeness of the organization to speak for all farmers can be questioned[73], DAGAMI has a clear leadership, which could negotiate with the company in a unified way. I will further discuss this additional condition on a more abstract level in the next chapter.

In addition to the conditions, two additional issues came up in the case studies and need to be discussed from a comparative standpoint.

The first issue of violent action appeared in the case of GFII. The attack of the NPA probably helped local farmers to create more pressure for authorities to act, but bore certain risks for the farmers themselves. Interestingly, the investment of Agumil seems to have triggered a violent response from the NPA as well. In July 2016, two trucks owned by the Provincial Government and a warehouse with fertilizer owned by Agumil were set on fire by armed persons (Sanchez Palatino 7/14/2016). The attack was later claimed by a regional command of the NPA, who reportedly left behind a letter: "Stated in the letter is the armed group's protest against Agumil Philippines Incorporation" (Sanchez Palatino 7/14/2016). During my interviews, nobody brought up the incidence, so its consequences are unclear. Nonetheless, there seem to have been attempts by NPA members to contact communities affected by the investment (Larsen et al. 2014: 33). Similarly to Isabela, Palawan has high mountain ranges that seem to serve as space for the rebel group to operate. As described earlier, attacks on companies are not unusual for the NPA, who also levy taxes in that way. The attacks on GFII and Agumil fit the pattern of similar incidences in Negros or Mindanao (International Crisis Group 2011), however, the effect of these attacks for smallholders is not always clear. Local farmers might be able to use these attacks to their advantage as they do have credible means to threaten the disruption of local peace and get attention from politicians and authorities. Yet, the NPA is not always on the side of local smallholders. Moderate farmer leaders who work with government agencies to achieve their interests are at times themselves the target of the NPA:

> "For the underground communists, the only genuine land reform is their own, and is to be implemented after they seize national state power. The guerrillas harass, intimidate, and sometimes assassinate

73 DAGAMI seems to be strong in certain parts of San Mariano and not all over the large municipality. Furthermore, their ideological orientation does not seem to resonate with all farmers (interview PH47).

> leaders of these [moderate] autonomous peasant movements." (Franco/Borras 2007: 70)

In other instances, the rebel group is known to work with traditional landowning families if it is in their economic interest (Franco 2008a: 1003). Furthermore, the presence of the NPA in a region can lead to further militarization as companies seek military protection relying on regular and paramilitary forces (International Crisis Group 2011: 19). The involvement of the NPA can, therefore, be both beneficial and risky for local farmers.

Another issue that came up in the analysis of the Agumil case is the difficulty of implementing rules for agribusiness venture agreements in the country. Despite the DAR Administrative Order No. 9, which formulates specific rules for AVAs as well as far-reaching oversight competences for the DAR, the cooperatives entered into an agreement with Agumil without any support. This seems to be reflective of AVAs more generally in the Philippines. A study conducted by the FAO focusing on Mindanao came to the following conclusion:

> "The study has revealed that while AVAs have been in existence in the Philippines for 26 years, there are still very few examples of successful agribusiness arrangements between ARBs and investor-companies. The study found out that most ARBs are not aware of their obligations and entitlements under their contracts, for most of these provisions are written in a language that they do not understand." (FAO 2016: x)

The study concludes that lawyers who can explain the contracts to smallholders entering into an agreement with the company would be helpful (FAO 2016: 12). This is certainly in line with my findings from the Agumil case. The GFII case provides somewhat of a contrast to this. As discussed, the sugar cane project allowed for farmers to enter into three-year contracts, which provided them with the necessary flexibility and the possibility to react to price changes of the commodities but also of inputs. The short-term contracts by GFII, therefore, present a viable alternative option. Furthermore, farmers who wanted to participate in the investment project did not have to take up a loan, helping them to avoid the debt traps that Agumil cooperatives are in now. These findings tie back in with my considerations on the relevance of different crops and the set up of investment projects.

Overall, my findings from the Philippines show the difficulties local smallholders face in the large-scale land investments even when the national legal opportunity structure is relatively favorable. State laws and regula-

tions have to be implemented and farmers need to push their rights to be protected. A strong civil society network, which can garner political attention, is needed to create this necessary push. In addition, missing unity among local actors can undermine the effectiveness of mobilization efforts and should be considered as an additional condition.

6.5.3 Summary of findings from the Philippines

In this final chapter, I will summarize the analytical chapter on the Philippines before I formulate my central findings in a configurational language. I will furthermore discuss the possible additional condition of unity among local actors in an abstract manner.

I started the analytical chapter on the Philippines with some context information. Large-scale land deals in the country have to be regarded against the background of the agrarian reform, which tried to redistribute large landholdings to small-scale farmers. Yet, certain government policies focusing on green economy and the promotion of bioethanol production created a new momentum for foreign investment in agriculture in the country. Civil society mobilization regarding large-scale land deals follows existing patterns and networks from agrarian reform struggles. There has been and still is considerable civil society activity in the country around land rights issues.

The effect of past mobilizations is a progressive stance by the Philippine Constitution, which demands land redistribution as a means to achieve social justice and sets limits for foreign investment in the land. More detailed regulations on large-scale land deals mostly focus on agrarian reform beneficiaries, which are supposed to be protected from unfair contracts with foreign investors. In consequence, the national legal opportunity structure can be described as relatively favorable for local smallholders even though ARBs are protected more than other farmers.

The two case studies then focused on how local actors tried to use this favorable NLOS to their advantage. The case of Green Future Innovations presents a success case; however, apart from legal mobilization through Congress and the Provincial Governor, the radical left network also undertook protests and factfinding missions. In addition, the NPA attacked company equipment. It is, therefore, difficult to ascribe the success to the legal arguments only; rather, it was likely the mix of strategies.

The case of Agumil, presents an example of contract growing agreements, which put the disproportionate risk of the investment on the shoul-

ders of smallholder cooperatives. The cooperatives did not have legal support when signing the agreements and only started to mobilize years later. While they achieved a congressional inquiry, they were not yet able to achieve their goals.

Simplifying my findings, I can create the following empirical truth table for the Philippines.

Table 16 Empirical truth table Philippines

	national LOS	network support	company	Outcome
GFII	favorable	strong	-	success
Agumil	favorable	weak	unreceptive	failure

Apart from the pre-identified condition, my findings from the Agumil case identified a possible additional condition: The degree of unity among local actors. This condition can be formulated on an abstract level and it seems likely that it plays a role in other cases as well. If company managers are faced with a myriad of different demands, they might simply ignore them or only answer to the ones that are least costly for the company. Furthermore, companies might exploit disunity among local actors:

> "Conflicting attitudes within a community towards the benefits of industrial development allow corporations to focus on those people willing to cooperate, and to dismiss or ignore more confrontational views." (Garvey/Newell 2005: 400)

In the case of Agumil, some cooperatives were happy to opt into the takeout deal, leaving those who aimed for another outcome in a difficult position. Acting together would have improved the bargaining situation of local actors. It becomes clear that internal mobilization for collective action is, therefore, an important component for successful legal mobilization. At the same time, the relationship with the condition of the support network needs to be discussed. Fundamentally, the question is how internal and external social mobilization are related. Can a group, which is divided internally, receive external support? Missing unity can certainly be a challenge to outside actors such as NGOs, as they might not be clear to whom and how they should provide support. Yet, there is also the option that outside civil society organizations help to create unity by providing a common frame or encouraging local mobilization.

