The London School of Economics and Political Science

Governing Land Investments: Global Norms, Local Land Tenure Regimes, and Domestic Contingencies in Uganda and Sierra Leone

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Declaration

I certify that the thesis I have presented for examination for the MPhil/PhD degree of the London School of Economics and Political Science is solely my own work other than where I have clearly indicated that it is the work of others (in which case the extent of any work carried out jointly by me and any other person is clearly identified in it).

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I can confirm that parts of chapter 5 and 6 have been published in the context of a single-authored article in the *Journal of Development Studies*.

Abstract

Following the outcry and fierce debates around 'land grabbing' in relation to the rise of foreign transnational large-scale land investments in the Global South since 2007, a plethora of international regulatory initiatives and global norms have emerged with the aim to make such investments more responsible and socially and environmentally sustainable. It remains unclear how and when such guidelines are invoked in practice in investment cases, and whether their use can prevent land conflict and protect local land rights as human rights, as promoted. This PhD project studies the conditions under which global norms for responsible investments may gain traction in cases of large-scale land investments in two different country contexts, Uganda and Sierra Leone. What accounts for the uneven invocation and use of international guidelines in addressing local land conflict? Much literature perceives of the idea of global norms to safeguard land rights in cases of large-scale land investments as deeply flawed and sees them as global governance tools to promote and justify neoliberal principles of privatisation, commodification and land appropriation. My research offers a more variegated picture. In line with theories of human rights norms implementation that finds that such norms tend to be adopted when local conditions are receptive, I draw attention to the important role of and variation in local land governance institutions and contingencies in shaping the extent to which and how such global norms gain traction in cases of large-scale land investments. The analysis focuses on (1) the prevailing land tenure regimes, (2) the stakes of the national government in investment projects, and (3) the 'strength' of the government vis-à-vis the international community. These three dimensions, I argue, are interlinked and vary at the subnational level, thus accounting for the uneven ways in which global norms are implemented.

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List of Abbreviations

AA	Action Aid
AfDB	African Development Bank
AIAP	Agribusiness Investment Approval Process
ASF	Avocats Sans Frontières
BIDCO	Business and Industrial Development Corporation
CAO	Compliance Advisor Ombudsman
CCO	Certificate of Customary Ownership
CFS	Committee for World Food Security
CFS-RAI	CFS Principles for Responsible Investment in Agriculture and Food System
CSO	Civil Society Organisation
DFI	Development Finance Institution
DFID	UK Government Department for International Development
DLB	District Land Board
EU	European Union
EIB	European Investment Bank
FAO	Food and Agriculture Organization of the United Nations
FCDO	UK Government Foreign, Commonwealth & Development Office
FIAN	Food First Information and Action Network
FSC	Forest Stewardship Council
FPIC	Free, Prior, Informed Consent
GIZ	Gesellschaft für International Zusammenarbeit
GLiSS	Great Lakes Institute for Strategic Studies
HCV	High Conservation Value
IDP	Internally Displaced Person
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IFC-PS	IFC Performance Standards
IFI	International Financial Institutions
LSE	London School of Economics and Political Science
LC5	Local Council 5 (District Chairperson)
LEGEND	Land: Enhancing Governance for Economic Development

LRA	Lord's Resistance Army
MALOA	Malen Affected Land Owners Association
MAKLOUA	Makpele Land Owners and Users Association
MAFFS	Sierra Leone Ministry of Agriculture, Forestry and Food Security
MILA	Makpele Individual Landowners Association
MLPE	Ministry of Lands, Country Planning and Environment
MLHUD	Uganda Ministry for Lands, Housing & Urban Development
NEMA	National Environmental Management Authority
NFA	National6 Forestry Authority
NGO	Non-Governmental Organisation
NKG	Neumann Kaffee Gruppe
NMA	National Mineral Agency
OECD	Organisation for Economic Co-Operation and Development
ONS	Office of National Security
OPUL	Oil Palm Uganda Limited
PELUM	Participatory Ecological Land Use Management Association
PICOT	Partnership in Conflict Transformation
PID	Partners in Development
PRAI	Principles for Responsible Agricultural Investment
REDD+	Reducing Emissions through Deforestation and Forest Degradation
RSPO	Roundtable on Sustainable Palm Oil
SVF	Shared Value Foundation
SiLNoRF	Sierra Leone Network for the Right to Food
SLIEPA	Sierra Leone Investment & Export Promotion Agency
TI	Transparency International
UIA	Uganda Investment Authority
UNCTAD	United Nations Conference on Trade and Development
UNCHR	United Nations High Commissioner for Refugees
USAID	United States Agency for International Development
ULA	Uganda Land Alliance
UWA	Uganda Wildlife Authority
VCS	Verified Carbon Standard
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

VODP	Vegetable Oil Development Project
WAAL2	West Africa Agriculture Number Two Limited
WHH	Welthungerhilfe

Chapter I: Introduction

1.1 Introduction

The sharp rise of large-scale land investments by domestic and foreign firms in the developing world, sparked by the financial and food price crisis of 2007/2008, has received worldwide attention throughout the last decade. Numerous media reports of conflict over land rights, forced displacement, human rights violations, and environmental destruction driven by such investments, particularly in sub-Saharan Africa (henceforth Africa), have reignited debates over the 'land question' in Africa and the future fate of the continent's land (Peters, 2013; Margulis et al., 2013). Pitting opponents of 'land grabbing' on the one end against advocates of win-win scenarios on the other, large-scale land acquisitions have become a prominent topic of debate on the global governance agenda. Agrarian justice activists and peasant rights organisations (i.e., La Via Campesina, GRAIN) strongly advocate against foreign investments, pointing to the violations of land rights of smallholders and land users. In contrast, most national governments and mainstream development agencies, such as the World Bank and the organisations of the United Nations (UN), believe in the development dogma that foreign direct investment will lead to economic growth, which will trickle down to benefit the majority. These actors emphasise the enormous potential of large-scale investments to contribute to poverty reduction by introducing employment opportunities, transferring technologies, and generating foreign exchange in developing countries (Liu, 2014; Songwe & Deininger, 2009). While indeed acknowledging the risks and harm that has been associated with investments, these mainstream actors believe that such negative effects are *avoidable* by improving state regulation and investor behaviour. In other words, if investments are done right, they can generate promising win-win scenarios that benefit not only the investor, but also the host country economy and communities in the vicinity of the investment.

Devising ways to achieve such 'win-win' scenarios and to correct the behaviour of investors and governments has become a significant focus area, if not trend, on the global governance agenda. The result of this has been the creation and proliferation of a plethora of (voluntary) codes of conduct and best practice standards meant for governments, investment companies, civil society groups and/or other actors with the purpose of disciplining and guiding land deals

to become more socially and environmentally responsible, to avoid conflict, and to protect local land rights. It is striking how many new global governance norms and guidelines to curb 'land grabbing' and optimise investments for mutual benefit have appeared on the global governance agenda throughout the last decade. These initiatives are crafted by a variety of actors, including international financial and donor organisations, national governments and donor agencies, transnational private governance organisations, as well as international nongovernmental organisations and social movements. Some examples include:

- the *Voluntary Guidelines for the Responsible Governance of the Tenure of Land Fisheries, and Forests (VGGT),* adopted in 2012 by the UN Committee for World Food Security (CFS) and the UN Food and Agriculture Organisation (FAO),
- the *Principles for Responsible Agricultural Investment that Respect Rights, Livelihoods and Resources (PRAI*), developed by the World Bank, together with various UN organisations in 2010,
- the *Performance Standards on Environmental and Social Sustainability*, developed by the International Finance Corporation (IFC) in 2012,
- the *CFS Principles for Responsible Agricultural Investments (CFS rai*), developed by the UN Committee on World Food Security in 2014,
- the principle of *Free, Prior, Informed Consent (FPIC)*, enshrined in the 2007 United Nations Declaration on the Rights of Indigenous Peoples, and adopted by the UN General Assembly,
- the *Guiding Principles on Large Scale Land Based Investments in Africa,* endorsed by the African Union (AU), African Development Bank (AfDB) and the UN Economic Commission for Africa (UNECA) in 2014,
- or the *Operational Guidelines for Responsible Land-Based Investment*, designed by the United States Agency for International Development (USAID) in 2015.

These and many other such international guidelines and instruments aim to incentivize investors to use responsible investment practices and governments to improve local law and practice around land governance.[1] While international guidelines vary in the ideology of their authors, their specific focus and thematic priorities, and their target audience, there are more commonalities than differences between them. For instance, with varying levels of emphasis,

[1] Chapter 2 provides a more detailed discussion and analysis of these international instruments.

they all call for increased transparency of large-scale land deals, fair consultations and participation of local communities in land deals negotiations, the implementation of environmental standards and safeguards, the up-holding of corporate responsibility to 'do no harm', as well as respecting 'legitimate' land rights as human rights (Wehrmann, 2017; Borras Jr. et al., 2013). Indeed, many such guidelines are understood in the literature as human rights approaches to responsible land investments, emphasising land rights as human rights, alongside human rights related themes such as food security (Borras &Franco, 2010; Wisborg, 2013).

A large literature on global norms and human rights norms in particular tells us about the various international actors, processes, conventions, and agreements in relation to global norms, but there is scarce empirical evidence of what actually happens on the ground in terms of norm diffusion in investment projects. Central to this literature is Risse, Ropp and Sikkink's (1999, 2013) work on human rights norm diffusion and their 'Spiral Model' of norm socialization that traces norm diffusion from the international to the domestic level. Their work, amongst others', emphasises the need for *receptive* domestic conditions for the way that global norms become institutionalised locally. Yet, what this means in practice in cases of large-scale investment projects is largely unclear and under researched. This research project is situated in precisely in this empirical caveat. I draw attention to the key role of domestic land governance structures and institutions for the way that such norms can gain traction in investment cases.

The provisions laid out in these global governance norms seem like real safeguards for local land rights at first glance, but there are several caveats and paradoxes inherent in these guidelines and their recommendations, which the authors and promoters of such codes of conduct may not have anticipated. For one, if the guidelines worked as they are supposed to, then we would expect that investment-related land conflict would abate or be absent, at least for newer and upcoming investment cases. However, despite the plethora of international guidelines being promoted and implemented at the national level, conflict around large-scale land investments in Africa is as present as ever. Media reports about displacement, dispossession, protest, and violations of land rights continue to appear. Moreover, during my research on large-scale land investments in Uganda and Sierra Leone in the last few years, I observed not only the persistence of conflict around investments but the unevenness of the salience, reference to, and use of international guidelines for responsible investments across different kinds of investments. Why does this occur?

1.2 Research Questions

This project thus puts forward the following research question(s):

- Under what conditions do global norms for responsible land investments gain traction locally?
- Why do international guidelines for responsible land investments seemingly have spatially uneven application and use, and varying degrees of 'success' in mitigating conflict and protecting local land rights, even when foreign investors claim to seek to comply with international guidelines?
- Why do international guidelines seem to be effective in dealing with *some* types of land transactions and land rights, but seem to be ineffective or worse in dealing with others, even within the same county and when dealing with foreign investors who appear to seek to comply with responsible investment practices?

In this dissertation, I am less concerned with the efforts to disseminate global norms than I am with the way that they are *received.* The analytical focus of this project is thus on the appearance of the norms in the local (land tenure) context, rather than tracing the reasons and strategies of norm diffusion by different actors.

1.3 Key Literature and its Limitations

This research project brings together and builds on insights and existing debates from three main interrelated literature streams: large-scale land investments, land tenure regimes and African land politics, as well as global governance and international rulemaking.

1.3.1 Large-scale Land Investments

I understand large-scale land investments as transnational and national commercial land transactions for the purpose of large-scale production, sale and/or export of food crops, biofuels, and forestry products, as well as projects in the tourism and mining sectors (Borras & Franco, 2010, p.2). This definition is one of many, as policymakers, academics and activists often disagree on the terminology used to describe large-scale investments. Other terms, for example, are large-scale acquisitions, land enclosures, 'land grabbing', or the global land rush (Edelman et al., 2013, p.1517). The term 'land grabbing' is particularly popular amongst

activist and social movement groups but has also been purposefully used by academics contributing to the *Globalizations* journal's special issue 'Land Grabbing and Global Governance' (Volume 10, 2013), with the purpose of highlighting the element of competition over the control over resources, rights, and authority over political institutions (Margulis et al., 2013, p.12). However, I purposefully avoid the term 'land grabbing' throughout this dissertation (except if it appears in citations), as it is mostly associated with negative connotations of illegal or forced dispossession of land and often associated with infringements on human rights. While this has certainly happened in many cases, I emphasize that large-scale land investments are not automatically 'land grabs'. Investments *per se* are not illegal and do not necessarily result in the mistreatment of communities, and dispossession of land rights.

A large literature has thematised the rise of large-scale land investments in the last decade. According to studies by Edelman et al. (2013) and Oya (2013), there are two distinguishable 'waves' of literature that have covered this topic since the 2007/08 financial crisis - its intellectual point of departure. The period from 2008 to 2012 marks the first wave of literature, called the "initial making sense period" (Edelman et al., 2013, p.1520). Literature from this period includes a multitude of media reports on rampant 'land grabbing' and the first academic studies on fundamental epistemological questions concerning the drivers, scale, geography, characteristics, risks and first outcomes of large-scale land deals.[2] From 2013 onwards, the second wave of literature contained more detailed and nuanced analyses of land deals, and saw the emergence of literature on specific focus areas, sub-themes and key challenges (Edelman et al., 2013, p.1520). These include, for example, legal and accountability aspects of land investments (Polack et al., 2013; Cotula, 2011, 2013; Golay & Biglino, 2013; Vermeulen & Cotula, 2010), environmental considerations and *green grabbing* (Milgroom, 2015; Fairhead et al., 2012), *water grabbing* (Mehta et al., 2012), and gender considerations and women's land rights (Ryan, 2018), as well as the state capacity and state-society relations (Lavers & Boama, 2016).

[2] Many of the numbers and estimates about the size of land being acquired, the number of land deals and the origin of the investors coming out of this first wave of literature have subsequently been questioned and criticized. For example, Bräutigam and Zhang (2013) and Hofman and Ho (2012)'s works debunked the 'myth' of rampant and 'uncontrollable' Chinese land investments in Africa. Notable is also the work of Cotula et al. (2014) in this regard, who empirically assessed common (mis)perceptions of large-scale land deals and provided new evidence on drivers, scale and geography, amongst other factors.

More recent literature, perhaps conceivable as a 'third wave' has focused on the idea of global 'solutions' to negative impacts of large-scale investments, mostly in the form of global governance norms, codes of conduct, and guidelines, propelled by both state and non-state actors (Clapp, 2017; Druzin, 2017; Kapstein, 2018; Schleifer et al., 2019; Dashwood, 2022).

1.3.2 Land Tenure Regimes

The existence and significance of formal-legal frameworks governing land in African countries is often underestimated. Yet global governance mechanisms are not introduced into a lawless void when invoked in situations of large-scale investments, but rather come into force within an existing formal-legal arena of varying land tenure regimes. Several important studies in this context have particularly informed and inspired this research project. For example, the works of Peters (2013), Berry (2002), Boone (2003, 2007, 2014), Lund (2008) and Mamdani (1996, 2001) on land politics and property relations in Africa has been influential for the purpose of understanding the background of African land politics and property relations that provide the context for large-scale land investments. These scholars show how current and historic political and socio-economic dynamics in Africa, and in particular, rural conflict and competition over land have been shaped by such land politics - rooted in colonial and post-colonial state building efforts.

I argue that when land investments are implemented, they enter a specific context of land politics and property relations. A central premise of this research is that such land politics in Africa vary across space and time, particularly at the sub-national level (Boone, 2003, 2007, 2014). Therefore, land investments, being implemented in different regions and localities of Uganda and Sierra Leone, are shaped differently by the given constellations of land politics. Land politics can be understood as the formal sphere of land laws and policies at the national level (including such measures as land reform) as well as the informal sphere of property relations at the local level. This is best encapsulated by the concept of land tenure regimes, which are legally framed at the national level but also comprise of 'informal' rules and personal relations at the local level.

For the latter, Boone's (2007, 2013, 2014) work on land tenure regimes is of particular theoretical significance for this thesis. Contrary to common interpretations of rural Africa as an 'ungoverned' and 'institutionless' space, Boone (2014, 2015) highlights the salience of sub-national variation in land tenure regimes and how these determine the nature of land rights and

the extent to which they are recognized or respected by the government. African land tenure regimes are understood as "property regimes that define the manner and terms under which rights in land are granted, held, enforced, contested and transferred." (Boone, 2014). They are also products of historical and cultural factors and therefore reflect the relationships between people, society and land (Payne, 2002). Boone (2014) groups these property regimes mainly into customary or statist models, which vary across sub-national regions in most African states. In customary tenure regimes, she argues, customary authorities (e.g., chiefs or elders) exercise authority over land and determine the ways that community members may access, own or use land.[3] In statist tenure regimes, local representatives of the central state (e.g., district administrations, local government) act as the landlord and allocator of land (Boone, 2014). While this binary division is fundamental for understanding the main differences in regimes in African countries, I consider more than these two categories of tenure regimes in this research. Statutory land tenure regimes also consist of privately owned and titled land (i.e., freehold tenure) and land under leasehold. In this work, I include and consider all the official tenure regimes formalized by the formal-legal framework for both Uganda and Sierra Leone. For Uganda, this consists of freehold, *Mailo,* leasehold and customary Land, as well as state-owned land, and for Sierra Leone, this consists of customary land, private freehold and state-owned land.

Some land tenure regimes embody land rights that are more recognized, respected and/or protected than others by African governments and, as a result of this, by private sector institutions, (international) financial organisations, international organisations etc). For example, land rights under private property regimes, such as freehold tenure, usually enjoy *de jure* and *de facto* recognition and protection at the national level. But land rights of people living on other tenure regimes, such as customary tenure, for example, are sometimes not fully recognized or protected. This project is concerned with what these differences in land tenure regimes and recognized land rights mean for the way that international guidelines can address investment-related land conflicts around land rights and protect local land rights? How can

[3] Boone (2003, 2007, 2013, 2014) speaks of 'neo-customary' tenure systems to emphasize the fact that land politics on customary land have been shaped and changed throughout the last century and do not anymore reflect precolonial notions of customary tenure. While this is certainly true, I will not use the prefix 'neo' in this dissertation, since in my fieldwork countries of Uganda and Sierra Leone, the official name for this tenure system is 'customary' tenure and it is referred to as such throughout my interviews and other data forms.

international guidelines aiming to protect 'legitimate' tenure rights and prevent such conflicts relate to this variegated terrain of land rights?

Illegibility of and legal ambiguity around land rights is a lived reality for most land users in sub-Saharan Africa, particularly for the more than 80 percent of land users on customary land across the continent (Deininger et al., 2011). The most intractable land conflicts happen precisely in such legal 'grey zones'. This means that the types of risks and conflicts that the guidelines set out to guard against do not always correspond to the types of conflicts that actually emerge in the context of diverse, illegible, and often ambiguous land rights and complex local land politics around large-scale land investments on the ground.

In Uganda and Sierra Leone, depending on the land tenure regime, there is variation in the way that the land rights of land users or land occupants are recognized by the central government (or not). For example, land rights under private property regimes, such as freehold tenure, usually enjoy *de jure* and *de facto* recognition and protection at the national level as they are enshrined in formal-legal frameworks, legible (documented), and enforceable in a court of law. For instance, on *Mailo* land in Uganda (a form of private freehold with unique characteristics of dual land ownership of both landlords and tenants), the land rights of Mailo tenants are state-recognized and enforceable in a court of law. In contrast, land rights of people living on state lands, such as national forest reserves, national parks or wetlands are often not recognized by national governments and international actors and, as a result, largely ignored in negotiations around large-scale investments on such tenure types.

Another scenario occurs on land tenure regimes where land rights are recognized in principle but are ambiguous and/or illegible due to the absence of documentation of these rights. This is the case, for example, on customary land. In most African countries, unregistered land rights of land occupants on customary land are often recognized in law but *de facto* not protected (Alden-Wily, 2011, Boone 2014). Various scholars have acknowledged the vulnerability of customary land rights in sub-Saharan Africa (Kapstein, 2018; Peters, 2013; Alden-Wily, 2011). Peters (2013) argues that since the colonial era, customary land in much of sub-Saharan Africa 'has been treated as less than full property' (p. 2) and that customary landholders are particularly threatened by the rise of global large-scale land investments. Thus, even if customary land rights are recognized in the country's constitution and land laws, this does not automatically mean that the state will protect them in practice.

1.3.3 Linkage Between Land Investments and Land Tenure Regimes

Some literature addresses the connection between land tenure regimes and large-scale land investments, yet often not in a comparative or explicit manner that takes account of the land tenure regimes *per se.* Central to my research is the question whether investment takes place predominantly on customary land or on privately titled property. A common assumption is that customary land is particularly vulnerable and targeted for 'land grabbing' as "large land deals most frequently occur where people do not have formal land rights" (White et al., 2012, p.637). Many scholars, such as Alden Wily (2011), Deininger and Byerlee (2011), Dell'Angelo et al. (2017), and Peters (2013) share this view. The reason for this, Alden Wily (2011, p.733) argues, is that "national land laws have generally been structured to make this appropriation possible, by denying that customary rights amount to real property rights, deserving of protection". In their meta-study of 57 cases of large-scale land investment across the world, Dell'Angelo et al. (2017) show that large-scale land deals disproportionally target communally and customarily owned land as the informal status of customary tenure makes it an easier target for land acquisitions than statist tenure. Especially in post-conflict contexts, many argue that weak and informal customary systems may give way to 'land grabbing' by powerful actors (van Leeuwen & van der Haar, 2013; Unruh, 2009).

However, others argue that investing on customary tenure can be particularly risky for investors. Several reports outline how various large-scale land investors in the Tana Delta in Kenya had to abandon their projects due to heavy protest by local residents who invoked their customary and ancestral claims over the land targeted for the investment (Smalley & Corbera, 2010; Grain et al., 2014). Smalley and Corbera emphasize that the "strength of customary claims" (2012, p.1051) provides scope for opposing large-scale land deals.

Christensen, Hartman and Samii (2018) sum up this debate about private versus customary land in the context of Liberia: "[P]rivate property protects owners and is legible to outsiders; customary systems, on the other hand, permit the low-cost displacement of existing users but can be difficult to discern" (2018, p.3). While they find that the rise of land investments tends to happen more *rapidly* on privately owned and titled land, they propose a nuanced argument: "If investors care about the transactions costs that come from the illegibility or uncertainty associated with the customary property rights systems, then we expect demand to be greater where private property prevails. However, if a customary system allows chiefs or other local

authorities to depress land prices by effectively expropriating current land users, then investors might be wooed by cheap land." (Christensen et al., 2018, p. 20).

In other publications, the analytical focus may be on specific aspects of customary tenure shaping land deals without discussing the significance of the tenure regime itself. This work provides important insights that have informed my study. For example, increasing attention is paid to the often-ambiguous role of customary and local authorities (i.e., chiefs, lineage and village elders, traditional councils) during negotiations and implementations of land deals (Polack et al., 2013; Nolte & Väth, 2013; Vermeulen & Cotula, 2010)[4]. For example, Schoneveld et al. (2011) and Polack et al. (2013) have documented that chiefs in Ghana, a country with robust and prevalent customary institutions, have at times abused their power position to personally benefit from land deals to the detriment of their constituents. They do so by handing out large tracts of land to foreign investors without evidence of negotiations concerning compensation payments for farmers in their jurisdiction whose land will be expropriated by the investment.

This view is complemented, yet also contrasted, by literature on communal tenure, peasant agency and social movements. This work often highlights the merits of local agency and traditional authority in customary institutions. This literature is concerned with "the politics from below" (Hall et al., 2015, p.467), local resistance against land dispossession and large-scale investment, and rural social movements more generally (Grain et al., 2014; La Via Campesina, 2012; McKeon, 2013; Smalley & Corbera, 2012; Vermeulen & Cotula, 2010)[5]. Anchored in critical agrarian studies and social justice movements, this literature considers land tenure regimes, such as (undocumented) customary tenure, to be particularly vulnerable and in need of protection from large-scale investment. Vermeulen and Cotula (2010) argue that despite formal legal recognition of customary tenure by the central state in some places, customary land users still hold a weak bargaining position in negotiations around land investments due to power imbalances and flawed consultation and compensation mechanisms. In contrast, Smalley and Corbera (2010) take a very optimistic view on customary tenure and 'peasant agency' with regards to landholders' ability to block land investments. They highlight

[4] The role of chiefs and political authorities at the local level is further discussed in Acemoglu et al (2014), Baldwin (2013, 2014), Honig (2015), Boone (2011) and for non-African contexts in Mattingly (2016).

[5] This literature partially emerged from ideological standpoints of agrarian neo-populism and an overall rejection of capitalism (Chayanov, 1966; Griffin, 1974, 1979; and Lipton, 1977).

the strength of customary tenure as a viable "legal platform for resistance" (2012, p.1053) against investment-related land dispossession in their study of the Tana Delta of Kenya, where customary landholders were able to successfully delay and stop two land deals through their organised contestations.

Yet, fewer scholars have drawn any systematic comparison between investments on different land tenure regimes with the goal of systematically capturing how this variation may affect investment trajectories and the scope for global norm instantiation. An exception is Boone's (2015) comparative study of two cases of local resistance against large-scale investment projects in Tanzania and Ghana. She demonstrates the political salience of land tenure regimes by analysing how resistance to a land investment on statist tenure in Tanzania scaled up to the national level and involved the central state while contestations around a land deal on customary land in Ghana remained throttled at the subnational level (Boone, 2015). This research project aims to take a widely comparative approach to systematically capture variation in the land tenure regimes governing land targeted for large-scale investments. I explore how such variation determines variation in how international guidelines and global governance instruments are used (or not) to shape investment projects.

1.3.4 Global Governance Norms for Responsible Land Investments

As Chapter 2 provides a detailed discussion and conceptualization of global governance norms, I will not discuss the concept of such instruments *per se* in this literature review. I will, however, outline important general debates on these guidelines here.

Regarding intergovernmental governance norms, such as the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests* (VGGT), enthusiastic reviews of such global instruments come (unsurprisingly) from the authors of the various guidelines themselves.[6] For example, the United Nations Food and Agriculture Organisation (FAO) have strongly supported the developments around the VVGT. The FAO called the VGGT a landmark achievement for the international community and a first concrete step towards achieving food security and effectively promoting sustainable development (FAO, 2012a). Many civil society organisations have endorsed and praised the emergence of international initiatives such as the VGGT and the CFS rai for their potential to provide a

[6] 'VGGT' and 'Voluntary Guidelines' are used interchangeably in this work.

framework of reference to support local resistance against 'landgrabbing' (Milgroom, 2015). Knowledge and information about land policies and human rights frameworks, both at national and international levels, can be fundamental assets for local communities in resistance and mobilization processes against land grabs. International guidelines can indeed become particularly useful instruments in these processes (Milgroom, 2015). In line with theories of human rights norms diffusion, domestic resistance groups, in coordination with transnational advocacy groups, have often successfully pressured national governments to adopt and institutionalise human rights norms and to change their (norm-violating) behaviour (Risse, et al., 1999, 2013; Keck & Sikkink, 1998).

Apart from human-rights based approaches promoted mostly by states and intergovernmental organisations (i.e., the United Nations), there are also numerous market-driven global governance norms created and promoted by non-state actors. Some see such transnational private governance norms (i.e., voluntary certification schemes for global commodity chains) as much needed and promising governance tools in situations of 'limited statehood' and where state- or intergovernmental regulation is absent, insufficient, or has failed (Green, 2013; Dashwood, 2012). In other words, such private initiatives could 'fill the gap' to ensure environmentally and socially sustainable outcomes of investment projects where there is not enough formal governmental regulation. Further, many private transnational governance norms, especially global certification schemes, are tailored specifically to certain commodities such as forestry governance or palm oil production (Schleifer et al., 2019; Dashwood, 2012), making them potentially much more attuned to specific (regulatory) needs 'on the ground'.

However, many have criticised global governance norms (both state-driven and private) and questioned the claim that they are viable instruments to create environmentally, politically and socially sustainable outcomes at the local level. For one, many observers argue that there is little empirical evidence of the precise impact of such governance norms for grassroots level outcomes (Green, 2013; Dashwood, 2012) or the available evidence raises questions about whether the aims are met (LeBaron & Lister, 2021). Even less empirical evidence can be found on the use of such guidelines to protect land rights and to mitigate investment-related conflict.

Given vibrant debates amongst the international (donor) community around state-driven intergovernmental global norms such as the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests* (VGGT) and the CFS *Principles for*

Responsible Investment in Agriculture and Food Systems (CFS-RAI), the absence of empirical studies on norms uptake in investment projects is surprising. Studies commissioned by the German development agency *Gesellschaft für Internationale Zusammenarbeit (GIZ*), although not peer-reviewed, form a notable exception.[7]

Clapp (2017) argues that international initiatives for responsible investments are "unlikely to bring substantial changes in practice (…) [due to] vague and difficult to enforce guidelines, low participation rates, a weak business case, and a confusing array of competing initiatives (2017, p.224). Indeed, "[t]here is a proliferation of initiatives servicing the same or similar needs that could lead to a level of both complexity and confusion (Clapp, 2017, p.230).

Peasant rights and social justice advocates largely criticize such international codes of conducts as "(…) checklist[s] of how to destroy the global peasantry responsibly" (De Schutter, 2011, p.275). They argue that global governance norms fail to tackle underlying causes of social injustice inherent in land grabs (Borras & Franco, 2010a; Zoomers, 2010). Borras and Franco (2010a) warn against the danger of reframing the narrative around the phenomenon of 'land grabbing' away from a social justice and 'pro-poor' perspective and towards more capitalist and economics-based understandings of the phenomenon as an 'opportunity' (Borras & Franco, 2010, p.510ff). Further, Fairbairn (2013) argues that international guidelines tend to ignore the role of domestic elites and local power hierarchies and asymmetries in the marginalisation of land users (2013, p.337). Zoomers (2010) argues that such global governance instruments may work to legitimize land investments and contribute to further land commodification in the developing world, leading to further marginalization and of smallholder farmers.

[7] GIZ has been at the forefront of global governance innovation, not only through some of their in-country programs but also as one of the only major donor organisations that has commissioned primary data collection on the effects of international guidelines on large-scale investments. One study commissioned by GIZ studied how two foreign large-scale investors in Uganda were aware of and/or using international guidelines with the purpose of mitigating or preventing land conflict (Vorläufer et al., 2017). The study focuses particularly on the use of the VGGT and the CFS-RAI. The authors find that one investment project was more successful than the other in implementing specific recommendations from these guidelines, but also that there is limited awareness of international guidelines overall from various stakeholders (Vorläufer et al., 2017). While not peer reviewed, this work provides concrete evidence on the use of international guidelines in investment cases, at least regarding state-driven guidelines largely promoted by the international donor community. It therefore provides a helpful point of reference and is also close in methodology to my own work, as it is mainly based on field research, including key informant interviews (although on a much smaller scale than my own fieldwork).

Further, some argue that the idea of global norms to safeguard human rights and land rights in cases of large-scale land investments is deeply flawed and nothing less than a tool to promote and justify neoliberal principles of privatisation, commodification and appropriation of land via means of land titling and dispossession (German, in press; Sassen, 2013; Bartley 2018; Borras & Franco, 2010). In her book *Power / Knowledge / Land: Contested Ontologies of Land and Its Governance in Africa* (in press), German critiques the current global land governance orthodoxy, "in which the seemingly progressive language of rights, tenure security and women's empowerment have been deployed to redirect the 2007 outcry over "global land grabs" to garner support for land titling and procedural forms of rights recognition, while obscuring the relationship between these instruments, the commodification of land, and growing transnational interests in Africa's farmland" (p.3). Others are similarly critical of the idea of global policy initiatives for responsible land investments and the insertion of 'global rulemaking' into national jurisdictions. Sassen (2013) sees foreign large-scale investments and associated global governance mechanisms as part of a larger transformation process in which national sovereign territory is slowly being converted to a commodity on the global market, and its governance subjugated to a form of global geopolitics rather than national laws.

My research and examination of the use of global governance norms at the grassroots level in cases of large-scale land investments in Sierra Leone and Uganda offers a variegated picture. I problematize the notion of the global level 'penetrating' the local level and instead draw attention to the important role and variation of domestic institutions and contingencies. I thus embed my research project in literature that considers large-scale investments in relation to wider African political economy questions, in particular those surrounding land politics, land tenure regimes, and property relations, as discussed above. I particularly highlight the importance of land tenure regimes as the domestic 'receiving' structures that are influential in determining the scope and limitations of global norms in investment cases.

To conclude, there is a substantive gap in research on actual outcomes and empirical evidence of the conditions under which global guidelines become institutionalised at the local level and to which extent they became effective in protecting land rights during investment projects. Also, there is a lack of systematic attention to how variation in local land tenure regimes shapes the use and applicability of international guidelines for responsible land investments.

1.4 Argument

I argue that variation in land tenure regimes is influential in determining the variation, uneven applicability and effectiveness of global governance mechanisms. In both Uganda and Sierra Leone, land tenure regimes, which vary across space (and time), constrain and shape the ways in which global codes of conduct for responsible investments gain traction and are able to protect local land rights in large-scale investments. Thus, depending on the underlying land tenure regime, international guidelines may become (more or less) instantiated in investment projects.

If a land tenure regime fully recognizes certain land user rights affected by an investment project, then actors invoking or promoting international guidelines (for example, local NGOs) can act as 'watchdogs' to make sure that these rights are indeed protected (i.e., national law is followed). In addition, as most international guidelines reach beyond the scope of national laws, these actors can invoke the global norms for responsible investments to push investors to adhere to *additional* guidelines, in other words, to 'over-comply' with the provisions of the national law. In contrast, if a land tenure regime does *not* recognize certain land user- or access rights affected by a large-scale investment project, and if the state is strongly invested in defending and/or upholding this non-recognition against the land users in the investment case, then the promotion of global governance mechanisms to protect these land rights largely falls flat. If, however, a land tenure regime is in the process of change and/or exhibits fluidity and ambiguity around land rights, the scope of when and how international guidelines can gain traction is much more open. Customary land, the dominant form of land governance in Uganda and Sierra Leone (as in most African countries), is often subject to such ambiguity around land (user) rights. Since customary rights are usually not registered or documented, it is often hard to prove who has which rights over which parcel of land. Contestation and ambiguity around land rights is especially heightened in post-conflict contexts and situations of former population movements due to international refugee flows. Legal ambiguity around land rights is a common lived reality for countless land users in sub-Saharan Africa and it is precisely in these grey zones of land claims not officially recognized by governments that the most intractable land conflicts happen.[8]

[8] The call for respect and protection of 'legitimate' land rights in most of these guidelines and the concomitant presumption that they can address the problem of land rights violations, unfair and unequal land politics poses several conceptual questions: What exactly is meant by legitimacy, and legitimacy

But these grey zones also provide the space for global norms to gain traction in innovative and creative ways that seem to 'go around' the state. in these settings, various non-state actors such as private investors, civil society actors, as well as local families and communities, can harness the guidelines to protect and bolster certain land rights, to re-define investment implementation practices, and to get new land governance laws and norms established. In my case studies on customary land – subject to vague and ambiguous land rights recognition, two further local contingencies appear to matter for the ways that global governance norms got adopted and used locally.

First, the way that global governance norms gain traction (or not) is partly dependent on the level of influence of the international community on the government. Thus, in situations of low state autonomy from the international community, the possibilities for the influence of international guidelines are much greater. In post-war contexts, the international community often plays an influential role in driving post-war stabilisation and governance reforms. In situations of weak state autonomy and strong dependence on the international (donor) community, international actors and the promotion and implementation of global governance norms can go a long way. In contrast, if the state is relatively 'strong', autonomous, and consolidated, the influence of the global donor community in pushing through land governance reform and promoting global norms may be more limited.

In Sierra Leone, where the government's sovereignty was greatly diminished after the war, the international donor community has a much wider scope in pushing reformist legislation and modification of land administration practices and land tenure regimes, including the promotion of the use of international codes of conduct for 'responsible' investments. Such codes of conduct have been institutionalised in the country's formal-legal framework in the form of a new National Land Policy and customary land tenure – the country's predominant form of land

in whose eyes? For example, the VGGT specify: "States should (…) [r]ecognize and respect all legitimate tenure right holders and their rights (…), [s]afeguard legitimate tenure rights against threats and infringements (…) and [p]romote and facilitate the enjoyment of legitimate tenure rights (…)" (FAO 2012b, Part 2, 3A. 3.1.). The CFS-rai state that "[r]esponsible investment (….) should safeguard against dispossession of legitimate tenure rights and environmental damage." (CFS 2014, art. 20). Similarly, both the IFC Performance Standards and the Equator Principles call for the recognition of legitimate land rights and refer to the principle of *Free, Prior, Informed Consent (FPIC)* to ensure that local (indigenous) communities are respected in their land rights.

governance – has been reformed and changed in large parts of the country. In that way, the international community has had a direct hand in changing the land tenure regime.

In Uganda, in contrast, where the state is relatively consolidated and autonomous vis-à-vis the international (donor) community, land laws and land tenure regimes are relatively stable governance arrangements. An exception is the post-conflict region of northern Uganda, which is emblematic of a vague and ambiguous customary land tenure regime. Here, investors have been influential in linking up with local families to re-define investment implementation processes. In most of the country, however, the influence of the international community and the way that global codes of conduct gain traction are constrained by established land tenure regimes.

Second, the stakes of the government in a particular investment project are influential in determining the degree to which international guidelines gain traction to protect local land rights. This is particularly the case in situation where there is ambiguity, overlap, dispute or otherwise room for interpretation of land rights. In other words, how deeply the state is invested in a particular investment project can determine the scope of influence of international guidelines. If the government has high stakes in a particularly lucrative or strategically important investment project, it may try to prevent 'outside influence' of international actors and global norms from interfering with the investment. For example, this is particularly the case for diamond mining concessions in the Eastern Province of Sierra Leone, where the government maintains direct control. Thus, the possibilities for international guidelines to gain traction are much lower in investment projects in which government has particularly high stakes.

In sum, I argue that variations in the land tenure regime greatly determine the way that international guidelines gain traction. Where land tenure regimes are subject to change and ambiguity in their recognition of land rights, two additional contingencies seem to matter as well. These are the level of state autonomy vis-à-vis the international community and the stakes of the government in particular investment projects.

1.5 Research Design and Methodology

This research project is based on a comparative study of 17 cases of large-scale land investments across two countries, Uganda and Sierra Leone. I aim to explore the varied implementation and use of any international guidelines on the ground, in the context of selected large-scale investment projects. In order to answer the research questions put forth by this project, I employ a structured, focused comparison. Up for comparison are not only the 17 cases of large-scale land investments across different sub-national land tenure regimes, but also a country comparison between Uganda and Sierra Leone. This project is based on a mix of extensive reviews of literature, policy reports, media reports, and 'grey' literature, as well as 13 months of fieldwork in Uganda and Sierra Leone, where I conducted over 200 unstructured and semi-structured interviews and focus group discussions, archival research, and undertook field visits and case observations. In the following sections, I will discuss the scope of the research, the research design, my case selection strategy, as well as my data collection strategy.