In summary, it became clear that a favorable national opportunity structure in the Philippines creates a situation for local smallholders in which they can protect their rights through legal mobilization. However, they are dependent on strong support networks, which help them pressure the administrative system and companies. Apart from the outside support network, internal unity appeared as another possible condition, which relevance has to be tested in future research.

7. Discussion

The country studies have provided insights into the diverse settings of Sierra Leone and the Philippines. The findings from the two countries and the four cases of large-scale land investments help me conclude. In a first step, I will draw a systematic comparison between the two countries and four cases (chap 7.1). In a second step, I will abstractly formulate the findings and discuss how the two additional conditions fit into an extended theoretical framework (chap 7.2).

7.1 Comparing Sierra Leone and the Philippines

My findings from Sierra Leone and the Philippines showed the relevance of the three core conditions conceptualized in the theoretical framework and helped me to identify two possible additional conditions. In the following, I will discuss the core and additional conditions in a comparative way.

The national legal opportunity structure between Sierra Leone and the Philippines varied considerably. The Sierra Leonean legal framework has considerable shortcomings in protecting customary ownership and use rights. Furthermore, unlike in the Philippines, there are no limits to foreign ownership of agribusiness companies or ceilings for land leases. In the Philippines, many smallholders can claim ownership and are protected from eviction. The differences in the tenure system and the regulatory framework seem to influence the type of investment. While both cases considered in Sierra Leone were large-scale leases with the company managing the whole plantation, the cases from the Philippines had a nucleus plantation on leased land in combination with contract-growing schemes. I suspect that this mirrors tendencies in the countries more generally; however, I do not have statistical data to underline this claim.

Irrespective of the type of investment, the different legal situations in the two countries considerably affected smallholders in making decisions about the projects. Both cases from Sierra Leone showed that most affected smallholders – customary owners or users of the land – hardly had any say in deciding about the large-scale land deal. Only in the case of Addax there was space for negotiation, as the company had gone beyond the legal re-

quirements of the country. In the Socfin case, local smallholders tried to defend their customary rights; however, so far, they were not successful.

The two cases in the Philippines are different in this regard. Smallholders were able to individually decide if they wanted to take part in the investment, either through individual contracts in the case of GFII or through joining a cooperative in the case of Agumil. In both cases, some people actively decided against participating. Nonetheless, some problems arose, in the case of GFII, because of wrongful land claims and, in the case of Agumil, because many cooperatives' members were not fully aware of the risks of the investment. The case studies thereby show that legal provisions in themselves are not automatically able to create ventures that benefit local actors. Instead, laws and administrative orders have to be implemented and enforced.

In regards to support networks, the overall picture varies between the two countries: National civil society actors involved in the Sierra Leonean cases are part of the same network, which formed around the issue of large-scale land deals. In both cases, national and international partners ran advocacy campaigns and provided local actors with legal representation, capacity building, and, in the case of MALOA, financial resources. International donors provide crucial funding for the Sierra Leonean NGOs and therefore contribute considerably to local support.

In contrast, civil society activism in the Philippines focuses on broader land issues, mainly the agrarian reform. There are two blocs in the civil society, which follow different ideological ideas and employ different strategies. While both blocs maintain international links, they are less dependent on international funding than civil society actors in Sierra Leone.

Comparing all four cases across countries, Agumil is the only case in which the condition of a strong support network was absent. As described in the case study, one possible explanation is the non-alignment of goals. The goal of the cooperatives to achieve economic wellbeing is counterproductive for the goal of NGOs to stop all oil palm expansion on Palawan. Similar divides between defensive activism seeking to stop palm oil expansion and contract farmers, who struggle for better conditions, have been observed in the oil palm industry in Indonesia (Pye 2010: 853). Furthermore, the case of the indebted cooperatives does not neatly fit the 'land grabbing' narrative, as the cooperatives entered into contracts with Agumil voluntarily (not necessarily well informed though). The case can, therefore, be seen as an example of the difficulty of receiving civil society sup-

port if the issues at hand do not fit existing frames used by relevant CSOs (Bob 2005: 27).

Regarding the other three cases, the type of civil society support varied between GFII and the Sierra Leonean cases. In the case of GFII, the involved network is a left-wing peasant movement, with a much more militant stance. The peasant movement was highly effective in its mobilization efforts. It exerted considerable pressure: "mere mention of the militant peasant organization provided smallholders a convenient leverage tool vis-à-vis the company" (Rutten et al. 2017: 11). The well-known militancy of the peasant movement (and possibly its indirect links to the NPA) might have a positive effect on locals to achieve their goals.

The NGO advocacy around the land deals in Sierra Leone differs in this regard and focuses on dialogue and peaceful means. National NGOs and the local activist organization MALOA frequently emphasized their wish to resolve issues peacefully and have a dialogue with the respective company (interviews SL11, SL19, SL33, SL42). There is a fear of being viewed as 'inciting', which in the context of post-war Sierra Leone can quickly delegitimize activism. It seems likely that militant forms of activism similar to the peasant-based KMP in the Philippines would not be considered appropriate in Sierra Leone. Framing of grievances by civil society actors and their respective strategies are linked to the country context and history. Consequently, the condition of a strong support network can take different forms and can be a militant peasant movement in one case and a traditional NGO, which provides locals with a lawyer in another case.

When it comes to the receptivity of companies, no clear patterns emerge between the two countries. As mentioned earlier, the cases in Sierra Leone were leases only, whereas the investments in the Philippines included growership arrangements. Furthermore, the Philippine cases presented joint ventures with the involvement of national businesspersons. Yet, there was no systematic difference in the receptivity of companies or in the way companies dealt with local actors. The companies were regarded as outsiders by the local population in all cases and initially instilled hopes for economic development.

The relevance of the difference between receptive and unreceptive companies was shown through the comparison between the Addax and the Socfin case in Sierra Leone, as discussed in chapter 5.5.1. The Philippine cases do not add much to this. Furthermore, I was not able to establish the receptivity of GFII back in 2011 when the legal mobilization took place. Nonetheless, in the setup today, smallholders seem to have the most bar-

gaining power in the GFII investment, as they can decide every three years if they want to continue growing sugar cane for the company.

Apart from the three core conditions, the country chapters identified and discussed two possible additional conditions: The role of local political elites in Sierra Leone and the unity among local actors in the Philippines. Comparing them across countries and all four cases provides further insights and validates their relevance.

The role of local and national political elites is one possible additional condition in explaining legal mobilization success and failure. The case of Socfin in Sierra Leone made this condition visible: Local customary authorities and national politicians derailed the mediation process of the Human Rights Commission of Sierra Leone. Furthermore, local authorities suppress local mobilization and dissent. Political elites essentially block mobilization attempts and 'protect' the company.

In the GFII case in the Philippines, local political elites played both negative and positive roles. Initially, barangay captains wrongfully claimed land or signed wrongful land claims. In these cases, they misused their position, which gave them the power to acknowledge informal land rights. However, in the follow-up, legal and other mobilization efforts pressured the Governor to intervene and to ensure that legitimate land rights are protected.

The two examples show that elites, who have a key role in decision-making processes about large-scale land investment, might misuse their position for their own personal gain. This finding is in line with existing research from Ghana, Mozambique, and Zambia, which shows that customary authorities, who are supposed to represent their constituencies, tend to abuse their power (German et al. 2013: 11; Schoneveld 2017: 127; Lanz et al. 2018). Similar dynamics can be observed at the national level, as evidence from Ethiopia, Nigeria, Zambia and Ghana shows:

> "[I]n all four countries, investors were found to have offered well-remunerated positions to ex-politicians or to later hire government officials involved in enabling project establishment. In Ghana and Nigeria, there were even cases where government officials were hired as 'consultants' while in public service." (Schoneveld 2017: 126)

In these contexts, local and national political elites are highly incentivized to 'protect' companies from local demands and derail legal mobilization attempts. In these situations, locals might rely on other elite actors or, ideally, on an independent judicial system to protect their rights. Further-

more, as the case of Addax indicates, a receptive company might be more willing to deal with local communities directly. This should especially hold for a company whose corporate culture emphasizes transparency and the avoidance of corruption.

The second additional condition is the degree of unity among local actors. I explored the relevance of this condition in the Agumil case where unity among cooperatives was missing. The other three cases provide additional support for this finding. Especially the Addax case is instructive in this regard. Involved civil society actors named the unity among the community of Masetleh as a relevant factor for success (interviews SL26, SL28, SL51). As described in the analysis (chap 5.3.2 + chap 5.3.4), the supporting NGOs helped in facilitating the unity among community members (interview SL51).

In the case of GFII, the pre-existing organization DAGAMI ensured unity among its members, which the support network probably reinforced. In the case of Socfin, unity among discontent landowners and users was created through MALOA, which presented grievances as one unified voice. At the same time, there were reports that Socfin had bought out some members of MALOA through offering them jobs at the company (interview SL42). Similar practices of dividing discontent groups through offering material benefits were reported by civil society members in the context of other investment projects in Sierra Leone (interview SL26, SL36) and seem to mirror company strategies in other countries:

> "[…] MNCs donate money and/or materials goods to communities in exchange for their support. Although the sums involved are miniscule for the MNCs, they are significant for poor communities. This practice may pit individuals within communities against one another, allowing the MNCs to divide and conquer the opposition." (Calvano 2008: 796)

Splitting up local actors seems to be one possible counter-strategy taken up by some companies. Internal unity requires internal mobilization and consensus-building among local actors. In the cases of Socfin and GFII, this was fulfilled by local organizations, whereas outside supporters played an essential role in creating unity among local actors in the Addax case. Similar attempts to create unity among cooperatives in the Agumil case had happened, as the example of the Association of Palm Oil Growers in Southern Palawan showed. However, cooperatives were not able to sustain the organization over time.

The comparison of the three core and the two additional conditions revealed differences and similarities between the two countries and the four

cases. The cases showed the relevance of a favorable legal system but also its limits if it is not implemented properly. Support networks did play an important role even though frames and strategies differed between the two countries. Differences of the company helped to explain different outcomes, especially in the Sierra Leonean cases. Finally, both additional conditions seemed to play a role across countries. The unity of actors turned out to be relevant in all cases, whereas the role of local and national elites was not as clear-cut. Yet, there is evidence that they can potentially block legal mobilization attempts.

7.2 *An extended framework of legal mobilization success in large-scale land deals*

The previous chapter compared central findings across the two countries and the four cases. I now link the results back to my theoretical framework. I will first discuss the relationships between the three core conditions on an abstract level, before including the two additional conditions in a second step. In a third step, I will show how the additional two conditions fit into the concept of an extended bargaining situation, which can capture the complexity of actors in large-scale land deals.

To identify relationships among the three core conditions looking at the truth table is helpful.

Table 17 Empirical truth table of core conditions

	national LOS	**support network**	**company**	**outcome**
Addax	unfavorable	strong	receptive	success
Socfin	unfavorable	strong	unreceptive	failure
GFII	favorable	strong	-	success
Agumil	favorable	weak	unreceptive	failure

The truth table shows two configurations in which legal mobilization was successful: In the case of Addax, the national legal opportunity structure was unfavorable. Nonetheless, a strong support network and a receptive company resulted in a successful outcome for the community of Masethleh. In the case of GFII, a favorable national legal opportunity structure, in combination with a strong support network, led to a successful outcome as

well. Unfortunately, I was not able to identify the receptivity of the company in that case; however, evidence from process tracing indicated that the condition was probably not significant, as the conflict was resolved through the Governor, holding the barangay captains accountable.

Evidence of the failed legal mobilization attempts can provide further clarification for the relationship between the three conditions. Comparing the Addax to the Socfin case shows the relevance of the receptivity of the company in cases in which the national legal opportunity structure is weak, but network support is still strong. This shows the relevance of companies following international soft law standards in countries with a weak land governance structure.

The Agumil case points to the relevance of the support network, which was absent in this case. However, if the missing support or the unreceptivity of the company is the main cause for the failure of the legal mobilization attempt is unclear. Yet, I suspect that the cooperatives could have been successful with more support. This would imply that the support network is a necessary condition for legal mobilization success.

Overall, my considerations lead me to the following relationships between the three conditions: If the national legal opportunity structure is favorable and local actors receive enough help from their support networks to enforce law, legal mobilization attempts should be successful. In the case that the national legal opportunity structure is unfavorable and local actors get the support of networks to use national and international less formalized norms, the legal mobilization success depends on the receptivity of investing companies.

Apart from the three core conditions, the two additional conditions can be conceptualized on an abstract level, as discussed earlier.

The role of political elites[74] is a relevant condition, which might be especially helpful in explaining legal mobilization failure. Existing research on large-scale land deals has emphasized that local and national political elites usually play an important role in facilitating these deals (Keene et al. 2015; Li 2015; Wolford et al. 2013), and as described in the previous chapter, often have a personal interest in 'protecting' investing companies. At the same time, as research on 'rightful resistance' shows, state officials can play a positive role, as they might act as an ally and enforce existing regulations (O'Brien/Li 2008). Different members of the same administration may be in favor of or against a large-scale land deal, and they might be open to lo-

74 Can be local or national elites, or both, depending on the context.

cal goals to varying degrees. In these cases, identifying a powerful ally within the administration might be a critical element to ensure that legal mobilization attempts can proceed and be successful.