1.5.1 Scope of Research

In this research project, rather than focusing on one particular set of guidelines, I speak of 'international guidelines' as the sum of global governance initiatives around large-scale land investments that have the common objective of aiming to protect 'legitimate' land tenure rights. Other common focus areas include ensuring transparency, consultation, participation, environmental considerations, and employment. A specific in-depth study of how each individual initiative is used and followed in practice is not only beyond the scope of this study but is also not the objective. Rather, my focus is on the uneven appearance and use of, and conformity to these international governance instruments, which, I argue, is attributable to variations in land tenure regimes.

To leverage, conform to, or 'use' international guidelines can mean various things. For one, conforming to guidelines can be understood for investment companies as largely following a 'bottom-up' approach of land deal making and land acquisition. This includes involving local host communities as key stakeholders in investment projects and negotiating land lease agreements directly with them according to the principles of Free, Prior Informed Consent (FPIC), instead of brokering the deal amongst political elites. For governments, the 'use' of guidelines could mean both the institutionalisation of these norms in the national formal legal framework, the engagement with international donor organisations and NGOs in rolling out awareness raising campaigns on the guidelines, as well as guaranteeing local land rights by enforcing fair land agreements and negotiations with communities in investment projects.

Another way to interpret the conformity and 'use' of international guidelines is through the lens of civil society organisations. National and international NGOs have been crucial in raising awareness on global norms, supporting aggrieved communities in existing 'land grabbing' cases, organising protests and running global campaigns to call attention to the issue. CSOs have often taken up the role of a 'watch dog' in investment cases and have joined up with international donors and paralegal organisations to compare investment projects against a range of best practice standards. In this project, I am not focusing on the way that various global norms are created, debated, and diffused by different actors, instead, I am mainly concerned with the way that they are *received* at the domestic level. My focus is on whether and when these guidelines can gain traction in protecting land rights during large-scale investments.

To study the way that global norms are leveraged during large-scale land investments, I concentrated on the implementation stage of investment projects. Investigating how global norms are invoked over the life course of an investment project is beyond the scope of this project.[9] Moreover, the moment of project formulation, I suggest, is when the invocation of global norms is usually most visible and/or clear. Land acquisition and environmental and social sustainability assessments usually happen at the inception stage of large-scale investment projects. This means that negotiations around lease agreements, local consultations or lack thereof, and potential resettlement of communities, and, importantly, investment-related land conflict happens at that stage. Thus, I argue that the first and most prominent 'meeting point' of global norms with domestic political processes and structures happens at the outset of investment projects. This is also the point where land tenure regimes become particularly definitive for the way that global norms are leveraged, as land tenure regimes define the kinds of land rights in question, the degree to which these are recognized by the state, and the actors involved.

1.5.2 Comparative Case Study Analysis

This dissertation seeks to study the spatially uneven application and applicability of international guidelines in the context of large-scale investments. Studying spatial variation means studying patterns, variations, similarities, and associations between factors. It therefore inherently demands a research design that covers more than one case study. "[Comparison] sharpens our power of description and plays a central role in concept-formation by bringing

[9] Given the comparative nature of my research project, which includes 17 case studies across two countries, tracing the development of global norms for each investment project over time is not feasible.

into focus suggestive similarities and contrasts among cases." (Collier, 1993, p.105). Answering my research questions requires systematic comparison between different land tenure regimes across regions in Uganda and Sierra Leone, different constellations of land rights and state recognition (or lack thereof) of these, different conflict patterns around land investments, and different ways that international guidelines (can) apply in efforts to address these.

Comparing two countries shows that these patterns hold across two similar yet distinct settings. Authors of international guidelines often seem to suggest that a 'one size fits all' application of these instruments in various local contexts and settings will be effective. Contrasting and comparing Sierra Leone and Uganda allows me to test out my argument that variation in land tenure regimes goes far in determining how international guidelines (can) play a role in reducing local land conflict around large-scale land investments. Demonstrating that this holds in both national settings helps make my argument more robust. It suggests that my findings are not rooted in the idiosyncrasy of one particular political system, or a particular historical path dependency in land governance of one country. The comparative method will therefore provide the framework for a country-level ('paired') comparison as well as a medium-n range of case studies.

Choice of 'medium-n' case studies

The unit of analysis in this study is the large-scale land investment project. With a set of 17 case studies of large-scale investment projects across various regions in Uganda and Sierra Leone, this research project employs a 'medium-n' comparative case study approach. 'Medium-n' approaches can be contrasted to both 'small-n' or 'large-n' or studies.–Traditional 'small-n' or single case studies have the advantage of delivering empirical richness and details of complex phenomena through what Clifford Geertz (1973) coined as 'thick description'. Simply stated, a case study is understood as "an intensive study of a single unit for the purpose of understanding a larger class of (similar) units" (Gerring, 2004, p.342). Plenty of research on large-scale investments in sub-Saharan Africa has taken the form of 'small-n' studies.[10]

[10] Examples of single case study research include studies by Sjögren (2014) and Martiniello (2015) on the Amuru Sugar Works project in Acholi, Northern Uganda, Borras Jr. et al. (2011) on the sugarcane and ethanol 'ProCana' project in Mozambique, Bottazzi et al. (2016) on the 'Addax Bioenergy' investment in Sierra Leone and Gilfoy (2014) on the Sime Darby palm oil plantation in Liberia. Smalley and Corbera's (2012) comparative study of two land deals in the Tana Delta of the Kenyan Coast is an example of a 'paired' comparison.

However, 'small-n' studies have often been criticised for their inferential limitations and the absence of a systematic understanding of a specific phenomenon across space. "[T]he fundamental problem – generalizability, or lack thereof – [is] inherent in the case-study approach" (McAdam & Boudet, 2012, p.30). Large-n studies, on the other hand, have inferential advantages that the 'small-n' case study approach cannot satisfy. Some authors have used 'large-n' datasets for exploring the phenomenon of large-scale land investments. While interesting to see overall developments and dynamics, it is hardly possible to understand local-level dynamics in this approach, let alone intricacies of local power dynamics around land politics or the reasons behind varied applicability of international guidelines in this framework. "In general, large N studies sacrifice depth of knowledge for inferential power." (McAdam & Boudet, 2012, p.29). This approach, therefore, is also not suitable for the purpose of my research.

Medium-n approaches', in contrast to the approaches outlined above, aim to "combine "thin" large N studies that allow researchers to generalize to broader populations versus "thick" case studies that yield a rich, holistic understanding of the phenomenon in question" (McAdam & Boudet, 2012, p.28). This methodological 'middle ground' might not satisfy the anthropologist using in-depth ethnographic methods, or the economist using large-n quantitative inferential methods. Nevertheless, I borrow valuable aspects from both approaches. Studying the variations of the use of international guidelines in large-scale investment cases according to different land tenure regimes and different local land politics requires a detailed and in-depth understanding of key aspects of each of my 17 case studies. My study requires a specific but selective 'closeness' to my case studies in order to understand the dynamics revolving around land rights, local politics, historical precedents, and state behaviour over time for each case. Even so, it is impossible to draw conclusions about patterns and variations about the use of international guidelines according to land tenure regime if the case studies are not treated in a systematic and cross-case manner. Between 15 and 25 cases offer a strong empirical base. It enables me to advance larger conclusions about the nexus of variations in land tenure types, investment types, and the applicability of international guidelines.[11]

[11] Several studies have already shown how 'medium-n' approaches can yield particularly interesting findings that are both rich and detailed, yet also potentially generalisable. One such example is the work of Doug McAdam and Hilary Schaffer Boudet (2012), who studied the phenomenon of social movements by examining a set of 20 communities and their mobilisation strategies against large-scale energy projects. Another example of a 'medium-n' study approach is Catherine Boone's book 'Property

1.5.3 Case Selection

Selection of Uganda and Sierra Leone as paired country comparisons

While completely different in many economic and socio-political factors, both Uganda and Sierra Leone are African countries, wherein land is mostly governed under customary land tenure regimes. Both countries have been actively promoting and welcoming large-scale land investments in recent years. At the same time, both countries have adopted relatively new and progressive land policies that aim to recognize and protect customary and marginal land rights (Alden Wily, 2012; FAO, 2018).[12] This parallel development and apparent paradox of promoting large-scale foreign land investment while also promoting the protection and strengthening of local land rights provides a particularly interesting frame to analyse how global governance instruments (can) work. In both countries, since 2015, there has been widespread advocacy by the UN Food and Agriculture Organisation (FAO) on the implementation of the *Voluntary Guidelines for the Responsible Governance of the Tenure of Land, Fisheries, and Forests (VGGT).* There was a similar implementation process for the VGGT in both countries, which included the establishment of multiple-stakeholder meetings, a VGGT secretariat and working group, as well as an inter-ministerial taskforce to help drive awareness raising campaigns and implementation programmes at the local level (FAO 2016). While this dissertation will not revolve around the VGGT in particular, a comparison of the uptake and use of the VGGT in both countries offers and interesting and specific angle of analysis for this research project.

Uganda and Sierra Leone are both particularly interesting contexts for this endeavour. While completely different in many economic and socio-political factors, both countries are actively promoting large-scale land investments and have welcomed and promoted numerous foreign investment projects in recent years. At the same time, both countries have adopted relatively new and progressive land policies that aim to recognize and protect customary and marginal

and Political Order. Land Rights and the Structure of Politics" (2014), which is empirically based on a set of 32 provincial and district-level cases of land conflict across a range of countries in Africa.

[12] Uganda's 1995 Constitution and 1998 Land Act formally recognizes customary tenure as equal to Freehold, Leasehold and Mailo tenure and declares that "Land in Uganda belongs to the citizens of Uganda" (RoU, 1995 Art. 237). More recently, the 2013 National Land policy sets out, among many other goals, to further define and protect customary land users and to strengthen and protect women's land rights (MLHUD 2013). While colonial land tenure laws in Sierra Leone were barely altered until the 1990s (Alden-Wily, 2012, p.11), the Sierra Leonean government has in 2015 passed what is considered an extremely progressive land policy (FAO, 2018), praised for its inclusive character and the protection of customary rights, as well as its close adherence to international best practice standards (i.e., Voluntary Guidelines (VGGT)).

land rights (Alden Wily, 2012; FAO, 2018).[13] This paradox of promoting large-scale land investments while also promoting the protecting of local land rights provides and interesting window to analyse the way that global governance instruments (can) work.

Further, in both Uganda and Sierra Leone, a myriad of international organisations and civil society group, in coordination with the central government, have started awareness raising and implementation programmes on various international guidelines with the purpose of promoting more responsible investment. Some investment cases seem to embody many of the best-practice standards such as consultation with local landowners, negotiations, compensation, while in other cases, such measures were seemingly absent. Further, in some cases, international codes of conduct and certification schemes were present, yet they did not address local land conflicts arising from claims to legitimate land rights made by local communities. In other cases, local land claims were painstakingly accommodated by investors and the government. In essence, sometimes international guidelines were seemingly able to make investments more 'legitimate' for local communities, and sometimes not.

Selection of 17 in-country case studies

The 17 large-scale land investment projects chosen for analysis were selected from a wider pool of potential cases on the basis of the following factors: a) their identification in existing literature on large-scale investments, including media reports, policy papers and briefs and other forms of 'grey' literature, b) information provided from structured and semi-structured interviews, particularly during my pilot studies and the first few months of fieldwork in both Sierra Leone and Uganda, c) information on the geographical distribution of land tenure regimes in each country, derived from thorough literature reviews in the field of political science, geography, and development studies as well as from my interviews, and d) the strategic objective of achieving maximum variation in the land tenure regimes underlying investment projects.

[13] Uganda's 1995 Constitution and 1998 Land Act formally recognizes customary tenure as equal to Freehold, Leasehold and Mailo tenure and declares that "Land in Uganda belongs to the citizens of Uganda" (RoU, 1995, Art. 237). More recently, the 2013 National Land policy sets out, among many other goals, to further define and protect customary land users and to strengthen and protect women's land rights (MLHUD, 2013). While colonial land tenure laws in Sierra Leone were barely altered until the 1990s (Alden-Wily, 2012, p.11), the country has in 2015 passed what is considered an extremely progressive land policy (FAO, 2018), which is praised for its inclusiveness and the protection of customary rights, and its close adherence to international best practice standards (i.e., VGGT)).

My initial case selection process yielded a list of 40-50 potential case studies. These cases spanned different regions of each country, different systems of land governance and different commodity sectors, including forestry, palm oil, sugarcane, coffee, tea, and various other agricultural crops such as maize, rice, and vegetables. Elimination of cases was driven mostly by the lack of information needed to organise fieldwork and by lack of access. If investors and other key informants around a particular case did not respond, and if there was little to no information available in any form of literature, including newspapers or NGO reports, I dropped the case.

In Uganda, I studied 9 cases of large-scale land investments and in Sierra Leone, I studied 8 cases. The cases need to allow me to observe investment dynamics across different land tenure regimes. In Uganda, I selected two case studies each of large-scale land investments on private (Mailo) land and on state land, and five cases on customary land. In Sierra Leone, there is less obvious variation in different land tenure systems. Almost the entire country, except for the Western Area encompassing the capital of Freetown, is made up of customary land. However, there is a *de facto* distinction between two types of customary tenure ('unreformed' and 'reformed)', which accounts for an important variation in land tenure, with implications for the way that global governance norms gain traction (or not). In Sierra Leone, I studied two cases of land investments on what I call 'unreformed' land tenure (although one of the these is a consolidated 'case' made up of several mining companies taken together in Kono District), five cases of investments on land held under 'reformed' tenure, and one case that was in a process of transition from one customary tenure 'type' to the other. The classifications are summarized below:

<u>Uganda (9 case studies in total)</u>

a. Private (Mailo) land: 2 case studies
b. State-land: 2 case studies
c. Customary land: 5 case studies

<u>Sierra Leone: (8 case studies in total)</u>

a. 'unreformed' customary tenure: 2 case studies
b. 'reformed' customary tenure: 5 case studies
c. One 'hybrid' case study

1.5.4 Data Collection Strategy

In order to carry out the research design discussed above, my data collection strategy was based on a desk study and fieldwork.[14] I conducted 13 months of fieldwork in Uganda and Sierra Leone between 2018 and 2020. In Uganda, fieldwork consisted of a pilot study in January 2018, a longer fieldwork period between April and September 2018, as well as a follow-up fieldwork trip in January 2020. In Sierra Leone, fieldwork was carried out between April and September 2019. During fieldwork, I collected data mainly in the form of unstructured and semi-structured interviews, as well as focus group discussions, field visits to around twenty large-scale farms, and archival research. Fieldwork in both countries was organized in two steps, mainly as 1) national and 2) local-level research. In both Uganda and Sierra Leone, I first spent several months in the capitals of Kampala and Freetown with the aim of gaining a closer understanding of the policy environment and the formal-legal setting around land governance, the existing land tenure regimes and history of land politics in the country, and the way that international guidelines and norms have been adopted at the national level, which included an analysis of the actors involved in endorsing, implementing or refuting such norms. This national-level research also provided the basis from which I selected the final cases of large-scale investments that I would focus my research on. For national-level data collection, interviews were held with key informants from central government representatives, staff of international and national NGOs and research institutes, lawyers, and land experts based in the capital.

In a second step, I zoomed in on the selected investment projects at the local level. This included substantial travel in rural areas where investments are mostly located. At the local level, I interviewed a range of local key informants from the district government and local administrators, investors and farm managers, domestic elites including traditional chiefs and landowners, local land users and affected communities near the project sites, as well as locally based foreign and domestic civil society organisations (i.e., NGOs, human rights advocates, farmer associations, environmental justice groups). I also conducted several focus group discussions with groups of around 20 villagers living in the immediate proximity of the

[14] The desk study consisted of thorough review of secondary literature from the fields of development studies, political science, geography, sociology, and law, case study material, as well as non-peer reviewed material (e.g., project reports, contracts, media and newspaper articles). This included in particular a review of policies and formal-legal frameworks around land investments, international guidelines.

plantations and project sites. Focus group discussions were intended to get an idea of the overall feeling and the local stories and perceptions of the population. This local and ethnographic component of the research project was crucial for extracting the "kinds of details that are necessary to understand the micro-politics of how large-scale land acquisition policy processes play out on the ground." (Milgroom, 2015, p.586).

At both national and local levels, key informants were mainly selected via 'snowball sampling', which entails the referral amongst people who know of other people that may have key information (Biernacki & Waldorf, 1981). Community groups targeted for focus group discussions were located and appraoched with the help of my research assistants and local key contact persons.[15]At the local level, the snowball sampling method and approaching communities together with locally trusted partners and focal people (i.e., gatekeepers) is particularly useful given the sensitive nature of the post-conflict context in both study countries, as well as the complex dynamics of land conflicts, land politics and land rights, which often requires the knowledge of insiders to help locate key informants (Biernacki & Waldorf, 1981).

1.6 Outline of chapters

This thesis is divided into seven chapters. After this first introductory chapter, Chapter 2 is a discussion and analysis of global governance mechanisms and international guidelines. Chapters 3 and 4 focus on Uganda. Chapters 5 and 6 focus on Sierra Leone. Chapter 7 concludes this dissertation

Chapter 2: Global Land Governance and International Guidelines for Responsible Land Investment

This chapter is focused on global norms for responsible land investments. I first discuss their ascendance onto the global governance agenda. I then frame and conceptualise global norms for responsible land investments within the literature and theorisation of global norms and human rights norms diffusion. I argue that despite the differences in these norms, such as their

[15] In both Uganda and Sierra Leone, I hired research assistants to help me with the translation of interviews and documents, and to gain access to relevant stakeholders around investment projects.

definition of the 'problem' around land investments, their focus areas and their specific audiences, (Annex 1), there are more similarities than differences in the recommendations they put forward. In particular, they all claim to be able to promote and protect 'legitimate' land rights. Yet, there is no consensus on what 'legitimate' land rights mean. I argue in this chapter that there is great complexity and variability in determining and defining the legitimacy of local land rights that these guidelines set out to protect. Finally, I analyse ways to understand and categorise global norms along human-rights based and market-based approaches. I focus in my discussion on the different conceptions and interpretations of land and property rights contained in these, and how these conceptions of land might match (or not) with particular kinds of land tenure regimes.

Chapter 3: Land Law and Land Tenure in Uganda

This chapter analyses the different land tenure regimes and the specific land rights claims and challenges of protecting these that arise under each land tenure regime in Uganda. I group Uganda's land tenure regimes into three categories: (private) Mailo land, state-owned land, and customary land. Private Mailo land, which is titled and registered, gives rise to a multi-layered structure of formally recognized claims to land rights. Claimants to legal land rights are the Mailo landlords and several layers of Mailo occupants or 'tenants', including 'lawful' and 'bona fide' tenants. Despite frequent land-conflict due to overlapping occupancy rights and absentee landlords, the firm recognition of Mailo (tenancy) land rights in Uganda's laws, as well as the history of protection of these claims by the state, created the conditions for legal and transparent procedures of land acquisitions for the large-scale investment projects. This creates propitious conditions for international actors and NGOs to pressure the investors and the government to adhere the national legal requirements with regards to protecting Mailo land, as well as to integrate international codes of conduct in various stages of project implementation. State-owned land gives rise to numerous informal and ambiguous land ownership and use claims by forest-dwelling– or using communities. In contrast to claims on private land, these are not protected or recognized by law. These claims are broadly ignored by the Ugandan government in cases of large-scale land acquisition. In investment cases, reference to global governance mechanisms does not lead to the protection of land rights, or the resolution of land conflicts. Instead, the thrust of the international guidelines in these cases was refracted to focus on environmental aspects of the investment project. (Unregistered) customary land is *de jure* on par, but *de facto* not treated as equal, to the other tenure regimes in Uganda. Customary land in Uganda thus gives rise to multiple challenges for those claiming land rights, which are sometimes recognized by the state and sometimes not. In cases of large-scale land investments, in which these rights are not

recognized, there is little that international actors or those invoking global codes of conduct can do to pressure the government to adhere to its own laws.

Chapter 4: Uganda – Case Studies

To support the arguments made in Chapter 3, this chapter presents nine case studies of land investments on three different land tenure regimes in Uganda. These provide varying degrees of recognition and protection of local land rights by the state, ranging from a 'strong' level of recognition (Mailo), to a more ambiguous level of recognition (customary), to the absence of such recognition altogether (state land). In two case studies of investments on Mailo land, the purchase of Mailo land by the government triggered tensions or conflict with regards to claims to legitimate authority over land by various categories of land occupants, ranging from 'legal tenant' to bona fide occupant, to 'squatters'. However, these conflicts were addressed and redressed in legalistic ways (national-level court cases, international grievance mechanisms etc.). Since these rights are recognized, the aggrieved communities, together with (national and international) activists and media outlets, could hold the government accountable, and invoke the international guidelines to draw attention to and help protect these rights. In two cases of investments on state-owned land, more specifically on state-owned national forest reserves, I show that because the land rights in question were not recognized by the Ugandan government, reference to global governance mechanisms did not lead to the resolution of land conflicts or the protection of local land rights. Considered a matter of national jurisdiction, responsibility to deal with local land conflicts was referred back to the Ugandan government by the investors. Five cases of investment projects on customary land, where land rights are recognized in principle but not always in practice show that whether international guidelines gain traction is dependent on the government's and/or the investor's recognition of these rights in individual cases. I argue that not all customary land rights are recognized unproblematically, in and of themselves. Customary land rights are often vague, contested, and illegible. These five cases are divided into types A and B. In the case studies under type A, the investors acquired land directly from a local family who were claiming rightful customary land rights. The case studies under type B highlight the contested nature of land tenure in many parts of northern Uganda, where the government often decides that the land in question is *public* land held in trust by District Land Boards, but communities consider the land to be their ancestral customary land.

Chapter 5: Land Tenure and the International Community in Sierra Leone

This chapter argues that despite the enormous influence of international guidelines and the domestic and global actors promoting their use in Sierra Leone, there is spatial variation in the conformity to and effectiveness of international guidelines in cases of large-scale land-related investments. I argue that this is related to variation in the underlying (customary) land tenure regimes. All investment projects are located in Sierra Leone's provinces on land under customary tenure, which is governed by chieftaincy institutions headed by paramount chiefs. This chapter discusses the way that customary tenure evolved over time (from the British Protectorate (1896 – 1961) to the post-colonial period (1961 – 2004) to the post-war era starting in 2002). It analyses the political factors that have led to the emergence of two distinct types of customary tenure in the post-war era. I argue that whereas the power of paramount chiefs in terms of decision-making over the access to and management of land and natural resources appears to have been relatively high before the outbreak of the war in all of rural Sierra Leone, it was severely weakened after the end of the war in most regions of the country. Yet, in some pockets, the political authority of chiefs remained largely unchanged. Customary tenure in the county's provinces can thus, in practice, be separated into two types, a 'reformed' customary land tenure system, in which the main actors are powerful families and an 'unreformed' customary land tenure system, where powerful chiefs predominate. This typology describes variation in Sierra Leone's land tenure regimes across both space and time and is useful for understanding the uneven way that international norms are gaining traction in cases of large-scale land investments. In investment cases on land under customary tenure characterised by 'strong chiefs' (i.e., unreformed customary tenure), I observed that investments were implemented and facilitated directly through the paramount chief, often without the involvement or the consent of local families, and without regard to international norms. Investment projects on land under customary tenure characterised by 'strong families' (i.e., reformed customary tenure), by contrast, tended to be implemented with the full involvement of local families. The paramount chief took a backseat in the negotiation process, conforming to global governance norms and guidelines.

Chapter 6: Sierra Leone – Case Studies

In this chapter I present eight case studies of large-scale land investments on two 'types' of customary land. The eight cases fall into three categories: five land investments on so-called 'reformed' customary tenure, two on 'unreformed' customary tenure, and one large-scale land investment that exhibits features of both types of land tenure. The case studies are organised according to a) the nature of the lease agreement (a single 'blanket' lease agreement vs.

individual lease agreements), b) the scale of decision-making (central role of the paramount chief vs. central role of families), and c) conformity to international guidelines and the involvement of civil society and activist groups.

Chapter 7: Discussion and Conclusion

In the concluding chapter, I summarise the main arguments and draw final conclusions. I offer reflections on the conceptualisation and framing of global norms, drawing from my discussion in Chapter 2. I then discuss the role of investors in using global norms in innovative, indirect and creative ways to circumvent or pre-empt the government in situations of vague and illegible land rights (i.e., on customary tenure). I show that in some situations, some private firms have taken on a state-like role and acted as *de facto* authorities in identifying and formalising land rights in investment projects on customary tenure. I further discuss possible implications of the post-conflict setting for the way that global governance norms are instantiated before drawing out some final implications of this work.

Chapter 2: Global Land Governance and International Guidelines for Responsible Land Investments

In this chapter, I first discuss the ascendance of large-scale land investments onto the global governance stage and the emergence of global norms in response to increasingly 'global' problems associated with these investments. Section 2.2 frames and contextualises the concept of global governance norms for responsible land investments in existing theories and literature on global norms and human rights implementation, following in particular the 'Spiral Model' of norms socialisation developed by Risse, Ropp, and Sikking (1999). Section 2.3 discusses the differentiation of human rights-based and market-based norms and their interpretation of 'legitimate' land rights. I argue that there is great complexity and variability in determining and defining the idea of legitimacy of local land rights that these guidelines set out to protect.

2.1 Global responses to global problems around large-scale land investments

How and why have global norms emerged in response to large-scale land investments? Throughout the last decade, large-scale land investments have become a truly international phenomenon and an important and much-debated topic on the global governance agenda. Capitalist enclosures and land accumulation for large-scale investment in countries of the Global South are not new. Historical legacies of foreign land accumulation for large-scale land investment, particularly in the eras of imperialism and colonialism, have set a precedent and influenced some of today's land investment dynamics (Margulis et al., 2013, p.2; Alden-Wily, 2012). For instance, at the beginning of the 20th century, large-scale plantation agriculture formed an inherent part of many colonial projects, especially in the 'settler economies' of Kenya, Namibia, South Africa and Zimbabwe. However, in the last decade, the sharp rise of private foreign large-scale land investments has prompted an unprecedented global scope and 'international character' of land investments. By now, it is widely acknowledged that "the drivers, scale and pace of the recent wave of land grabs are distinct from previous eras" (Margulis et al., 2013, p.2).

For one, this 'internationalisation' of large-scale land investments is particularly shaped by the emergence of new actors on the global playing field. As has been thoroughly covered in literature, a sharp rise of large-scale land investments was triggered by the 2007/2008 financial and food price crisis, which led to a sudden rise in the value of arable land. Taking advantage of this opportunity, numerous food and agri-business companies, sovereign wealth funds and private equity funds from all over the world started investing in cross-border land-based agricultural projects, mostly in developing countries. Such investments were also promoted by international donor organisations. Investments in agriculture, particularly in sub-Saharan Africa, were seen as a solution to an impeding 'food price crisis' driven by the sharp spike in commodity prices at the time (Kapstein, 2018, p.174). This rising tide of land investments involved the active participation of new and emerging actors on the global governance stage. Unprecedented, new players such as private firms and financial actors from the BRICS countries, the new OECD countries such as the Gulf states and South Korea, as well as from several powerful middle-income countries were purchasing and leasing large tracts of land across the developing world, particularly in sub-Saharan Africa (Margulis et al., 2013, p.8)[16].

The new international character of large-scale land investments is also marked by changing patterns of global food production and consumption. Land-related investments now increasingly cut across sectors and purposes. In their article, *The Challenge of Global Land Governance*, Borras Jr. et al. (2013) identify key trends within the current global political-economic context that are particularly driving the 'internationalisation' of large-scale investments and the integration of the aforementioned new players. For example, they point to the rise of "'flex crops and commodities' (…) with multiple and flexible uses – across food, feed, and fuel complexes and industrial commodities" (2013, p.162). Indeed, a rising number of large-scale investments around the world are engaging in popular flex crops sectors such as oil palm, maize, sugarcane and soybean, as well as fast-growing tree crops. Increasing numbers of forestry investments cater to multiple uses and purposes of tree plantations. Apart from investments oriented in more traditional timber production and extraction practices, numerous reforestation and forest rehabilitation projects emerged under the umbrella of global environmental conservation efforts. Many of these projects are now framed as global climate

[16] While particular emphasis is often set on sub-Saharan Africa as a 'target' of large-scale investment and 'land grabbing', it needs to be noted that, as a global-scale phenomenon, the recent rise in land investments occurred in all regions and parts of the world, and not only in Africa (Margulis et al., 2013, p.2).

change mitigation projects by engaging in the wood chips-based biofuels sector and carbon offset programmes, such as the Reducing Emissions through Deforestation and Forest Degradation (REDD+) schemes (Borras Jr. et al., 2013, p.162). This is often referred to by critics as *green grabbing* or "grabbing for environmental ends" (Margulis et al., 2013, p.14). *Green grabbing* combines the characteristics of large-scale land investments (including the potential expulsion or displacement of forest dwellers and users from the forests) with larger narratives of environmental conservation and climate change mitigation.[17] Such investments cut across various sectors and multiple uses and therefore also relate to various international agendas. A connected concept, *water grabbing* also combines multiple sectors and resources.[18]

The increasing internationalisation of large-scale investments and the rising tide of civil society activism on this topic have sparked fierce discussions among the international community. Demands for *global* governance responses and instruments have emerged, not only with regards to what global governance of land investments should look like but also, more specifically, what kinds of policies and governance instruments are appropriate to guide and discipline these land deals.[19] This is most clearly reflected in the "flurry of global rule-making projects at various scales involving a multiplicity of actors to regulate land grabbing" (Margulis et al., 2013, p.4). How such rule-making projects are leveraged at the domestic and local level is the central focus of this research project. These global norms and guidelines will be discussed in more detail in the next section. Before doing so, clarifications must be made on the concept of global governance in the context of large-scale land investments, as well as what I understand as the 'international community'.

[17] While a 'green' orientation is a visible trend, it is important to note that such 'green'- oriented investments are still only a small sub-set of the much larger phenomenon of more conventional, commercially driven, non- 'green' large-scale forestry projects in the Global South.

[18] Water grabbing refers to "a situation where powerful actors are able to take control of, or reallocate to their own benefits, water resources already used by local communities or feeding aquatic ecosystems on which their livelihoods are based." (Mehta et al., 2012, p.193).

[19] There have been previous attempts by the international community to design a global land politics and establish international land governance instruments, albeit, focused on land governance more generally rather than on the foreign acquisition of land. These have so far not been very long lasting. McKeon (2013) and Margulis et al. (2013) discuss the historical attempts at establishing international land governance mechanisms. Such events include the 1979 World Conference on Agrarian Reform and Rural Development (WCARRD), convened by FAO, which aimed at establishing an international framework for land reform, the 1999 'Global Campaign for Agrarian Reform', organised by La Via Campesina, and, more recent, the 2006 International Conference on Agrarian Reform and Rural Development (ICARDD) – essentially a second version of the WCARRD – convened by FAO (Margulis et al., 2013, p.6).

2.1. Global Governance and the International Community

2.1.1 Global governance

Global governance refers to "the modern practice of governing transborder problems and to the institutions, rules, actors and ideologies that govern the global political economy" (Margulis et al. 2013, p.4). Further elaborating on this definition, Margulis et al (2013) explain:

> Today, the term global governance is widely used by academics and the general public in a variety of ways and meanings, including reference to the 'practices of governance without government (Roseneau & Czempiel, 1992); a 'normative goal' (Wiess, 2000); a 'discourse' (Brand, 2005); the inclusion of actors other than nation-states (McKeon, 2009) and the 'institutionalisation of the neoliberal globalization project' (Cox, 1993).
> (p.5)

Central to this project, global governance can manifest itself through the creation and adoption of international governance mechanisms and instruments, in the form of policies, guidelines, conventions, treaties, and codes of conduct, amongst others, which can be summarised as 'soft laws'. There is a presumption that the global level is the place where criteria are best set on how to govern large-scale transnational land investments in the developing world. Despite different interpretations of these large-scale investment trends according to different political positions and ideologies, the need for a *global* effort to govern and/or guide, discipline, and facilitate large-scale land investments is seemingly shared by diverse members of the international community. A central tenet of global governance is that global rules and norms can make up for lacking capacities and faulty governance structures and institutions at the national level. The idea is that if the formal-legal framework at the national level as well as the domestic human capacities and resources are not enough, the international community can step in to correct this.

The donor community, through national donor agencies and multilateral development banks, has in many cases taken this stance, especially in countries emerging from war or natural disasters without functional legal frameworks, institutions and capacities, such as Sierra

Leone.[20] The assumption that global norms and rules can and should be created and followed has a long history and has already gained prominence in the era of Structural Adjustment Programmes (SAPs) of the 1980s and the 'good governance' agendas of the 1990s. The large majority of international (donor) organizations and financial institutions (e.g., the IMF and World Bank) promoted 'good governance' principles: to guide institutional reform and capacity building and propel administrative processes for handling aid flows in countries receiving development assistance (Dornboos, 2003, p.3). Countries that conformed to these global norms to implement international good governance norms were often considered 'development champions' or 'donor darlings'. Sierra Leone, for example, was considered a development success story and "a state that has been resurrected and reconstructed by the international community" (Jackson, 2011, p.205).

Not only state-driven and intergovernmental, but also non-state, private governance initiatives share the view that global governance can 'step in' where domestic public authority is weak, insufficient or otherwise faulty (Lee et al., 2020; Schleifer et al., 2019; Green, 2013, Strange, 1996). "Increasingly, [multi-national corporations], and to a lesser extent some NGOs, have assumed dimensions of government" (Sawyer & Gomez, 2012, p.8). In her book *Rethinking Private Authority* (2013), Jessica Green argues that private forms of global environmental governance can complement public global governance forms and can insert themselves "where public institutions are fragmented, diffuse, or simply nonexistent" (p.173). Many global governance norms and standards directed at non-state corporate actors, especially in the realm of environmental sustainability standards, emphasize the idea of 'overcompliance' with insufficient public regulations. The Equator Principles, for example, state that when a country's environmental impact assessment does not meet global governance standards, a company is supposed to meet these global standards anyway.

2.1.2 The international community

Despite diverging opinions on the meaning of proper land governance and large-scale land investments, many argue that the 'solution' lies in the form (or perhaps rather *some* form) of global governance.[21] I understand the 'international community' as not only consisting of international donor and financial organisations, civil society organisations, activist groups, and

[20] The implications of this for the way that international guidelines gained hold in cases of large-scale investments in post-war Sierra Leone are analysed in chapters 5 and 6 of this thesis.

[21] Debates about the 'need' for *global* solutions and global governance instruments to tackle issues and challenges of topics such as environmental politics is subject to a wide debate in the literature (Turner et al., 1990; Adger et al., 2001).

transnational networks, but also of private corporate actors that all take part in global debates on land governance and the regulation, promotion, or curtailing of large-scale land investments.

Apart from more conventional players in this context, such as international financial institutions (i.e., World Bank, IMF), international donor agencies, and UN organisations, debates around a global governance of large-scale land investments have been increasingly influenced by non-state actors such as private sector (corporate) actors and civil society movements. For the latter, many activist movements on agrarian justice (e.g., GRAIN, La Via Campesina) have particularly engaged in the creation, interpretation and proliferation of global norms on land governance and responsible investment. As Paoloni and Onorati (2014) observe, "[t]he demand for an international instrument that is helpful in the fight for access to land by small-scale food producers has been the subject of peasant movements and civil society groups for decades" (2014, p.379).

Corporate actors, who are often at the centre of the implementation of large-scale investments, have also contributed to global governance initiatives promoting 'responsible land investments', mostly through a series of pledges to uphold self-imposed regulation, and contributions to setting 'best practice' standards for the corporate sector. Referred to broadly as transnational private governance initiatives (Schleifer et al., 2019) or transnational civil regulations (Green 2013), these non-state market driven initiatives include, for example, voluntary certification programs for specific global commodity chains (i.e., the Forest Stewardship Council (FSC), the Roundtable on Sustainable Palm Oil (RSPO)), as well as global corporate social responsibility (CSR) norms (Dashwood, 2012). However, private sector commitments to global land governance also have to be understood in the context of financial and reputational risk management (Lee et al., 2020; Wright & Rwabizambuga, 2006; The Munden Project, 2014; Schanzenbaecher & Allen, 2015).[22] "The implementation [of voluntary

[22] Wright and Rwabizambuga (2006) explore the incentives for banks to adopt voluntary codes of conduct. They argue that "firms are rewarded with enhanced legitimacy and reputation if they develop internal structures "isomorphic" with external institutional pressures" (Wright & Rwabizambuga, 2006, p.90). Apart from reputational risks in relation to 'land grabbing', the ignorance of social and environmental safeguard bears substantial financial risk for private sector actors. In particular, land tenure disputes and other land-related conflict seems to have a notable impact on reputational and financial risks for companies. A much-cited study prepared for the Rights and Resources Initiative (RRI) by the Munden Project in 2012 explored the link between land conflict and financial risk for investors investing in agricultural land, forestry, mining and infrastructure. The main mechanism driving financial risk, the authors point out, are delays to the investment projects. "By themselves, delays caused by land tenure problems can inflate a project's expenditures by an order of magnitude -

guidelines] is likely to be taken most seriously among those actors facing the greatest reputational risk from accusations of 'land grabbing'." (Kapstein, 2018, p.179).

2.3 Global norm diffusion

What is known about the way that global norms gain traction domestically?
A commonly accepted view in the field of international relations describes domestic norm institutionalisation as a trickle-down effect of global rule making: International norms are 'institutionalized' through their emergence at the international level and their subsequent adoption into international and national law through signatures of treaties, ramifications by states, and the incorporation of norms into domestic laws (Betts & Orchard, 2014). This assumes that global governance norms, understood as formal treaties and legal standards as well as informal customs and codes of behaviour, can shape the behaviour of nation states and other actors at the national and sub-national levels (Betts & Orchard, 2014, p.3; Finnemore & Sikkink, 1998; Twomey, 2014). This view is rather state-centric and follows a 'top-down' logic of norm diffusion. It tells us little about the role of domestic actors, institutions and structures in shaping norm institutionalisation. It further excludes other potential actors involved in norm diffusion, such as civil society and private sector (corporate) actors.

A more helpful framework to understand norm implementation is the theorisation of human rights norms. Land rights can arguably be understood as human rights (Wisborg, 2013; Borras & Franco, 2010) and many of the international guidelines for responsible land investments are presented as human-rights approaches to governing land investments, (i.e., the VGGT, CFS-RAI). "Human rights provide normative standards that could be used to evaluate the processes and outcomes of transnational land acquisitions" (Wisborg, 2013, p. 1200). The analytical frame of this thesis is thus based on a logical extension from the expansive human rights literature.

This literature has commented on when, how and to what extent human rights norms have been able to gain traction. Much of this literature finds that global norms tend to become adopted

and in some cases these losses have even been great enough to endanger the future of the corporate parent itself." (The Munden Project, 2012, p.2). Rather than altruistic motivations, time, money, and reputation are thus main drivers for private sector institutions to adhere to international guidelines.

and implemented when local conditions are receptive and domestic actors and interest groups are championing such human rights norms. For instance, Cortell and Davis (1996), in their examination of the influence of global norms on US policy, highlight the importance of domestic actors such as societal interest groups, but also government officials, in appropriating international norms to further their own interests and in channelling these into domestic policy discourses (1996, p.472). Druzin (2017) highlights the importance of 'network effects' for the way that international standards based on *soft law* become adopted and implemented. He argues that if international standards and norms exhibit strong 'network effects', which means that the value of a standard increases as more people are using it, then those norms are more prone to become adopted and gain traction (2017, p.362).