The degree of unity of local actors as a relevant condition for legal mobilization success is logical from a social mobilization and business management perspective:

> "Without collective action, constituents would be disconnected individuals lacking a coherent interest in corporate behavior, and managers would fail to perceive these constituents as consequential. By framing their interests vis-à-vis the focal corporation, collective action among potential stakeholders facilitates the emergence of stakeholder awareness, both among the constituents of the organization and in the eyes of managers." (King 2007: 22–23)

My initial model did not pay specific attention to these internal mobilization processes, as I focused my research question on local actors, who were organized to the degree that they would voice collective demands. However, even when previous mobilization has taken place, it does not mean that it remains unchallenged or that members of an organization stay unified. The dissolved Association of Palm Oil Growers in Southern Palawan is a case in point and shows the need of local actors to create a certain degree of unity among themselves.

Adding these two conditions to the empirical truth table gives a first impression about their role. However, it should be noted that the explanatory power of the conditions diminishes the more conditions are added. This is related to the underlying logic of a configurational approach, which, as described in chapter 3.1.2, takes seriously all possible combinations in which conditions can appear and act together. For five conditions, this means that theoretically, 32 combinations are possible[75]. I, therefore, combine the results presented in the truth table with the findings from process tracing and theoretical considerations to draw conclusions.

75 The number of possible combinations is $2^{\text{number of conditions}}$. This shows the limits of applying a QCA logic to small-N research designs. The more conditions are included, the less meaningful the results get as the combinations only describe one specific case (Berg-Schlosser/Meur 2009: 27).

Table 18 Empirical truth table of all conditions

	national LOS	support network	company	degree of unity	Political elites	outcome
Addax	unfavorable	strong	receptive	unified	-	success
Socfin	unfavorable	strong	unreceptive	unified	blocking	failure
GFII	favorable	strong	-	unified	-	success
Agumil	favorable	weak	unreceptive	not unified	-	failure

Focusing on the additional conditions, two cases stick out: Agumil and Socfin. As discussed in the previous chapter, Agumil is the only case with missing unity of local actors and missing a strong support network. There is, therefore, the possibility that the two conditions are so closely linked that they could be expressed by one condition[76]. However, the question of the role of the condition of internal unity for the outcome of legal mobilization would still be relevant. Following theoretical considerations discussed earlier and my findings from process tracing, I assume that a certain degree of internal unity among local actors is a necessary condition for legal mobilization success.

The case of Socfin was the only one in which legal mobilization was stopped by local political elites. In other cases, political elites did play a role as well; however, it is difficult to break their behavior down into simple categories. Government authorities at different levels usually play a role in implementing large-scale land deals. Yet, whether they are able to facilitate or stop legal mobilization is linked to the respective configurations of power within the political system. I suspect that legal mobilization attempts relying on soft law instruments should be easier to derail than hard law instruments such as litigation, at least under the condition of a sufficiently independent judiciary. Furthermore, I assume that the role of local elites is less relevant in cases of a receptive company, as they might be less likely to hide behind power holders. However, these assumptions need further research.

Returning to the starting point of my theoretical framework, the two additional conditions can be integrated into the bargaining situation. My original version described a simple bargaining situation between two parties: Local actors on the one side and transnational corporations on the other

76 A combinatory condition could be the degree of mobilization of local actors, which could include the elements of internal and external mobilization.

side. Yet, my empirical work showed a more complex picture, which needs to be incorporated into the bargaining model, taking into consideration multi-level and multi-party bargaining. On the side of local actors, internal bargaining about a common position needs to be considered, while local and national elites can potentially stop or enable legal mobilization attempts on the side of the company. The following figure gives a simplified impression of this extended bargaining model.

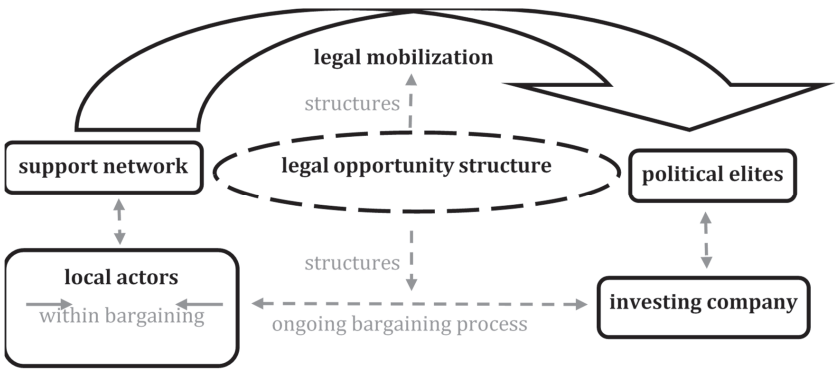

Figure 7 Extended bargaining model

Of course, graphic representations of complex realities are always somewhat limited. Yet, figure 9 helps to summarize my research findings and my final conceptualization. As in the initial model in chapter 3.2.2, there is an ongoing bargaining process between local actors and investing companies. However, additional relevant actors are included in the extended model. The support network helps local actors to pursue legal mobilization. Political elites have the ability to 'protect' investing companies, even though they are rarely as unified as presented in this figure. Within bargaining is added to local actors to signify the relevance of the condition of unity[77]. The legal opportunity structure is an underlying structure, which influences the bargaining power of different actors, their role in the overall situation and the possibilities for legal mobilization.

77 Within-bargaining theoretically applies to all other parties as well.

8. Conclusion

Concluding this dissertation, I will review the research presented and discuss its meaning for the literature and policy debates. I will recap the research question and the main findings in a first step (chap 8.1). The second part will consider the limits of my research and formulate further research desiderata (chap 8.2). The final part will discuss what these findings mean against the background of current debates described in chapter 2 of this thesis (chap 8.2).

8.1 Summary

My research endeavor was inspired by the ongoing international debate about the regulation of large-scale land deals. Commentators following a human rights or a market-based approach both argued for global rules but in different forms and with different contents. While a human rights-based perspective demands a veto right for local actors and binding instruments, a market-based perspective focuses on consultations and the persuasiveness of voluntary best practice standards.

Several new international instruments were developed containing traces of both approaches. Civil society and academic reactions varied between radically questioning the usefulness of regulation, being critical of missing bindingness and optimistic assumptions. Yet, existing research on the use of legal arguments, legal representation or legal institutions was so far inconclusive: Legal mobilization seemed to take place in large-scale land deals. However, the conditions under which legal mobilization by local actors was successful had not been subject to systematic research. This is the gap the dissertation helped to fill through answering the question: *Under which conditions can local actors successfully pursue their goals through legal mobilization?*

Addressing the research question required the development of a framework, which was able to consider different perspectives – a legal, a social mobilization and a business management approach. Viewed through the lens of bargaining power, I brought the three aspects together with the help of a configurational approach. I derived three core conditions: The favorability of the national legal opportunity structure, the strength of sup-

port networks and the receptivity of the company. These core conditions served as a heuristic tool for my empirical analysis, which had the aim to specify the relationship between the conditions and legal mobilization success and add possible additional conditions.

My empirical analysis focused on two cases of large-scale land deals in two countries: Sierra Leone and the Philippines. Both countries differ considerably in regard to their national legal opportunity structure. While smallholders in Sierra Leone do not have formalized decision-making rights concerning large-scale land deals, many farmers in the Philippines have means of claiming legitimate tenure rights and a veto right in land investments. The national legal opportunity structure was evaluated in both countries with the help of a 'collective optimum', created through a human rights perspective on land. The effects of the respective national legal opportunity structures were then analyzed through process tracing in two cases of large-scale land deals in each country: Addax and Socfin in Sierra Leone, and GFII and Agumil in the Philippines. The analysis aimed to show the relationship between and the relevance of the three core conditions. Further insights were created by comparing the findings within and across countries. Data used in the analysis came from 102 interviews conducted during field research in Sierra Leone and the Philippines as well as a variety of documents from media, NGOs, companies, activist groups, governments or academics.

Overall, my analysis showed how the national legal opportunity structure shaped the possibilities of local actors in mobilizing for their goals in both countries. In the case of Sierra Leone, these possibilities were very limited for local smallholders. In this context, the receptive company, Addax, which followed international guidelines, offered more space than Socfin, which relied on local authorities to suppress local mobilization. In both the Addax and the Socfin case, NGOs played an important role in supporting local actors. In the Philippines, the favorable national opportunity structure created a situation for local smallholders, in which they could protect their rights through legal mobilization. Nonetheless, local actors were dependent on strong support networks, which could help them pressure the administrative system and companies. Apart from the outside support network, internal unity appeared as another important condition –, especially in the Agumil case.

The findings from the analysis can be summarized on an abstract level to answer the research question. *Legal mobilization of local actors should be successful if the national legal opportunity structure is favorable and if local actors are unified and receive strong network support. In cases in which the nation-*

al legal opportunity structure is unfavorable, local actors also need to be unified and receive strong network support. However, in these cases the success of the legal mobilization will depend on the receptivity of the company and the role of political elites.

8.2 Limitations and future research desiderata

There are certain boundaries to my research as well as open questions that point out future research desiderata. I will discuss some general limits before going into more detail regarding the three literature strands identified as relevant in the introduction.

My dissertation focused on the way legal mobilization is employed by local actors to achieve their goals. I identified particular 'local actors' in each of my cases without further discussing their status in the overall affected population. The focus was not necessarily on the 'most marginalized' groups. I mentioned this in the chapter from Sierra Leone, where I pointed out differences between landowners and land users in customary law. However, I did not focus on these differences in the analysis. Similarly, I did not delve into the relationship between cooperatives and indigenous people in the Agumil case.

Furthermore, my research did not take into consideration gender-specific aspects of tenure systems and surrounding dynamics in large-scale land deals (Alano 2015; Ryan 2017). My research did not focus on how company investments influenced these existing societal inequalities and the role different local actors played in these settings. It would, however, be of interest, under which conditions legal provisions could mitigate or worsen inequalities between societal groups or gender in large-scale land deals.

Furthermore, this dissertation did not assess the economic benefits or losses of local actors on a systematic basis. However, from anecdotal evidence collected during interviews, it seems that the GFII case was probably the most beneficial to local smallholders. The smallholders who cooperated with the company saw it as one additional source of income, sometimes using land that was otherwise not valuable to them. In contrast, the farmers in the Agumil case were highly indebted and hardly received any financial outputs. The investment clearly did not improve their economic well-being. The situation was more complicated in the Sierra Leonean cases as the investments changed the local economy significantly. A household survey comparing communities in the Addax investment area to outside communities showed that the average household income in the Addax area was

indeed higher. However, prices for food had also increased in the project area to nearly the same degree that income had risen (Rist et al. 2016: 5). Determining economic benefits in such settings is a complex endeavor and depends to a considerable degree on the methods used. It should be noted that my 'success' cases do not automatically imply 'economic success'; instead, success in my cases showed that locals were able to influence the investment project in a way that they wanted. I do, however, assume that this should at least protect local actors from economically detrimental effects.

In addition, my dissertation is not representative of all large-scale land deals. As mentioned in the case selection chapter (4.2.2), I was focusing on land investments, which had created some attention and subsequent mobilization efforts by locals and civil society organizations. There can be investment projects, which are less problematic and respect local rights. However, I regard my selected cases as typical for large-scale investments that create national and international attention. I, therefore, expect that my findings around local dynamics and legal mobilization attempts are similar in other cases. My abstract model is furthermore applicable to other private sector investment cases such as mining projects, even though state actors usually play a more significant role in sub-soil resource exploitation.

Apart from some general boundaries of my dissertation, my study points to future research desiderata for the legal studies, social mobilization and business management literature.

As described in the introduction, the dissertation contributes to the legal studies literature by focusing on legal mobilization processes that take place outside the courtroom in countries with a relatively weak rule of law. I thereby provide a much broader picture of how people use and negotiate the law in the context of large-scale investment projects in developing countries. I did focus on legal possibilities and actions taken by local actors and did not further discuss the legal protection of companies on the national and international levels. I thereby left out the international investment regime, which has received considerable criticism as being overprotective of investors at the expense of local populations (Johnson 2016: 73). More specifically, bilateral investment treaties have been criticized for limiting governments in their regulatory responses regarding foreign investment in agriculture (Ewelukwa Ofodile 2014). The effects these treaties have on individual cases would be a relevant further research endeavor. In my examples, the role of international investment law did not surface, as

no bilateral investment treaty had been signed between host governments and countries of origin of the investors (UNCTAD 01/03/2019).

At the same time, my research leads to follow up questions such as the long-term effects of legal mobilization on different levels: Does legal mobilization leave local people feeling empowered and lead to new collective rights claims (McCann 1994: 11)? Or does the experience with the law lead to disenchantment and further marginalization (Gallagher/Yang 2017: 188)?

Furthermore, can legal mobilization attempts lead to broader changes on the societal level? This question is especially relevant in Sierra Leone. As described in chapter 5.1.3, a civil society network formed around the issue of large-scale land deals. The network has considerable influence on the political level, for example, in the development of the new National Land Policy. Besides, the network frequently brings together affected people from different regions of the country, who might, as a result, claim their rights more vocally. Simultaneously, the land deals themselves can lead to a questioning of existing customary rules, which start to be renegotiated (Bottazzi et al. 2016). These dynamics might change understandings of statutory and customary land rights and the role of chiefs. Mobilization efforts and rights discourses employed by civil society against large-scale land deals might have considerable long-term effects, as suggested by Alden Wily:

> "[T]he land rush is generating such increasing local reaction that subordination of majority rural rights shows signs of becoming less easy. This may prove to be the case even in the most recalcitrant of cases […] If only for political reasons, those governments may later, if not sooner, feel bound to modify their land laws […]." (Alden Wily 2014: 222)

These macro-level dynamics should be studied further in the next couple of years, which should show moves towards more inclusive land legislations if the optimistic assumption formulated by Alden Wily was correct.