Highly influential in the human rights norms literature and forming part of the analytical frame of this thesis, is the work of Risse, Ropp and Sikkink (1999, 2013) on human rights implementation. In their ground-breaking work *The Power of Human Rights* (1999), they highlight the important role of domestic societal groups in linking up to transnational and international advocacy groups to pressure the norm-violating state to implement and internalize human rights norms. In Risse, Ropp, and Sikkink's second book, *The Persistent Power of Human Rights* (2013), Simmons evaluates evidence from more recent quantitative and qualitative publications on human rights realizations and reaffirms the central role of civil society actors, NGOs and transnational advocacy networks in paving the way for the implementation of such norms (2013, p.46). In particular, where domestic and transnational actors and interest groups are given leverage and are 'hoisted up' as rights-holders by international human rights norms, pressures for the implementation of new human rights policies and habitualization of such norms is particularly effective (Simmons, 2013, p.58). "[W]here agents with the motive and the means to organize domestically and transnationally, and where organizational pressures can be sustained, commitments have been associated with better human rights outcomes" (Simmons, 2013, p.57).

Underpinning the arguments and instructive for understanding the progression of norms implementation in both books by Risse, Ropp and Sikkink is their 'Spiral Model'. The five-phase model theorizes the process of human rights socialization, "by which international norms are internalized and implemented domestically" (Risse et al., 1999, p.5).[23] In Phase One, a

[23] The Spiral Model is illustrated in Figure 1.3, p. 20 in Risse, Ropp, and Sikkink (1999).

repressive government violates human rights and oppresses domestic societal opposition groups, who are too weak to challenge the state. Transnational advocacy groups lack sufficient information on the human rights repression. If and when domestic civil society groups successfully build transnational links to international advocacy groups, the norm-violating state is put on the international agenda of human rights networks (1999, p.22). In phase two, international and domestic human rights networks pressure the norm-violating state by means of denunciation and public shaming, to which the state responds initially by denying any human norm violations, as well as the human rights norm itself. In phase three, under sustained transnational mobilization and pressure, the state is forced to makes some tactical concessions. While these can be understood as empty "cosmetic changes to pacify international criticism" (Risse, Ropp &Sikkink 1999, p.25), this phase crucially clears the way for the cementation of domestic social mobilization around the human rights norm. In Phase four, the human rights norm has achieved consensual and 'prescriptive' status at the domestic level, and there is no more controversy about the validity of the norm. This phase consists of institutional reform and policy change. Norm-violating behaviour may still occur. In phase five, human rights violating behaviour subsides as states change their behaviour in adherence with the international human rights norm in question.

This theorization of norm implementation and the Spiral Model are of significance to my work in several ways. For one, analogous to the Spiral Model, I aim to show in this work that when international norm(s) reach the domestic level, they are transformed and modified by the domestic structures that 'meet' them. These receiving domestic structures, in my project, are predominantly the land tenure regimes and land governance structures and the domestic actors involved in land governance and large-scale land investments.

However, while the Spiral Model offers a good understanding of global norms implementation and is particularly well elaborated and articulated for the way that transnational networks are formed and become influential (Phases 1-3), scholars have observed that the model seems to be lacking concrete information on what actually happens in Phases 4-5 at the domestic and local levels in terms of norm adoption (Hochstetler, 2003). Risse, Ropp and Sikkink (1999) operationalize Phases 4 and 5 as country level variables. While the dominant actors in Phases 1-3 are the transnational human rights networks (and domestic opposition groups in phase 3), the dominant actors in phases 4 and 5 are national governments and domestic society (1999, p.32). Yet how these actors interact, negotiate and shape the norm implementation 'on the

ground' is left rather vague. Hochstetler (2003) argues, "[t]he remaining major gap in the spiral model of socialization into global norms is a good understanding of the domestic political processes that are critical in the final phases for turning rhetorical commitments into consistent norm-congruent action." (p.37). Focused particularly on the domestic and local side of norm implementation, this thesis responds to this caveat. I emphasise the local land governance institutions, the actors therein, and the abovementioned domestic political processes in shaping the conditions under which global norms for responsible land investments are locally leveraged (or not) in cases of land investments.

2.4 The Protection of Land Rights in Global Norms

Despite their great number and variation, it is notable that most global governance norms, regardless of their ideological tendency, include similar recommendations for investment projects, such as greater transparency, consultations, environmental standards etc.[24] A particularly striking common thread in all guidelines, and of central interest in this thesis, is the guidelines' call for respecting and protecting 'legitimate' land rights and the concomitant presumption in these guidelines that they are able to address the problem of land rights violations, unfair and unequal land politics, and dispossession at the local level. While all guidelines contain some recommendations on the recognition and/or protection of land rights, the interpretation of such rights and the degree to which they are defined varies greatly among guidelines. What does it mean for guidelines to address legitimate land rights in concrete settings of land investments? What do these guidelines interpret as 'legitimate'? It is beyond the scope of this chapter to analyse each individual set of guidelines with respect to their interpretation of land rights, however, there are several discernible tendencies among the guidelines that allow for a better understanding and organisation/grouping of them according to their approach and definition of land rights. An important distinction in this regard can be made between human-rights based and market-based approaches in international guidelines.

2.4.1 Human-rights based approaches

Human-rights based approaches are initiatives that appeal to the universal safeguarding of *rights*. Concordantly, land rights are understood as universal human rights, often listed together

[24] Annex 1 presents an overview of a range of global norms, containing a discussion on their orientation and specific goals.

with the Right to Food. International guidelines grouped under this approach include, among others, the *Voluntary Guidelines on the Responsible Governance of the Tenure of Land, Fisheries and Forests (VGGT)*, the *UN Guiding Principles on Business and Human Rights ('Ruggie Principles')*, and the *CFS Principles for Responsible Investment in Agriculture and Food Systems (CFS RAI).* The goal of human-rights based guidelines is to 'do no harm' and to safeguard people's rights to land and ensure secure livelihoods of smallholder farmers, land users and occupants and marginalised groups in the context of large-scale investments.

Standing out in particular in this regard are the VGGT, adopted by the Committee for World Food Security (CFS) in 2012. Kapstein (2018) argues that the issuance of the VGGT with a particular focus on human rights, "is suggestive of the global spread of rights-based discourse, and the effort to frame economic issues as issues of rights is one that is increasingly found within advocacy movements" (p.174). The prominent role of civil society actors in the crafting of the VGGT has seemingly given these guidelines normative power and legitimacy.[25] Some argue that the VGGT are helping to reshape the policy discourse by bringing about a change of political framing and are altering the (mainstream) narrative of the need to develop agricultural land from an economic point of view to a moral debate of human rights and protection of the vulnerable and marginalised (Kapstein, 2018, p.174; Clarke, 2015).

Following the international adoption of the VGGT, the CFS RAI were developed in 2014 with a similar emphasis on human rights and more concrete recommendations regarding large-scale investments for private sector institutions. Another important human-rights based global norm is the principle of *Free, Prior, Informed Consent (FPIC)*, which has become particularly important in advocating for the recognition of indigenous land rights. While FPIC is to be understood as a principle enshrined in many other documents and not as a separate set of guidelines itself, FPIC promotes legitimate land rights as those including ancestral land rights, communal and customary land rights, and other forms of so-called 'informal' land rights.

Some human-rights based international instruments dedicate substantial and specific clarifications to their understanding of 'legitimate' land rights. The VGGT articulate an explicit

[25] Paoloni and Onorati (2014) discuss the unprecedented participation and influence of civil society actors in the negotiation process for the VGGT. "In the present context, such engagement must be considered truly innovative, because it represents the first attempt made on the basis of a participatory approach "bottom-up" (Paoloni & Onorati 2014, p.373).

understanding of 'tenure rights' as human rights. This is particularly evident in the document's reference to the *UN Declaration on the Rights of Indigenous People* and the *UN Voluntary Guidelines on the Right to Food* (Kapstein, 2018, p.179). The VGGT call for states to "[r]ecognize and respect all legitimate tenure right holders and their rights (…)" and "to take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others" (FAO, 2012b, Part 2, 3A.3.1.1). The VGGT define 'legitimate' tenure rights as "including legitimate customary tenure rights that are not currently protected by law" (FAO 2012b, Part 2, paragraph 5.3). In addition, the VGGT supportive document *Responsible Governance of Tenure: A Technical Guide for Investors* (2016) further stresses that both formal and informal tenure rights should be seen as legitimate and emphasises the notion of *social legitimacy*, whereby "all tenure rights formally recognized in law, as well as customary or informal rights not formally recognized but seen as legitimate and practised by communities for a significant period of time, should be accepted as legitimate by investors as they carry out their due diligence and project development" (FAO, 2015, paragraph 1.B)[26].

The principle of FPIC promotes land rights as legitimate land rights, including ancestral land rights, communal and customary land rights, and other forms of so-called 'informal' land rights. According to this approach, legitimate land rights are derived from a broad and holistic view of land as sources of cultural, spiritual, and environmental, but also political and economic value for indigenous communities.

There is, however, a contradiction inherent in these human-rights based approaches: On the one hand, these guidelines interpret legitimate land rights as including 'socially legitimate' rights and those not necessarily formally recognized by law. On the other hand, they also appeal for investors and other actors to respect national formal-legal frameworks and, in the case of the VGGT, to act "in accordance with national laws" (FAO, 2012b, Part 2, paragraph 5.3). "Investors have the responsibility to respect national law and legislation and recognize and

[26] After the adoption of the Voluntary Guidelines, the FAO has in subsequent years published a series of 11 technical guides in order to help develop capacities of various stakeholders on land governance in line with the VGGT and to support the implementation of the VGGT. The technical guides are focused on specialised areas, (i.e., forestry, gender, cadastre systems, pastoralism) and/or target specific audiences (i.e., investors, lawyers, land valuers, civil society). The 11 guides are available under http://www.fao.org/tenure/resources/collections/governance-of-tenure-technical-guides/en/.

respect tenure rights" (VGGT, FAO 2012b, Part 4, paragraph 12.12). How can an investor protect land rights not recognized by the formal legal framework and/or in violation of national laws, and at the same time follow national laws?

Thus, by calling for the recognition of legitimate land rights, these human-rights based global norms recognize that some land rights are socially and historically perceived as legitimate by different groups. but that these rights are sometimes not recognized in law (i.e., they are not *de jure* land rights) or may actively be denied or ignored by government. This poses several challenges. Who is going to decide if land rights are legitimate if the government has already taken the stand that they are not? What does it mean for international guidelines to prevent land conflict and protect legitimate land rights in situations of unclear, ambiguous and legally excluded land claims? "There has been little reported about the implementation of these guidelines, but considerable debate on the potential for them to protect people from dispossession." (Milgroom, 2015, p.587).

2.4.2 Market-based approaches

Market-based approaches include those initiatives that are based on certification programs for global commodity chains and corporate social responsibility frameworks for enterprises, following the logic of private sector self-regulation. Examples of these approaches include the *Equator Principles*, the *IFC Performance Standards on Environmental and Social Sustainability*, the United Nations Principles for Responsible Investment in Farmland ("Farmland Principles"), as well as more sector-specific private certification schemes such as the *Roundtable on Sustainable Palm Oil (RSPO)*.Part of the logic for the emergence of (market-based) guidelines and the need for private sector self-regulation is rooted in utilitarian and self-preserving arguments, i.e., reputation and financial risk discussed above.

Market-based initiatives take a view of legitimate land rights that differs from the view inherent in human-rights based approaches. Guidelines such as the *Equator Principles* or the *IFC Performance Standards* simply refer to 'legitimate' land rights as those that are considered 'legitimate' by the national formal-legal framework of host countries. Whether customary land, indigenous, or other forms of 'informal' or undocumented land are considered by the investors, according to these guidelines, depends therefore on the laws and policies in the host country. Moreover, and in stark contrast to the VGGT's interpretation of *social* legitimacy, the IFC

Performance Standards take a more proactive approach to defining and determining the legitimacy of land rights, namely by defining them themselves:

> Where involuntary resettlement is unavoidable, either as a result of a negotiated settlement or expropriation, a census will be carried out to collect appropriate socio-economic baseline data to identify the persons who will be displaced by the project, determine who will be eligible for compensation and assistance, and discourage ineligible persons, such as opportunistic settlers, from claiming benefits. In the absence of host government procedures, the client will establish a cut-off date for eligibility.
> (IFC PS, PS5, p.4).

This essentially encourages the investor to determine legitimate land rights status of local people themselves as a prelude to displacement, if the state has not clearly done so. This is what happened in several cases of investment examined in this thesis, as I will discuss in more detail in the next chapters.

This is not to say that market-based guidelines will definitely ignore land tenure related questions and all non-formal land rights. Rather, it can be assumed that defining legitimacy for land rights will be framed in the interests of private-sector actors rather than with the intention of making decisions based on a fair and historically embedded evaluation of legitimacy of land tenure at the local level. Nevertheless, "[a]lthough tenure issues are too extensive and complicated for individual firms and investors to resolve independently, risk provides a strong incentive for the private sector to contribute to clarifying and securing tenure rights." (The Munden Project, 2012, p.3). The *IFC Performance Standards* and the *Equator Principles* both make reference to the principle of FPIC but emphasize that FPIC is to be understood as a 'recommendation' for investors rather than a veto right for indigenous communities to oppose investments and only to be evoked in "special circumstances" (IFC PS 7, paragraphs 13-17), the meaning of which is left unclear and vague. This essentially puts the question of legitimacy up for debate and, in case of doubt, for the investor to determine.

In essence, the understanding of legitimate land rights distilled from market-based approaches to global governance norms for responsible land investments is that land rights are legitimate when they are already legally (*de jure*) recognized by the government and legible. This is in

line with my argument in this thesis that global norms tend to gain traction in protecting local land rights during investment projects on land tenure regimes where these rights are (at least) *de jure* recognized, meaning they are enshrined in the formal-legal framework of a country. Often, however, land rights are recognized in the country's formal-legal framework in principle, but still exist in a (negotiable) *grey* area, where they are not clear, legible (documented), and/or uncontested, and thus not always recognized in practice by the government.

2.4.3 Other Categorisations of Global Norms for Responsible Investments

Apart from the distinction between market-based and human rights- based approaches, another way to organise and categorise the growing plethora of good governance instruments on responsible land investments comes from Borras Jr. et al. (2013), who outline three competing political 'tendencies' of international rulemaking in the context of large-scale land investments. In their view, global governance instruments serve the purpose to 1) "regulate in order facilitate land deals", 2) "regulate in order to mitigate adverse impacts and maximise opportunities of land deals" or 3) "regulate to stop and rollback land deals" (2013, p.163).

In the first ideological approach ('regulate to facilitate land deals'), large-scale land investments are considered desirable and actively promoted according to the logic that if investments are 'done well', they will greatly benefit all involved. Recommendations in international guidelines aim to "facilitate capital accumulation within an efficient institutional context" (Borras Jr. et al., 2013, p.169). A central principle of this ideological position is the advocacy for (private) land titling and strengthened property rights, following the logic that only titled land is valuable land.27. This ideological position can be thus firmly linked to the abovementioned market-based approaches to global governance of large-scale land investments, including the interpretation of legitimate land rights as those that are enshrined in

27 With regards to the positions on land titling and registration, the three tendencies outlined by Borras Jr. et al (2013) can be connected to Catherine Boone's study (2019) of three contrasting pathways and understandings of legal empowerment through land registration. In her paper, *Legal empowerment of the poor through property rights reform: Tensions and tradeoffs of land registration and titling in sub-Saharan Africa*, Boone outlines three ideological camps: 1) Land registration and titling for individualization and commodification, 2) land registration to secure the use-rights of farmers to stabilize the peasantry, and 3) land registration in order to strengthen communal rights for ethno-justice and territorial autonomy (Boone 2019). These three positions on advocacy for land registration and titling more or less map onto the three ideological tendencies of international guidelines outlined by Borras Jr. et al. (2013).

formal-legal frameworks, and that are clearly legible, ideally, titled. A typical proponent of this tendency is the World Bank/IFC.

In the second ideological approach ('regulate to mitigate adverse impacts and maximise opportunities'), large-scale land investments are seen as inevitable, but also as a "relatively [welcome] development in the midst of state neglect of the rural sectors" (Borras Jr. et al., 2013, p.170). The main goal is to mitigate the negative effects that investments may produce while simultaneously reaping and maximising the benefits. This ideological position also recommends strengthening property rights, but with the purpose of promoting tenure security for local communities, as well as community consultations and negotiations, and greater transparency through such mechanisms as Free Prior Informed Consent (FPIC). This view prevails-amongst the international donor community and typical international actors supporting this position are the UN FAO as well as numerous NGOs, especially Oxfam. This ideological position can be seen as a compromise and a fusion between the market-based and human-rights based approaches outlined above.

These two interpretations of global governance mechanisms listed above are seemingly consistent with my argument in this thesis that land rights first need to be secured and recognized legally and formally by the state (as a minimum condition) in order for international guidelines to gain traction in pressuring investors and governments to protect these rights.

In the third ideological position ('regulate to stop and rollback land deals'), large-scale land investments are seen as a threat to smallholder farmers and overall food sovereignty. In contrast to the other two ideological positions, this approach takes an "anti-imperialist, anti-(neo)colonialist stand against capitalist accumulation of land" (Borras Jr. et al., 2013, p.171). This approach is spearheaded by peasant rights movements and activist organisations such as La Via Campesina and GRAIN. Due to its call to 'stop and roll-back' large-scale investments altogether and its arguments for a sharp turn in the politics of international food regimes, this position has not been linked to many concrete international instruments within the arena of global governance of large-scale investments. However, similar to the other two ideological positions, this third position advocates for securing land rights "although not limited to Western private property ideas, to include communal and community property regimes" (Borras Jr. et al., 2013, p.171). This position is clearly rooted in the human-rights based approaches.

In practice, ideological approaches to global governance and land rights protection are rarely clear cut and often overlap. The VGGT in particular are an example of how seemingly all positions and narratives can merge. The VGGT are seen by many as a unique product of international consensus on land governance that, through lengthy multi-stakeholder negotiations, brought together all types of international actors and all forms of competing logics and tendencies. With actors as diverse as the World Bank and La Via Campesina both signatories to the VGGT, the guidelines seem like 'a minimal common denominator'. Some contest this: "[B]y no means do the Voluntary Guidelines capture the full spectrum and diversity of actors, institutions, and practices active and relevant to land. Instead, the Voluntary Guidelines need to be contextualised as the first but not necessarily final word on global land governance." (Margulis et al., 2013, p.18).

Another example of a fusion of different ideological positions is the creation of the International Land Coalition (ILC), a global alliance of over 250 intergovernmental and civil society organisations. ILC members comprise such actors as the World Bank/IFC – typically assigned to market-based approaches to global governance, as well as UN organisations (i.e., FAO, IFAD) and numerous mainstream NGOs promoting more human-rights based approaches (Borras Jr. et al., 2013, p.174). Similar to the ILC, the Interlaken Group presents another such initiative. The Interlaken Group is an informal network of individual leaders from influential companies, investors, CSOs, government and international organizations, which aims to guide private sector action towards securing local and communal land rights.

2.5 Conclusion

This chapter presented a discussion and conceptualization of global norms for responsible investments. The literature and theories of global norm diffusion and human rights reveals that there is little empirical evidence of how global norms gain traction locally and the domestic political processes and institutions that this entails. I thus situated this work in the domestic structure of land governance institutions and tenure regimes. I discussed substantial shortcomings and contradictions in global governance norms for responsible land investments. For one, there is great complexity and variability in determining and defining the legitimacy of land rights in global governance norms for responsible investments. Market-based global governance norms seem to particularly endorse the legibility of land rights by means of titling

and documentation and thus interpret 'legitimacy' as rights that are enshrined in formal-legal frameworks. Other global governance norms, especially those under human-rights based approaches, recognize that land rights can also be subject to *social* legitimacy and advocate for the protection not only of formally recognized land rights but also of so-called informal rights (i.e., customary rights, undocumented land user rights etc.).

The lack of consensus on the definition and interpretation of legitimate land rights leaves many questions unanswered: How then are such guidelines posited vis-à-vis the national-legal institutions and various different land tenure regimes that define land rights? What does it mean for global norms, whether market-based or human-rights-based, to protect what they deem as 'legitimate' land rights in diverse and varying land tenure settings and situations of unclear, ambiguous and unrecognized land rights?

Further, there is a fundamental contradiction within global governance norms, particularly in those adhering to the human-rights based approach: While many guidelines (especially the VGGT) advocate for the protection of *all* land rights, including those not formally recognized or documented by law, these guidelines also emphasise the need of investors and all actors to abide by national laws and formal-legal frameworks. In case of ambiguous and undocumented land rights, how can investors abide to national law that may not recognize and/or actively deny such rights, while at the same time adhering to international guidelines to protect these? There is thus a substantive gap in our knowledge of how global governance norms relate and interact with local land rights, who determines the legitimacy of such rights, and how such international guidelines can protect legitimate land rights in practice, in the context of complex and varying land tenure regimes.

One task of this thesis is to understand and study international rule-making projects and guidelines and the composition of actors and narratives around them. A second is to show that these are inherently political and unfold in the context of complex and sometimes ambiguous local land laws and in national contexts in which the state already has, *de jure*, extensive land prerogatives. "[O]nce laws and policies are passed, they do not self-interpret or self-implement." (Borras Jr. et al., 2013, p.172). Therefore, this dissertation is particularly interested how these guidelines interact with and address land issues on the ground in the contexts of African land politics, land laws, and land tenure regimes.

I made the analytical choice to consider the plethora of international guidelines and group them (or roughly differentiate them) in my analysis according to human-rights based and market-based guidelines. I will not analyse in a one-to-one manner the way that individual guidelines work and interact with land tenure regimes on the ground. This is not only beyond the scope of this dissertation, but also not necessary in order to achieve the goal of this research project, to put forward a model that aims to explain variation in how global governance instruments (can) interact with investments. My main argument is that variation is a function of differences in pre-existing or underlying tenure regimes. As discussed above, the guidelines address mostly the same issues, such as transparency, consultations, environmental safeguards, and in particular, land rights protection. Therefore, I will speak of the plethora of guidelines as more or less one phenomenon in relation to land rights.

In the next chapters, in the context of Uganda and Sierra Leone, this dissertation examines and analyses the way that international guidelines (can) engage with local land rights and how the question of 'legitimacy' for the prospect of protection from dispossession of such land rights plays out in practice. I will show that what is deemed 'legitimate' in terms of land rights greatly varies from one region and locality to another on the ground and is shaped and constructed primarily through formal-legal recognition, historical trajectories, and the level of state involvement. Where land rights are state recognized, international guidelines seem to be able to gain traction in holding the government and/or the investor accountable to the protection of such rights. Where land rights are not recognized, global norms seem to fall flat in their intention of protecting those rights. However, where land rights are *de jure* recognized, but illegible, ambiguous, or contested (but claimed by local communities as 'legitimate'), there is scope for global norms to be leveraged locally in innovative ways, as my case studies on unregistered customary land will show.

Chapter 3: Land law and land tenure regimes in Uganda[28]

In this chapter, I discuss and analyse the different land tenure regimes and the structures of land administration in Uganda. I show that each land tenure regime gives rise to specific land rights claims and challenges of protecting these. In Uganda, investment projects are a prominent topic in national debates about 'land grabbing' and land rights. According to the online database The Land Matrix, there are currently 29 large-scale land investments in operation in the country (Land Matrix, 2021). The management of conflict associated with the rise of foreign large-scale land investments is a prominent topic in Uganda. References to principles laid out by international codes of conduct and global governance norms for responsible land investments feature in many but not all large-scale land acquisition cases. Invoking the research question of this thesis, this chapter is concerned with the question of why conformity with international guidelines seems to be effective in protecting *some* land rights and helping to mitigate land-related conflict in investment cases but seems to be ineffective or worse in dealing with other land-related claims – even within the same country. This chapter is structured into three parts. Section 3.1 outlines the country's formal-legal framework around land in order to understand the wider context of land tenure regimes in the country. Section 3.2 reviews the characteristics of different land tenure regimes in Uganda. I will show that each regime gives rise to a particular constellation of claims to land rights by various claimants. I will discuss the extent to which these are recognized by the state in the formal legal framework and in practice. Section 3.3 concludes this chapter.

3.1 The Formal-legal Framework Around Land

Uganda's current land politics and the variation in land tenure systems cannot be grasped properly without their contextualisation in the country's turbulent history of land politics. In the following, I will briefly outline the evolution of land laws and policies, and the development of the distinct tenure regimes during the colonial and postcolonial eras in Uganda.

[28] A version of chapters 3 and 4 on Uganda has been turned into an article in the *Journal of Development Studies* (DOI 10.1080/00220388.2021.1983165).

Uganda was declared a British Protectorate in 1894, when the British established their rule mainly in Uganda's Central Region, which comprised the Buganda Kingdom. In 1900, a land settlement, referred to as the *Buganda Agreement,* was signed between the Protectorate government and the regents of the Buganda Kingdom. At the time of the Agreement, it was assumed that the entire Kingdom area comprised of 19,600 square miles (GIZ, 2018). Approximately half of this land became 'mailo' land (after the English word "square mile"), under the ownership of the *Kabaka* (the king), the court, the royal family as well as around 1000 loyal chiefs and private Mailo landlords. The other half, around 10,500 square miles, became 'Crown land', vested in the protectorate government under the British crown. From Crown land, the British administration made concessions in the form of individual freehold and leasehold titles to individuals. There was no legal protection of (customary) land users on crown land. However, the *Crown Lands Ordinance Act of 1903* gave limited recognition to customary tenure and permitted Ugandans to occupy land not held under Mailo, freehold, or leasehold tenure as customary land users (Mugambwa, 2007, p.40).

Since Mailo land functioned just like inheritable freehold land, with full private ownership rights, the 1900 Agreement de facto created a class of African landlords, a landed aristocracy of Baganda Chiefs. In contrast, people living on and using the land became 'tenants' overnight, with obligations to pay rent to these landlords, resembling the European feudal system. In the years that followed the Buganda Agreement, the Mailo landlords raised the *busullo* (land rent) and *envujjo* (commodity rent) on their tenants to unreasonable levels, resulting in political turmoil and the threat of rebellion (Green, 2006, p.372). In response, the British administration forced the Buganda Parliament (the *Lukiiko*) to pass the *Busullo and Envujjo Reform Law of 1927* that capped the annual rent payment (*busullo*) at 10 shillings or one month's labour and fixed the commodity rent (*envujjo*) at 4 shillings per acre of harvested cotton or coffee (Green, 2006, p.374).

After independence, the *1969 Public Lands Act* was passed, which turned crown land into public land. Land that was former crown land under customary use, and therefore neither mailo, freehold, or leasehold, became public land vested in the Uganda Land Commission. While the Public Lands Act considered customary land to be public land vested in the state, the Act gave some degree of recognition of customary land rights to land users. Customary land, now considered public land, could still be alienated by the state as freehold or leasehold at any time, however, customary land users had to be consulted and were entitled to compensation

payments (McAuslan, 1999, cited in Hunt, 2004, p.176). In 1975, Idi Amin passed the *Land Reform Decree,* that converted all land in Uganda to public land. Existing Mailo and freehold titles were converted to leaseholds held by the state as the sole landlord. On the remaining public land, customary land users had no legal protection anymore as their land could be alienated by the state without their consent. In practice, the nationalization of land through the Land Reform Decree was mostly ignored by both landowners and administrators (Hunt, 2004, p.176). Nevertheless, the official abolishment of Mailo and freehold land tenure regimes and all prior laws regulating relationships between landlords and tenants in Buganda persisted until the enactment of the new Constitution 1995.

By the 1990s, two decades of irregular settlement and informal and overlapping land use in most of the country led to increased competition and conflict over land, amplified by civil unrest during and after the Amin era, population growth, and economic decline. The pressing 'land question' in Uganda forced the Museveni administration to reform the country's land politics by enacting a new constitution and comprehensive land policy. The *Constitution of 1995* repealed the Land Reform Decree and reinstated Mailo and Freehold Tenure, alongside Leasehold and Customary Tenure as the four officially recognized tenure systems. Greatly decreasing government control over land, Article 237 of the Constitution declares that "Land in Uganda belongs to the citizens of Uganda" (RoU, 1995 Art. 237) in accordance with these four types of land tenure systems. Technically, state-owned ('public land') officially ceased to exist upon the coming in force of the Constitution. However, substantial parts of land in Uganda are still under central and local government control and trusteeship, on which I will elaborate further in the next part. Most notably, the Constitution officially recognized customary tenure. Article 237 (4) provides for the option to acquire customary certificates of ownership (CCOs) on formerly public land under customary tenure, after which this land can be converted to freehold. In addition, the Constitution provided far-reaching protection against eviction for 'bona fide' occupants on Mailo, Freehold, and Leasehold Land. 'Bona Fide' occupants are those that have been settled undisturbed on a plot of land for 12 years or longer before the coming into force of the 1995 Constitution. Further, the *1998 Land Act* was enacted to guide the operationalise the Constitution and to further clarify tenure rights for customary land users and tenants in the Mailo system. For example, the Act required that the management of Public land was to be decentralized to the district level and held in trust by District Land Boards (GoU, 1998). Many see the 1995 Constitution and 1998 Land Act as progressive and revolutionary land legislations that have made huge strides to protect customary and marginalised tenant's

rights. “The Land Act is the most important piece of land legislation since the Land Reform 1975 (which it repeals) and, arguably, it represents as great a revolution in land relations as the Buganda Agreement and other reforms ushered in at the colonial period.” (Coldham, 2000, p. 65). However, while the Land Act was internationally praised for its pro-tenant character, not much of the Land Act has been implemented to date (Green, 2005, p.277).

Lastly, the *2013 Uganda National Land Policy* was passed after a comprehensive consultative process and aims to “consolidate[s] the various scattered policies associated with land and natural resources with emphasis on both ownership and land development” (MLHUD, 2013a, p. iv). While still in the process of implementation, the National Land policy sets out, among many other goals, to improve the coordination of the land sector with other productive sectors of the economy, to further define and protect customary land users by creating a customary register/ cadastre, and to strengthen and protect women’s land rights (MLHUD, 2013).

The most important instruments of land law at a glance:

- 1900 Buganda Agreement
- 1927: *Busullo* and *Envujjo* Reform Law
- 1969 Public Lands Act
- 1975 Land Reform Decree
- 1995 Constitution of Uganda
- 1998 Land Act
- 2013 National Land Policy

Figure 1. Overview of the most important land-related legislations in Uganda.
Source: Compiled by author.

3.2 Land Tenure Regimes and Land Claims

As discussed, land tenure regimes, as institutional configurations, establish the basis of land rights, land access, and the character of the political authority over land (Boone, 2007, 2013, 2014). In Uganda, since the implementation of the 1995 Constitution, there are four officially recognized land tenure regimes, namely freehold, leasehold, Mailo, and customary land. In addition, a significant part of the land in the country is government-land or public land.

According to Boone's model of statist and neo-customary land tenure regimes, Uganda's freehold, leasehold, Mailo, and government-owned land would constitute 'statist' land tenure regimes, contrasted with customary land.

In this chapter, I use an adapted categorization of these tenure regimes and group Uganda's land tenure regimes into three categories: private, state-owned and customary land. Freehold and Mailo land tenure both fall under the category of private land. For private land, I will focus here specifically on Mailo land as it is essentially a form of freehold with additional characteristics, but more prevalent than freehold tenure in Uganda. While not officially a recognized tenure regime of its own, I include state-land in my categorization as substantial parts of Uganda's land is owned or under the control of the government, and many large-scale land investments are implemented on state-owned land. In turn, I do not include leasehold tenure as a stand-alone category in the analysis. Leasehold tenure is recognized in Uganda's Constitution but is, in practice, not a land tenure regime of its own.[29] Leasehold titles can be issued on all other land tenure categories in Uganda. All foreign investors must acquire a leasehold title as foreign ownership of land is impossible. Customary land tenure prevails throughout much of Uganda.

In Uganda, land held under Freehold, Mailo and Leasehold tenure is usually clearly marked by boundaries and registered in a national cadastre system. Customary land, on the other hand, is still largely unregistered. It is estimated that around 20 percent of the land in Uganda is registered under Freehold, Mailo or Leasehold, while 80 percent of the country is under customary tenure, held by over 90 percent of the rural population (Obaikol, 2014, p.55). Comprising 98.04 percent of all registered land in Uganda, the Central Region (Buganda

[29] Leaseholds can be created on all of the other officially recognized land tenure regimes. Authorized landowners of a plot of land under Freehold, Mailo, or Customary tenure can lease out land at their discretion. Non-Ugandan citizens can only acquire a plot of land in the form of leasehold tenure, as opposed to Freehold, Mailo, or Customary tenure (GoU – Constitution – (Chapter 15) (237) (2c). It is further specified that such leases for non-citizens cannot exceed 99 years (1998 Land Act (40) (3). Leasehold titles are fairly flexible as the terms of the lease (duration, supervision, land use) are agreed upon between the lessor and the lessee and can be amended. In addition, leasehold titles are easily transferable. For example, a holder of a leasehold, subject to terms and conditions of the lease contract, can exercise the powers of freehold (i.e., sub-leasing, mortgaging, pledging land). Sub-leases on leaseholds must be for less amount of time (years) than the lease period of the original lease, so that reversion to the original owner can be guaranteed (Obaikol, 2014, p.46). Leasehold tenure is recorded in a registry, in accordance with the Registration of Titles Act.

Kingdom) has the highest percentage of registered land, while only 0.01 percent of land in Northern Uganda is registered, as Table 1 shows below (Obaikol, 2014, p.42).

Table 1. Number of land titles issued by region in Uganda (2010)

	Mailo/freehold		Leasehold	
Region	**Number**	**%**	**Number**	**%**
Central	45,470	98.04	23,624	50
Western	816	1.75	10,888	23
Eastern	87	0.19	8,338	18
Northern	5	0.01	3,897	8
Totals	**46,378**	**100**	**46,747**	**100**

Source: Obaikol, 2014, adapted from the Ugandan Ministry of Lands, Housing and Urban Development (MLHUD), 2010

Land tenure regimes roughly map onto geographical regions in Uganda (Figure 2). Mailo tenure is practiced today only in Uganda's Central Region, which comprises the Buganda Kingdom, as well as Kibaale District (Western Region), which was part of Buganda Kingdom until 1964. Customary tenure is mostly found in northern and eastern Uganda, but also features in the Western Region. Noticeably, state-land does not feature on this map, as pockets of state-land exist all over the country, not just in one specific region.

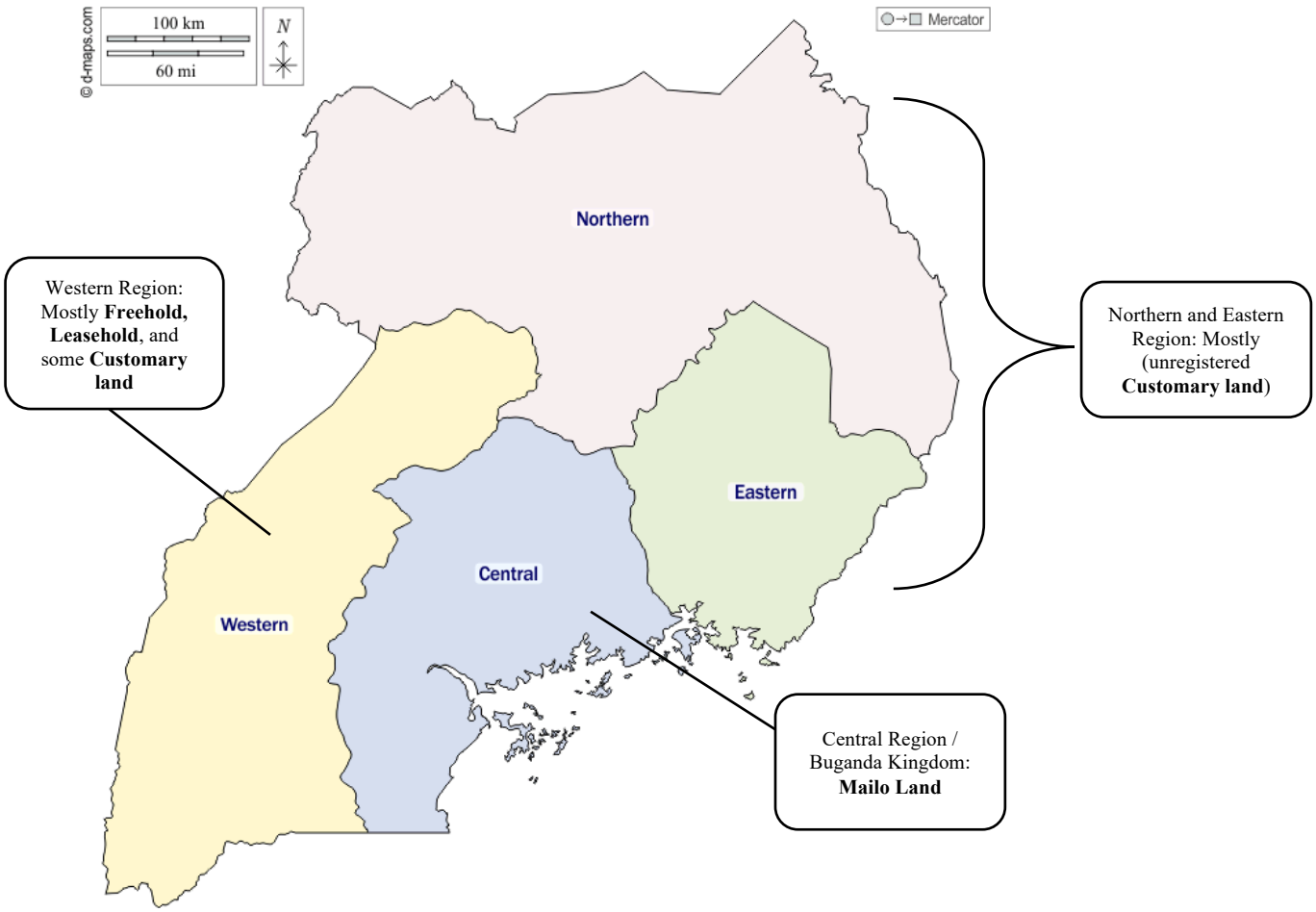

Figure 2. *Rough distribution of land tenure regimes in Uganda*
Source: Adapted by author from D-maps.com

3.2.1 Private (Mailo) land

Both freehold and Mailo tenure are officially recognized and protected by law, registered in a central registry, and equip the landowner with exclusive ownership rights. The 1998 Land Act (Section 3.2) specifies that Freehold Tenure

(a) involves the holding of registered land in perpetuity,

(b) enables the holder to exercise, subject to the law, full powers of ownership of land, including but not necessarily limited to—

(i) using and developing the land for any lawful purpose;

(ii) taking and using any and all produce from the land;

(iii) entering into any transaction in connection with the land, including but not limited to selling, leasing, mortgaging or pledging, subdividing creating rights and interests for other people in the land and creating trusts of the land;
(iv) disposing of the land to any person by will.[30]

In contrast, Mailo tenure can be understood as an extension of Freehold tenure and is characterized by a unique dual landownership structure. This involves the landlord, who owns the land title to a plot of land 'in perpetuity' (as is the case with Freehold), and occupants or 'tenants' who occupy a part of this plot, and also have transferable rights to this part of the land. Mailo tenure is an artifact of the country's colonial era. As the first instance of private land rights in Uganda, it originated with the abovementioned Buganda Agreement of 1900, the land settlement signed between the King of Buganda (Uganda's Central Region) and the British protectorate. Through this agreement, half the land in the Buganda Kingdom was allocated to the *Kabaka* (King) and his loyal chiefs as private property (essentially as 'Freehold'), while the other half was vested in the British Crown as 'crown' land. This basically created a class of African "Mailo" landlords, while smallholder farmers living on these demarcated estates were turned into 'tenants' on this land, subject to rent and tax payments.