This issue of broader societal change touches on core questions of the social mobilization literature. The dissertation contributes to this literature by focusing on a 'middle ground' of social mobilization, in which social actors try to achieve their goals by referring to legal norms and pushing for their enforcement. The cases represent local social actors who are not necessarily interested in societal change but rather want to improve their living situation. My research furthermore raises issues, which can be answered with the help of a social mobilization perspective in future re-

search. One question refers to the strategies employed by local actors and their support networks. In many cases, legal mobilization such as the calling on a national institution such as Congress in the Philippine cases or the Human Rights Commission in the Socfin case, are only part of broader advocacy campaigns and other activities. The case of GFII raised the question of violence in contributing and explaining the success of local actors. The question arises under which condition which combination of strategies might be most successful. As discussed in chapter 7.1, I assume that the strategies used by local actors have to fit societal contexts. Nonetheless, future research could focus more systematically on commonalities across cases and countries.

The question of strategy is especially interesting as many civil society campaigns around large-scale land deals involve the cooperation of local actors from the Global South with NGOs from the Global North. Typically, these relationships face certain difficulties due to the differences in financial resources, organizational background (Pieck 2013), but also regarding ideological or strategic views (Hahn/Holzscheiter 2013). There are signs that these challenges can be mitigated by applying the principle of affectedness, which is prevalent among civil society in the realm of food security governance (Schramm/Sändig 2018). In this regard, mobilization in large-scale land deals can serve as an example of successful cooperation between locally affected people and international NGOs across borders.

Another issue is the process of opinion formation on the local level. My research question focused on a point when people had already come together to take action. However, as indicated by the additional condition of unity among local actors, this cannot be automatically assumed. Some authors suggest that communities are usually divided among potential 'winners' or 'losers' of an investment (Schoneveld 2017: 127; Borras/Franco 2013: 1730). However, there is evidence that opinions take form on a collective level as interviews from villages in Kenya indicated:

> "Only one location, village 5, had a mixture of opinions for or against. Elsewhere, villagers were united, even if they varied in their reasons. Interviews revealed heterogeneity in respondents' livelihoods, education levels and life-worlds. […] this might suggest villagers' discursive positions are shaped collectively." (Smalley/Corbera 2012: 1049)

This finding underlines social mobilization approaches that assume that the existence of grievances alone is not enough for collective action to appear (Granzow et al. 2015). Instead, framing processes take place that help people to interpret events. In many cases of large-scale land deals, opinions

form before an investment has taken place, which leaves further room for interpretation as outcomes are only anticipated. Community leaders, politicians, outside NGOs and other social actors might try to influence opinion-making processes in local communities. Studying these micro-processes further would elucidate existing local power structures and their possible changes in the light of incoming investors.

Finally, my dissertation also contributes to the business management literature, through linking considerations about company stakeholders with social mobilization and legal issues. The role of law has not been studied explicitly in relation to the stakeholder salience model. However, as my dissertation suggests that whether companies perceive certain groups as relevant stakeholders depends on the legal situation, for example, whether customary landowners and users have a veto right or not. A company's decision about who they regard as relevant stakeholder is dependent on the legal situation in a country. This relationship can be further specified for different economic fields in future research.

The empirical material of my dissertation did point to another critical issue, which should be studied further from a business standpoint: The economic viability of large-scale agricultural investment projects. While I do not have data on profit margins, anecdotal evidence implies that only three out of the four projects were economically profitable, namely the investment of Socfin. As described, the Addax investment had failed mostly due to low yields. Yields were also substantially lower than projected in the Agumil case, and the mill seemed to be running only at half capacity. Finally, GFII was not able to encourage enough sugar cane growing and therefore did not have enough raw material for the bioethanol refinery. The economic difficulties raise two important follow-up questions that need further research.

Under which conditions are large-scale land deals economically viable? Large-scale investments seem to be especially risky, as mentioned in chapter 3.1.1. In a World Bank study on 39 agricultural investment projects, only 45 % were financially profitable (World Bank 2014: 17). Furthermore, large-scale agricultural plantations are difficult to manage and often struggle to achieve higher yields then small-scale farming (Schönweger/Messerli 2015). However, if investing companies struggle, local populations are likely to be negatively affected. This became apparent during the scale down of the Addax project: Workers had to be laid off (SiLNoRF 2016), rent payments were late, and social programs like a garden project for local women were stopped (interview SL15). Furthermore, a company that is struggling financially will, of course, have a harder time giving in to local demands,

for example, for higher rent payments. For locally affected communities, non-viable investment projects are, therefore, an additional risk. There is a clear need to assess the economic viability of large-scale land deals more critically. Some investments appear to be based on unrealistic yield expectations and fail to take conditions on the ground into consideration.

The second question is linked to the realization that the project that seemed to be economically successful was the investment of Socfin, which was the least receptive company out of the four cases studied. This puts the 'business case' for voluntarily following guidelines, mentioned in the introduction, into question. Are companies that are self-committing to following international principles and guidelines really more successful economically? The 'business case' argues that the costs of unresolved land conflicts will be higher for investing companies than doing proper consultation right from the beginning (World Bank 2014: xvii). However, the case of Addax shows that following best practices is costly. A former employee estimated the cost of the social affairs department, compensation paid locally and the running of the Farmers Development Program at 10 to 12 million USD (interview SL54). Nonetheless, the investment project still faced criticism:

> "[…] when you do apply best practice and you work with best practice, you still get bad press. […] best practice can be done, but it costs. And a lot of investors were not prepared to even pay a fraction of the money that Addax paid out." (interview SL54)

If done correctly, consultations and keeping up good relations between companies and local communities will be costly, especially if you consider the amount of people that might need to be involved: 13,500 and 20,000 affected people in the cases of Addax and Socfin respectively. Economists should engage in realistic calculations of what these processes cost. Sadly, the case of Socfin might be an example of how 'consultations' can be done 'cheaper': by negotiating with the government and Paramount Chief and leaving it to them to deal with local discontent. Of course, my data are limited in this regard, however, I question that there is always a 'business case' for applying voluntary standards. This is in line with existing research on the relationship of corporate social responsibility and financial performance of companies, which so far generated ambiguous results (Schreck 2011). Future research should analyze if and under which conditions a 'business case' exists for applying international soft law standards in large-scale land investment deals.

8.3 Implications of my findings for regulating large-scale land deals

What do my findings and my final answer mean for the existing debates about regulating large-scale land deals? I will present implications for the existing literature on large-scale land deals as well as policy debates.

My research findings provide evidence for all three positions taken about regulating large-scale land deals described in chapter 2.3.1. Looking back, an optimistic position emphasized the possible positive role played by voluntary standards. In contrast, a critical position demanded binding regulations as the way forward and a radical position stayed highly skeptical of the usefulness of regulation overall. My dissertation shows that all positions are justified in specific settings.

My findings from Sierra Leone clearly show how missing recognition of customary tenure rights puts local actors in a tough situation. They hardly have any say in large-scale land deals and their participation in decision-making processes relies on the discretion of companies and local chiefs. Legal reforms protecting customary land rights are therefore clearly needed. This finding underlines the need for binding law (critical view) and protection of customary and collective tenure rights.