Land law reforms over the years have strengthened and protected the land rights of these Mailo tenants and occupants. Especially since the last two decades, the implementation of the 1995 Constitution, the 1998 Land Act, the 2010 Land (Amendment) Act, and the 2013 new National Land Policy, the protection of land occupants became progressively more solidified in law, and

[30] Freehold tenure is widely regarded as the most favourable form of tenure. As outlined in the 2013 National Land Policy, "[i]t is clear that public policy regards freehold as the property regime of the future" (MLHUD 2013a:20). Accordingly, the Ugandan legal framework provides for the possibility to convert leasehold and customary tenure to freehold. The Ugandan Constitution and the 1998 Land Act specify: Leaseholds granted to Ugandan Citizens created out of former public land and were existing by the coming into force of the land Act 1998 may be converted to freehold (Constitution, Art. 237 (5); Land Act (28). These documents further specify that any person, family, community or association holding land under customary tenure on former public land may convert the customary tenure into freehold tenure (Land Act 1998 ((9)(1); Constitution, Article 237(4)(b)). Formal private property rights, as one of the main tenets of the neoliberal paradigm, have been hailed as a way to attract investment, reduce poverty and foster sustainable development (Ho 2016:1121). The concept of exclusion and individualization of land control is central to this tenure type as it allows for land transactions such as buying, selling, mortgaging land, according to market logics and incentives (Boone, 2019, p.5). Ascribing clear, formal and guaranteed individual land rights, this tenure type is therefore seen as the most secure, most desirable form of land ownership by mainstream actors.

by now, it is difficult for the state to legally evict occupants. Legal and bona fide tenants can claim a 'place at the negotiation table' when it comes to land transactions on Mailo land.

In the century that followed the Buganda Agreement, colonial and post-colonial administrations (except for the Idi Amin regime) undertook substantial land reforms to strengthen and protect the land rights of Mailo occupants (see Table 2).

Table 2. Laws that impacted occupancy rights on (privately) registered land in Uganda

Law	**Effect on land occupants on private land**
1927 *Envujjo* and *Busulo* Reform Law	Fixed rent and tax payments at a very low price and made evictions of tenants near impossible
1975 Land Reform Decree	Abolished private land rights, severely weakened position of land occupants
1995 Constitution	Legal recognition and protection of land occupants and definition of 'lawful' and 'bona fide' tenancies
1998 Land Act	Further definitions and regulations for the relationship between tenants and landlords
2010 Land (Amendment) Act	Provides for statutory protection from eviction for lawful and bona fide tenants (if ground rent is paid)
2013 New National Land Policy	Calls for further protection of land occupants and harmonisation of landowners with lawful or bona fide tenants

Source: Compiled by author

In the decades following the Buganda Agreement, Mailo landlords kept increasing the rent and tax on their land occupants, leading to threatening political turmoil. To prevent a possible peasant revolt, the British colonial administration forced the Buganda Parliament (the *Lukiiko*) to pass the Busullo and Envujjo Law of 1927 that capped the annual rent payment (*busullo*) at 10 shillings or one month's labour and fixed the commodity rent (*envujjo*) at 4 shillings per acre of cotton or coffee (Green, 2006, p.374). This "'virtually eliminated' the peasants' grievances against the landlords" (Green, 2006, p. 374 with reference to Apter, 1967: 186–187). In addition, this law made it nearly impossible to evict tenants unless they broke this law

(Green, 2005, p.259). While tenants were not granted outright ownership formal land titles, their status as rent-paying tenants was protected and elevated considerably.

Occupant rights were legally protected this way until the Idi Amin regime in the 1970s. In 1975, Idi Amin passed the Land Reform Decree, which abolished all private land titles (Mailo and Freehold) and converted them into leaseholds, with the government as the sole landlord. This severely weakened the position of *bibanja* holders (legal tenants), who lost the legal protection they had gained through the practice of rent and tax payments to their landlords. Landlords were turned into lessees, and land occupants became informal tenants directly at the mercy of the state, as their tenancy could be terminated at any time (GIZ, 2018, p.31). However, while legal provisions and protection of the land rights of tenants was extinguished, these land occupants and their descendants mostly remained on their land and continued to farm it. Because of this, "the abolition of Mailo land was followed by a period of uncertainty regarding acquisition, inheritance, purchase etc. of *bibanja's*" (GIZ, 2018, p.31). The civil unrest and economic decline during and after the Idi Amin regime further led to internal migration as well as "unregulated settlement on *bibanjas* and expansion by way of opening up fallow land" (GIZ, 2018, p.31). Often, absentee landlords were not aware of who settled on their land during this time. This growing uncertainty of the legality of land rights and the recognition of the status of tenants, alongside other land-related grievances such as land rights of minority groups, customary land owners, and Mailo landlords grew into a heated political debate over 'the land question' in Uganda by the 1990s.

The 1995 Constitution addressed the challenge of re-regulating the occupation of tenants on formal private land. Article 237 (8) of the Constitution introduced the legal concept of 'lawful' and 'bona fide' tenancies, thereby legally protecting these land claimants. As outlined in the previous part, a 'lawful occupant' on private Mailo land includes anyone who has settled on the land with the consent of the landlord. A "bona fide occupant" on any registered land (Freehold, Mailo, or registered government land) is defined as someone having occupied and farmed the land uncontested for at least twelve years before the 1995 Constitution, as well as persons that had been resettled on the land by the government before that date (Coldham, 2000, p.66). [31]

[31] 'Bona fide' occupancy rights are not limited to the Mailo land tenure regime but apply to all forms of officially registered land in Uganda, including Mailo, Freehold, and Leasehold.

In addition, the 1995 Constitution provided that within two years after the implementation of the new Constitution, Parliament was to enact (a) a new law to regulate the relationship between lawful or bona fide occupants and the registered owners of that land; and (b) provid[e] for the acquisition of registrable interest in the land by the occupant. (Constitution, Art. 237 (9a and b). Accordingly, the Land Act of 1998 spelled out further definitions of 'lawful' and 'bona fide' tenants, as well as regulations for the relationship between these tenants and the registered landowner (1998 Land Act, Part I, (29-38). (see part 1). Above all, the Land Act aimed "to provide security of tenure for those whom the government called 'bona fide' occupants who had been living on a plot of land for at least 12 years without paying rent. It proposed to require both illegal occupants and legal renters to pay landlords 1,000 Ush ($0.58) per year as a nominal fee in order to obtain a certificate of occupancy." (Green, 2006).

In 2010, the Land (Amendment) Act further protected occupancy rights by granting statutory protection against evictions to lawful and bona fide occupants and their successors, as long as the ground rent is being paid. Most recently, the 2013 New Land Policy also addressed the issue and aimed at harmonising the relationship between registered (private) landowners and lawful or bona fide tenants (2013 National Land policy, 4.4 (43-6)). Legal or bona fide occupants may undertake comprehensive transactions on the land they occupy, however, subject to consent by the landlord. According to Section 34 (1-5) of the 1998 Land Act, a tenant by occupancy may assign, sublet, pledge, create third party rights in, subdivide and undertake any other lawful transaction in respect of the occupancy. Similar to landlords, a tenancy by occupancy may be inherited.

Mailo land titles are registered and recorded in a central registry. There is no official registry for occupancy rights. The 1998 Land Act (Section 33) provides for the option of a tenant to apply for a certificate of occupancy with the registered Mailo landlord. Despite legal provisions to protect and elevate the legal land claims of occupants in the last decades, occupancy and tenancy rights on registered land are often not without controversy in Uganda today. While the state protects land occupants against evictions and provides for the option of acquiring certificates of occupancy, this is contingent on occupants paying the nominal ground rent prescribed. However, "the nominal ground rent provided for is largely ignored creating a land use deadlock between the tenants and the registered land owner" (MLHUD, 2013a, .4 (43)). Occupancy of land is thus not easily proven, especially concerning 'bona fide' occupancies.

"The burden of proof has been placed on the land owner to prove that the person claiming occupancy rights is not bona fide. This has sometimes resulted in extra-judicial evictions as many unlawful occupants have invaded lands of especially Mailo owners claiming to be 'bona fide'." (Obaikol, 2014, p.47). On the other hand, many landlords have lost their land when they should not have (GIZ, 2018, p. iv). The new 2013 Land Policy acknowledged that "the landlord-tenant relationship as legally regulated is not amicable or harmonious." (MLHUD, 2013a, 4.4 (43)).

In sum, private land in Uganda (Freehold and Mailo) is firmly enshrined in the formal-legal framework, legible, protected by the government. Mailo land in particular is characterised by a multi-layered structure of land rights and claims from 'lawful' and bona fide tenants as well as so-called squatters. Even though tenants have no outright ownership or documented protection of their claims (titles), the land rights of lawful and bona fide tenants are robust in the Ugandan political-legal context. It is difficult for the state to legally evict Mailo occupants. Conflicts are frequent but are handled in legal or legalistic ways (i.e., court cases, grievance mechanisms). Freehold and Mailo land rights (both landlords and tenants) are significantly protected and enforceable by law and hence provide the claimants with legitimate land rights in the eyes of the international community. As my case studies in the next chapter will show, the status of lawful and bona fide occupants on Mailo land is internationally recognized by international frameworks. These claims are treated as legitimate land rights by international guidelines.

3.2.2 State-owned land

While public or state-owned land is not considered one of the four official land tenure regimes in Uganda, a substantial part of the land in Uganda is owned or under the control of the government, or a public sector body linked to the state. Many large-scale land investments in Uganda are implemented on state owned land, in particular on state-owned forest reserves. Therefore, I am including 'state land' in this section as a noteworthy tenure regime.

There is ample room for confusion about what exactly constitutes state land in Uganda. Generally, the literature on land rights in Africa does not pay enough attention to the various forms that 'state-owned' land can take and how this regime has changed throughout history (Choquer, 2011). State-owned land is often used equivalent to 'public land' in the literature.

There is a need for clarification of the different concepts and definitions of 'state-owned' land. In most countries, 'public' land is land held 'in trust' by the state for the purpose of public use. Such public domains often refer to roads, land for railways or electric lines, public places like markets and cemeteries, or nature reserves (Choquer, 2011). As the designated use of such land for public interest is usually enshrined in and protected by law, the state cannot normally sell the land to individuals for private use. This is contrasted by state land referring to the state's private assets and properties. Unlike public land, the government can rent or sell its own assets to individuals (Choquer, 2011).

In the Ugandan context, state-owned land is often conflated with 'public land' and both concepts tend to take on different meanings at the national and local level. As I will show with my case studies, the distinction between (private domain) state land, public domain state land, and public land is important and has very different implications for large-scale land investments. With the coming into force of the 1995 constitution and its declaration that "all land in Uganda belongs to the citizens of Uganda" (RoU, 1995 Art. 237), state land technically ceased to exist and became a questionable concept. However, plenty of land is still under the control of the Ugandan government.

Art. 238 of the 1995 Constitution established the Uganda Land Commission (ULC) with the mandate to hold and manage any land in Uganda vested in or acquired by the Government of Uganda in accordance with the provisions of the Constitution. Such government-owned land in Uganda refers on the one hand to individual landholdings that are registered and titled, especially in urban areas. Such land is understood as *private domain* government assets and is handled like by the state like freehold land, meaning it can be sold, leased, mortgaged or divided up. On the other hand, there is government land in the *public domain*, which can be further separated in the Ugandan context between public land at the national level and public land at the local level. At the national level, 'public land' held in trust by the central government are natural resources and nature reserves. The 1995 Constitution created a public trust over important renewable natural resources, including lakes, rivers, wetlands, forest reserves, game reserves and national parks (MLHUD, 2013b), vested in the State "to hold and protect for the common good of all citizens of Uganda" (MLHUD, 2013b, p.27). According to the 1998 Land Act, the government at national or local levels is explicitly prohibited from leasing out or otherwise alienating any of these natural resources, except by way of a concession, license or permit (MLHUD, 2013b, p.27). These natural resources are managed by national-level

government bodies, such as the National Forest Authority (NFA), the Uganda Wildlife Authority (UWA) and the National Environmental Management Authority (NEMA).

At the local level, public land is all land that is "not owned by any person or authority" (Land Act, 1998, Chapter 227, 59 (1)). In the 1995 Constitution, the management and allocation of such land was decentralized away from the national to the district level. The 1998 Land Act called for the provision of District Land Boards (DLB) in each district. District Land Boards were to be "independent of the Uganda Land Commission and (…) not be subject to the direction or control of any person or authority" (Land Act, 1998, Chapter 227, 60). District Land Boards act as the sole landlord over public land in the district and can allocate such land to individuals, groups or companies in the form of a leasehold title. Obtaining a freehold title, Mailo title, or customary certificate of ownership (CCO) is impossible on such land. To clarify, land 'not owned by any person or authority' applies to land that is neither claimed as a (private) government asset nor falls under one of the official land tenure regimes, such as customary, Mailo, freehold, or leasehold tenure, and is referred to as public land[32]. Since customary tenure is still largely unregistered and untitled, the requirement of 'not claimed' is of course contested, as I am going to discuss in more detail in Chapter 3.

In sum, government land in Uganda falls into three categories: 1) government land, which is titled and registered (private domain government land), 'public' land at the national level, which is held in trust by the government, which is gazetted but not titled, and 'public' land at the local level, held in trust by the government at the local (district) level (by District Land Boards), which is neither gazetted nor titled (MLHUD, 2013b, p.71). State-owned land, especially public land at the national level (such as forest reserves), gives rise to multiple informal and ambiguous land ownership and use claims. In contrast to claims on private land, these are not protected or recognized by law. As I will show in the case studies, they are broadly ignored and trampled upon by the Ugandan government in cases of large-scale land acquisition.

Access and use rights on state-owed forest reserves

There is a turbulent history of granting and denying access/use rights on public land that is held in trust by the government to local land users (Table 3). In contrast to the history of occupant

[32] During my fieldwork in Uganda, the use of the term 'public land' as applying to the category of land belonging to nobody at the district level and managed by the DLBs was confirmed to me in multiple interviews.

rights on private land (as shown above), access rights to public land, in particular Central Forest Reserves, became increasingly restrictive over time.

Table 3. History of access and denial of land user rights on public/state-owned land in the post-colonial period

Regime and policies	**Effect on access rights to public lands, in particular to Central Forest Reserves**
Edward Mutesa (1963-1966) *1962 Public Lands Act*	Settlement and deforestation of unoccupied state-owned forests allowed without prior consent from the government
Milton Obote (1966 – 1971 – 1st term) *1969 Public Lands Act*	
Idi Amin (1971-1979) *1975 Land Reform Decree*	Widespread de-gazettement of Central Forest Reserves and nature reserves; public land allocations to individuals and communities; encouragement of deforestation for household self-sufficiency
Milton Obote (1980-1985 - 2nd term)	Settlement of forest land without prior consent, continued allocation of forest land to communities; tolerance of deforestation
Yoweri Museveni (1985- present) *2001 National Forestry Policy* *2003 National Forestry and Tree Planting Act*	Increased privatisation of natural resources and public land; increased restriction of access rights to public lands; criminalisation of 'encroachment' on forests; emphasis on conservation and forest rehabilitation

Source: Compiled by author.

During the colonial period and continuing in the early-post-colonial era, use rights to 'public land' at the national level were fairly open. "The early post-colonial period set the stage for occupancy, use and access rights of public lands, conditions to which the neoliberal policy environment in recent decades appears to have trumped." (Lyons & Westoby, 2014, p.18). The *1962 Public Land Act* and the *1969 Public Lands Act* permitted smallholder farmers to deforest unoccupied forest land for agricultural cultivation and other purposes, without prior consent from government officials (Lyons &Westoby, 2015, 2014; Mugambwe 2007; Petracco & Pender 2009).

Next, the Idi Amin Regime (1971-1979) allowed further access to public land. For one, Amin's 1975 Land Reform Decree encouraged local communities to access forested land "to improve

household self- sufficiency and reduce pressure for service provision upon the failing state" (Lyons & Westoby 2014, p.18). Also, the de-gazettement of public lands, such as forests and nature reserves, was a frequent occurrence during the Amin era. For example, the Aswa-Lolim Game Reserve and Kilak Controlled Hunting Area in Acholi, northern Uganda, were degazetted in 1972 to open way for private ranches and agricultural development (Interviews with land expert,11 July 2018; Interviews with district-level government officials, 1 and 2 August 2018; Olanya, 2016, p.2). Notably, substantial portions of Central Forest Reserves, originally gazetted by the colonial administration between 1930 and 1950 were de-gazetted under Amin and distributed to communities and individuals, often as rewards or gifts for acts of loyalty or military service (Interviews with land expert, 11 July 2018; Lyons &Westoby, 2014). The Amin regime also established development projects inside forest reserves and actively invited workers to resettle to these forests. For example, parts of the Bukaleba Central Forest Reserve in the Eastern Region were turned into large-scale cattle rearing project, which attracted a substantial in-migration of labour, mainly from the North of the country, strongly encouraged by the Amin Regime (Focus Group Discussion, 13 July 2018). Other parts of the Central Forest Reserves were offered to war veterans and their descendants, as in the case of the Kiboga Forest Reserve and Namwasa and Luwunga Forest Reserves in Mubende and Kiboga Districts, Central Uganda (Focus Group Discussions, 17 May 2018, 9 August 2018; Grainger &Geary, 2011, p.9).

In addition, entire groups of people were purposefully resettled into state forests as part of state-led resettlement schemes. As Mugyenyi et al. (2005) report, numerous former military personnel were resettled in the Rusibe Central Forest Reserve in Mubende District in Uganda's Central Region, and Sudanese refugees have been resettled in a Central Forest Reserve in Masindi District, in the Western Region (p.9). This trend of public land allocations continued under the second Milton Obote regime (1980-1985), when local politicians in particular made use of state forests as patronage resources. For example, it is estimated that two thirds of the Mabira Forest Reserve in Uganda's Central Region were 'lost' to encroachers between 1980 and 1983, condoned and encouraged by local politicians "for fear of losing popularity" (Mugyenyi et al., 2005, p.11).

A shift in policy occurred during the Museveni regime, which began in 1985. During the 1990s, his administration initiated a series of policy reforms that signaled a shift towards increased privatization and commodification of natural resources. More restrictive policies in the 2000s

included the *2001 National Forestry Policy* and the *2003 National Forestry and Tree Planting Act*, which opened up the way for private investment on state-owned forests and more restricted user access for communities (Lyons & Westoby, 2014, p.18). The reforms of the Ugandan forest sector since the early 2000s saw the establishment of the National Forest Authority (NFA). The NFA was tasked with the governance of the country's 506 Central Forest Reserves and was particularly tasked to identify and deal with encroachers in the forest. The Law Enforcement Unit of the NFA carries out the evictions of 'illegal' settlers.

The new understanding was that encroachment and unregulated use of forests were hindering conservation and economic development. In their Annual Report for the Financial Year 2015/2016 (the latest available), the National Forestry Authority argues that encroachment and illegal timber extraction continue to be "the main threats to forests in protected areas leading to degradation of natural forests." (NFA, 2016, p.37). Soon after its creation in 2003, the National Forestry Authority began to redraw the boundaries of forest reserves and embarked on mass evictions of forest dwellers (Mugyenyi et al., 2005, p.v). By that point, many forest communities had been living and using the forests for many decades and considered them their home. These communities insist on their legitimate right to this land, based on 'bona fide' occupancy status due to decades-long settlement, or acquisition of the land as a gift or reward directly from a previous political regime. While some scattered communities were able to challenge the evictions and were resettled or received compensation (Mugyenyi et al., 2005, p.8), there was no comprehensive regulation for forest dwellers and no formal recognition of any land rights in the forest. Protesting and resisting the evictions was seen as hampering with the mandate of the National Forest Authority.

The basis of claims to legitimate landownership or land use on state forests is not recognized by the Ugandan government and not enshrined in the legal framework. In their study on the eviction practices of the National Forestry Authority in Uganda, the Ugandan NGO ACODE argues "It is not in doubt that some encroachers have acquired some rights over the land they have occupied for decades. Others have been granted titles on the forest reserves by the relevant government agents, which have not been revoked by competent authorities, and cannot be evicted without compensation or resettlement" (Mugyenyi et al., 2005, p.vi).

In sum, while community access to state forests was not only tolerated but even encouraged by previous regimes, including the outright allocation of land as rewards or gifts and explicit

invitations to settle in forested land (i.e., during the Amin regime), the policy reforms of the 2000s have severely restricted access rights of land users while promoting unfettered access to such land for private companies. In essence, the promotion of privatization and access of private investment to forests came with the formal extinction of (historical) land rights of forest dwellers and users. Today, rights of local communities on public land are not legally recognized and people living and using state forests are labelled as 'squatters'. Under Ugandan law, environmental conservation and the integrity of forests is stipulated as more important than the (historical) access and user rights to land and forests by local land users. As my case studies will demonstrate, these claims are nevertheless there, and often provoke local conflict when large-scale land investments are implemented, and these communities are forcibly evicted from the forests.

3.2.3 Customary Land

Under customary tenure, land is governed and managed according to the norms and practices of a particular (customary) community within a framework set by national law. Abundant literature on African land politics perceives customary tenure in sub-Saharan Africa as a co-creation of colonial authorities and local people. Colonial rulers used state-backed local leaders (recognized as 'traditional' or 'customary' by the colonial administration) to indirectly govern rural populations (Boone, 2014, 2015; Peters, 2009; Mamdani, 1996). Most land in Uganda (and in most of sub-Saharan Africa) is not held by individuals as formal and titled private property. Instead, over 80 percent of Ugandans hold their land under customary tenure (Obaikol, 2014, p.55).

Customary tenure relies heavily on informal mechanisms and non-documentary evidence, such as ancestral claims, oral histories or witness accounts by heads of clans or elders of families, and the demarcation of customary land is often based on natural boundary markers (i.e., stones, trees, streams, ant hills etc.) (Obaikol, 2014, p.55). Land under customary tenure can be held individually, by nuclear families, or extended families (clans). These ownership structures vary from region to region, with customary land held by nuclear families is mostly found in western Uganda, while extended family (clan) structures are more predominant in northern Uganda. Customary tenure can also include communal land ownership of common grazing and hunting grounds. This is predominant, for example, in north-eastern Uganda (Karamoja), where nomadic cattle herding predominates.

In Uganda today, customary land is *de jure* on par with other forms of land tenure and was officially recognized for the first time in the 1995 Constitution and was reinforced through the 1998 Land Act. The 1995 Constitution and the1998 Land Act were praised by many as progressive and even revolutionary land legislations that recognized and protected customary and marginalised tenant's rights.

De facto, however, customary tenure is not on equal footing with the other tenure regimes.[33] There is no registry or systematic documentation of customary land. This makes it hard to bring customary tenure into the purview of international land governance guidelines. The Land Act of 1998 provides for the option of acquiring certificates of customary ownership (CCOs) that can serve as confirmation and evidence of customary ownership of land and give the owner transactional rights in accordance with customary law (Hunt, 2004, p.177). The idea is that certificates of customary ownership, which can be acquired at low cost, will serve to secure land rights as equal to freehold in nature, as the owner of the certificate would have secured ownership and transfer rights (i.e., selling, leasing, mortgaging land), in accordance with customary law (Hunt, 2004, p.177). In addition, a certificate of customary ownership can then be converted into a freehold title, following official surveying procedures, as outline in the 1998 Land Act (10). As mentioned before, customary land owners can also apply to convert their land to freehold title if they had legally occupied former public land unchallenged for 12 years before the coming into force of the 1998 Land Act (Constitution, Article 237(4)(b); Land Act 1998 (9)(1)).

[33] The Ugandan government has also directly and indirectly expressed its preference for privately-owned and titled land, over customary forms of land tenure. Especially forms of pastoralism are widely disregarded and numerous policies have called for the sedentarisation of pastoralists in north-eastern Uganda. A leaked letter from first lady and Minister of State for Karamoja Affairs, Janet Museveni, to the head of the EU delegation in Kampala, made particular headlines for calling nomadic ways of life in northern Uganda 'outmoded', 'backward', and 'dangerous' (The Guardian, 2011). In the letter, she called for the phasing out of EU food aid money in the region, thereby forcing pastoralist households to rely on home-grown food. The continuous lower status of customary land in Uganda was even acknowledged by the 2013 National Land Policy that recognizes that "customary land tenure continues to be "regarded and treated as inferior in practice to other forms of registered property rights, denying it opportunity for greater and deeper transformation (…)" (MLHUD, 2013a, 4.3, 38 (i)). The Policy further declares, "The State shall recognize customary tenure in its own form to be at par (same level) with other tenure systems", and "The state shall establish a land registry system for the registration of land rights under customary tenure" (MLHUD, 2013a, 39. (a) and (b)).

In practice, however, these certificates are seen as inferior to a land title (i.e., freehold, Mailo, leasehold), especially by financial institutions. The 1998 Land Act provides for the option of converting a CCO into a freehold title, following official surveying procedures. This further indicates that CCOs are considered an inferior and intermediate step toward what is often deemed by states and international actors to be the ultimate goal, a freehold title. Very few such certificates have actually been applied for or issued in Uganda so far. In recent years, efforts to record customary rights and issue CCOs have been undertaken, but these are still sporadic and largely driven by donor organisations and NGOs.[34] In sum, there seems to be a contradiction: While customary land is on the one hand officially treated as equal in the formal-legal framework, the Ugandan government is de facto promoting the privatization of land and customary land keep being disregarded.

Customary land claims in northern Uganda

The recognition of customary land tenure is particularly fragile in northern Uganda. The history of war and forced population displacement is still very present and has led to ambiguity and disputes around customary land rights in the region. After a two-decade long insurgency by the Lord's Resistance Army (LRA), relative stability slowly returned in 2006. The post-conflict recovery since then has been marked by complicated land conflicts and land-related grievances (Atkinson & Hopwood, 2013). During the war, the entire rural population was forced to leave their homes and move to Internally Displaced Persons (IDP) camps. Upon their return, many communities were unable to settle back on their former homesteads, farm- and grazing lands. Some found their land occupied by others, often by predatory military and political elites who took advantage of the vast population displacement. Moreover, social and demographic changes during the war years have complicated notions of land ownership. The Acholi sub-region is predominantly under customary tenure, where land is neither registered nor titled in official cadastres.

[34] A number of domestic and international NGOs and international donor organisations, in collaboration with the Ugandan Ministry for Lands Housing and Urban Development (MLHUD), are implementing programmes to promote the issuance of CCOs across Uganda's customary lands. For example, the UN Food and Agriculture Organisation (FAO) has implemented CCO titling in the district of Kasese in Western Uganda and is now rolling out further programmes in Adjmani in northern Uganda. The German development organisation *Gesellschaft fuer Internationale Zusammenarbeit* (GIZ) is currently launching a CCO titling porgramme in the northern districts of Teso and Soroti. The relief and recovery organisation ZOA has supported CCO titling in Nwoya, in northern Uganda. Other initiatives for rolling out CCO titling are coming from the UN International Fund for Agriculture Development (IFAD) in Masindi (Western Region), Apac and Oyam (Northern Region).

The war has severely weakened the social and economic institutions underlying this form of tenure (Sjoegren, 2013): During the time spent in camps, many elders and traditional chiefs, who were most knowledgeable about customary laws and the boundaries of the land in their home areas, died, leaving behind fragmented knowledge of land ownership and demarcations. The war further weakened rural livelihoods, the impact of which is still felt today. Among other factors, the ongoing theft and looting of livestock during the war led to economic decline and widespread poverty in the region. This, in turn, heightened the competition over natural resources and fuelled distress-sales and -leases of land. As a consequence, wealthy individuals, groups, investor companies, and the government have been able to acquire land at relatively cheap prices. Today, a general trend of growing uncertainty, insecurity and competition over land ownership is visible in the Acholi region. This is further complicated by the influx of nearly one million South Sudanese refugees (UNHCR, 2018) since the eruption of protracted conflict in 2013 in South Sudan, who require land in order to sustain themselves.

A particular type of contestation in northern Uganda, especially in the Acholi sub-region, revolves around the notion of *customary* versus *public* land. Public land, as noted above, is managed by District Land Boards (DLB) at the local level, who can issue leasehold titles to individuals, groups or companies. Obtaining a freehold or Mailo title, or a CCO, is impossible on such land. The Ugandan government claims much land in the region as public land. But the label of public land is often strongly contested by local communities, who argue that the land in question is their ancestral customary land. The issue flares up when land is privatized, or investments are made as people are told that they are illegally squatting on 'public land' and to vacate the area. It seems that the government is using the concept of 'public land' to secure and control land and redirect it to commercial investors in northern Uganda. It is hard to apply the international guidelines when there is fundamental dispute over the legal status of different claims or ambiguity about which law applies and when local claims to customary land rights have no clear or undisputed status in Ugandan law.

3.3 Conclusion

In this chapter, I presented and discussed various land tenure regimes and the formal-legal framework around land in Uganda. I discussed in particular the kinds of land user rights that

arise on each land tenure regime in Uganda (Freehold, Mailo, State-land, Customary land), and the way these rights are recognized and protected by the Ugandan state. I show that there is considerable variation amongst the tenure regimes in this regard. Whereas land rights on private Freehold and Mailo land are firmly enshrined in Uganda's formal-legal framework, claims to legitimate land user rights on state-land are not recognized. Another scenario is presented for customary land, where unregistered customary land rights are *de jure* recognized in the country's legal framework but are in practice often not protected.

I argue in this thesis that the extent to which international guidelines for responsible investments can gain traction in particular land-acquisition settings depends on the type of tenure regime governing the land in question, and the status of state recognition of the land rights arising on these tenure regimes.

Chapter 4: Case Studies in Uganda[35]

In this chapter, organised in four parts, I present cases of land investments on three different types of land tenure regimes in Uganda, private (Mailo) land, state land, and customary land. These cases support my argument, that the extent to which the invocation of international guidelines in investment projects can gain traction in mediating conflicts and protecting local land rights varies depending on the type of tenure regime governing the land in question. Section 4.1 contains case studies on private Mailo land, where land rights are recognized, legible (documented), and enforceable in a court of law. I show that international guidelines invoked in investment projects on Mailo land can gain traction to force the government to honour its own laws, as well as conform to international best practice standards. Section 4.2 covers case studies on state-land, where local land (user) rights are not recognized by national law. International guidelines have no legal basis to protect these in cases of large-scale land investments on state land, and mostly fall flat. Finally, Section 4.3 analyses case studies on unregistered customary land, where land rights are subject to ambiguity and are not recognized unproblematically, in and of themselves. For these cases, I have observed global norms being instantiated and appearing in investment cases in innovative ways, often driven by private investor initiatives themselves.

4.1 Large-scale Investments on Mailo Land

The following two case studies are typical of dynamics emerging around large-scale land investments on Mailo land. Due to the multilayered and often-confusing structure of occupancy claims on Mailo land, conflict emerged during the implementation phases of the projects. These conflicts were addressed and redressed in legalistic ways (i.e., court cases, grievance mechanisms etc.). Mailo land rights are formally recognized and protected by the Ugandan government, and therefore constitute graspable and legible claims for actors invoking international guidelines for responsible investments.

[35] A version of chapters 3 and 4 on Uganda has been turned into an article in the *Journal of Development Studies* (DOI 10.1080/00220388.2021.1983165). Some sections in this chapter are the same as in the journal article, including three of the case studies. These are the 'Vegetable Oil Development Project (VODP)' on Mailo land, the 'Busoga Forest Company' on state-owned land, and the 'Atiak Sugar Factory' on customary land.

4.1.1 The Vegetable Oil Development Project (VODP)

In 2003, the Vegetable Oil Development Project (VODP), formerly known as the Oil Palm Uganda Limited (OPUL) project, was established as a public-private-partnership between the Government of Uganda and two international palm oil companies, the Kenyan company BIDCO Ltd. and the Singaporean company Wilmar International. The Government of Uganda owns 10% of the shares of the VODP project. The project was funded by the International Fund for Agricultural Development (IFAD) and supervised by the World Bank (Vorlaeufer et al., 2018). Located off the shores of Lake Victoria, on Bugala Island, in Kalangala District in Central Uganda, operations under Phase 1 began in 2003. The island comprises an area of approximately 270 km2. 16,000 hectares were initially allocated for the development of oil palm plantations (Carmody & Taylor, 2016). In late 2017, the second phase of the VODP project included the expansion of the project to neighboring Buvuma Island in Buvuma District, where the cultivation of another 10,000 hectares of palm oil was planned. (Interview with company representative, 30 August 2018).

The government committed to identify and allocate 6,500 hectares of land to BIDCO and Wilmar, which was to be 'free of encumbrance' (i.e., free of claims to land ownership or use by local communities), and suitable for agricultural production under a 99-year lease (IFAD, 2011). Approximately 3,000 of the 6,500 hectares were retrieved from formerly public land and 3,500 hectares were purchased by the government from private Mailo landowners and tenants. As a partnership between the private sector, the government, and farmer organizations (Kalangala Outgrower's Trust), and funded by international organizations, the project was considered an 'example of innovation in development cooperation' (Barbanente et al., 2018, p. 8). Due to the strong presence of reputable international organizations directly overseeing the investment, the project was subject to international codes of conduct, in particular the IFC Performance Standards, and IFAD's Environment and Natural Resource Management Policy, Social Environmental and Climate Assessment Procedures and Climate Change Strategy. The VODP nucleus estate was further developed in line with the guidelines of the Roundtable on Sustainable Palm Oil (IFAD, 2011, p. 44).

Recommendations contained in international guidelines featured at many stages of the project implementation. Particular attention was given to securing local land rights. The government set up a Land Acquisition Task Force to carefully monitor the Mailo land purchases. Land acquisition was based on a 'willing buyer – willing seller' concept (Barbanente et al., 2018, p.

13), and the principle of Free Prior Informed Consent (FPIC) was applied for both landlords and tenants.

However, the Mailo land purchases posed several challenges to the project. Due to a complicated history of population displacement during the colonial era, much of the Mailo land on the islands belonged to 'absentee landlords' and has, over the years, been settled by a mix of Mailo occupants, some of which claimed legal or bona fide tenancy status, as well as those the law considers to be 'squatters'. This multi-layered structure of Mailo land claims has complicated the process of land purchases since disentangling ownership and tenancy rights, lack of consent by absent landowners, and disagreements over boundaries took time and resulted in land-related disputes in some instances (Barbanente et al., 2018, p. 13). These quickly captured the attention of donors, civil society, the government and the investors, who responded swiftly and diligently. NGOs supporting local communities referred to national legal requirements for protecting Mailo land rights as well as to international guidelines to pressure the government and the investors to conform to 'best practices' for responsible land acquisition. NGOs also invoked the use of grievance mechanisms, provided by the international financial organizations involved in the project. In 2016, the NGO Friends of the Earth, together with the Ugandan NGO National Association of Professional Environmentalists (NAPE), filed a complaint about the activities of one of the foreign investors, BIDCO, at the Social and Environmental Compliance Unit of the United Nation's Development Program (UNDP) (Vorlaeufer et al., 2018, p. 15). This was possible since BIDCO is a member of UNDP's Business Call to Action Alliance, a global advocacy platform promoting pro-poor business models. The complaint against BIDCO accuses the company of violating guidelines by causing displacement of land users and environmental harm (Vorlaeufer et al., 2018, p.15). In early 2017, NAPE filed a further complaint to the International Finance Corporation (IFC) on behalf of the Bugala Farmer Association. This avenue for grievance claims was possible since BIDCO was partially funded by the IFC.

The provision of grievance mechanisms is part and parcel of most international institution-specific principles for responsible investment. For example, the UN Guiding Principles on Business and Human Rights state that 'business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted' (United Nations, 2011, Art. 29). I consider the use of grievance

channels by local communities and NGOs to be part of a larger repertoire of strategies for pressuring governments and investors to conform to international guidelines.

The involvement of international actors in the project, the advocacy by NGOs and the use of international grievance mechanisms had substantial effects on the further development of the project. The complaint filed by NAPE to the IFC resulted in the establishment of a voluntary dispute resolution process between members of the Bugala Farmer Association, BIDCO, the Ugandan government, and aggrieved Mailo landowners, resulting in the granting of compensation payments to all Mailo tenants and people living on the land, regardless of their legal status (Barbanente et al., 2018, p. 14). The investors also changed their land acquisition strategy for the expansion phase to Buvuma Island. According to a VODP representative, '[l]and challenges are even higher in Buvuma Island. So here we decided to simply compensate everyone, regardless of the status of the tenant' (Interview with company representative, 30 August 2018). The project thus surpassed the requirements of Uganda's formal-legal framework, which only requires compensation for 'lawful' and 'bona fide' tenants, and compensated all people living on the land, regardless of their status. In line with the principle of FPIC and other international standards of inclusive deal-making, the investors further undertook 'a comprehensive, participatory stakeholder mapping (…), covering all land occupants prior to land acquisition (…) and both owner and occupants must agree on the acquisition.' (Vorlaeufer et al., 2018, p.18).

In sum, despite the occurrence of land conflicts in the first phase of the project, the way these were redressed demonstrates strong political will on the part of the government and the investors to avoid any potential (further) infringement of Mailo rights. This may be partially due to the nature of the project as a high-profile international public-private-partnership. More importantly, I argue, the firm recognition of Mailo land rights in Uganda's laws as well as the history of protection of these claims by the state created the conditions for a legal and transparent procedure of land acquisitions for the project and the possibility for international actors and NGOs to pressure the investors and the government to adhere to international principles, beyond the national legal requirements.

4.1.2 The Kaweri Coffee Plantation

The Kaweri Coffee Plantation Ltd. is a subsidiary company of the Neumann Kaffee Gruppe (NKG) from Germany. It is the largest commercial coffee farm in Uganda covering 2,512

hectares of land. The farm is located around 20 kilometres outside of Mubende town in Mubende District, Central Uganda (Buganda). In this case, the government directly facilitated the investment. In 2000, the government, through the Uganda investment Authority (UIA) purchased 'Plot 99' from a private Mailo landlord. Subsequently, the land was given as a leasehold for 99 years to the Neumann Kaffee Gruppe (NKG) for the establishment of the coffee plantation. The lease contract between the UIA and the Neumann Kaffee Gruppe involved a clause that the land should be 'free of any encumbrance', meaning that there would not be any land claims (user or ownership rights) by people on the land. As specified in the 1988 Land Act, any dealings with land occupants, such as resettlement or compensation was to be undertaken by the former Mailo landowner, thus, the government, in this case.

At the time of the transaction between the UIA and the Neumann Kaffee Gruppe, several thousand people lived on the land. In 2011, around 400 families (over 2000 persons) were evicted from their homes by the Ugandan army.

> They came with the presidential representative of the area and the commander in chief of the Uganda Peoples Defence Forces and ordered for eviction. They gave us an ultimatum of three days. For us, we thought they were not serious, people had to resist because they had no option of where to go.
> (Participant in Focus Group Discussion, 17 May 2018)

The private Mailo plot ('Plot 99') was subject to multiple claims to land rights by various occupants. When asked about their land rights, local communities living in the vicinity of the Kaweri Coffee Plantation insisted that they had legal protection through their 'bona fide' occupancy status. "Most of us were bona fide occupants. We are on Mailo land and a person settling on Mailo land according to the 1995 constitution, 12 years back, is a bona fide occupant." (Participant in Focus Group Discussion, 17 May 2018).

In this case, these claims were seemingly violated by the government. My interviews revealed that there was widespread confusion and lack of consensus among government representatives about the land tenure regime at the implementation stage of the project, which had grave implications for the recognition and protection of land user rights (Interviews with district-level government officials, 15 and 16 May 2018). For example, some government officials argued that the land was government land and that the claimants had no legal status and were

'squatters' on the estate (Interview with district-level government official, 15 May 2018), while others insisted it was a freehold plot (Interview with district-level government officials, 15 and 16 May 2018). On both state land and freehold land, the concept of legal tenants and occupants does not exist, as this is a unique feature of Mailo land.

However, the land title (Figure 3) clearly shows that the land remains a private Mailo plot that had changed hands between private owners before it was sold in 2000 to the Ugandan Investment Authority. The land was leased to the German investor (under a leasehold title), but remains a private Mailo plot, with the government as the landlord. In short, the land is still private Mailo land, therefore, tenancy rights falling under private land titles still apply.

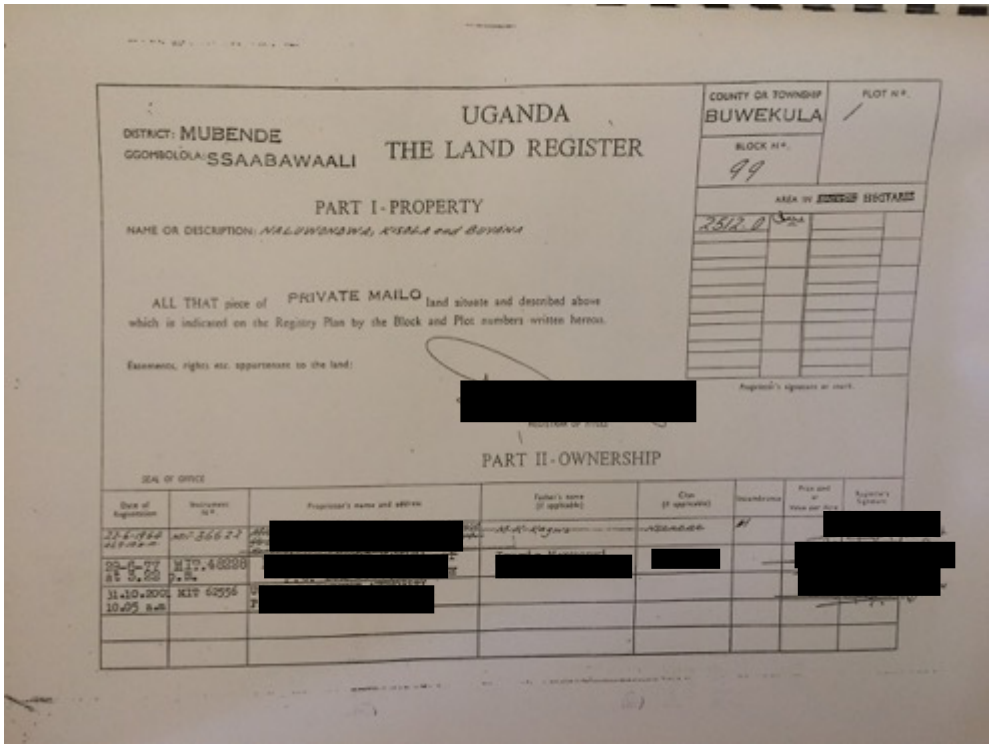

Figure 3. *Private Mailo land title for Plot 99.*
Source: Photo of land title taken by author (2018)

The confusion about the land tenure status of the plot can be partially attributed to a complicated history of Mailo land in Uganda, as well as land reform, unmonitored settlement patterns, and frequent change-over of the land owner. 'Plot 99' had changed hands through legal purchase several times before it was leased out to the Neumann Kaffee Gruppe by the Uganda Investment Authority. The land had previously been used as a groundnut farm and was first recorded under private Mailo title in 1964. Before that, it belonged to the category of

'official' Mailo estates, managed under the administration of the Buganda Kingdom (Interview with land rights activist, 15 May 2018). During the Idi Amin regime (1971-1979), the landowner left the country and only returned in the 1990s. During this time, numerous communities settled on the abandoned estate informally. The Ugandan military also built several army barracks for ex-soldiers in the northern part of the estate. These settlements happened not only during the absence of the landlord, but also after the enactment of the 1975 Land Reform Decree, which suspended all private land titles and extinguished any attached legal recognition of any occupants on these estates. Therefore, the settlement of the land was neither monitored or regulated by authorities and happened gradually and informally. Also, some communities apparently settled on Plot 99 with the help of local customary authorities, who allocated them a part of the land in exchange for a small fee (Interview with district official, 15 May 2018).

Reports of the Kaweri land conflict and evictions of the communities had a major backlash. News of the evictions and Mailo land rights violations caused an outcry that scaled up to the national and international level. Many media outlets, NGOs, and activist groups (i.e., FIAN, GRAIN, Welthungerhilfe) depicted the Kaweri Coffee investment as a prime case of 'land grabbing'. Evicted communities were able to mobilise and gather the attention and support of NGOs, activist networks and human rights groups at both national and international levels. The grassroots protest movement *Wake Up and Fight for your Rights* was formed to represent the aggrieved land users.

Several NGOs at the national and international level became involved in drawing attention to human rights and land rights abuses and the non-conformity to national laws and international guidelines in the case. For example, Action Aid Uganda supported local communities in their response to the evictions and reported widely on the case. In addition, the Food First Information and Action Network, an international human rights network, dedicated substantial resources to the support of evicted communities.[36]

[36] This mobilisation between domestic societal groups and transnational activist networks to draw international attention to human rights violations is in line with Risse et al.'s (1999, 2013) theories of norm diffusion and is particularly described in stages 2 and 3 of their 'Spiral Model' of norm socialisation.

In 2001, shortly after the evictions, they supported the communities in filing a lawsuit against Kaweri Coffee Ltd. and the Ugandan Government. After bureaucratic delays over the course of several years, the judge at the Nakawa High Court ruled in the favour of the local communities claiming legal Mailo occupancy rights in 2013. The judge ruled that the evictions had violated the Mailo land rights of the aggrieved communities. This clearly shows that these rights have some legal standing in the formal-legal framework. However, the case was further complicated and dragged out by a back-and-forth shifting of blame between the government and the foreign investor. The Judge ordered Kaweri, not the government, to pay compensation payments amounting to EUR 11 million (Fian International, 2013). The judgement thus did not sanction the Ugandan government (i.e., the Ugandan Investment Authority and the Ugandan Army) for the evictions. Kaweri's lawyers appealed against the judgment in 2013 and the case kept reappearing in the High Court of Uganda over the last decade. This culminated in a 2019 court-ordered mediation procedure and settlement agreement. The government agreed to pay compensation without interest, and most of the aggrieved families agreed to the settlement (Mutaizibwa, 2021).

Further reference to international codes of conduct was made by activist networks through the utilisation of an international grievance mechanisms, which is an inherent feature of most international guidelines. In 2009, the evicted communities, with support by the Germany Division of FIAN initiated a formal complaint against the Neumann Kaffee Gruppe (NKG), the parent company of the Kaweri Coffee Plantation, at the National Point of Contact (NCP) for the OECD Guidelines for Multinational Enterprises. Neuman Kaffee Gruppe, as an international investor is held to adherence to these guidelines. The official complaint accuses the company of violating the OECD Guidelines that require investment companies to conform to national laws and policies and respect the human rights of those affected by their investment in the host countries. This prompted an investigation and hearing of different parties by the German NCP of the OECD, in the Federal Ministry of Economy and Technology. Two years later, the NCP concluded that the accusations against the Neumann Kaffee Gruppe were unfounded, since the company had acted in 'good faith' that the land it was leasing was 'free of encumbrance', as it had been promised to the company (Neumann Gruppe, 2016). The NCP referred the responsibility back to the Ugandan government to protect the land rights of those using the land, in accordance with national law.

Nevertheless, the reputational and financial repercussions for the investor company have been significant. In the investor's home country of Germany, reports on the case have triggered a heated debate over 'landgrabbing' and the role of German corporations in the Global South. The Neumann Kaffee Gruppe had to justify and defend its actions on multiple occasions. The case gained such attention in Germany that the country's then-Federal Minister of Economic Cooperation and Development, Dirk Niebel, became involved and addressed the NGO FIAN International in their campaign against the Neumann Kaffee Gruppe in 2013 (Brämer & Ziai, 2016). Outside of Germany, the case also featured in a 2016 publication by the Policy Department of the Directorate-General for External Policies of the European Union. The study entitled 'Land grabbing and human rights: The involvement of European corporate and financial entities in land grabbing outside the European Union' (Borras et al., 2016) strongly criticized the company as well as Germany's role in supporting such investments and tolerating human rights and land rights violations (Borras et al., 2016, p.17).

In sum, this is a case in which the Ugandan government basically did not conform to its own land laws. Mailo occupancy rights and procedures on compensating Mailo land users in case of eviction are enshrined in the formal-legal framework. The violation of these land rights and the evictions triggered a backlash and international outcry. For one, the court case against the company and the government was won in favour of the aggrieved communities whose legitimate rights to the land were confirmed at the Nakawa High Court and compensation payments were ordered. Numerous media outlets have reported internationally on the company's and the government's disregard of local land rights and lack of consultations and due diligence mechanisms – core principles in most international codes of conduct for responsible investment (i.e., as in the VGGT, PRAI, FPIC etc.). Finally, the utilisation of a grievance mechanism at the National Point of Contact (NCP) for the OECD Guidelines for Multinational Enterprises and the two-year assessment of the case shows the level of importance accredited to this case.

I argued that on private (Mailo) land, civil society actors and other who are invoking global norms for responsible investment can act as 'watchdogs' and pressure the government to uphold its own land laws, as well as invoke international guidelines to seek formal conflict redress. This is precisely what happened in this case. The grievance procedures worked to place the 'fault' back on the Ugandan government for violating their own land rights and their contract with the Neumann Kaffee Gruppe.

Conclusions for investments on Mailo land

The two case studies on Mailo land discussed above portray very different projects. One is a multi-stakeholder, public-private development cooperation project and the other is a project implemented by a single foreign private investor. Both cases show how Mailo land gives rise to a multi-layered structure of formally recognized claims to land rights. In both cases, the purchase of Mailo land by the government triggered tensions or conflict with regards to claims to legitimate authority over land by various categories of land occupants, ranging from 'legal tenant' to bona fide occupant, to 'squatters'. The complex structure of Mailo occupancy claims has deep-seated political and historic roots. Particularly the problem of 'absentee landlords', either due to civil unrest under the Idi Amin regime (in the case of the Kaweri Coffee Plantation) or state-led evacuations of entire regions due to sleeping sickness eradication strategies (in the case of OPUL), caused and perpetuated the problem of overlap in land rights and the confusion over the legal status of land occupants. However, these challenges do not take away from the firm cementation of these Mailo land rights in the formal-legal framework and their enforceability in a court of law, which is the basis for civil society groups to hold the government accountable to their own laws as well as to pressure the government to adhere to further international guidelines.

In both case studies, the conflicts and tensions in relation to land claims by occupants on private Mailo land have resulted in the following:

- They quickly scaled up not only to the national but also the international levels. They were 'visible' conflicts that sparked an outcry about land rights violations and 'landgrabbing'.
- They prompted a fierce reaction from activists and NGOs at the national and international levels, who campaigned and advocated against these land rights violations.
- Occupant rights were affirmed and protected in a Ugandan court of law (in the case of the Kaweri Coffee Plantation)
- They provided the basis to launch complaints through international grievance mechanisms inherent in international guidelines, which led to visible changes in the behaviour of investors and the project strategies (particularly for the case of OPUL).

In the case of the Vegetable Oil Development Project (VODP), emerging disputes around overlapping Mailo occupancy rights were 'visible' conflicts that were rapidly addressed in legalistic ways by the government and the investors. Through the funding and supervision by IFAD and the World Bank/IFC, an important link to the international arena and 'outside influence' was established. NGOs took up an active 'watchdog' role to protect Mailo land rights and supported aggrieved Mailo land users in filing grievance reports to these organisations, which were decided in their favour and led to an altered strategy for the next land acquisition phase of the project: In order to avoid further potential disputes over overlapping occupancy rights, and to ensure the principle of FPIC, the company decided to compensate all land users even though national law only required the compensation of Mailo tenants with official lawful and bona fide status.

In the case of the Kaweri Coffee Plantation, land occupants were evicted by the army and initially lost their land rights. However, the consequences and repercussions that followed this demonstrate how occupant rights in Uganda, as legally protected land rights, do carry substantial weight. The evictions were widely reported in national and international media forums as land rights and human rights violations. NGOs at the national and international level became involved in advocacy work for the communities. International guidelines were invoked by NGOs and aggrieved communities in many ways, and used as reference points in Uganda, Germany (origin of investor), and at the international level. The conflict was redressed in a legalistic way and a Ugandan judge ruled in favour of the occupants and ordered compensation payments. In this case, the government did not honour its own laws and did not recognize the legal status of Mailo land occupants. But since these rights are *de jure* recognized by law, the aggrieved communities, together with activists and media outlets, were able to hold the government accountable and, beyond this, invoke the international guidelines to draw attention to and help protect these rights. In sum, for Mailo land rights, conflicts are frequent but are handled in legal or legalistic ways (i.e., court cases, grievance mechanisms laid out in international conventions and guidelines).

4.2 Large-scale investments on state-owned land

The two cases discussed in this section are representative of dynamics emerging on state-owned land, in particular on state-owned central forest reserves. Diametrically opposed to the cases on Mailo land, the government does not recognize claims to land rights emerging from

land users on state-owned forest reserves. Conflict related to claims to land by forest-dwelling and using communities during the implementation of the investment projects were not redressed in legalistic ways. Reference to global governance mechanisms did not lead to the resolution of land conflicts or the protection of local claims to land rights.

4.2.1 The Busoga Forest Company

In 1996, the Government of Uganda, through the National Forestry Authority (NFA) granted the Norwegian Company Green Resources over 11,000 hectares of forest land within two of its state-owned Central Forest Reserves for the purpose of plantation forestry and the restoration of degraded forest land. The company now manages two pine and eucalyptus plantations in the form of 49-year lease concessions. The licensed area under the name Busoga Forest Company, which constitutes this case study, covers over 9,000 hectares of the Bukaleba Forest Reserve on the northern shores of Lake Victoria, in Mayuge District, Uganda's Eastern Region. The company's other plantation, the Kachung Forestry Project, covers 2,669 hectares in Dokolo District, Northern Uganda. The Bukaleba Forest Reserve is one of 506 state-owned Central Forest Reserves under the management of the NFA. These Reserves fall under the category of 'public land' at the national level. The central government is effectively the 'landlord' and can lease out these forests (or parts thereof) by way of concession, license or permit (MLHUD, 2013b, p. 27). Leases to private individuals are prohibited and it is illegal to pursue subsistence farming, livestock grazing, or similar non-forestry related activities inside these Reserves (NFA, 2003).

The implementation of the Busoga forestry project triggered a myriad of conflict dynamics. When Green Resources first acquired the investment license in 1996, several communities, comprising around 15,000 people, were located inside the forest area licensed to the company. In 2000, the NFA evicted people from the Reserve claiming they were 'squatters' on state-owned land. Some communities managed to avoid evictions and remained in a cluster of villages inside the Reserve.

Not all forest dwellers claim to have legitimate land rights in the forest. Some acknowledge that it is state-owned land to which they have no formal right but argue that they have 'nowhere else to go' and no material means to resettle (Focus Group Discussion, 13 July 2018). Others are adamantly defending the legitimacy of their land rights on the basis of two different historical claims. One group argues that they migrated into the area in the 1970s to work on a

state farm inside the forest and were given land by the Idi Amin regime. They claim they have lived there for several decades, invoking a 'bona-fide' settlement status. Others argue they have ancestral (customary) land rights in the forest reserve from the pre-colonial era. After being forcibly evicted as part of the Tse Tse fly eradication programmes led by the colonial government in the Lake Victoria region in the first half of the 20th century, these people claim to have returned to their ancestral land in the 1980s (Focus Group Discussion, 13 July 2018).

The NFA does not consider these communities to have legitimate land rights in the forest and refutes the notion of 'ancestral land' altogether. 'They are playing the political card and it is basically all about political bargaining.' (Interview with government official, 6 June 2018). In 2011, after ongoing tensions over the issue of forest dwellers in the project area, President Museveni issued a directive to allocate 500 hectares of the company's licensed area to these communities. This, however, did not resolve the conflicts. Instead of land being 'allocated' to communities in a formal and legalistic manner, the situation is better described as an extra-legal 'toleration' of communities to stay in the forest. Without land titles or other documentation, their land tenure status remains unresolved and in a legal grey zone. There is no formal procedure in place to legally carry out the presidential directive to give 500 hectares of forest land to communities. This caused substantial confusion: On the one hand, communities are 'tolerated' to stay and cannot be evicted anymore. But the NFA still invokes laws about land use inside forest reserves, which strictly prohibit non-forest related activities. In many cases, people were arrested, and their cattle confiscated (Focus Group Discussion, 13 July 2018). The communities are effectively still treated as 'encroachers':

> The problem is that this agreement [to hand over 500ha] was made on a loose communication by the president. (…) There is no individual nor an institution that is assigned to follow through on this or follow up. It was merely a political move. In the meantime, we are still seeing the people living there as encroachers. We are chasing away the grazers, who bring their livestock into the forest.
> (Interview with government official, 6 June 2018).

Referring to the illegal nature of 'encroachers' in Central Forest Reserves, as outlined in Uganda's formal-legal framework, the company also does not recognize a legal basis of land rights for these communities.

> If you were to use the law, if you were to use any forms of (…) regulation, then all those people would be gone by tomorrow. And they [the communities] would never go to any court of law to win any sort of case because they have no grounds.
> (Interview with company representative, 6 June 2018).

Considered a matter of national jurisdiction, the company effectively deferred the responsibility to deal with land issues back to the Ugandan government. "We do not have the tools nor the mandate to deal with [evictions]" (Interview with company representative, 6 June 2018). In the absence of government action to resolve the question of forest dwellers, the company started to apply 'soft' pressure to get people to leave the forest. By financing schools and hospitals outside of the Reserve, they aimed to incentivize people to relocate. They also continued to cultivate tree plantations in close proximity to the villages, which substantially limited the communities' farming and livelihood possibilities, thus driving them out (Interviews with company representatives, 5 and 6 June 2018).

In this case, international actors invoked global governance mechanisms as part of forestry certification schemes with regards to sustainable tree planting practices, climate change mitigation strategies, and biodiversity safeguarding (Interview with company representative, 6 June 2018; Green Resources, 2016, p. 7). In 2011, the Bukaleba Forest Plantation was certified by the International Forest Stewardship Council (FSC), and, in 2012, as an Afforestation and Reforestation project under the Verified Carbon Standard (VCS), a system to certify carbon emissions reductions. Despite the invocation and use of these guidelines and certification instruments, the land rights of forest dwellers and the protracted conflict surrounding the remaining communities inside the Reserve remained unsolved and unaddressed by the government, the company, and international and civil society actors.

The lack of mobilization by NGOs - usually acting as 'watchdog' organizations - in response to the plight of forest dwelling communities is further striking in this case, particularly in comparison to the well-documented case of the company's sister plantation in northern

Uganda.[37] I argue this lack of engagement on the part of international actors and NGOs in this case comes as the result of the *de jure* non-recognition of land rights of forest dwellers in Uganda's legal framework. Instead of addressing the ambiguous, illegible and historical claims to land rights of forest communities, international guidelines invoked in this case focused exclusively on environmental aspects of the project. In applying 'soft pressure' to incentivize communities to relocate, the company was seemingly forced into action by institutional paralysis, and the lack of guidance from the international instruments.

4.2.2 The New Forest Company

In 2005, the National Forest Authority granted the UK-based company New Forest Company (NFC) a license to develop three forest concessions in Uganda. The NFC is funded by numerous international financial and development organisations and private equity funds, including the European Investment Bank (EIB), the HSBC Bank, and the AgriVie Agribusiness fund, an agricultural investment firm funded itself by the World Bank/ International Finance Corporation (IFC). One of the three plantations covers 8,958 hectares within the Namwasa Forest Reserve in Mubende District and one 9,383 hectares within the Luwunga Forest Reserve in neighbouring Kiboga District, in the Central Region. A third plantation is located in Bugiri District, Eastern Region. This case study is focussed only on the plantations in Mubende and Kiboga District.[38]

At the time of the deal making, the area inside the forest reserves allocated to the New Forest Company was inhabited by numerous communities, who were considered to be 'illegal squatters' by the government. Large-scale evictions took place between 2005 and 2010 by the Ugandan army and police. The exact number of evictees is disputed but can be estimated to be between 15.000 and 30.000 people (Lyons, 2017). The evictions led to conflict between the aggrieved communities, the government, and the company. People inside the forest reserve claimed legitimate rights to use and live in the forest on the basis of (historical) land allocations

[37] In contrast to the Busoga Forest Company project, the Kachung Forestry Project has been subject to substantial international media coverage (i.e., Edstedt & Carton, 2018; Lyons & Ssemwogere, 2017). This may be due to fact that this investment is a fully certified international 'carbon offset' project, selling carbon credits to the Swedish Energy Agency, and therefore part of topical debates on the 'financialization' of carbon and 'triple-win' narratives.

[38] My fieldwork in this case was more limited compared with other cases. This was largely due to difficulties in accessing local communities, as well as the refusal of the New Forest Company staff to speak with me. However, I was able to supplement this case study with available secondary literature and media reports.

by previous regimes. Similar to some of the evicted communities in the case study of the Busoga Forest Company, the evicted communities in Kiboga district claimed they were invited into the forest reserve in the 1970s under the Idi Amin regime (Interview with NGO staff member, 17 August 2018; Grainger and Geary, 2011, p.3; Zagema, 2011, p.16). Their rights to live in and use the forest were since then recognized by subsequent regimes, allowing them to build permanent structures and expand their villages. As Grainger and Geary observe, "they had functioning village and government structures, such as local council systems, schools, health centres, churches, permanent homes, and farms on which they grew crops to feed themselves and surpluses" (2011, p.3). In Mubende District, many of the evictees claimed that they inherited the land from their fathers or grandfathers, in recognition of their service during the Second World War, having fought for the British Army in Egypt and Burma (Grainger & Geary, 2011, p.3). Other community members claimed they acquired the land through purchase, inheritance or as gifts during the 1980s and 1990s (Zagema, 2011, p.16). Further, some members of the evicted communities were Rwandan refugees, fleeing the Rwandan genocide in the 1990s and settling in the reserves (Focus Group Discussion, 9 August 2018). The government, however, did not recognize any of these claims to land rights of the forest dwelling communities. In the government's view, the eviction of communities was justified as people living in the forest reserves had no rights to be there and were 'illegal encroachers'.

In this case, the Ugandan branch of the international NGO Oxfam and the national NGO the Ugandan Land Alliance (ULA) heard of the case and got involved to investigate the apparent land rights violations. In 2011, they published a much-cited report (Grainger & Geary, 2011) that called attention to the evictions and labelled the NFC project a prime example of 'land grabbing'. Oxfam and ULA also mobilised the evicted communities in filing two court cases against the project, one for the aggrieved communities in Mubende District, and one for those in Kiboga District. The cases were presented at the Uganda High Court, where the communities claimed they were wrongfully evicted as they had legitimate rights to the forest land, either on the basis of a 'bona fide' occupant status (having lived on the land for over 12 years before the Constitution of 1995), or as customary landowners (Interview with NGO staff member, 17 August 2018; Zagema, 2011). The Uganda High court initially issued an injunction on the ongoing evictions, while a full hearing was to take place. However, after about a year, both court cases were dismissed by the Court on the grounds that the plaintiffs were illegally using government-owned forest land and that the New Forest Company cannot be sued as it is not the landowner (NFC, 2011b). None of the court cases were brought against the government

directly. This court judgement demonstrates and reaffirms the non-recognition of forest user rights in Ugandan law.

The 2011 publication on the case by Oxfam and the ULA triggered a wave of interest and media coverage that scaled up to the international level. For a while in 2011, this caused a substantial but short-lived public relations crisis for the NFC. The wave of accusations of 'landgrabbing' against the company also cast the spotlight on the international financial and development organisations that were funding the project, as well as on the Forest Stewardship Council – institutions that all claim to uphold high social and environmental standards (Zagema, 2011).

The European Investment Bank had invested around US$ 5 million in the NFC and financed the AgriVie Agribusiness fund, a main shareholder in the New Forest Company. EIB's Environmental and Social Principles and Standards, include a standard on involuntary resettlement. However, according to the 2011 Oxfam report, the EIB found nothing wrong with NFC's operations in Uganda and stated that "it is satisfied by the project's Environmental Impact Assessment, and that it believes NFC to have acted within its rights" (Grainger & Geary, 2011, p. 9). The HSBC Bank had invested US$10 million in the NFC operation in Uganda. HSBC also has several 'sustainability' policies including for sensitive sectors such as 'forest land and forest products'. Despite the allegations brought against the company, the HSBC stated that they are satisfied that the NFC operation met their policy standards, subject to the company meeting the certification standards outlined by the Forest Stewardship Council (Grainger & Geary, 2011, p. 9).

The Forest Stewardship Council had certified two of the three NFC plantations (in Mubende and Bugiri District) through the FSC-accredited certification body SGS Qualifor. SGS inspects, audits and certifies forest plantations against the FSC principles and criteria. In response to the allegations and media coverage of the evictions at the Namwasa plantation in Mubende District, the Forest Stewardship Council launched a formal complaint to the SGS Qualifor for their certification of the New Forest Company plantation in Mubende over possible breaches of several of the FSC criteria. In response, SGS investigated the case and produced an audit report. The report (Henman-Weir, 2011) concluded that the New Forest Company was "not in breach of criteria 2.2, 2.3 and 4.5, as suggested by FSC, based on the Oxfam reports about "'land grabs' that were recently sensationalised" (Henman-Weir, 2011, p.3). The FSC

thereafter closed its investigation into the case in 2014 and referred to the 'successful' mediation process undertaken by the IFC – CAO investigation (FSC, 2014).

Further, the IFC had provided a US$7 million loan to the AgriVie Agribusiness Fund to support the investment project. In response to the media uproar around the case, the IFC tasked the Compliance Advisor Ombudsman (CAO), the independent accountability mechanism of the IFC, to investigate the allegations. In January 2012, a CAO team travelled to Mubende District, and launched a mediation process with representatives of the aggrieved communities and the NFC (CAO, 2018). According to CAO's assessment and dispute resolution conclusion report, the affected communities, together with their legal advisors, agreed on a formal settlement between the communities and the NFC in July 2013. This settlement set out a range of vague agreements and action points. On the part of NFC, this included to provide support to the Mubende community and increase its corporate social responsibility programme (CAO, 2018). The communities, in turn, "agreed to respect NFC's legal rights to operate within the Namwasa Central Forest Reserve" (CAO, 2018). In addition, land was apparently bought outside of the forest reserve to be allocated to the communities for resettlement (Interview with former ULA member, 18 August 2018).

However, as Lyons et al. (2017) observe, "[t]he settlement (…) was limited to supporting unspecified 'community development projects' and the residents have not been allowed to return to their land" (2017, p. 332). This shows that while these mediation efforts on the part of the IFC were aimed at the enhancement of the situation and livelihoods of some of the evicted communities, there was no engagement with the unresolved question of the communities' claim to land rights in the forest. It seems that the issue of land rights was circumnavigated, and the focus was cast on 'making the best of the situation' for the evicted communities rather than actually engaging with or protecting their claims to land rights in the forest. This reinforces my argument that international organisations invoking global codes of conduct are unable to protect and secure local land rights if these rights are not recognized by law as a minimum condition.

The government persisted in its position that the aggrieved communities had no legitimate rights to use or live in the forest and that they were illegally encroaching on government-owned land. The international uproar and criticism of the case was quickly quenched by the Ugandan government, who backed the New Forest Company and in turn targeted the NGOs who had

reported on the case (Lyons et al., 2017). Oxfam and the Uganda Land Alliance, the NGOs responsible for 'raising the alarm' on the case, and who acted as legal advisers for the evicted communities during the (failed) court cases faced a backlash by the government and were threatened with de-registration (Interview with NGO staff member, 17 18 August 2018; Reuters 2012; The Guardian, 2012). The Ministry of Internal Affairs called on Oxfam Uganda and ULA to formally apologize to the person of the president and the Ugandan people for 'lying' about the government's role in the evictions, 'inciting violence' and spreading wrong information to the IFC (Interview with NGO staff member, 17 August 2018). An investigation by the Ugandan NGO board followed, recommending retraction of all publications on the case and that the NGOs should lose their operating license if they did not apologize. In the end, neither NGO was formally de-registered. But according to a Reuters report (2012), the ULA made a public statement, expressing regret for "inaccurate or speculative statements that the media might have made when writing on the content of the report and apologized for misunderstandings" (2012).

Conclusions for investments on state land

In sum, these cases show that if national law and the Ugandan government do not formally recognize land use rights on state-owned land, then actors invoking international guidelines and codes of conduct have little basis to lobby for the protection and recognition of these rights. In the case of the Busoga Forest Company, it seems startling that despite the presence of international actors and a multitude of international certification schemes and 'codes of conduct', the claims and grievances of the forest dwelling communities are not addressed by these and remain. The focus of the international frameworks invoked in this project remains mostly on environmental aspects of the investment. Attention on land rights issues fell largely off the radar. In the case of the New Forest Company, in contrast, the land conflict and the grievances of evicted communities did briefly scale up to the international level and provoked an engagement by the international financial institutions backing the project, as well as the Forest Stewardship Council. This was largely due to the 2011 publication on the case by Oxfam and the Uganda Land Alliance, which was propelled into the international arena through civil society and activist networks, to the point that the company and the financial backers of the NFC were unable to ignore these public accusations. However, this international attention and involvement of international organizations did not lead to the protection or recognition of the land rights claimed by the evicted communities. International attention and debate on the case led to mediation and seemingly an amelioration of the living situation of the evicted

communities, but it did not work to alter their legal status as encroachers on government land. The court cases filed by communities in this case fell flat as there was no legal basis for these claims to land rights in the eyes of Ugandan law. Similarly, investigations into the land conflict launched by the international organizations found no evidence of any 'wrongdoing' by the company and the investigations were quickly closed.

Thus, in both cases, questions around land rights were treated by the investors and international organisations as matters of national jurisdiction. This demonstrates the apparent ill-fit of global norms for responsible investments with unrecognized, ambiguous, and 'invisible' land rights claims. Further, in the context of Uganda, these case studies on government owned forest reserves raise wider questions about land rights recognition: How should the Ugandan government deal with local land rights that derive their legitimacy from the public land allocations, de-gazettements, and forest use policies of previous regimes? Can such land rights be simply erased? Also, if the present government has not engaged with the forest communities in decades, indicating its tolerance of these communities, can they now be evicted without compensation?

4.3 Large-scale Investments on Customary Land

In this section, I present a range of case studies of large-scale land investments on (unregistered) customary land in northern Uganda. Customary land tenure gives rise to lots of ambiguity and contestation over land rights. Even though customary land rights are recognized in Uganda's legal framework, they are often not recognised or protected in practice by the government and/or the investor during investment projects. This is especially the case for customary land in northern Uganda, where the history of war and population displacement has largely contributed to confusion and ambiguity around customary land rights. Customary land rights are sometimes outright denied by the state, especially in situations where the government seems to have high stakes in an investment project. But sometimes, there is scope for innovative use of global norms for responsible investments, driven mostly by private investors themselves. In my case studies, dynamics around large-scale land investments, investment-related land conflict and the invocation of global codes of conduct in this region have usually taken two forms. In one type of investment cases (Type A), investors set up a lease contract directly with elite local families, simultaneously facilitating the titling and 'securisation' of their land claims,

in order to subsequently sub-lease the land from them for the purpose of the investment. In the other type of investment cases (Type B), the government played a central role in facilitating the land acquisition for a foreign investor. The land was leased out by the government to investors under the premise of it being 'public land' – held in trust by local District land Boards, or it belonging to nature reserves – managed by the Ugandan Wildlife Authority. In the following, I present five case studies. Three are representative of Type A, and two are representative of Type B, as listed in Table 4. These investment projects are all located in the Acholi Sub-region in Northern Uganda, within Amuru und Nwoya Districts (Figure 4). Figure 5 shows the approximate location of the five case studies within the Acholi sub-region.

Table 4. Overview of cases of large-scale land investment on customary/ public land

Type	Project Name	District in north. Uganda	Form of land acquisition
A	**Amatheon Agri**	Nwoya District	Leasehold from 12 landlord families
A	**Omer Farm**	Amuru District	Leasehold from 4 landlord families
A	**Atiak Sugar**	Amuru District	Leasehold from 1 landlord family
B	**Amuru Sugar Works**	Amuru District	Land allocation by DLB
B	**Apaa Game Reserve**	Disputed: Claimed by Amuru and Adjumani Districts	Land allocation by DLB + UWA + District government

Source: Compiled by author.

Figure 4. *Acholi sub-region, including Nwoya and Amuru Districts, where the case studies are located.*

Source: UNOCHA 2010/ UBOS, 2006, compiled by JICA Study Team.

Figure 5. Approximate location of case studies in the Acholi sub-Region

Source: Adapted by author from Google Maps (2018), using MyMaps.

Type A: Land investments brokered directly with local families

In these three case studies, the investor acquired land through a leasehold (or sub-lease) from a local family or group of families claiming rightful customary land rights to the land in question. The investor plays a central role in the land acquisition process by approaching the family(ies) directly instead of acquiring the land through the state. This 'bottom-up' approach is largely in line with many best practice standards for responsible land investments. During the land acquisition process, the investor facilitated the formalisation of a land title (either leasehold or freehold) for the family(ies) at the local District Land Boards. This resulted in conflict (although contained at the local level) between the lessee families and neighbouring communities or people using the same land and also claiming customary land rights to it. The general call of international guidelines to engage with local land users directly and to protect land rights in these cases was subverted by the conversion of customary land rights to a more 'legible' tenure regime (i.e., Freehold) and by the decision over legitimacy of land rights by the investor and the DLB.

4.3.1 Amatheon Agri Uganda Ltd.

Amatheon Agri Holding N.V. is a German food company and agribusiness active in in Zambia, Zimbabwe and Uganda. The company's Uganda operation, Amatheon Agri Uganda Ltd., started a large-scale agriculture investment in Nwoya District in the Acholi sub-region in 2013. The area is a degazetted game park and now held as public land under the management of the Nwoya District Land Board (DLB). Amatheon acquired 5000 hectares (around 19 square miles) of land as a leasehold directly from the Nwoya DLB. Nwoya District has a total area of 1,828.7 square miles (4,736.2 square kilometres). But all investments in the district are located in the part that is the former Acwa Lolim game reserve and is now designated 'public land' held in trust by the Nwoya DLB in the North-West of the district. The rest of the district is made up of Murchison Falls national park and customary land in the North-East. Figure 6 shows the area that is reserved/ destined for commercial agriculture projects in Nwoya District (in blue), which is the former Aswa-Lolim Game Reserve.

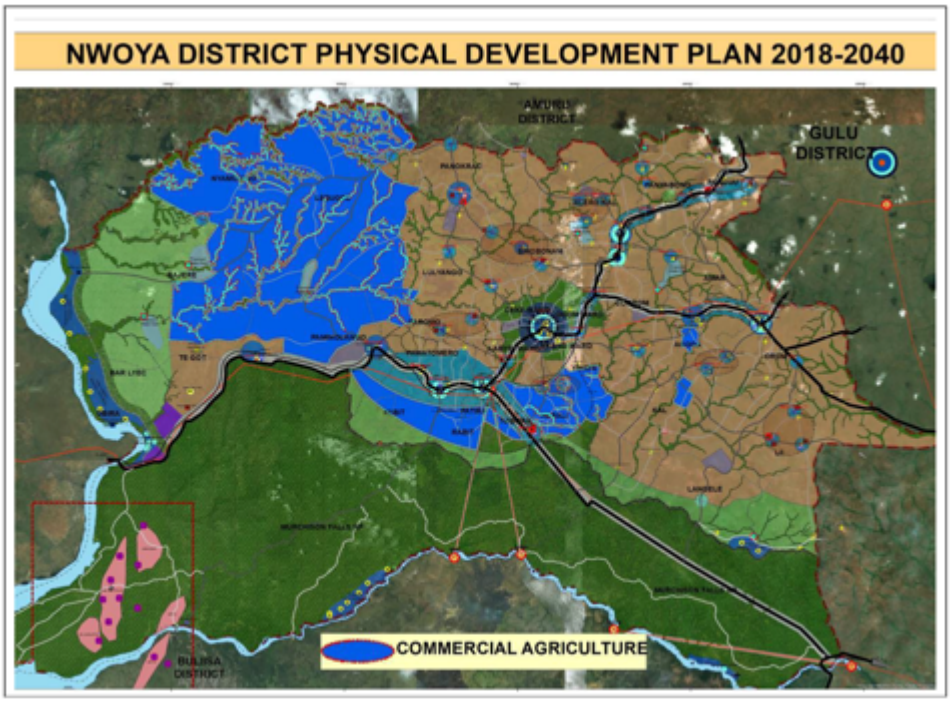

Figure 1-5: Commercial Agriculture areas

Figure 6. *Area designated to commercial farming projects in Nwoya District*
Source: Nwoya District Physical Development Plan – Strategy Document (2018-2024)

Amatheon Agri is one of the largest commercial farms in this area and managed by a foreign investor. The company is sub-leasing land from several local landowning families. Before the project started, these families did not have formal leasehold titles. During the negotiation and implementation phase of the project, the company supported the families in acquiring official leasehold titles at the Nwoya DLB for their respective plots of land, before sub-leasing this land to the company. During this process, the company first conducted their own assessments of landownership to establish who had 'rightful' or ancestral claims to land and who did not. In the absence of formal land titles, the families' claims to historic and ancestral land rights to land in this region lies in a legal grey zone, as the whole area has been officially labelled 'public land' following the de-gazettement of the Aswa Lolim Game Reserve in 1972 (Olanya, 2016). However, numerous families still claim customary land claims inside this area, although these rights remain unformalized.