The case of Addax shows that settings of problematic land legislation, international soft law instruments can make a difference. In the case of Addax, these were the RSB principles, the IFC standards and generally international best practices[78]. The company added agreements with landowning families, which created space for direct negotiations between communities and Addax. The case study shows that international soft law does make a difference and provides some evidence for the optimistic position, even though the extent to which local actors were able to negotiate with the company were highly limited.

The two cases from the Philippines show how legal protection of tenure rights can be helpful for local smallholders but does nonetheless require collective mobilization to be enforced, such as in the GFII example.

The Agumil case does show the limits of legal regulation in regard to ensuring economic benefits for local smallholders. When the cooperatives signed the contracts with Agumil, they were missing a clear understanding of legal implications and financial risks. The example supports radical views on regulation, which argue that smallholders will always lose out when faced with influential agribusiness investors. At the same time, the case highlights the importance of 'informed' in free, prior and informed

78 The VGGT had not been passed yet at the time when the investment was set up.

consent and gives some indications of what this should include: for example an understanding of legal consequences of agreements signed and the awareness of economic risks, especially in cases, which requires smallholders to take out a loan.

Overall, my findings show the chances of legal reform but also the challenges in enforcing and claiming them in developing countries such as Sierra Leone and the Philippines. Legal norms do not automatically lead to better outcomes for local smallholders. Nonetheless, binding national law can provide affected people with important arguments and puts them in a better bargaining position vis-à-vis TNCs. In cases in which national law is weak, international norms gain in importance. They are particularly relevant in cases in which companies are obliged to them due to voluntary self-commitment or their funding structure.

My findings underline the importance of ongoing efforts to translate the VGGT into national law, such as in Sierra Leone (Koch/Schulze 02/12/2017). As described in chapter 6.2.2, the new National Land Policy of the country contains several central provisions of the VGGT and goes even further in providing FPIC for future large-scale land investment deals. International soft law instruments, therefore, have a role to play in guiding national reforms. These efforts should be further supported.

At the same time, creating new international instruments is another important avenue to enhance the legal opportunity structure of local actors. My research points to the importance of a veto right for affected smallholders. As discussed in chapter 2.2.3, there are developments towards a right to land. However, the UN Declaration on the Rights of Peasants and Other People Living in Rural Areas only provides affected people with a participation right and not a right to give or withhold consent. This is a shortcoming, as 'participation' or 'consultation' puts local smallholders in a weaker position when viewed from a bargaining theoretical perspective, such as I have taken in the thesis. The investment of Socfin provides an example of how 'consultation' was interpreted: A few meetings took place with some landowning families, who voiced their general interest in leasing part of their land. This was considered as a general 'yes' of local communities by the company to the investment. Against this background, the specification of consultations in UNDROP, which demands "active, free, effective, meaningful and informed participation" (UN General Assembly 12/17/2018: Art. 2.3), is already a step forward. My findings, nonetheless, echo calls for FPIC for communities in large-scale land deals.

In addition to supporting calls for FPIC, my results show the importance of legal empowerment projects that have gained international atten-

tion in the last years (Commission on Legal Empowerment of the Poor 2008; Goodwin/Maru 2017). Going beyond legal aid, legal empowerment focuses on capacitating people "to exercise their rights" (Goodwin/Maru 2017: 158). This is especially relevant in the context of large-scale land deals, where local actors usually need support in understanding the legal documents that they are confronted with and future implications. At the same time, the mere provision of legal expertise is not necessarily enough, as communities might need help in terms of decision-making. Lawyers and paralegals providing legal explanations should, therefore, know consensus building and dialogue methods. Two guides developed by Namati, in collaboration with the Columbia Center on Sustainable Investment, give some insights into how negotiation processes within communities and with investors can be organized. They do, for example, include a pre-investment stage, which aims at formulating a common vision for the community, and establishes an understanding of the value of existing land and natural resources (Columbia Center on Sustainable Investment/ Namati). Attempts in this regard have already been made by the International Institute for Environment and Development, who implemented different legal empowerment projects in regard to strengthening local land governance in the face of incoming investors in Ghana, Cameroon and Senegal (Cotula/Berger 2017). Overall, legal empowerment projects make sense for improvement of local land governance and in the face of large-scale land deals and should not only be implemented but also studied further.

Despite these positive policy recommendations for legal reform and legal empowerment projects, my research points to limits. One condition that showed up was the role played by local and national political elites. While legal empowerment projects might help to hold officials accountable in some instances, political elites can pose a considerable challenge for local communities. As mentioned in the discussion in chapter 7.1, research shows that customary authorities and national politicians often misuse their power position for their own personal gains. This is not surprising, as the land sector is one of the most corrupt sectors in many countries (Transparency International/FAO 2011).

Large-scale land investments usually lead to a considerable influx of capital, which is often exploited accordingly:

> "Corruption in the administration of land remains rampant. It occurs at all phases and all levels of large-scale land deals. These various forms

> of corruption make it easy for investors to circumvent even the most carefully crafted regulations." (De Schutter et al. 2016: 85)

Procedural regulations might be able to help create transparency and move decision making power away from the individual to whole communities (German et al. 2013: 11). However, corruption in the land sector is often linked to corruption in other public sectors, and therefore a much broader challenge.

One last issue needs mentioning: The issue of suppression and the rising violence against land rights activists. In 2017, 207 environmental and land rights defenders were killed globally according to data from the NGO Global Witness. It was not only the deadliest year yet but also the first time that killings in relation to agribusiness overtook the number of people killed in the mining sector (Global Witness 2018: 8). These are just the extreme cases. In many instances, local activists are silenced through legal proceedings. The Special Rapporteur on the Rights of Indigenous Peoples Victoria Tauli-Corpuz has noted an increase in criminal charges against indigenous land rights defenders, a dynamic she calls a 'silent epidemic' (Zweynert 4/10/2017). These developments show the difficult situation of local activists in many places, such as MALOA faces in the case of Socfin. After the research for this dissertation was finished, 15 MALOA members were again arrested under false pretexts in January 2019 (Human Rights Defenders in Sierra Leone 2019). The incidence shows that, while legal mobilization worked in some cases discussed in this dissertation, the struggle for land rights continues.