The company thus took on a challenging land rights assessment and verification process in a context of substantial confusion over land rights in Nwoya District. Claims to land rights for plots of land often overlapped. Many people settled there after the war, some claiming prior

customary land rights (Focus Group Discussion, 31 July 2018). Other families claimed they own rights to the land as it was given to them under the Idi Amin regime (Focus Group Discussion, 31 July 2018). A study commissioned by the German development organisation Gesellschft fuer Internationale Zusammenarbeit (GIZ) describes the verification process of land ownership undertaken by Amatheon:

> Initially, land owners with sufficiently large areas were identified with the support of local brokers. Surrounding communities, elders and elected officials at the local level (village and parish) were then involved to verify rightful ownership, which could be either formalized through leasehold titles or not. During this step, all occupants were identified, their land was mapped, and assets were listed. At the sub-county level, area land committees then verified informal claims of the land. Finally, at the district and national level, formal land ownership was validated. Village representatives were furthermore involved in any land transaction as witnesses. Selling prices and leasing rates were negotiated with owners considering the local land market.
> (Vorlaeufer et al., 2017, p.19)

The assessment done by Amatheon called together the community leaders and family heads to figure out who had which kind of rights to which land, and how to deal with the 'squatters'. They consulted and negotiated with local communities with the aim to avoid conflict (Focus Group Discussion, 31 July 2018; Interview with company representative, 1 August 2018). Today, the company runs operations on 12 registered parcels of land. The project therefore does not take place on one consolidated piece of farmland. There are 12 individual farms, organised into three 'farming clusters'. A 'cluster' refers to a group of three to four farms that are near one another, or even direct neighbours (sharing a border). Each farm belongs to a family and is named after them. Some of the farms were given to Amatheon as direct leaseholds by the families, where the landowning families transferred their leasehold titles (including tax obligations etc.) directly to the company. Other farms were acquired by Amatheon as sub-leases, where the families remain the main leaseholding 'landlord' (although technically the DLB is the overall landlord.).

At the international level, Amatheon Agri Holding N.V. has been praised as a showcase for responsible large-scale land investment. The German Development Organisation *Gesellschaft*

fuer Internationale Zusammenarbeit (GIZ), commissioned a study of the company's Uganda operation with the purpose to investigate to which extent the company adhered to international best practice standards and guidelines, particularly to the VGGT. In the report, the company was praised for following due diligence procedures that avoided human rights abuses and land conflicts from the start. "Even though the VGGT did not explicitly inform the land acquisition process, the procedures can be considered ex-post compliant with the VGGT" (Vorlaeufer et al., 2017, p.20). Engaging directly with local families to lease land from them and helping them to formalise and thus 'secure' their land rights seems particularly in line with international codes of conduct. The company has also been called an "exemplary model of agricultural investment" (Lusaka Times, 2017) on the international stage, also for their other two investment projects in Zambia and Ghana.

My interviews with local government officials and company staff generally confirmed Amatheon's good reputation as a responsible investor following best practice standards (Interviews with district-level government representatives, 26, 27 and 30 July 2018). The company was particularly praised for their 'close partnership' with local families and communities as well as their corporate social responsibility programmes, which included the provision of school furniture to local schools, and other material goods (Interviews with district-level government officials, 26 and 30 July 2018).

While relations between the company and the land leasing families were by and large harmonious and stable, the investment project has triggered several conflicts and tensions between the land-leasing families and neighbouring families and communities. For one, when the identified land-owning families wanted to lease their land to Amathoen, several people were living on the land (Interview with the local government representative, 26 July 2018). They were considered 'squatters' and assumed to have settled there after returning from IDP camps, seizing the opportunity to claim 'vacant' prime farmland. Apparently, these 'squatters' assumed customary ownership of these lands, and even sold off some land to 'outsiders', mainly business elites from Gulu (Interviews with local government representatives, 26 and 30 July 2018). This caused disputes between the original landowning families who wanted to lease their land to Amatheon, the so-called 'squatters' who also claimed land rights, as well as the businesspeople that had bought land from them. My interviewees told me about court filings and demands for refunds by these business elites, who felt cheated (Interview with district-level government officials, 26 July 2018; Interview with lawyer, 16 August 2018).

4.3.2 The Omer Farming Company Ltd.

Omer Farming Company Ltd. is a commercial vegetable growing enterprise owned by an Australian investor, run jointly with local families in Amuru District. The commercial farm began operations in late 2014 and at first almost exclusively cultivated maize. In recent years, the company has switched to growing other assorted vegetables and rice on around 2000 hectares of land (Interview with company representative, 31 July 2018).

The company acquired land directly from four local families, who claimed rightful customary land rights over extensive plots of land in the area. Similar to the other case studies under Type A of investments, the company facilitated and supported the formalization of official leasehold titles for the families at the Amuru District Land Board (Interview with family member, 2 August 2018). After this, they sub-leased the land from the families to set up the large-scale vegetable farm. The land of the four families are neighboring plots but became one consolidated farming area under the Omer Farming Company project. The largest plot of land leased to the company was given as a sub-lease by a main landowning family in the area. After first acquiring this land, the farm then expanded further by acquiring additional (smaller) sub-leases from three other families.

Conflicts ensued between the land-leasing families and surrounding communities and people occupying the land who were considered to be illegal ‘squatters’ by the land-leasing families and local government officials (Interview with family member, 2 August 2018; Interviews with district-level government officials, 30 July and 1 August 2018). According to my interviewees, these ‘squatters’ came to the area between 2008 and 2014, after the end of the war. After the conclusion of the land deal for the Omer Farming company, the four land-leasing families supported the ‘squatters’ with small sums of money and iron sheets to allow them to relocate and rebuild their livelihoods elsewhere (Focus Group Discussion, 2 August 2018; Interview with family member, 2 August 2018). This was accepted for the most part. But In 2017, there was a bigger dispute between the main landlord family and some ‘squatter’ communities, and several people were arrested. Similar to the conflict dynamics at the Amatheon Agri project in Nwoya District, there was also a major dispute between the main landlord family and some wealthy businesspeople from Gulu and Kitgum. Some of the squatters had sold off parts of the land to members of this business elite, who then took the landlord family to court after they

had leased this land to the Omer Farming Company (Interview with company representative, 31 July 2018; Interview with family member, 2 August 2018).

4.3.3 The Atiak Sugar Factory

The Atiak Sugar Factory is a sugarcane investment by the Horyal Investment Holding Co. Ltd., owned by well-known Kenyan-Somali entrepreneur Aminah Hersi Moghe. The project is located in Amuru District and is based on a nucleus estate as well as substantial outgrower farming areas. While there is conflicting data on the size of the farm, it can be estimated to be between 4-6,000 hectares (Interview with local government official, 17 August 2018). Operations started in early 2019. The government supported the project with around 26 - 28 billion UGX Shillings (approx. 6-7 million USD). In 2018, the government also bought a 10% share in the company.

The company directly engaged with a local extended landowning family who claimed rightful customary land rights to the land on which the project was to be implemented. Upon entering into contract negotiations with this family, the company helped to formalise the family's (unregistered) customary land claims by facilitating the issuance of a freehold title in the family's name at the Amuru District Land Board. Thereafter, as the landlord, the family granted the company a leasehold title over a large portion of their land for the purpose of sugarcane production. The process of land demarcation and the formalisation of the family's land title sparked conflicts between the extended family and the surrounding communities.

Some neighbours and community members claim that the family claimed land beyond their land boundaries during the formalisation process, and then leased land to the company that was not theirs to give (Focus Group Discussion, 17 August 2018). Community members also argued that part of the land that was leased to the company was their customary communal hunting grounds that they had used before the war (Focus Group Discussion, 17 August 2018; Interview with local government official, 17 August 2018)

The 'landlord' family is wealthy and politically well-connected. According to my interviews, there was a sense of 'strong-arming' and intimidation of locals by the family (Focus Groups Discussion, 17 August 2018; Interview with a land lawyer, Kampala, 10 September 2018). Multiple interviews alluded to the elite and wealthy status of the family and that they are feared in the area.

> This was their [the community's] communal land, but these people [the landlord family] grabbed it all! (…) This was a communal hunting ground. By the mere fact that they now have a title, and because they have the money, every other person fears. If you are to say, 'but this is my land', they will say 'you are inciting violence, you are trespassing' (…) and they can get you arrested.
> (Interview with local government official, 1 August 2018)

The family is working closely with local law enforcement as well as higher-up officials in the government (Interview with family member, 1 September 2019). Apparently, complaints and land claims voiced by neighbouring communities were squelched, people were arrested, and many villages were forced to relocate or lost access to their farmland (Interview with local government official, 17 August 2018). There were reports of intimidation and exclusion of local government officials who were critical of the investment, and who spoke out against land rights violations of customary claimants (Interview with local government official, 17 August 2018). Despite the intimidation, the paramount chief (*rwot Kweri*) of Atiak, together with several community members, sued the family over land rights violations. The case was taken up by a law firm in Kampala. However, before the case reached the courthouse in the first round, President Museveni himself invited the conflicted parties to his residence for a private audience and asked that the case be handled outside of court (Interview with lawyer, 10 September 2018). This demonstrates the level of influence of the landowning family and the involvement of political interests in this case.

While no explicit reference to a particular set of global guidelines was made in this project, numerous principles laid out in global norms for responsible investment seemed to feature in the case. The Atiak Sugar Factory was praised by the general public and media in Uganda for a participatory and inclusive ideology, the empowerment of women groups and sugarcane-outgrower farmers, and an overall pro-poor, developmental and even philanthropic orientation (CWEIC News, 2018; Muwanga, 2020). The investor seemed to follow a 'bottom-up' approach to land acquisition by negotiating a lease contract directly with what was believed to be the rightful landowning family (Interview with local government representative, 17 August 2018, Interview with land expert, 18 November 2018). Direct engagement with local landowners and users is seen as a 'gold standard' of responsible investment by most international guidelines (i.e., VGGT, CFS rai). By facilitating the formalisation of a freehold land title for the family,

the call for ‘securing’ legitimate land rights, as outlined in most international guidelines on responsible investments, was seemingly met.

In sum, the Atiak Sugar Factory on (originally) undocumented customary land in northern Uganda was hailed an example of a ‘best practice’ and pro-poor investment. The company was commended for negotiating a land deal directly with a local family and helping to ‘secure’ and formalise their land claim. Yet, while this family’s land claims were recognized and, in the course of the investment converted into private property, land claims of neighbouring customary land users, including communal land rights, were invisible and ignored.

Type B: Investments brokered through the government

In the following two case studies, the government, via the District Land Board of Amuru District, directly allocated land to private investors. This was heavily contested by local communities claiming ancestral customary rights to the land. In these cases, there is no recognition of or negotiation with any local customary land users. Instead, these rights are denied on the grounds that the land in question is not customary land, but *public* land held in trust by the DLB. These cases resulted in substantial conflict that also grabbed the attention of international observers. But international advocacy for adherence to global norms for responsible investment did not result in the protection of the claimed land rights of local communities, and conflicts continued.

4.3.4 Amuru Sugar Works

In 2008, the Madhvani Group of Companies, in a joint venture with the Government of Uganda (51% – 49% shares), applied for a leasehold for 40,000 hectares of land from the Amuru District Land Board for the purpose of a large-scale sugarcane plantation in Lakang, Amuru District. A lease of 10,000 hectares was granted by the DLB to Madhvani on the basis that the land in question was gazetted ‘public land’. However, the process of surveying and demarcating the land for the project was met with stiff resistance and protest by local communities who claimed violations of their customary land rights. A decade-long protracted conflict ensued that captured widespread interest of national and international media and scholars. A range of academic articles covered the case in recent years, including, amongst others, Sjoegren (2014), Martiniello (2015), Atkinson and Owor (2013).

The communities, together with several Acholi community leaders (i.e., clan elders and Members of Parliament) openly contested the investment plans, arguing that the land in question had unlawfully been allocated to Madhvani as it was the communities' rightful customary land, not state-managed public land. In 2008, shortly after the Amuru DLB allocated the 10,000 hectares of land to the project, they filed a court case at the Gulu High Court to oppose the investment. The first judgement of the High Court of Gulu in April 2008 declared that the land was indeed customary land and had been historically used by communities as communal grazing and hunting grounds (High Court of Uganda, 2008, cited in Martiniello, 2015; Interview with journalist, 13 August 2018).

After this first legal victory for the communities of Lakang, the state appealed the verdict, leading to another court case. In the second ruling in February 2012, the judge reverted the first ruling and declared that the land was *not* customary land after all, but instead, public land held in trust by the DLB (Martiniello, 2015; Interview with journalist, Gulu, 13 August 2018). The main basis for this ruling was the (apparent) lack of evidence of long-term and historical settlement of the communities in the area, the lack of evidence of agriculture activities, and the ruling that the allocated land was part of the former Aswa Lolim game reserve and Kilak Hunting Ground, inherited from the colonial period. These game reserves were degazetted in 1972 and supposedly made available for commercial farming under the management of the DLB, therefore making it public land.[39] (Interviews with local government representatives, 30 July 2018; Martiniello, 2015, p.661; Atkinson & Owor, 2013). This verdict was challenged in an article by Atkinson and Owor (2013), who argued that this land is rightfully customary land, based on their analysis of oral testimonies and archival documents about historic and ancestral customary practices and land claims in this region of Amuru District. Nevertheless, ensuing attempts by the aggrieved communities at appealing the verdict and seeking legal redress were unsuccessful (Martiniello, 2015, p.662). Protests and conflict persisted for many years, including instances of 'naked protests' that caught international scholarly attention.[40]

In 2017, after continuing protests disrupted and delayed the implementation of the project, the government embarked on a strategy to carry out a 'forceful survey' of the land with the

[39]Whether the de-gazettement of a national park automatically turns land into public land is highly contested. Some claim this, but others say the land is thereby converted back to customary tenure (Vorlaeufer et al., 2017).

[40] For further analysis of the role of the naked protests, see Abonga et al., 2020; Laing and Weschler, 2018; and Olanya, 2016.

intention of (forcefully) compensating the supposed landowners in the area (Interview with journalist, 13 August 2018). A budget of 12 billion UGX for compensations was approved by parliament in 2018. The idea was to appease the situation by rapidly establishing a list of 'rightful' landowners that could then be compensated and the conflict put to rest. But the process by which 'rightful' landownership was established remains blurry and has been criticised as being largely arbitrary and subject to widespread corruption (Interview with land expert, 13 August 2018; Interview with journalist, 13 August 2018). The move by the government shifted the debate away from the contested status of the land towards the question of money and compensation. Many people rushed to the area to stake a claim on land in the hopes of making it onto the 'compensation list'. Numerous influential individuals and political elites were able to claim land and get these claims recognized. My interviewees reported that several Acholi politicians were paid off or 'silenced' by huge compensation offers (Interview with land expert, Gulu, 13 August 2018; Interviews with NGO representatives, 19 July, 25 August, and 30 August 2018, Interview with journalist, 13 August 2018; Sjoegren, 2014, p.70). Some members of the aggrieved communities who had claimed customary rights on this land were also included in the 'forceful survey', to which they had not agreed.

> [T]he government gave out an ultimatum. There was a forceful survey, and the government said they will compensate people who were forced to have their land surveyed and will have to leave. (…) At the end of the day, people were coerced.
> (Interview with local government representative, 26 July 2018)

> Some of those community members rejected the compensation offer and, at the time of research, planned to open another court case, arguing that the survey and land demarcation "were irregular and forceful, that human rights were violated, that there was no compensation for the destruction of infrastructure (…) and household items.
> (Interview with journalist, 13 August 2018).

In essence, the survey, demarcation and compensation exercise by the government shows again how the government, in the absence of land titles on customary land, has substantial leeway in deciding on the legitimacy of land rights. These arbitrary decisions over 'legitimacy' always

create winners and losers, echoing dynamics of the case studies on Type A investments on customary land – formalising land rights for *some* but not for *other* land users.

The case was widely covered by national and international media and Ugandan NGOs have led campaigns against Madhvani. However, this has not led to a recognition or protection of customary land rights as such. The difficulty in proving customary land rights and the absence of their documentation, I argue, gives the government substantial leeway to decide over the nature of land rights in individual cases. In this case, the government, through the local District Land Board, decided that the land in question is *not* customary land but public land, held in trust by the local government. Neither the international media coverage of the case nor the court case granted land rights to the communities. Therefore, international guidelines could not be invoked to protect these land rights.

4.3.5 The Apaa land conflict

In this case, the Ugandan Wildlife Authority (UWA) leased out a large area of land to a private South African investor for the purpose of developing a tourist-attracting wildlife resort and game park with safari lodges. Forced evictions of people living in the village of Apaa within the designated region sparked a decade-long protracted land conflict. The conflict is also grounded in a border dispute between the Adjumani and Amuru district governments, which both claim that the land comprising Apaa village lies within their administrative jurisdictions. The area destined for the game park comprises 825 square kilometres and covers the border region of Amuru and Adjumani Districts as shown in Figure 7:

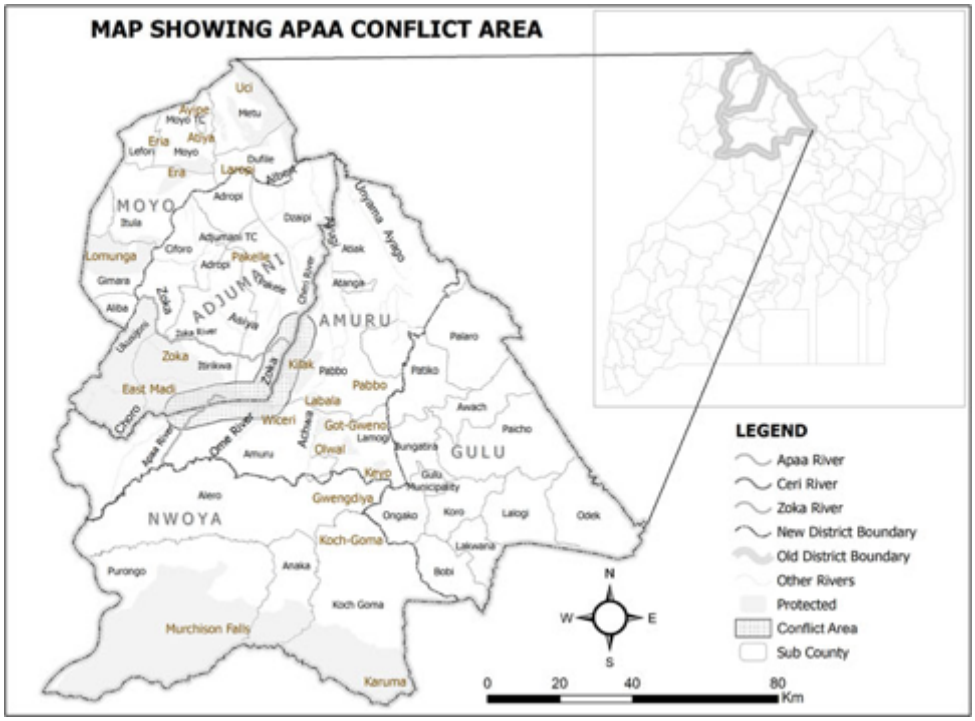

Figure 7. *The land destined for the game reserve investment, including Apaa village*
Source: Kobusingye, van Leeuwe,n & van Dijk (2017, p. 474)

Within this border region lies Apaa village. The communities of Apaa, around 25.000 people, claim this land as their ancestral customary land and part of Amuru District (Interview with land lawyer, 15 August 2018; Testimonies of Apaa villagers at a press conference, 20 July 2018; Lenhart, 2013).

The Uganda Wildlife Authority (UWA), however, consider the land to be part of state-controlled game park purposed for conservation related tourism. They see the Apaa communities as illegal encroachers on this land. In 2002, the UWA, in collaboration with the Adjumani District government, gazetted the land around Apaa and nearby areas as part of the newly established East Madi Game Reserve. In 2009, without consulting the local communities occupying the land, they entered into a 20-year lease management concession with the South African investor company, Lake Albert Safaris Ltd (LASL) for the development of the game park with sport hunting, safari, and other tourism opportunities, as well as environmental purposes (Serwajja, 2015; Onen, 2019; Abonga et al., 2020). The decision to gazette the land as part of a national park legally and officially puts this land under the management of the state (through the UWA). Any potential customary land claims of people on this land are thus extinguished. The gazettement of the land by the UWA and the Adjumani District local

government to become part of the East Madi Game Reserve was contested by the Amuru District Council, who argued that this land is part of Amuru District. Whether Apaa is part of Adjumani or Amuru District may have important implications for the land rights status of the Apaa communities.

> As a result of those actions by the two districts, the area now appears to have a dual legal status, being legally recognised as a de-gazetted area, and at the same time as a gazetted game reserve. Either legal status has significant consequences for the extent to which the residents of Apaa are allowed to use the land.
> (Kobusingye et al., 2017, p. 466)

In 2011 and 2012, many of the inhabitants of Apaa village were forcefully evicted by the Ugandan army, police, and the Ugandan Wildlife Authority (UWA). Lenhart (2013) estimates the number of evictees to be around 4.00-4,500 in 2011 and around 6,000 people in 2012 (2013, p.69). The violent evictions have gained substantial media coverage and sparked international and academic interest, especially given the long history of contestation around land rights in Acholiland and instances of population displacement going back to the colonial era.[41] Academic interest was also focused on the role of social movements, the role of local protests, and particularly the 'naked protests' by elderly women, which also happened in the case of the nearby Amuru Sugar Works project. National NGOs including the Uganda Land Alliance (ULA) and the Participatory Ecological Land Use Management (*PELUM*) Association as well as international NGOs such as Safer World have reported on the case and drawn attention to the plight of the communities of Apaa. Following the evictions, community representatives and local political leaders filed a court case in 2012 against the government of Uganda and the UWA to contest the evictions on the grounds that they were the rightful owners of the land and that these rights had been violated (Sewajja, 2015; Interview with land lawyer, 15 August 2021). Following this, the High Court of Gulu issued an injunction on further evictions in 2012

[41] Customary land users in this area were already evicted in the early 1900s due to government-issued Tse Tse fly eradication programmes. The gradual resettlement of the area by communities was subsequently further interrupted by forced population resettlement for consecutive gazetting and de-gazetting of game parks and nature reserves – dynamics that are still going on today. Further compounding this conflict is the creation of new districts in the course of the decentralisation reforms in Uganda in the late 1990s and early 2000s (Green, 2008).

until the conflict was resolved and the exact boundary between Adjumani and Amuru District was decided upon.

However, despite the court injunction and the national and international coverage of the case, numerous reports revealed that forced evictions and harassment of the Apaa community by the Uganda Wildlife Agency (UWA) continued unpunished in subsequent years and that the legal status of the land and the exact border between the two districts remains disputed (Interviews with local government representatives, 30 July 2018; Interview with land lawyer, 15 August 2018; Community meeting on the Apaa conflict, 15 August 2021; Testimonies of Apaa villagers at a press conference, Kampala, 20 July 2018; Sewajja, 2015; Olanya, 2016).

Despite the *de jure* recognition of customary land rights in Ugandan law, this case shows that in the absence of clarity over the legal status of the land and the inability of local land users to prove their unregistered customary land rights, it is very much up to the government to decide whether unregistered customary land is recognized or not in specific cases. In this case, it was not. Thus, the question appears again of how global norms calling for the protection of local land rights can gain traction in such situations? Concordant to my argument, this case shows that if the land rights in question are not state recognized, the invocation of international codes of conduct largely falls flat and leaves its proponents in a state of paralysis.

This argument was particularly highlighted in 2018, when over 200 villagers from Apaa camped out in front of the United Nations Office of the High Commissioner for Human Rights (UN OHCHR) office in Gulu to protest the ongoing land and human rights violations and seek support and solidarity from the international community. "(…) [T]hey would use their presence (…) as a tool to draw international attention to their struggle for the rights that their own government had so long ignored, and even violated." (Laing & Weschler, 2018). This drew renewed media coverage and international interest in the case. However, Laing and Weschler (2018) closely followed and documented the response by the UN organisation, which was marked by 'pervasively dismissive behaviour toward the Apaa protesters' (2018, p.4). No international guidelines, frameworks, or codes of conduct were invoked by the UN agency to pressure the government to recognize and protect the customary land rights of the communities. In fact,

> UN Staff insisted that their mandate in Uganda restricts them to monitoring and does not extend to publishing reports or issuing statements condemning human

> rights abuses. [T]he UN OHCHR eventually did issue a statement which studiously avoided any critique of the Ugandan Government or expression of sympathy for the protesters (…).
> (Laing & Weschler, 2018)

The inertia on the part of the UN – a main promotor and author of several international guidelines – to provide support to the communities and to lobby for adherence to national laws and/or global codes of conduct shows how the hands of these actors are seemingly tied in these situations when the government has already decided on the legal status of land rights in question. Following the renewed media coverage and attention on the case after the (unsuccessful) protest at the UN OHCHR, the central government reacted with a supposed solution and resettlement package for 374 families from Apaa in 2019. The package included '20 bags of cement, 20 iron-roofing sheets and 10,000,000 Ugandan Shillings (roughly £2,000) in order to re-establish themselves on new plots of land.' (Laing & Weschler, 2019). However, Laing and Weschler document substantial shortcomings of the proposed resettlement package. For example, there was a flawed counting exercise that led to the number of 374 families to be included in the resettlement package, when, in reality, there are more likely thousands of aggrieved families in Apaa (2019). Fundamentally, the resettlement package did not recognize what the communities of Apaa were fighting for, which was the legal status of this land as their customary ancestral homeland. It seemed more like an appeasement or small concession by the government to assuage the situation.

At the time of conducting research (late 2018, and early 2020), the conflict continued, and no clear solution was found. Despite media coverage, continued protests, and discussions about the contested resettlement package and other 'compromises', the fundamental issue remains that the customary land rights the communities were fighting to protect remain unrecognized.

Conclusion for investments on customary land

Customary land rights in Uganda are recognized in principle (in the country's legal framework), but are often ambiguous, illegible, and contested in practice due to the absence of documentation of these rights. This often presents a challenge for those invoking or making reference to international guidelines in order to mitigate conflict and protect local land rights in investment cases. I have presented two types of dynamics emerging in investment cases on customary land.

In one type (Type A), the investors take up a central role in the land acquisition process by directly approaching and negotiating lease contracts with local Ugandan families, and supporting the formalisation of their land titles at the District Land Boards. These investments are widely considered to be following best practice standards because of their 'bottom-up' approach to deal-making and by helping to 'secure' the land rights of local families. Yet, while the land claims of some (often elite and wealthy) families were recognized and, in the course of the investment, formalised and converted into private property (Freehold) or secure leaseholds, land claims of neighbouring customary land users, including communal land rights, were invisible and ignored. The apparent conformity with international guidelines by the investor and the government in terms of engaging at the local level and securing the family's land thus actually worked to *de*legitimise customary land claims for other people. In fact, by formalizing the land rights for *some* already privileged local landowners, the investor contributed to a process of transformation of land tenure away from customary and communal (unregistered) land use to increased privatization and formalization of land, and the emergence of landlordism in northern Uganda.

In the other type of investment dynamics (Type B), the government (through the DLBs) plays a central role in the process of land acquisition. In contrast to cases under Type A, there is no recognition of or engagement with local customary land users at all. Instead, the government has decided that the land in question was not customary land, but public land, held in trust by the District Land Boards. As such, the DLB issued leasehold titles and concession agreements to large-scale land investors, which resulted in protracted conflict and protest that scaled up to national and international levels. While this international attention has led to lots of debate and discussions on compensation and amelioration of the situation of the evictees, it did not, however, lead to a recognition nor the protection of the land rights of customary land users as such. This strongly echoes the case of the New Forest Company on a state-owned central forest reserve, which has gathered a lot of international attention due to an NGO report (and sparked some initiatives over compensation or other ameliorations of the situation of the evictees), but did not lead to the protection of their land rights per se. In lieu of the government's decision over the land tenure regime, there is little that civil society and international actors can do to pressure the government to adhere to 'its own laws' or invoke international best practice standards beyond that.

In essence, Type A resulted in the conversion of customary land to private and registered land (in the form of leasehold or freehold titles) while Type B resulted in the denial and eradication of customary land rights altogether. Both ways in which land is acquired in these situations resulted in the extinction of customary tenure.

4.4 Conclusion

In this chapter on Uganda, I argued that the adherence to global governance norms by the government, investors, and civil society is shaped by whether and to which extent the land rights in question are already legally recognized and protected by the state, which varies from one tenure regime to another. I presented case studies of land investments on three different types of land tenure regimes that exhibited different degrees of recognition of land user rights by the state. This ranged from a firm recognition of land rights on private Mailo land to a more ambiguous recognition of land rights on customary land, as well as the absence of land rights recognition altogether on state land.

On Mailo land, where land rights are recognized, legible (documented), and enforceable in a court of law, actors invoking international guidelines (i.e., civil society groups and NGOs) can assume a 'watchdog' function to ensure that the government is honoring its own laws. In addition, these actors can pressure the government and the investor to go over and beyond national laws to integrate and comply with additional international best practice standards. In my case studies case of the Vegetable Oil Development Project (VODP) and the Kaweri Coffee Plantation on Mailo land, the rights of Mailo landlords and tenants were firmly enshrined in Uganda's legal framework. However, due to the complex history of Mailo land and multi-layered structure of several tenancy types, conflicts emerged in the implementation phases of these investments. However, these disputes were 'visible' conflicts that were rapidly addressed in legalistic ways by the government and the investors through the use of national-legal channels (courts) as well as international grievance mechanisms – a recommendation in many global norms.

In contrast, in my cases on land tenure regimes where land rights are not recognized by national law (i.e., state-owned national forest reserves), international guidelines have no legal basis to protect these. In the case of the Busoga Forest Company and the New Forest Company, claims

to land rights invoked by forest-dwelling communities were not recognized by the Ugandan government. Local communities claiming rights to forest land on the basis of ancestral (customary) rights or having received land as gifts by previous governments were considered 'squatters' by the current government. They were sometimes allowed to remain on the land in a legal 'grey zone', as in the case of the Busoga Forest Company.

In both cases, global governance mechanisms were not altogether absent, as the projects were funded by international financial institutions and part of global forestry and carbon certification schemes. However, reference to global norms seems to have been limited to addressing environmental aspects of the investment, rather than the ambiguous land claims of forest dwelling communities. These remained unresolved and were treated by the investor and the government as a matter pertaining to national (sovereign) jurisdiction. These cases show that if the government does not recognize the land claims in question as a minimum condition, then the hands of international organizations and NGOs are tied in terms of pressuring the government or the investor to protect or recognize these land claims. Actors invoking or making reference to international guidelines are thus often unable to engage with ambiguous, undocumented, contested, and unprotected land rights.

Finally, I presented case studies on customary tenure, where land rights are *de jure* recognized in principle, but are often ambiguous and illegible in practice due to the absence of documentation and historical contestation of these rights. In some cases of investment, there is scope for global norms to appear in innovative ways. In the context of ambiguous, but legally recognized land rights, investors have often devised new ways to circumvent the government and the problem of unclear land rights by becoming directly involved in the identification and formalization of land rights of local communities. In other investment cases, where the government seemingly had high stakes and was centrally involved in the land acquisition process, global norms for responsible investments were unable to gain traction.

Chapter 5: Land Tenure and the International Community in Sierra Leone

This chapter, organised into three parts, discusses the land politics and tenure regimes in Sierra Leone. I argue that two different types of customary tenure regimes effectively emerged in the country's post-war era. This may explain the spatial variation in the uptake and effectiveness of global governance norms for responsible investment. Section 5.2 discusses the influx of the global donor community and the promotion of global governance norms in post-conflict Sierra Leone in the early 2000s. In section 5.2, I discuss the land tenure regimes and land administration structures in Sierra Leone. In section 5.3, I analyse the evolution of customary land tenure over time, from the colonial to the post- colonial, and post-war era. I analyse the historical and political factors that have led to the emergence of two distinct types of customary tenure, discussing in particular the effects of the civil war, and the uneven impact of post-war legal reforms driven by the international donor community. Section 5.4 contains a discussion of how the variation in customary tenure types affects global governance norms and concludes the chapter.

5.1 Sierra Leone: A testing ground for global governance mechanisms?

Sierra Leone was subject to a devastating civil war that ended in 2002. The post-conflict recovery period is marked by the strong presence of the international community in the country. These actors have promoted programs to stabilise and rebuild the country's economy and political system, including the land tenure and land administration systems in some parts of the country. This post-war period also saw the sharp rise of foreign large-scale land investments in Sierra Leone, in line with global trends of increased transnational investment flows after the 2007/8 financial and food price crisis. Foreign investors have acquired thousands of hectares for the purpose of large-scale monoculture tree plantations and mechanised farming projects throughout the last decade. According to the Land Matrix, an online database on large-scale land investments, 24 new land deals in Sierra Leone from 16 different investor countries were concluded in the time period between 2006 to 2016 (Land Matrix, 2016). Accompanying this trend in Sierra Leone was another. Global attention increasingly shifted to topics of agriculture, food security, the risks of 'land grabbing', and correspondingly, to international governance mechanisms to incentivise investors and developing country governments to achieve more

‘responsible’ investments. This concern on the part of the international community has taken hold in Sierra Leone - in a post-war context in which international donor agencies have firmly established themselves and are already steering much of the country’s politics.

The country’s land and agriculture sector has become a priority sector and destination for development programmes by a multitude of international organisations and NGOs. It has come to be seen as a ‘testing ground’ for global governance mechanisms for responsible land investments. This might not seem surprising, considering Sierra Leone’s receivership status vis-à-vis the international community and the government’s diminished sovereignty. International donor organisations had considerable leverage to implement various projects and policies that were deemed important or ‘trendy’ on the global governance agenda. As a “guinea pig for liberal state-rebuilding” (Harris, 2014, p.133) after the civil war, it seems that Sierra Leone has also become a guinea pig for testing out the implementation of international guidelines and global governance norms with regards to ‘responsible’ large-scale investments. Indeed, Sierra Leone was quickly labelled a ‘success story’ for its avid cooperation and political will to adopt and implement international governance mechanisms and standards, and to reform the land governance sector (FAO, 2019).

Numerous international development organisations and donors such as the UN Food and Agriculture Organisation (FAO), the then-UK Department for International Development (DFID) (now the UK Foreign Commonwealth and Development Office - FCDO), the World Bank, the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), as well as various international and national NGOs (i.e. Welthungerhilfe, Green Scenery and Namati amongst others) have promoted the use of various global governance norms on sustainable and responsible foreign large-scale investment in the country. Particular emphasis has been given to the implementation of both the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)*, and the *Principles for Responsible Agricultural Investments (CFS-RAI)* through awareness raising initiatives, capacity building and multi-stakeholder meetings. A few concrete programs and initiatives in this regard stand out.

Most notably, the government of Sierra Leone has taken on board the VGGT and other international guidelines by institutionalising these into domestic law. In a tripartite agreement between the UN Food and Agriculture Organisation (FAO), the Republic of Germany and the

government of Sierra Leone, a push to revise and reform Sierra Leone's land-related legal framework culminated in the launch of the new National Land Policy (NLP) in 2017 – the country's first comprehensive land legislation since the colonial era. The NLP is seen as a successful product of international governance collaboration – referring to the VGGT Guidelines in more than 90 paragraphs. The FAO reports that "[w]orldwide, no other known policy refers as closely to the principles of the Guidelines as Sierra Leone's new National Land Policy." (FAO, 2019, p. 9).

Further, in 2015, the UK's Department for International Development (DFID) launched their 'Enhancing Governance for Economic Development (LEGEND)' programme to support the development and testing of innovative approaches and partnerships for strengthening land governance. There is a specific focus on piloting approaches to responsible land-related investments. DFID funded two investments in Sierra Leone as flagship pilot projects for the exemplary use of the VGGTs and other international norms on responsible investment (Landportal, 2014).[42] In these investments (a palm oil and a cocoa plantation in the country's Eastern Province), particular attention was given to setting up mutual benefit partnerships with local people, negotiating lease agreements with individual families on the basis of the international standard of Free, Prior, Informed Consent (FPIC), and ensuring environmental safeguards and community development initiatives. Several other newer investments followed similar routes.

In 2017, the FAO, in collaboration with the Sierra Leone Investment and Export Promotion Agency (SLIEPA) and the Ministry of Agriculture Forestry and Food Security (MAFFS), started to develop an official Investment Approval Process (IAP) for Agribusiness companies. This initiative aims to provide a legal foundation for how future investors should engage in 'responsible' agricultural investments in Sierra Leone.[43] The implementation of the new

[42] The DFID LEGEND projects are implemented in the form of tripartite partnerships between the investor, a civil society organisation to guide the project, and DFID as the funding organisation. Projects supported under the LEGEND fund are expected to, among other goals, to "[d]emonstrate how the VGGT can be applied to concrete investments: particularly in relation to respecting and protecting the land tenure rights of poor women and men and improving responsible investment practices" (Landportal, 2014).

[43] According to SLIEPA, the IAP will focus on four key activities: screening prospective investors and proposed projects through due diligence, ensuring consultation and participation of all affected stakeholders, requiring impact assessments prior to deciding whether to approve a project, and preparing contracts and agreements for approval by the parties and the relevant authorities (SLIEPA,

Investment Approval Process is currently being piloted in four relatively new investment projects across the country.

However, there is a mixed track record with regards to the effectiveness of these programs. During my fieldwork in Sierra Leone in 2019, I observed strong variation in the conformity to and use of these guidelines by diverse actors such as the government, the investors themselves, civil society actors, and local landowners and users. In some investment cases, the guidelines seemingly do not feature at all, while other investment projects are seemingly modelled on them and serve as international showcases for their exemplary use. Several large-scale investments seem to be currently 'in transition' and are changing their operations and strategies to better conform to global governance norms. These cases together present a very mixed picture. My research question for this chapter is therefore: What accounts for the uneven conformity to global governance norms by international investors, government actors, civil society, local land holders, and land authorities?

Several inconsistencies and paradoxes in current debates and in the literature on Sierra Leone complicate the issue further. Some hail Sierra Leone as a developmental 'success story' and praise the government's apparent strong political will in spearheading responsible and sustainable investment projects and reforming the land governance sector (FAO, 2019). Yet, there are also numerous reports of local conflict, human rights and land rights abuses, widespread corruption around land-related investment projects, as well as the continuation of what Reno (1995) termed 'shadow state' politics with regards to mining concessions.

This chapter sets out to analyse the political economy of land tenure, land investments and international codes of conduct in Sierra Leone. In six months of fieldwork in Sierra Leone, I examined a range of large-scale land investments located across different regions and diverse commodity sectors in the country including palm oil and other agricultural crops, forestry, and mining. In line with the overall thesis, I will argue that in spite of the enormous influence of the VGGTs and the domestic and global actors promoting their use, there is spatial variation in the conformity to and effectiveness of international guidelines in cases of large-scale land-related investments. I argue that this is related to variation in the underlying land tenure

2017). The IAP is further intended to continuously guide investments after lease contracts have been signed.

regimes, which varies across regions in the country. In this sense, the case of Sierra Leone helps extend the argument developed in Chapters 3 and 4 on the Uganda case, which is that spatial variation in 'underlying' or pre-existing land tenure regimes shape how and the extent to which international guidelines like the VGGTs and similar 'best practice' standards actually gain traction in large-scale land investments.

In the case of Sierra Leone, this variation is visible *within* the customary tenure regime. All investment projects are located in the country's provinces on land under customary tenure, which is governed by chieftaincy institutions headed by so-called paramount chiefs. Secondary literature on legal reforms, the effects of decentralisation and land politics in post-war Sierra Leone has alluded to variations across space in the role and powers of paramount chiefs. Some observers argue that the political authority of paramount chiefs has substantially decreased in the post-war era (Renner-Thomas, 2010). Others, in contrast, argue that powerful patron-client networks, strong chiefly authority and "shadow state" (Reno, 1995) politics continues to exist in the post-war era. The literature further suggests that the powers and authority of paramount chiefs tend to be higher where there are vested interests in high-value natural resources such as diamonds and strong pre-existing patrimonial networks (Jackson, 2007; Allouche 2013, 2017; Fanthorpe et al., 2011).

During my fieldwork, I observed these patterns of variation in the levels of authority of paramount chiefs across the country. Building on the secondary literature on post-war Sierra Leone and my own findings, I argue in this chapter that the customary tenure systems in Sierra Leone have tended to evolve in two different directions after the end of the war. A 'pre-existing' customary tenure system based on powerful chiefs still exists in areas where vested interests in high-value natural resources and elite power networks shaped by rent extraction and patrimonialism persist. This is for example the case in Kono District in the country's Eastern region, the hub of the diamond mining economy. I have labelled this kind of tenure system here 'unreformed' customary tenure. Meanwhile, a 'newer' customary tenure system characterised by the weakened role of paramount chiefs and, in turn, stronger family authority over land has developed in regions of the country where there are fewer vested interests in natural resources, and weaker pre-war elite patrimonial networks. This kind of tenure I have labelled 'reformed' customary tenure.

This *de-facto* distinction between these two types of customary land tenure can help explain the uneven conformity to international guidelines by investors, NGOs, government representatives and local communities. International initiatives for 'responsible' investments were able shape/ influence the course of land investments located on the 'newer' customary tenure type, while these initiatives did not gain traction or were largely ineffective in investment cases under the 'unreformed' tenure type.

5.2 Land Tenure and Land Administration in Sierra Leone

Sierra Leone is divided into four provinces (Southern, Eastern, Northern and North-Western) and the Western Area, which encompasses the capital of Freetown (Figure 8). Each province is divided into districts (Figure 9), creating 16 districts overall. The Western Area is made up of two districts, Western Area Rural and Western Area Urban (Freetown). Forming the third layer of subnational administrative boundaries, Sierra Leone is also divided into 190 chiefdoms (Figure 10).

Figure 8. *Four Provinces of Sierra Leone*
Source: Wikipedia, 2018.

Figure 9*. 16 Districts of Sierra Leone*
Source: Wikipedia, 2018.

Figure 10. *190 chiefdoms within the four provinces in Sierra Leone*
Source: Adapted by author from maplibrary.org

Sierra Leone's Western area is densely settled and has no significant large-scale foreign investments since the turn of the 21st century.[44] My research was therefore focused on the four provinces, on land under customary tenure, where the bulk of foreign investments has taken place since the turn of the 21st Century. Sierra Leone is formally characterised by a dual land governance system, made up of statutory tenure (state-land and private freehold land) in the Western peninsula, and unwritten customary tenure in the four rural provinces. This dualism is rooted in the county's history of colonialism. In 1808, the Western area was declared a British Colony under direct British administration and governed under English common law. The rest of the country was declared a British Protectorate in 1896, managed under a system of 'indirect rule' through appointed paramount chiefs and based on what the British interpreted as customary law. After independence from Britain in 1961, subsequent postcolonial

[44]According to the 2015 Sierra Leone Population and Housing Census, Sierra Leone has a total population of 7,9 million of which 1,5 million are located on the 557 km^2 of the Western Area Peninsula, (Statistics Sierra Leone, 2017).

governments maintained and reinforced this "bifurcated state" (Mamdani, 1996). Most academic and 'grey' literature (including country reports and studies by NGOs etc.) on land governance in Sierra Leone focuses on this strict contrast between 'the formal' land tenure of the Western Area, and the 'non-formal', unwritten customary land governance of the rural provinces (Manning, 2009; Sturgess & Flower, 2013; Kaindaneh et al., 2015; Ochiai, 2017 amongst others). However, my historical and political analysis revealed further variations of land governance systems in the post-war era, specifically *within* the customary land tenure regime in four provinces, albeit in practice rather than in formal-legal terms.

5.3 Customary Tenure in Sierra Leone: Change and Constancy Over Time

In the following, I will discuss the way that customary tenure evolved over time and analyse the political factors that have led to the emergence of two types of customary tenure in the post-war era. I focus specifically on the role of paramount chiefs, as the highest customary authority in Sierra Leone.

5.3.1 The British Protectorate (1896-1961)

While chieftaincy itself may refer to some sorts of pre-colonial institutions, the form and character of today's chieftaincy institutions in Sierra Leone has been strongly influenced and shaped by the colonial practice and the colonial governance strategy of 'indirect rule'.[45] Upon declaring Sierra Leone's rural regions outside of the British colony of the Freetown peninsula a British protectorate in 1896, the colonial administration set up a system of indirect rule by demarcating chiefdom jurisdictions and boundaries. It appointed paramount chiefs to exercise so-called customary law, keep political order and extract taxes in the name of the colonial government.[46]

[45] Sesay (1995) and Richards (2005) see the role of chiefs as largely unchanged since the colonial era and attribute the prevailing importance of chieftaincy institutions to the fact that a strong and bureaucratic Sierra Leonean state never properly emerged. Contrasting this view, Albrecht (2017, p.163) thinks of chiefly authority not solely as the product of colonial rule but rather as a hybrid institution that combines multiple sources such as state-based practices and pre-colonial customs.

[46] Colonial indirect rule was not unique to Sierra Leone's experience but has shaped most African societies as analysed and researched by a plethora of scholars (Mamdani 1996, 2001; Boone 2007, 2013, 2014; Berry 1992; Herbst 2000; Lange 2004; Acemoglu et al. 2014; Albrecht 2017). However, it is widely asserted in literature that colonial-era indirect rule in Sierra Leone has been particularly impactful for today's long-living chieftaincy institutions (Richards 2005; Sesay 1995).

Indirect rule in Sierra Leone was based on a symbiosis between central politicians in Freetown and paramount chiefs in the provinces (Albrecht, 2017). Chiefs were elevated to great power and given near-absolute authority over their chiefdom jurisdictions. Held accountable only to the colonial administration instead of to the people in their jurisdictions, and bestowed with economic opportunities from above, paramount chiefs often became despotic (Mamdani, 1996; Acemoglu et al., 2014, p.3; Sawyer, 2008, p.389). This was particularly salient with regards to land issues and land-related investments in Sierra Leone.

The most important land-related piece of legislation during the colonial era was the Protectorate Land Ordinance 1927 (amended in 1960 to the Provinces Land Act Cap. 122), which vested the authority over land in the so-called tribal or traditional authority (i.e. the paramount chief) in the name of the communities and elevated the role of paramount chiefs to 'custodian over the land'.[47] This increased the legal powers of Paramount Chiefs considerably and provided them ample opportunities for rent seeking.[48] While not constituted as such in the Act, it has over time become an accepted practice that the chiefdom council and the paramount chief in particular directly benefit from the proceeds from rent payments derived from statutory leases (Renner-Thomas, 2010, p.243). This was (and is) particularly the case in chiefdoms with lucrative mining activities (i.e., Kono District), where paramount chiefs and chiefdom councils were eligible for 'surface rent' payments from miners (Acemoglu et al., 2014, p.327).

The colonial state invested minimal efforts to establish bureaucratic structures or practices outside of the Western area (Albrecht, 2017, p.162). To facilitate large-scale investments in the protectorate, the colonial administration largely depended on the authority of strong paramount

[47] The term 'traditional' authority is subject to debate. As scholars like Catherine Boone (2014) and Sara Berry (1992) observe, perceptions of African 'customs' and 'traditions' in the literature need to be understood against the background of colonial practices of arbitrarily mapping out chieftaincy jurisdictions and allocating and often reinventing the meaning of African 'tradition' in order to assign local authorities as traditional rulers to exert authority on behalf of the central state.

[48] The Provinces Land Act, Cap. 122 is still the only formal means by which non-indigenous persons or entities, including foreign companies, can legally gain access to land in the Provinces, as the Act provides a legal basis for statutory leases. According to the Act, the authorities involved in statutory leases to non-indigenous persons and entities are the chiefdom council, presided over by the paramount chief, and the District Officer (now the chief administrative officer of the district council). Landowning families, whose land is subject to the lease, have usually not been included in a statutory lease arrangement. "There are virtually no powers vested in the actual landowners, nor is their role in the whole process defined by the Act." (Renner-Thomas, 2010, p.242). In practice, however, representatives of families or communities were sometimes added as parties to a lease, but rather as a measure of 'goodwill' than a legal requirement.

chiefs, whom they elevated and rewarded with financial benefits. While a feature of all land-related deal making throughout rural Sierra Leone, the linkages between the central state and despotic paramount chiefs was particularly salient in the diamond mining regions of Kono District in the Eastern Province. Even before the rural regions of Sierra Leone were officially declared a British Protectorate in 1896, the State House of the British Colony in Freetown had already signed several trade treaties with rural chiefs (Reno, 1995, p.32).[49] Driven by geopolitical and economic factors, the colonial government sought such trade treaties particularly in the Eastern region of the country, especially in Kono District. To push back against French trade interests and fend off military expansion into the country's northeast, then-Governor Samuel Rowe "[a]ggressively pushed Freetown's commercial orbit northeast into Kono in the 1890s" (Reno, 1995, p.32).

While Sierra Leone is richly endowed in numerous minerals such as bauxite, rutile and gold, the country's diamond deposits in the Eastern and Northern provinces have historically been of key significance. Diamonds were first discovered in the Kono region of the country in the1920s and became the most important source of revenue for the colonial government in the following decades.[50] Large-scale mining commenced in 1932 in Kono District through the Sierra Leone Selection Trust (SLTS), a subsidiary of the famous South African DeBeers mining company, that acquired an exclusive prospecting license for 99 years, which covered the entire country (Renner-Thomas, 2010).

British traders established lucrative trade relations directly with paramount chiefs of the chiefdoms in Kono District, thereby legitimising and bolstering the latters' authority and power over their constituents. The strong engagement with paramount chiefs in Kono through trade deals quickly allowed the chiefs to assume control over mining concession but also over local production and trade in the ivory, gold, and groundnut sectors (Renner-Thomas, 2010). They also benefitted directly through prestige, political connections to the central state, financial rents and the acquisition of firearms (Reno, 1995, p.33). In fact, chiefs became so powerful in Kono District that they staffed their own armies, employed forced labour, and exercised

[49] Kup (1975, cited in Reno 1995, p.32) reports that already by 1873, the colonial administration in Freetown had signed 73 trade treaties with local chiefs in the 'hinterland'.
[50] Diamond exports became the backbone of the Sierra Leonean economy between the 1930s and the 1970s, accounting for over two-thirds of export earnings and one quarter of national GDP (Maconachie and Binns, 2007, p.104).

despotic authority over the people in their chiefdoms (Reno, 1995, p.33). As I will show in the next sections of this chapter, these political arrangements were reproduced by subsequent (post-colonial) governments and persisted in this region of the country nearly 100 years after the first large-scale foreign investments in the area.

5.3.2 The postcolonial period (1961 - 2002)

Upon independence from Britain in 1961, the immediate post-colonial government under President Sir Milton Margai of the Sierra Leone People's Party (SLPP) maintained the political structures and the dual governance system established by the colonial regime.[51] The SLPP not only maintained the principles of indirect rule in the country's provinces, but chiefs also "became integral to political party formation in Freetown, while remaining the primary gatekeepers to the localities over which they ruled" (Albrecht, 2017, p.165). In fact, literature suggests that the role of chiefs became even more powerful than in the colonial era (Albrecht 2017). "[I]n the postcolonial state there is no clear line of separation between chiefs and government institutions" (Albrecht, 2017, p.165). In fact, "[i]rrespective of which political party has governed in Freetown, a majority of party politicians who have been elected to the central legislature have been members of chiefly families." (Albrecht, 2017, p.165). Especially under the one-party system established under the rule of President Siaka Stevens of the All People's Congress (APC) and continued by his successor Joseph Momoh, the symbiosis between party politicians in Freetown and chiefs in the countryside helped to reinforce the centralisation and concentration of power and resources in Freetown – a system reminiscent of the colonial era (Allouche, 2013, p.10). The APC regime played a central role in shaping and manipulating the political structure in the mining regions of the country. "The governing elite in Freetown frequently intervened in chieftaincy elections to ensure the election of regime loyalists, and regime insiders were given preferential access to mining licences on prime sites. "(Fanthorpe & Maconachie, 2010, p.263). This accumulation of power at the centre, combined corruption and patrimonial networks linking chiefs and politicians, particularly with regards to diamond mining industry in Kono District, is often seen as a precursor and a factor contributing to the civil war that broke out in 1991. As reported

[51] This stood in contrast to some other African postcolonial governments of the 1960s that aimed to break the political ties with traditional leaders and attempted to revoke their powers since they were seen to have collaborated with the repressive colonial regime (Albrecht 2017:165). This was, however, rather the exception to the rule as most African post-independence countries maintained the socio-political and administrative structure of the colonial period.

in a 2010 report on 'Environment, Conflict and Peacebuilding Assessment' by the United Nations Environment Programme (UNEP):

> Massive corruption in Sierra Leone's diamond industry played a significant role in creating the environment for political collapse. The country's leader from 1968 to 1985, Siaka Stevens, personally controlled the lucrative sector, overseeing the mass diversion of revenue to the pockets of favored elites. By the end of Stevens' tenure, the economy was entirely criminalized and had all but collapsed. The situation did not improve under his successor, the military leader Joseph Momoh. The looting of natural resources for personal gain marginalized much of the population, undermined the government's legitimacy, and weakened its capacity to maintain peace and stability.
> (UNEP, 2010)

One can infer from the existing literature that the way that paramount chiefs related to the central government in the colonial and post-colonial eras varied between Kono and the rest of the country's regions. While the role of paramount chiefs across Sierra Leone was central to land governance and vital in land-related investments in all provinces, by all accounts, chiefs in Kono District were particularly powerful. Housing the country's lucrative diamond mining fields, a constellation of high political stakes and elite politics manifested there, which particularly elevated the paramount chiefs in Kono as gatekeepers and facilitators of mining concessions from which they also extracted lucrative rents. This set them apart from other paramount chiefs in Sierra Leone, the vast majority of whom, one can surmise, were not as closely tied to government interests, or at least not tied to the highest echelons of government in such high-stakes ways.

5.3.3 The Post-war era (2002 onwards)

In the post-war period, customary tenure and the authority of paramount chiefs has tended to evolve into two different directions. In most of the country, the power of paramount chiefs substantially decreased (Renner-Thomas, 2010). As I will argue below, chiefs' power in the land tenure domain became more 'symbolic' in nature, giving way to greater participation of local families in land-based decision making in cases of large-scale foreign investments. This

is in line with, and indeed partially structured by, global governance mechanisms for 'responsible' investment. In some areas, such as Kono District, by contrast, paramount chiefs and sub-chiefs still seem to hold on to substantial political power and are still crucial figures and gatekeepers to large-scale land-related investments. What factors may have driven the divergence of customary tenure between Kono District and the rest of the regions in the post-war period?

Two possible (contributing) drivers of political change that may explain this divergence are discussed below: a) the effects of the civil war on chieftaincy institutions, b) the effects of post-war decentralisation and governance reforms driven by the international community (i.e., the chieftaincy restoration project, the 2004 Local Governance Act and the 2009 Chieftaincy Act). I suggest that these factors have changed the political landscape around customary tenure and decreased the power of paramount chiefs in many or perhaps even most regions outside of Kono District, while these changes hardly seemed to take hold in Kono District itself.

The Sierra Leonean civil war – A contestation over chieftaincy itself

The Sierra Leonean war from 1991 to 2002 can be understood as an attack on the institution of chieftaincy itself. As outlined above, chiefs became even more powerful in the post-independence period due to their role in political party formation and thereby "became associated with the kleptocratic tendencies of the Freetown elite" (Jackson, 2007, p.95). It is widely asserted in secondary literature that the abuses of chiefly power caused substantial social grievances that were important drivers of the civil war (Richards, 1996, 2005; Jackson, 2005, 2007; Fanthorpe, 2006). Particularly the grievances of rural alienated youths were seen as drivers of conflict. These included resentment of chiefs over unpaid forced labour and 'community work', and their control over land, marriage and the judicial system (Jackson, 2007; Richards, 2005). Chiefs often "hand[ed] down fines that were grossly incommensurate with the offences committed" (Fanthorpe, 2006, p.30), thus preventing youth from acquiring the capital necessary to access land, marry, and start their own families. Richards (1996, 2005) even sees the Sierra Leonean war as echoing notions of a 'slave revolt' and Fanthorpe (2006, p.32) sees it as evidence of an ongoing class struggle in the country.

Numerous paramount chiefs, along with government representatives and other figures of authority, were targeted during the war by the Revolutionary United Front (RUF) and many

were killed or forced to flee. “To the RUF, pre-war chiefs symbolized a land-owning elite that, like the central government, was corrupt and unaccountable and therefore a legitimate target.” (Albrecht, 2017, p.173). This resulted in a “a large number of [chieftaincy] vacancies in the post-war period.” (Jackson, 2007, p.95). “Of 149 Paramount Chiefs, 63 had been killed and thus gave way to successors elected by their peers in late 2002 and early 2003.” (Vincent, 2013, 33). Rebel groups attacked paramount chiefs everywhere, but paramount Chiefs in Kono District were particularly targeted because of their historic control over lucrative diamond fields. From 1996 to 2001, Kono District became a particular RUF stronghold (Albrecht, 2017, p.173).

> In many places the RUF had created their own version of a Native Administration (NA) system. Kono District was a special case as they were specifically targeted by the best-trained rebels because of the diamonds and gold found in the district. The rebels therefore overran the district and had a government with proxy chiefs (…).
> (Vincent, 2013, p.34)

As I will discuss in the next section, the office of paramount chiefs was reinstated in the post-war era. The political vacuum at the local governance level and the vacancies of the office of the paramount chief after the end of the war, coinciding with the arrival of the international donor community and extensive governance reforms, left paramount chiefs substantially weakened and less powerful (Renner-Thomas, 2010). Interestingly, this was not the case in Kono District. Despite the RUF’s animosity towards chiefs and their particular targeting in this diamondiferous region, “paramount and lesser chiefs were able to reconstitute themselves as local leaders” (Albrecht, 2017, p174) and seemingly managed to accumulate similarly high levels of power to before the war, the reasons for which I will discuss in the next section.[52]

[52]Apart from evidence in the literature on the particularly strong attacks on chiefs in Kono District, there is not much concrete information on the geographical targeting of chiefs during the war. Rather than arguing that where the chiefs were targeted the most during the war, they were weaker after the end of the war, I am rather emphasizing the resilience of the historic government-chief alliance and patronage networks around the mining economy in Kono District to explain how Kono Chiefs are again as powerful as before the war.

Post-war administrative-legal and local governance reforms

After the Sierra Leonean civil war came to an end in January 2002, the country was devastated. Sierra Leone was one of the least developed countries in the world and ranked 180th out of 182 countries in the Human Development Index (HDI) for 2009.[53] Promoting the neo-liberal peace paradigm, numerous international donor agencies and humanitarian assistance programmes, spearheaded by the United Nations and the Economic Community of West African States (ECOWAS), arrived in Sierra Leone to propel the post-conflict reconstruction and peacebuilding process. Coming under "international receivership status" (Ismail, 2008, p.20), the weak post-war Sierra Leonean state became nearly completely dependent on foreign aid, totalling 60 percent of GDP in 2003 and 50 percent in 2006 (Bender, 2011, p.79). "Sierra Leone became portrayed by the international community as an example of successful post-war peacebuilding (Jackson, 2011; Allouche, 2013) and was seen "as a state that has been resurrected and reconstructed by the international community" (Jackson, 2011, p.206).

This version of post-war Sierra Leone stands in stark contrast to other literature that highlights persistent insecurity, inequality, poverty, corruption, patrimonialism, and a continued operating of what Reno (1995) had called the 'shadow state elite' with regards to dubious and backdoor mining deals (Allouche, 2013). The influence and impact of the donor community in Sierra Leone therefore represents a sticky subject of debate within the literature. "Sierra Leone, along with a handful of other countries, was in many ways a guinea pig for liberal state-rebuilding after conflict in the early 2000s" (Harris, 2014, p.133).[54] The liberal concerns by the donor community were connected to democratisation, accountability, good governance, economic liberalisation, support to civil society and the Millennium Development Goals (MDGs). The British Department for International Development (DFID) played a pivotal role in post war Sierra Leone's (liberal) state-building process and security sector reform programs, as well as in propelling administrative-legal reforms including, controversially, the restoration of chieftaincy institutions and a decentralisation program.

[53] The country is still ranked in the 'low human development' category with an HDI score of 0.438 and ranking 181st out of 186 countries for 2018. However, the country's HDI score increased from 0.270 to 0.438 between 1990 and 2018, which marks an increase of 62.2 percent (UNDP, 2019, p.3).

[54] While a "mostly well-intentioned but ideological experiment" (Harris, 2014, p.155), the idea of liberal peacebuilding has been widely criticised for depicting post-conflict African countries as *terra nullius* that lack domestic politics (Harris, 2014).

The question of chieftaincy restoration

The future of chieftaincy institutions became a burning issue amongst the donor community in the post-war reconstruction period. Between 1999 and 2002, DFID designed and funded the 'Paramount Chiefs Restoration Programme', later called the 'Chiefdom Governance Reform Programme'. The programme was meant to fill the political vacuum in the countryside after many paramount chiefs had been killed or forced into exile during the war. "The DFID and the state were however simultaneously faced with a dilemma now remarkably familiar in Sierra Leonean colonial and post-colonial history, that stabilisation of the countryside was urgently needed, and the chiefs were best placed to do this" (Harris, 2014, p.131). Supported also by the United Nations Mission in Sierra Leone (UNAMSIL), the 'Chiefdom Restoration Project' was, on the one hand, supposed to serve as a security measure by "recreating the responsibility of the chiefs to 'report strangers' and curb any residual power of ex-combatants (Jackson, 2011, p.211). On the other hand, the restoration of chiefs was highly controversial to many observers as "it had become apparent early on that chiefdom administration in general had deep-rooted problems that no single donor programme was likely to resolve" (Fanthorpe, 2004, p.2). The donor community in general was highly sceptical of reinvigorating so-called "traditional" leaders as this "diverted significantly from the liberal aims of the donor community, some of whom took a very dim view, seeing the DFID programme as a shot in the arm [to the chieftaincy] at a vital time for what they perceived as a moribund and anachronistic situation" (Harris, 2014, p.132).

The question of chieftaincy restoration and the future of local rural authority in Sierra Leone left scholars divided. Richards (1996, 2005) and Hanlon (2005) urged caution about the reinstatement of chieftaincy institutions after the war and basically argued for the abolishment of chiefly powers altogether, while Fanthorpe (2006) believed in the reinstatement of chiefs coupled with comprehensive legal reforms and strict regulation of their powers to ensure greater downward accountability. The latter became the chosen course of action for the international donor community.

Donor-led local governance reforms

More in line with the liberal concerns by the donor community, the main strategy to accompany and keep the restoration of chieftaincies in check was a massive and fast-tracked decentralisation plan and comprehensive local governance reform, largely financed by the World Bank. The Local Government Act of 2004 provided for the re-establishment of a system

of elected 'local councils' at the chiefdom level.[55] Through the Act, elected local councils or 'district councils', were established and formally empowered to acquire and hold land, manage human settlements and development plans in the chiefdoms (GoSL, 2004). This basically inserted a competing source of local governance into the countryside and transferred some responsibilities of land governance from the chiefs to the councils. Tensions between the chieftaincy institutions and the new district over political authority ensued. Nevertheless, "[f]or many donors, the chiefdoms are beyond redemption, hence the rapid drive towards elected local government with the hope that chiefly authority will eventually wither away" (Jackson, 2007, p.97).

Apart from the decentralisation reform, the enactment of the 2009 Chieftaincy Act represents another direct attempt at curbing and regulating the power of the paramount chiefs, particularly with regards to the qualifications, election processes, roles, functions and removal of paramount chiefs. As Renner-Thomas (2010) notes, "[t]he social and political authority of the paramount chief has considerably diminished due mainly to the fact that the office is no longer exclusively hereditary but it now, to a very large extent, elective." (2010, p.15). Overall, the governance reforms introduced by the post-war Sierra Leonean state and the donor community appear to have taken hold in much of the national territory, but not in all. Indeed, there is evidence of patchy and uneven results across the country. In particular, there seems to have been little change in customary land tenure structures and workings in Kono District, where paramount chiefs maintain a powerful grip over their constituencies and the access to natural resources.[56]

Many scholars point to the unique political context of Kono District to explain why donor-led administrative-legal reforms seemingly did not work to weaken the authority of paramount chiefs there as it did elsewhere in the country. Specific attention in the literature has been paid to the role of the diamond mining industry in Kono District in shaping powerful patrimonial

[55] Local councils had existed in the early post-colonial era, prior but had been abolished under the one-party rule of president Siaka Stevens in 1972.

[56] Elsewhere, positive effects of the decentralisation reforms have been noted: "From 2004 to 2008, there was a significant turnover in elected councillors, suggesting people believed in the electoral process. Marginalised groups and women also benefited from the expanded political space. In 2004, women had 13 per cent of seats in local councils, in 2008 this increased to 18 per cent" (Srivastava & Larizza, 2011, cited in Fanthorpe et al., 2011).

networks (Reno, 1995; Keen, 2005; Maconachie & Binns, 2007). Frankfurter et al. (2019) argue that the post-war reforms were essentially ineffective in Kono District due to the longevity and prevalence of neo-colonial 'indirect rule' structures around the diamond mining industry has prevented the decentralisation reform from taking hold in this region.

> [A]lthough there have been significant efforts after the civil war to promote local councils as a more liberal form of rural government that might better regulate and coordinate local development and relations with mining actors (Fanthorpe, Lavali, and Sesay 2011), we found they did not wield power commensurate with the chieftaincy.
> (Frankfurter et al. 2019, p.532)

This is further attested to by Fanthorpe et al. (2011) in a study commissioned by DFID. The authors compared the influence of local councils versus the chieftaincy institutions in their ability to govern and provide services. The study shows that despite some variation, deference to local councils is generally quite high across Sierra Leone. Kono District, however, represents a stark exception to this pattern: Regardless of their location (rural-urban), socio-economic status, or level of infrastructure, communities in Kono District had far lower approval ratings for local councils than communities anywhere else, and, in turn, strong deference to their paramount chiefs. Echoing earlier arguments, this high level of influence of paramount chiefs in Kono, the authors argue, is related to their historic control over high-value mineral resources and their close connectedness to central state politicians in Freetown: "In Kono District, chiefs remain key political players even in urban areas, having accumulated wealth and decision-making power over land and settlement rights during the peak years of diamond mining. (…)" (Fanthorpe et al., 2011, p.29).

In *Reshuffling an Old Deck of Cards? The Politics of Local Government Reform in Sierra Leone,* Paul Jackson (2007) highlights the continuities between pre-war and post-war political structures and notes that the local governance reform has failed to clearly define the relationship between paramount chiefs and the district councils, especially regarding the access to land and natural resources (Jackson, 2007, p.104). "In practice, chiefs, as guardians of the land, can severely hinder the access of councils to agricultural and other land. This is likely to be worse in relation to land with rich natural resources, particularly diamonds and plantation agriculture (…)" (Jackson, 2007, p.104). Allouche (2013, 2017) further argues that donor-led

governance reforms were not only unable to dismantle powerful patronage structures around diamond mining, but instead, actively worked to re-create them:

> [T]he patrimonial linkages that were forged during the colonial era to maintain control over the country have been reinforced and deepened, not only by successive governments, but also through donor-, local and national NGO- and Sierra Leone-government-led initiatives that either favoured the rural elite or co-opted them.
> (Allouche, 2013, p.12).

In sum, it seems that where there are vested interests in high-value natural resources and strong pre-existing elite power networks shaped by rent extraction and patrimonialism, as in Kono District, "the rural gerontocracy is still present" (Jackson, 2007, p.98). Despite post-war decentralisation and administrative-legal reforms initiatives, the power of paramount chiefs in these locations will remain very strong – as in the case of Kono District. This, in turn, may help to explain why the influence of the international community in the land governance sector and the 'testing out' of international norms on responsible investment has been largely contained to areas outside of Kono District.

I suggest that the intense promotion of global governance norms for responsible land governance was made possible in regions in Sierra Leone in which a) the power of local elites had been largely diminished by the war, and/or where b) the administrative-legal reforms were able to take hold and thereby weakened the power of chiefs vis-à-vis local councils. In these areas, a new way of implementing large-scale land investments (with adherence to global norms and with families as important brokers) has slowly taken hold in the post-war era. This transition is still in progress as I will demonstrate through case studies of land investments. In Kono District, these factors do not seem to align, and may work to explain why these regions were kept outside of the purview of international donors.

5.4 Conclusion

Based on the historical analysis in the previous part, I have advanced a processual argument about change in land tenure regimes over time in this chapter, arguing that customary tenure - characterised mainly by the authority and power of the paramount chief in Sierra Leone - has

tended to evolve in two different directions since the end of the war. Whereas the power of paramount chiefs in terms of decision-making over the access to and management of land and natural resources appears to have been relatively high before the outbreak of the war in all of rural Sierra Leone, it was severely weakened after the end of the war in most regions of the country, yet in some pockets, the political authority of chiefs remained largely unchanged. I argue that this variation is influential in shaping post-war large-scale land investments and the way that international guidelines can gain traction in these investments.

In the post-war era, the international community was influential in reshaping land administration institutions and procedures in much of Sierra Leone. Growing reference to and conformance with international guidelines in cases of large-scale investment reflect both a) legal-institutional reforms at the national and sub-national level, and b) on-going efforts by international donors, in conjunction with newly empowered sub-national actors, such as landholding families and local elected officials, to shape the terms of large-scale land investments. These changes, I argue, have taken hold on the so-called 'reformed' customary tenure type, where the political authority of paramount chiefs has decreased since the end of the war.

In some regions of the country however, customary land tenure has seemingly not been affected by the changes outlined above. This seems to be the case particularly in areas where vested interests in natural resources exist and patrimonial networks still persist. In those places, wealthy and powerful paramount chiefs are still highly influential and often sole authorities over land and the people in their chiefdoms. The international community and the promotion of international norms for responsible investments have not gained much traction in land-related deals. Paramount chiefs remain the main interlocutors between the government and foreign investors during large-scale land and mining investments.

Kono District in the Eastern province is an exemplar and enclave of this 'status quo ante' - type of customary tenure. As discussed above, the resilience against change of this kind of customary tenure in Kono may be rooted, amongst other factors, in the government's mining deposits that are concentrated in Kono District. Government officials have historically required the assistance of paramount chiefs to facilitate lucrative mining deals (Reno, 1995; Jackson, 2007). Still today, mining rents are a critical sector for revenues of the current political elite and too substantial and critical for the government to forgo, and this may be one possible reason

why the ‘reformed’ land laws and procedures have not taken hold in these areas. I will refer to these ‘unchanged’ dynamics around land as the ‘unreformed’ type of customary land tenure.

I thus argue that customary tenure in the county’s provinces can in practice be separated into two types, a ‘reformed’ customary land tenure system characterised by powerful families and an ‘unreformed’ customary land tenure system characterised by powerful chiefs. Whereas existing literature has mostly characterized Sierra Leone’s land tenure systems as a dichotomy between statutory and customary tenure, often perceived as ‘formal’ and ‘informal’, I argue that in practice, there are three tenure types overall:

1. Statutory land tenure in the Western Area (freehold, leasehold, state-owned land)
2. Customary land tenure with powerful chiefs – mostly in Kono District, Easter Province – (‘unreformed’ customary land tenure)
3. Customary land tenure with powerful families – in most of Sierra Leone– (‘reformed’ customary land tenure)

This typology can be used to describe and understand variation in Sierra Leone’s Land tenure regimes across both space and time. Figure 11 sketches out where these tenure types are hypothesized to prevail in the country. The distinction between statutory tenure and customary tenure is relatively clear cut in geographic terms, with statutory tenure firmly restricted to the Western peninsula (yellow) and customary tenure (light and dark green) prevailing in the four rural provinces. The distinction between the two customary tenure types discussed above, however, is not as black and white and does not manifest perfectly in geographic boundaries. While customary tenure characterised by strong chiefs is particularly concentrated in in Kono District (dark green), customary tenure characterised by strong families is found in and around most of the investment projects I studied (in red), and to a considerable extent in most other regions outside of Kono District. However, despite the prevalence of ‘strong’ family authority over land for this kind of tenure, this does not mean that chiefs are always weak in regions outside of Kono and that there is no contestation around power over land in the areas outside of Kono. Remnants of powerful chiefs may remain a feature in areas outside of Kono where there are vested interests of political elites. But for reasons of clearer illustration, I highlighted Kono in particular as representative of the ‘unreformed’ type of customary tenure.

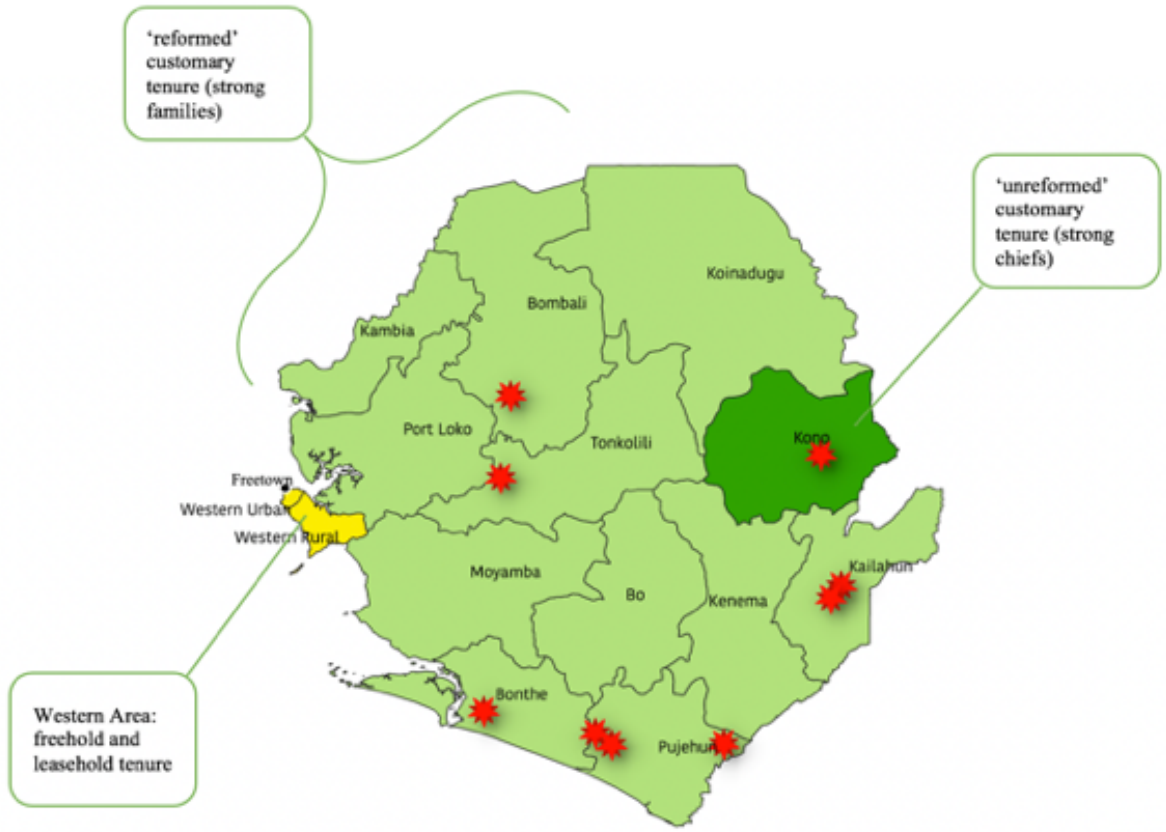

Figure 11. *Sketch of today's geographical location of the three tenure types and the approximate location of my case studies of large-scale investment*
Source: Adapted by author from maplibrary.org using QGIS.

This typology of land tenure types, each type with its distinct histories and politics, is fundamental for understanding the uneven way that international norms are gaining traction in cases of large-scale land investments today in Sierra Leone (and Uganda). As I will show in the next chapter, in investment cases on land under customary tenure characterised by 'strong chiefs', I observed that investments were implemented and facilitated directly through the paramount chief, often without the involvement or the consent of local families, and without regard to international norms. In contrast, investment projects on land under customary tenure characterised by 'strong families' tended to be implemented with the full involvement of local families while the paramount chief took a backseat in the negotiation process – conforming to global governance norms and guidelines.

The next chapter analyses eight case studies of large-scale land investments to illustrate the arguments made. Of these, five case studies are cases of land investments on ‘reformed’ customary tenure, while two case studies are cases of land investments on ‘unreformed’ customary tenure. In addition, one case study is a case of large-scale land investments that exhibit features of both ‘reformed’ and ‘unreformed’ customary land tenure.

Chapter 6: Case studies in Sierra Leone

This chapter presents eight case studies of large-scale land investments on two types of customary tenure regimes in Sierra Leone, 'reformed' and 'unreformed' customary tenure. Concordant to my overall argument in this thesis, I show that the type of tenure regime largely determines whether and how global norms for responsible land investments are leveraged to protect land rights and mediate conflicts during investment projects. I also argue that in the context of customary land in Sierra Leone, whether global norms gained traction locally further depends on two additional contingencies: the autonomy of the government from the international community and the high stakes of the government in particular investment projects.

Organised into four sections, section 6.1 of this chapter contains five cases of land investments on 'reformed' customary tenure. On this tenure type, global norms have gained traction to protect land rights of landholding families. In section 6.2, I present two cases of investment projects on 'unreformed' customary tenure, where global norms have been largely absent. In section 6.3, I present one additional case study of an investment project that seems to exhibit features of both types of customary tenure. I thus consider this case a 'hybrid' case. The analysis of each case study in this chapter is presented according to the following schema: a) the shape of the lease area (a single 'blanket' lease vs. individual lease agreements), b) the scale of decision-making (central role of the paramount chief vs. central role of families), and c) the conformity to international guidelines and the involvement of civil society and activist groups.

a) Shape of lease area: A single 'blanket' lease vs. individual lease agreements

Investment projects on the 'reformed' customary tenure type are all characterised by a new logic of land-deal making, namely acquiring the land in the form of individual lease agreements with landholding families rather than through one single 'blanket' lease signed by the paramount chief. This is clearly captured in the maps of the concession areas shown for the case studies below. Where the investment project is on 'unreformed' customary tenure, these maps depict a single large-scale lease area. By contrast, where the project takes place under

conditions of 'reformed' customary tenure, one sees scattered individual plots of land that have been leased out by individual families.

b) Scale of decision-making (central role of the paramount chief vs. central role of families)

In the case studies on 'unreformed' customary land, the lease agreement is usually brokered amongst a small group of elite actors (chiefs, investors, politicians, sometimes some heads of landowning families) with the paramount chief playing a central facilitator role. In contrast, the scale of decision-making over land lease agreements is much more localised for the case studies on 'reformed' customary land. These are characterised by individual lease arrangements, agreed on and signed by individual landowning families for their plot of land.

c) Conformity to international guidelines and involvement of NGOs

The newer investment projects on the so-called 'reformed' customary tenure seem to all be implemented under the guidance of and in adherence to international guidelines such as the VGGT, the CFS-RAI and other principles of responsible investments, such as Free Prior Informed Consent (FPIC), and are referenced by investors, government representatives, and civil society actors involved in these investment projects. These guidelines are also usually promoted by national and international NGOs and land-related activist groups, who often act as 'watchdogs' to ensure that investment projects are implementing these standards. In contrast, in investment projects on what I call 'unreformed' customary land tenure, involved stakeholders do not seem to conform to global norms for responsible investments. In these cases, national and international NGOs and activist groups working on land governance issues are also largely absent.