Appendix: list of interviews

No.	date	place	interviewee	organization	No. of persons
Sierra Leone					
SL1	23-Nov-16	Freetown	staff member	development agency	1
SL2	23-Nov-16	Freetown	staff member	national NGO	1
SL3	24-Nov-16	Freetown	staff member	development agency	1
SL4	25-Nov-16	Freetown	staff member	FAO	1
SL5	25-Nov-16	Freetown	staff member	international NGO	1
SL6	9-Mar-17	Freetown	staff members	international NGO	2
SL7	10-Mar-17	Freetown	lawyer		1
SL8	15-Mar-17	Freetown	staff member	international NGO	1
SL9	16-Mar-17	phone	staff member	national NGO	1
SL10	20-Mar-17	Makeni	staff members	university	2
SL11	22-Mar-17	Makeni	staff member	local NGO	1
SL12	24-Mar-17	Makeni	staff member	international NGO	1
SL13	27-Mar-17	Malal Mara Chiefdom	chiefdom leaders, youth leader		4
SL14	27-Mar-17	Malal Mara Chiefdom	village elder		1
SL15	29-Mar-17	Makeni	company staff	company	1
SL16	29-Mar-17	Malal Mara Chiefdom	youth leader		1
SL17	30-Mar-17	Makari Gbanti Chiefdom	female activist		1
SL18	30-Mar-17	Makari Gbanti Chiefdom	section chief		1
SL19	31-Mar-17	Port Loko	staff member	local NGO	1
SL20	4-Apr-17	BKM Chiefdom	village elders		5
SL21	4-Apr-17	BKM Chiefdom	village women		4

No.	date	place	interviewee	organization	No. of persons
SL22	4-Apr-17	BKM Chiefdom	chiefdom speaker		1
SL23	5-Apr-17	BKM Chiefdom	village elders		3
SL24	6-Apr-17	BKM Chiefdom	village elders		1
SL25	6-Apr-17	BKM Chiefdom	village elders		2
SL26	10-Apr-17	Makeni	paralegal	national NGO	1
SL27	11-Apr-17	Malal Mara Chiefdom	village elder		1
SL28	12-Apr-17	Makeni	staff member	local NGO	1
SL29	12-Apr-17	Makeni	staff member	local NGO	
SL30	19-Apr-17	Freetown	staff member	Sierra Leone Chamber for Agribusiness Development	1
SL31	20-Apr-17	Freetown	staff member	national NGO	1
SL32	21-Apr-17	Freetown	staff member	Ministry of Agriculture, Forestry and Food Security	1
SL33	24-Apr-17	Bo	staff member	National NGO network	1
SL34	24-Apr-17	Bo	activist	local organisation	1
SL35	25-Apr-17	Bo	staff member	national NGO	1
SL36	26-Apr-17	Bo	paralegal	national NGO	1
SL37	1-May-17	Malen Chiefdom	chiefdom speaker		1
SL38	2-May-17	Malen Chiefdom	female activist	local organisation	1
SL39	2-May-17	Malen Chiefdom	female employee	company	1
SL40	2-May-17	Malen Chiefdom	former village chief		1
SL41	2-May-17	Malen Chiefdom	activist	local organisation	1
SL42	2-May-17	Malen Chiefdom	activist	local organisation	1
SL43	3-May-17	Malen Chiefdom	councilor		1

No.	date	place	interviewee	organization	No. of persons
SL44	3-May-17	Malen Chiefdom	manual laborers		3
SL45	3-May-17	Malen Chiefdom	unemployed youths		1
SL46	3-May-17	Malen Chiefdom	employee	company	1
SL47	3-May-17	Pujehun	official	district government	1
SL48	3-May-17	Pujehun	staff members	local NGO	2
SL49	8-May-17	Freetown	staff member	Human Rights Commission of Sierra Leone	1
SL50	8-May-17	Freetown	staff members	Ministry of Lands	2
SL51	12-May-17	Freetown	lawyer	national NGO	1
SL52	5-Jul-17	Skype	staff member	international NGO	1
SL53	18-May-18	Skype	staff member	international NGO	1
SL54	24-Jul-18	Skype	former employee (management)	company	1
Philippines					
PH1	20-Feb-18	Manila	professor	university	1
PH2	21-Feb-18	Manila	staff members and activists	national farmers' association	5
PH3	21-Feb-18	Manila	staff members	international farmers' association	2
PH4	22-Feb-18	Manila	staff member	international NGO network	1
PH5	23-Feb-18	Manila	staff member	national farmers' association	1
PH6	26-Feb-18	Manila	lawyer	national NGO	1
PH7	27-Feb-18	Manila	staff member	Cooperative Development Authority	1
PH8	27-Feb-18	Manila	staff member	national farmer's association	1

No.	date	place	interviewee	organization	No. of persons
PH9	27-Feb-18	Manila	farmer activist	national farmer's association	1
PH10	1-Mar-18	Manila	clergy	Catholic church	1
PH11	7-Mar-18	San Mariano	official	municipality of San Mariano	1
PH12	7-Mar-18	San Mariano	employees	company	2
PH13	8-Mar-18	San Mariano	barangay captain + secretary		2
PH14	8-Mar-18	San Mariano	independent planter		1
PH15	8-Mar-18	San Mariano	independent planter		1
PH16	8-Mar-18	San Mariano	bargangay captain		1
PH17	8-Mar-18	San Mariano	contract farmer		1
PH18	8-Mar-18	San Mariano	contract farmer		1
PH19	8-Mar-18	San Mariano	contract farmer		1
PH20	9-Mar-18	San Mariano	employees	company	2
PH21	9-Mar-18	San Mariano	farmer activist		1
PH22	12-Mar-18	Pagudpud	official	municipality of Pagudpud	1
PH23	12-Mar-18	Pagudpud	barangay secretary		2
PH24	12-Mar-18	Pagudpud	barangay capatain		1
PH25	12-Mar-18	Pagudpud	former barangay captain		1
PH26	14-Mar-18	Laoag	staff member	Philippine Coconut Authority	1
PH27	29-Oct-18	Manila	staff member	international farmers' association	1
PH28	29-Oct-18	Manila	lawyer	national NGO	1
PH29	5-Nov-18	Puerto Princesa	staff members	local NGO	2
PH30	7-Nov-18	Puerto Princesa	staff member	Palawan Sustainable Development Council	1

No.	date	place	interviewee	organization	No. of persons
PH31	8-Nov-18	Puerto Princesa	staff member	Provincial Cooperatives Development Council	1
PH32	9-Nov-18	Puerto Princesa	staff member	local NGO network	1
PH33	12-Nov-18	Brooke's Point	staff member	Department of Environment and Natural Resources	1
PH34	12-Nov-18	Brooke's Point	chairman	farmer's cooperative	1
PH35	12-Nov-18	Brooke's Point	former chairman	farmer's cooperative	1
PH36	13-Nov-18	Sofronio Espanola	staff member	Palawan Sustainable Development Council	1
PH37	13-Nov-18	Sofronio Espanola	elected official	municipality	1
PH38	13-Nov-18	Sofronio Espanola	member	farmer's cooperative	1
PH39	13-Nov-18	Sofronio Espanola	chairman, treasurer and accountant	farmer's cooperative	3
PH40	13-Nov-18	Sofronio Espanola	staff members	Department of Agrarian Reform	2
PH41	14-Nov-18	Batarazza	board members	farmer's cooperative	9
PH42	14-Nov-18	Batarazza	members	farmer's cooperative	2
PH43	14-Nov-18	Brooke's Point	staff member	Philippine Coconut Authority	1
PH44	15-Nov-18	Sofronio Espanola	chairman	farmer's cooperative	1
PH45	19-Nov-18	Puerto Princesa	staff members	Land Bank	2
PH46	23-Nov-18	Manila	staff members	Department of Agrarian Reform	3

No.	date	place	interviewee	organization	No. of persons
PH47	26-Nov-18	San Mariano	staff members + ARBs	Department of Agrarian Reform	5
PH48	28-Nov-18	Cauayan	farmer activist		1

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