As noted earlier, it is beyond the scope of this research to advance a complete explanation of the causes of variation between individual cases of large-scale land investments based solely on observed similarity and changes in the customary tenure system.[57] However, several consistent and systematic variations between investment projects on the so-called 'reformed' and 'unreformed' customary tenure are captured here, and this is what is key to my argument in this dissertation. These are summarised in Table 5 below.

[57] Why certain large-scale investments were implemented in different ways can also be rooted in numerous other factors (i.e., preferences of a particular investor or paramount chief, the specific commodity sector and global market, the weather and geographical factors etc.)

Table 5. Main features of variation between investment cases on 'unreformed' and 'reformed 'customary tenure

Main features of variation:	**Case studies on "unreformed" LTR**	**Case studies on "reformed" LTR**
a) Shape of lease area	Single large-scale lease area ('blanket' lease)	Individual smaller plots of leased-out farmland
a) Scale of decision making	Small group of elites + central role of paramount chief	Localised: individual landholding families
b) Conformity to international guidelines and involvement of NGOs	Largely absent	International guidelines are central features, and sometimes projects are 'showcases' for the use of guidelines. Civil society groups are involved and present in the case.

Source: Compiled by author.

Table 6. Overview of case studies of large-scale land investments in Sierra Leone

Nr	Project name	Start date	Location	Sector	Size (hectares)	Implementation	Lease arrangement
1	Sierra Tropical Limited	2018	Lugbu Chiefdom, Bo District, Southern Prov.	Pineapples	4,335 (750 planted)	Bottom-up (individual leases)	Around 50 direct lease agreements with landowning families
2	Lizard Earth (started as part of DfiD LEGEND programme)	2018	near Daru, Kailahun District, Eastern Prov.	Cocoa	1,000 (of which 750 are under production)	Bottom-up (individual leases)	17 lease contracts with landowning families (2 years of negotiations)
3	Natural Habitats (part of DfiD LEGEND programme)	2014 (new project on old estate)	Makpele Chiefdom, Pujehun District, Southern Prov.	Palm Oil	30,700 initially, then downsized to 2320	First Top-Down (blanket lease), then Bottom Up	At first, 1 lease contract covering the entire Makpele chiefdom. Now, individual lease contracts with landowning families
4	Miro Forestry Company	2012 (new project on old estate)	Yoni Chiefdom, Tonkolili District, Northern Prov.	Forestry	21,000 initially, then downsized to 5344	First Top-Down (blanket lease), then Bottom-up	At first, 1 lease contract. Now, 39 lease contracts with landowning families
5	Goldtree SL Limited	2008 (new project on old estate)	Daru, Kailahun District, Eastern Prov.	Palm Oil	6400 (tbc)	First Top-down, then bottom up (but mixed picture)	At first, 2 'top down' lease contracts. After revision, addition of 2 new lease contracts with 200+ 'Landowners Agreements'
6	SOCFIN Agricultural Company	2011	Sahn Malen Chiefdom, Pujehun District, Southern Prov.	Palm Oil	12,000 initially, now 17,812	Top-down (blanket lease)	1 'blanket' lease arranged through the GoSL and the paramount chief: GoSL leased land from communities and sub-leased it to Socfin)

7	Meya Mining and other mining projects	Various starting dates	Various chiefdoms, Kono District, Eastern Prov.	Mining (Diamonds)	varies	Top-down (blanket leases)	1 lease signed usually between company, GoSL, and paramount chiefs
8	Sunbird Bioenergy Africa Ltd. / Addax and Oryx Group Ltd.	2010	3 chiefdoms in Tonkolili and Bombali Districts, Northern Prov.	Palm Oil	52,000 initially, then downsized to 23,800 (2014)	Mix: Top-down / bottom up (blanket leases remained but also consultations)	3 Leases (essentially 'blanket' leases) for each of the 3 chiefdoms hosting the investment; some 'bottom-up' elements in contract negotiations

Source: Compiled by author.

6.1 Land Investments on 'Reformed' Customary Tenure

The five case studies presented below are investment projects indicative of dynamics on land under the 'reformed' customary tenure system, characterised by weaker chiefs, more empowered families, individual lease arrangements with families, and alignment to numerous international guidelines. Two of the newer cases among these can even be understood as 'showcases' for responsible investments, promoted by the international community. Sierra Tropical Ltd. and Lizard Earth have been implemented in 2018 and have indicated adherence to numerous international guidelines from the start by implementing the principles of FPIC and making individual lease arrangements with local families, indicating a 'bottom-up' approach. The other three cases, Natural Habitats, Miro Forestry, and Goldtree SL Ltd. were built on pre-existing older investment projects that have changed investor and their investment strategies in the last decade. More specifically, they have switched their *modus operandi* from the dynamics typical for investments on the 'unreformed' customary tenure to those typical of investments on the 'reformed' type of customary tenure. In the course of this changeover, these investors have started to adopt strategies that align with international guidelines, such as involving the surrounding communities in the deal-making, signing individual contracts over land leases directly with families instead of the paramount chief. These cases, some of which are still in the process of this change, are representative of the ongoing changes in customary tenure that have taken hold after the end of the war. They support my arguments about how changes in the customary land tenure regimes, particularly the changing power of chiefs, precedes or coincides with the growing influence of and conformity to international guidelines.

6.1.1 Lizard Earth

Lizard Earth is a cocoa investment near Daru in Kailahun District in the Eastern Province of Sierra Leone. The project was born out of a previous cocoa investment, the 'Sustainable Partnership for the Implementation of Responsible Investment in Agricultural Land (SPIRAL)' project, founded in 2018. This project was part of the LEGEND Challenge Fund of the UK's then Department for International Development (DFID). With the goal of developing a socially sustainable and responsible business model for large-scale cocoa production, SPIRAL was created as a tripartite partnership with the German NGO Welthungerhilfe to guide the investment, the private company Balmed as the investor, and DfiD as the funding body. After

a change of investor, the project Lizard Earth emerged out of the SPIRAL project in late 2018. The current project is still supported by the NGO Welthungerhilfe and continues the approach of a sustainable and responsible land investment.

a) Shape of lease area

Lizard Earth follows a sustainable 'block farming' approach, by which land is not acquired as a consolidated surface area but consists of several parcels of land that may or may not be adjacent to one another. Often, the land is not simply leased, but subject to joint management agreements with the landowners, based on revenue-sharing. These individual parcels are clustered and managed as a 'block', thereby reaching economies of scale similar to large-scale consolidated land investments. Lizard Earth's processes of land acquisition resulted in 17 individual lease contracts with individual families. These 17 individual production sites are small parcels of land at village level, spanning over 12 communities (meaning that some communities have more than one production site for the project) and are organised into four clusters. The map below shows the location of the four clusters in different chiefdoms of Kailahun district.

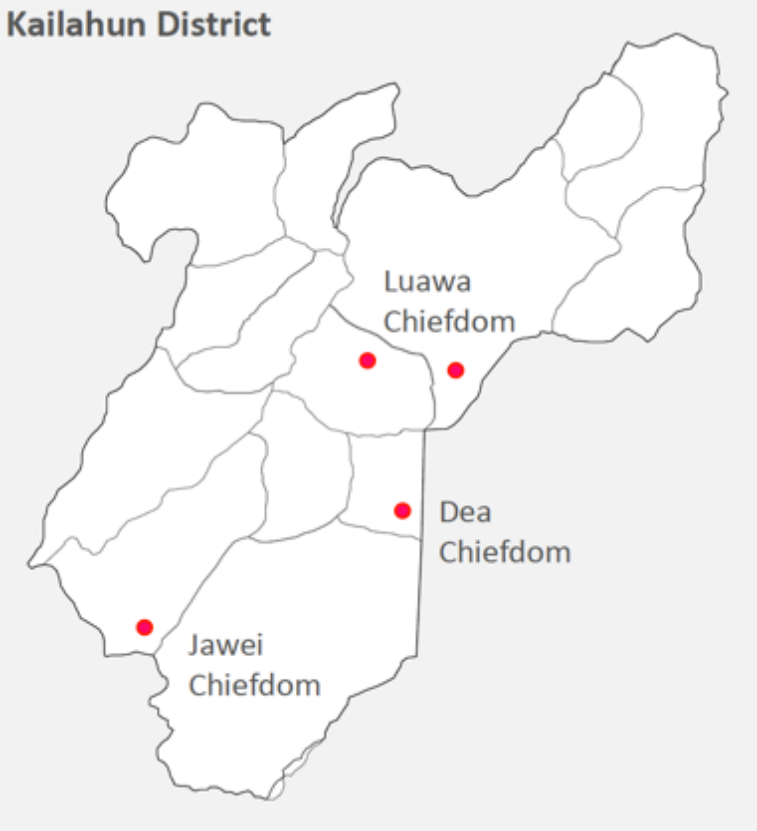

Figure 12. *Location of Lizard Earth production sites (clusters of farms at village level) in different chiefdoms of Kailahun District, Easter Province*
Source: Lizard Earth (2020)

b) Scale of decision-making

The investor negotiated custom individual lease contracts for each plot of land, as each plot was subject to complex ownership claims by multiple landowning families. The processes included the facilitation and organisation of numerous community meetings to allow for intra-community and intra-family negotiations to determine who should be included in the lease agreement. While individual families negotiated and decided on the land lease agreements, the paramount chief played a more 'symbolic' role of liaising with, facilitating, and supporting both the investor and the communities in the land acquisition process for the project. The investors formally met with the paramount chief, town chiefs and other community leaders at the beginning of the project to pay their respect, explain the aims of the project, secure the support of these leaders, and learn from them about the history of the communities and their land use in the region (Werner & Scholler, 2019; Interview with company representative, 9 and 23 August 2019).

c) Conformity to international guidelines and involvement of NGOs

The concept of the Lizard Earth project was to develop an innovative, sustainable, and responsible business model for cocoa production on a large-scale, in line with numerous international best practice standards (Interview with company representative, 23 August 2019). Emblematic of the conformity to such best practices is the clearly 'bottom-up' process of land acquisition, which was time-intensive and complex. The agreements that were developed were a mixture of lease and partnership models and were far more detailed than normal lease agreements. The land acquisition process included a process of land 'pledges' made by families willing to offer land to the investor, a participatory surveying and mapping exercise of the plots offered, which involved the training of community and family members in the use of GPS, and an official survey of the plots by government surveyors. It further contained a 'high conservation value' assessment, a baseline survey of communities, and the development of a socially sustainable selection method for future hired farm labourers and employees on the basis of 'vulnerability' as well as a Participatory Land Mapping and Action Planning (PLMP) initiative with communities, which included sketch mapping, land use planning, geo-referencing, and, importantly, the mapping of land *use* rights of community members

(Interview with NGO staff member, 15 May 2019; Interview with company representative, 23 August 2019). Mapping land use rights, specifically from the perspective of the local communities, particularly conforms to numerous recommendations inherent in international guidelines that emphasise the need to recognize and secure 'legitimate' tenure rights, particularly those of vulnerable and marginalised groups (i.e., VGGT, section 3A; CFS-RAI, Art. 20).

Further adherence to the VGGT, CFS-RAI, the Free Prior informed Consent (FPIC) – principle, and other international frameworks and best practices is evident in the abovementioned sustainable block farming approach, which emphasises shared benefits and partnership structures with the land-leasing families. Global norms for responsible investment were particularly promoted through the DFID LEGEND programme, under which the project's predecessor, SPIRAL, was implemented. A report (2019) commissioned by the NGO Welthungerhilfe specifies:

> Promoting the CPC-Model [Cocoa Production Cluster-Model] as a responsible land-use option, the Project worked closely with government authorities lobbying for the inclusion of key-points of the VGGT and other standards into relevant policies including the government's new Agri-Business Investment Approval Process (the "AIAP"). All consultations followed a participatory approach and involved civil society as well as government bodies and commercial agents. The main aim was to influence the overall land tenure and investment debate in Sierra Leone and to establish the CPC as a new rights-based investment model in the agriculture sector.
> (Werner & Scholler, 2019, p.8)

This shows that Lizard Earth, like the former SPIRAL project, can be understood as a 'showcase' or 'demonstration project' for the exemplary use of global governance mechanisms for responsible land investments. The investor, the supporting NGO Welthungerhilfe, and the funding organisation DFID have made this clear.

> We are supporting this project, also in the hope that it will become a *proof of concept* for this kind of business model but also for how to undertake responsible land investment generally. (…) So that we can finally move away

from the mere theoretical discussion around proper land governance towards a having a specific example to be able to say, ‘it’s possible, and it’s also profitable’.
(Interview with NGO staff member, 15 May 2019)

With the substantial funding and integration into the LEGEND programme and the support by Welthungerhilfe, this investment project can be understood not only as a showcase project, but also as an ‘emanation’ of the very organisations that are promoting the use of the international guidelines.

6.1.2 Sierra Tropical Ltd.

Sierra Tropical Ltd. is a subsidiary of the large food processing company DOLE Asia Holdings Pte Ltd., and is currently in the process of implementing a pineapple farm and processing plant on 4,300 hectares of land in Lugbu Chiefdom in Bo District in the Southern Province of Sierra Leone. After a feasibility study was conducted in 2014, a Memorandum of Understanding (MoU) was signed with the Sierra Leonean government, and an investment of USD 40 million was approved in 2017.

Figures 13 and 14. *Sierra Tropical Farm near Sumbuya Town in Pujehun District, Southern Province*
Source: Photographed by author (2019).

a) Shape of lease area

Of the anticipated total farmland of 4300 hectares, the company had, at the time of research, leased 750 hectares within the Lugbu Chiefdom directly from landowning families. This resulted in a concession area marked by individual and smaller plots of farmland. The map below (Figure 15) shows the scattering of individual plots of land in that area leased to the company so far.

b) Scale of decision-making

The land was acquired through negotiating individual lease agreements with around 50 landowning families in the Lugbu chiefdom. Each plot of land that was leased to the company was surveyed and mapped in a participatory manner together with the families that were offering their land. For the signing of the lease agreements between the company and the landowning families, each family had to appoint 6 family members to represent the family and to sign the lease in the name of the extended family. In line with the Government of Sierra Leone's mandate for land leasing fees, the company is paying a rent payment of USD 12,50 per year, per hectare of land. Of this, 50 percent is allocated to the landowning families, 20 percent received by the Lugbu Chiefdom Council, another 20 percent by the Bo District Council, and 10 percent allocated the central government through the National Revenue Authority (NRA). The amount to be received by the landowning families (USD 6,25 per year per hectare of land) is paid directly by Sierra Tropical to the families. To ensure transparency, two of these family members always have to be present when Sierra Tropical pays them the yearly rent payments. At least one member of the 6 appointed family representatives has to be female (Interview with company representative, 14 May 2019). Little reference was made in my interviews to the role of the paramount chief in this case. As the landowning families were centrally involved in the land deal, the paramount chief seemingly took a backseat in the deal-making and served rather a symbolic function.

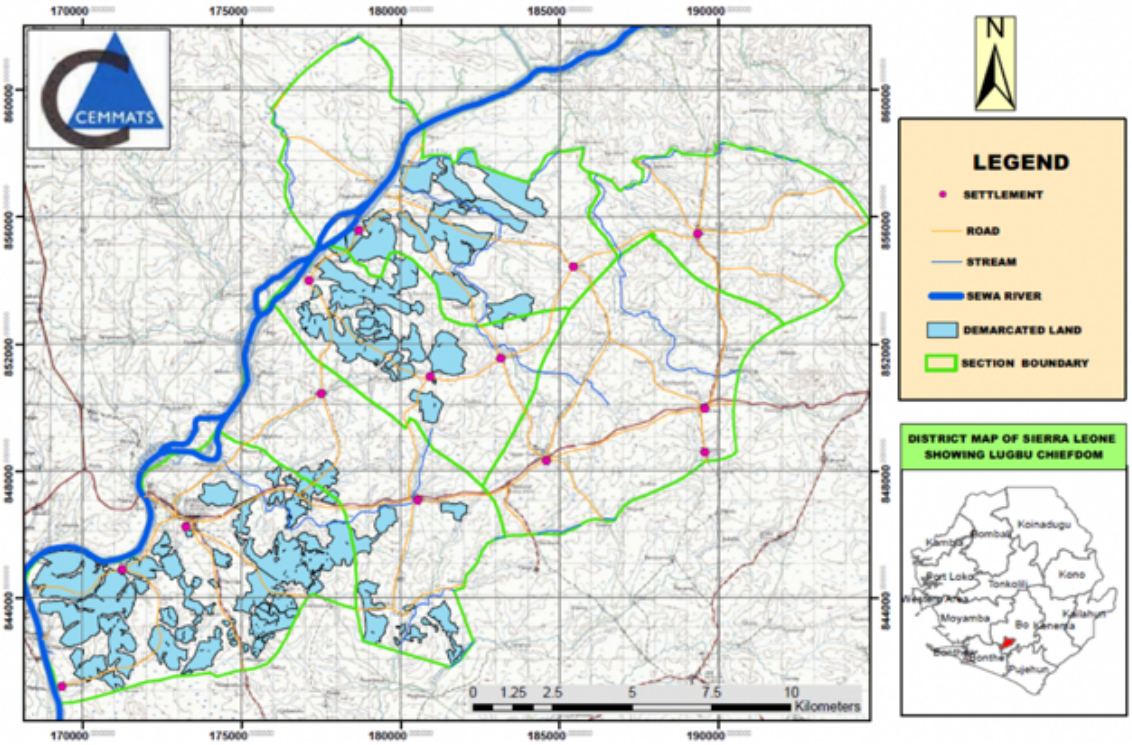

Figure 15. *Map of the individual plots of land leased by Sierra Tropical from individual families*
Credit: Sierra Tropical (2019).

c) Conformity to international guidelines and involvement of NGOs

The way the land was acquired by the company from the landowning families was clearly 'bottom-up' in nature and based on the principle of Free Prior Informed Consent (FPIC). The company engaged with landowning families and paid rental fees directly to each family. Sierra Tropical further appointed a community affairs consultant who liaised between the investor and the local communities. The company also emphasises gender parity - an important aspect of best practice standards for responsible investments - in its employees, with a at least 40 percent of female hired team leaders (Interview with farm managers, 31 May 2019; Interview with company representative, 14 May 2019).

The company follows ecological principles, leaving conservation areas and buffer zones between their pineapple plantations. An Environmental and Social Impact Assessment (ESIA) was undertaken in 2016. The investment is insured by the Multilateral investment Guarantee Agency (MIGA), part of the World Bank Group, and follows the IFC Performance Standards as well as the World Bank's Environmental Health and Safety (EHS) Guidelines. Sierra Tropical is one of the designated pilot projects for the new Agribusiness Investment Approval Process (AIAP), which was developed and supported by the UN Food and Agriculture

Organisation (FAO), together with the Government of Sierra Leone, and which is strongly based on principles of the VGGT and CFS-RAI.

6.1.3 Natural Habitats (former WAAL2 project)

Natural Habitats Sierra Leone (NHSL) is a subsidiary of the Dutch palm oil company Natural Habitats Group (NGG) and started operations in Sierra Leone in 2014. Natural Habitats focuses on the collection, processing and trading of organic, fair trade, and sustainable palm oil and the use of organic agriculture practices. The Natural Habitats palm oil project is located in the Makpele Chiefdom of Pujehun District in the Southern Province of Sierra Leone. The project evolved out of a previous palm oil investment created in 2012 by the West Africa Agriculture Number Two Limited (WAAL2) company, which caused substantial local conflict over land in the chiefdom. After the take-over of Natural Habitats, the company's general manager responded in 2015 to the UK DFID's call for applications for the 'LEGEND' challenge fund. With a specific focus on piloting new approaches to responsible land-related investments and mainstreaming the VGGT, this programme funds partnerships between commercial investors and NGOs. As part of this programme, the Dutch NGO Solidaridad partnered with the Natural Habitats project in 2016.

a) Shape of lease area

The previous investment company, West Africa Agriculture Nr. 2 Ltd. (WAAL2), acquired over 30,700 hectares of land within the Makpele Chiefdom, covering almost the entire area of the chiefdom of 41,218 hectares. The lease excluded only the Gola Rainforest and adjacent 'buffer zone' within the chiefdom (Figure 16). After WAAL2 transferred the lease to Natural Habitats, the new company drastically changed their investment strategy. Natural Habitats announced that it would reduce what came to be known the 'Master' lease of 30,700 hectares to around 5,000 hectares. To do so, the company embarked on the demarcation and surveying of individual parcels of land of landowning families that were (still) willing to lease their land to Natural Habitats. This resulted initially in a reduced concession area of 3,320 hectares (Focus Group Discussion with NGO staff and farm managers, 3 June 2019; Interview with NGO staff member, 17 May 2019). This change of strategy and reduction of the concession size change of strategy was largely supported by the incorporation of the project into the DFID LEGEND programme and the partnership with Solidaridad. Together with the latter, it was decided to completely overhaul the master lease and create new individual ease agreements for each

landowning family that was leasing land to the project, on the basis of fair community consultations and negotiations (Focus Group Discussion with NGO staff and farm managers, 3 June 2019). This resulted in another downsizing of the area leased to Natural Habitats, to 2320 hectares.

The two figures below show the contrast in the size of the concession area. Figure 16 shows the old concession area (the 'Master' lease), which was demarcated by the WAAL2 project and initially taken over by Natural Habitats. Figure 17 shows the downsized concession area (in yellow). Currently, the size of the investment is slowly expanding again, with more and more local landowning families approaching Natural Habitats, willing to lease out their land (Focus Group Discussion, 3 June 2019; Interview with NGO staff member, 17 May 2019).

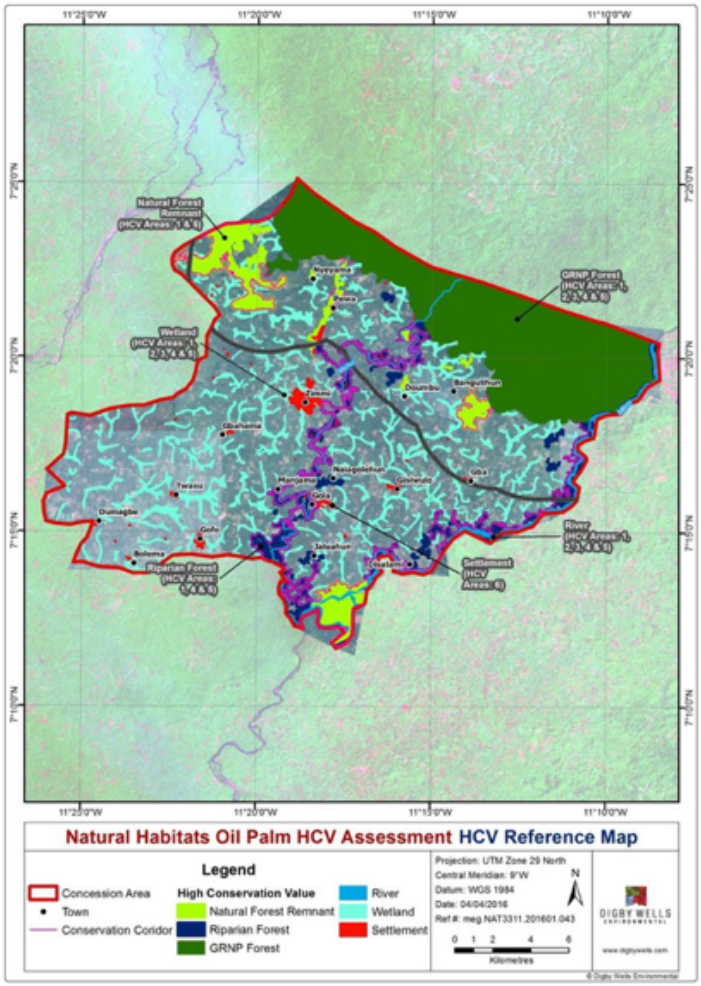

Figure 16. *Map showing the original size of the land lease covering almost the entirety of Makpele chiefdom*
Source: Digby Wells Environmental (2016).

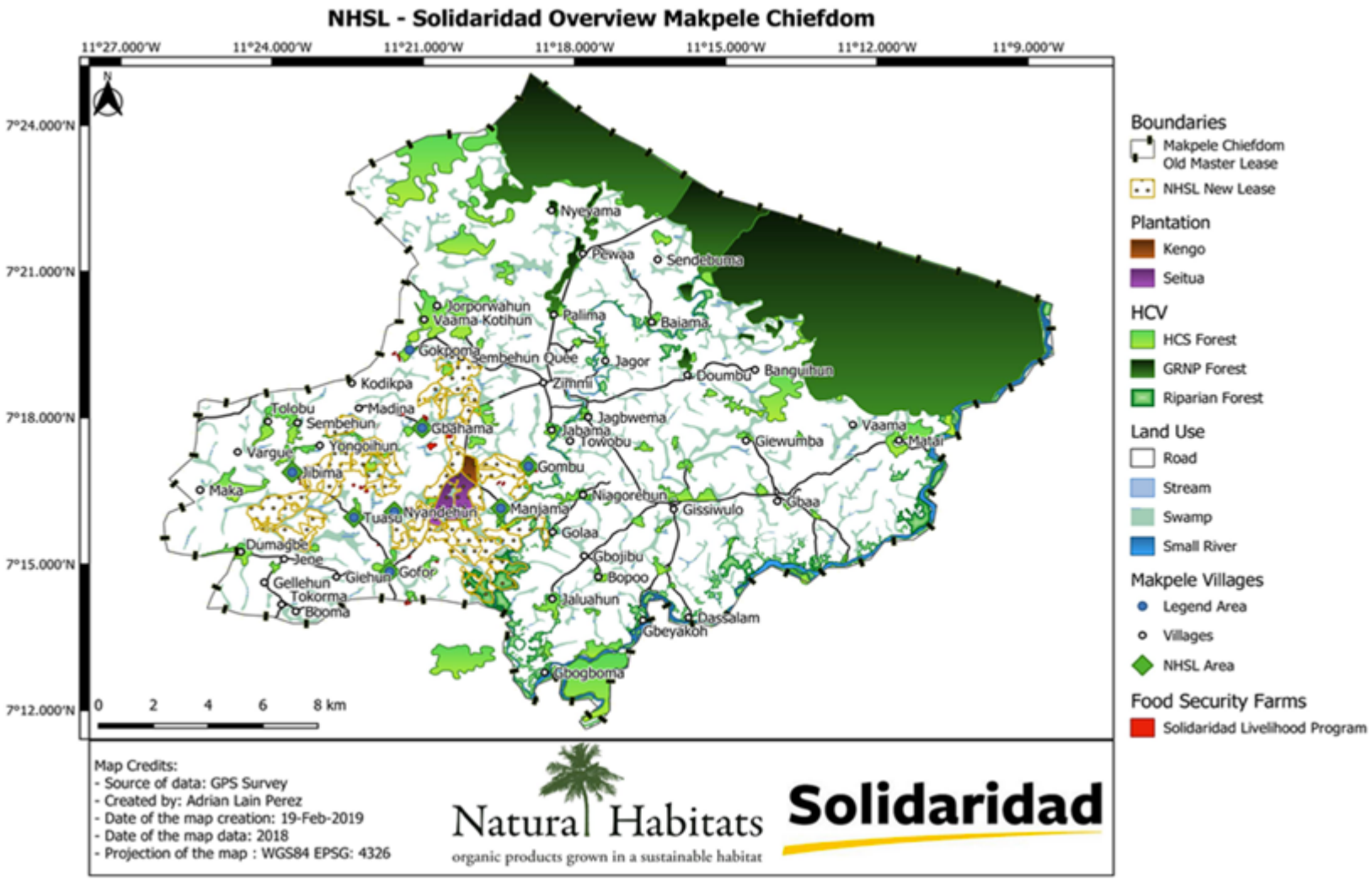

Figure 17. *Map showing the investment area within Makpele Chiefdom (after downsizing)*
Source: Solidaridad Sierra Leone (2019)

b) Scale of decision-making

The way the land was initially acquired by the former WAAL2 project was 'top-down' and representative of the 'unreformed' type of customary tenure. WAAL2 concluded a lease agreement directly with the late Paramount Chief of the Makpele Chiefdom, who signed over nearly all of the land in his chiefdom on behalf of the chiefdom's communities and landowning families. The latter, in fact, were largely unaware of this deal and only learned that their land had been leased out to the company at a later stage, largely due to the engagement of the Sierra Leonean NGO Green Scenery that investigated the case (Interview with landowners, 3 June 2019; Focus Group Discussion with NGO staff and farm managers, 3 June 2019).

However, the change of investor in 2014, and with this, the change of investment strategy and the drastic downsizing of the concession area by Natural Habitats moved the locus of authority and decision-making power over land to individual landowning families. They could now decide if they wanted to lease out their land or not and were in a position of negotiating the terms of these agreement. The NGO Solidaridad strongly supported the families in this process. Further, the new individual lease agreements were negotiated with the help of the paralegal organisation Namati that legally represented the local communities.

The role of the paramount chief also strongly contrasts between WAAL2 and the successor company, Natural Habitats. The lease contract for WAAL2 was concluded directly between the company and the aging paramount chief of Makpele Chiefdom, who had been in office for many years and who signed off the 'blanket' lease, covering nearly the entire surface of the chiefdom, in a 'top-down' manner. This chief passed away shortly after WAAL2 deal was signed in late 2012 and was succeeded by his son in 2013. The latter was the incumbent chief during the changeover from WAAL2 to Natural Habitats. The newly crowned paramount chief seemed to express a strikingly different behaviour and attitude with regards to his own role, compared to his predecessor. For example, whereas the old paramount chief seemed to equate his role of 'custodian of the land' with that of 'landlord' with sole authority over the land, the new paramount chief saw this differently:

> My role of paramount chief is that I'm the custodian of the land, although land is owned by individual families. I don't own the land. (…) So whatever decisions [those] families come up with regards to their land, is what I have to protect.

(Interview with Paramount Chief, 3 June 2019)

Further, in line with the analysis in the previous chapter on the declining power of paramount chiefs and their increasing dependence on the electorate (Jackson, 2007), the new paramount chief of Makpele seemed to be very aware of his role of 'serving' his constituents rather than ruling over them in despotic manner:

> It could not be in my own interest if I was to say, 'just go ahead, investor, just go ahead and do what you want to do'. Because at the end of the day, all the blame would be casted on me. Because those that are not in favour [of the investment], I have to protect them, too.
> (Interview with Paramount Chief, 3 June 2019)

c) Conformity to international guidelines and involvement of NGOs

Today, the Natural Habitats project stands out for high community engagement and sustainability, and for its unprecedented move to substantially downsize an existing concession area. When the company inherited the existing lease of over 30,000 hectares from the WAAL2 project, they inherited with it a myriad of local conflict and land-related grievances. Community land covering almost the entire chiefdom had been leased without local consultations to the WAA2 project and then transferred to Natural Habitats, again without local consultations. At first, people did not trust the company any more than they trusted the WAA2 project in 2014 (Interview with NGO staff member, 17 May 2019; Focus Group Discussion with NGO staff and farm managers, 3 June 2019; Interview with Paramount Chief, 3 June 2019).

However, the subsequent changes in the investment strategy, the project's incorporation into the DfiD LEGEND programme, the involvement of numerous national and international NGOs, and the overall conformity to international guidelines and best practice standards have seemingly brought sweeping changes. When the Dutch NGO 'Solidaridad' joined the Natural Habitats project in 2016, they mobilised communities and organised numerous awareness raising and training workshops on the content of Sierra Leone's new National Land Policy and the *Voluntary Guidelines for the Responsible Governance of the Tenure of Land, Fisheries, and Forests (VGGT).* They further created a multi-stakeholder platform, in which they brought together all involved stakeholders, such as community representatives, local government, the

new paramount chief and chiefdom council representatives, staff of Natural Habitats, and various NGOs and civil society groups. This platform met quarterly per year and became a forum for discussion, representation of different groups, and conflict mediation. The decision by the Natural Habitats – Solidaridad partnership to dissolve the old 'Master' lease and re-negotiate new and individual lease agreements with local landowners signalled a move toward conformity to international guidelines. In addition, engaging the paralegal NGO Namati to represent local landowners in the lease negotiations is in line with the principle of FPIC and allows for a fair negotiation process, where both parties are at eye level.

Further in line with international guidelines such as the VGGT, the CFS-RAI and many others, the change of strategy allowed for the participation of communities and gave room for political representation and options for contestation for these groups. For example, in 2016, several communities formed a community resistance movement, which became the Makpele Aggrieved Landowners and Land Users Association (MAKLOUA), and which was represented in the multi-stakeholder platform meetings (Interviews with landowners, 3 June 2019). In contrast, another community group formed consisting of those landowning families that were willing to lease out their land to Natural Habitats, the Makpele Individual Landowners Association (MILA) (Interview with landowners and users, 3 June 2019).

Solidaridad and Natural Habitats National are specifically testing and applying the new national Land Policy of Sierra Leone with this project. This concerns in particular the downsizing of the 'Master' lease agreement since the National Land Policy recommends that investments should not exceed 5000 hectares. Further, the investor explicitly committed to conforming to the VGGT (Figure 18) and further became the first large-scale investment project to explicitly test out the Analytical Framework for Land-Based Investments in African Agriculture, an analytical tool to help investors conform more closely to the VGGT[58].

[58] This due diligence framework was designed by the Leadership Council of the 'New Alliance for Food Security and Nutrition' and Grow Africa, which consists of a group of land experts from the UN Food and Agriculture Organisation (FAO), the African Union Land Policy Initiative, and representatives of G7 donor countries. It aims to help investors ensure that their projects are sustainable, transparent, respecting human rights, and conforming to international best practices, particularly the VGGT (Grow Africa, 2015).

Figure 18. *Poster at the Solidaridad Office, Freetown.*
Source: Photographed by author (2019).

6.1.4 The Miro Forestry & Timber Company

Miro Forestry & Timber Products is a UK-based forestry company located in Yoni chiefdom of Tonkolili District in Sierra Leone's Northern Province. The company started operations in Sierra Leone in 2012 and is mainly involved in the production of plywood for the regional and international construction market, as well as the production of transmission poles, edge glued panels and other forestry products. Miro Forestry & Timber Products, which also operated another forestry project in Ghana since 2010, is supported by several international development finance institutions such as the UK-based CDC group and the Finnish Fund for Industrial Cooperation (Finnfund). The company claims to have reforested more previously degraded land than any other forestry company on the African continent by planting over 20 million trees in recent years (Miro Forestry and Timber Products, 2021).

a) Shape of lease area

At the end of 2011, Miro Forestry acquired a consolidated concession area covering over 21,000 hectares of land. Shortly after that, the company's management decided not to utilise

the entire concession area and considerably downsize the land to be cultivated (Interview with company representative, 29 May 2019). Currently, the project is cultivating an area of 5344 hectares based on individual agreements with landowners. The original lease is still in place but meaningless in practice (Interview with company representative, 29 May 2019; Interview with NGO staff, 15 May 2019).

The map below (Figure 19) shows the current composition of leased land surfaces by Miro Forestry. The two areas marked in red represented the consolidated areas originally leased to the company in 2011 (making up 21,000 hectares). The map shows how the company has 'ignored' this lease area and only acquired land in the form of individual lease agreements with landowning families, including outside of the original area.

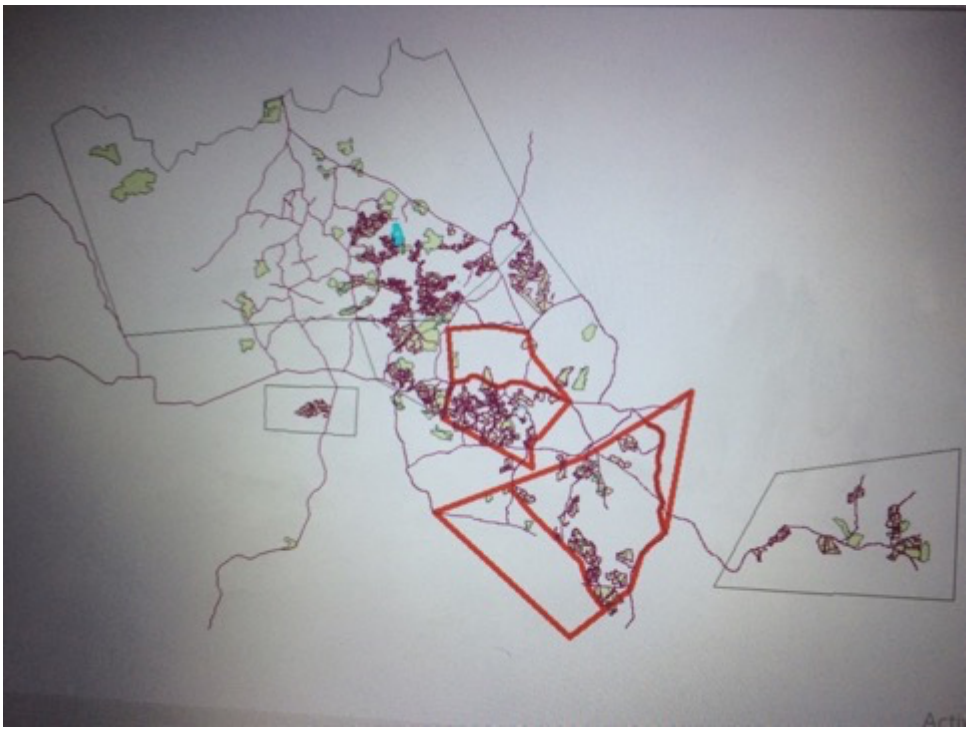

Figure 19. *Map showing plots of land leased by the Miro Forestry Company from landowning families.*
Source: Miro Forestry Company (2019).

b) Scale of decision-making (first top-down, then bottom-up)

The original lease contract covering 21,000 hectares of land was signed in a 'top-down' manner between a small number of elite actors including representatives of the investor company, the paramount chief and members of the chiefdom council, government representatives, and some community heads within the area. According to a company representative, once the project started operations in 2012, the company's management apparently realised that they needed to

change their strategy to include the local landowning families and overhaul the previous lease agreement in order to avoid conflict and to be able to create a 'win-win' situation (Interview with company representative, 29 May 2019).

There are 50 communities within the concession area of 21,000 hectares, of which representatives of only 15 of those communities were signatories to the original lease. Many of the other communities did not even know their land had been leased out, similar to the first lease contract of the Natural Habitats project (under WAAL2) (Interview with land owners, 29 May 2019). The Miro Forestry company decided to change its strategy and proceeded to acquire land on the basis of new individual lease agreements with landowning families, while agreeing to still paying a yearly surface rent for the entire area of 21,000 hectares to the communities (Interview with company representative, 29 May 2019). For plots of land that were offered to the company within the original lease area, the company created 'land acknowledgement agreements' with landowning families if they were still willing to lease out their land. At the time of this research (2019), there were 28 such agreements within this area. For plots of land offered to the company from families outside of the original lease agreement area, the company developed new lease agreements with them on an individual basis, of which there were 39 at the time of research. These developments are emblematic of the changes taking place on the so-called 'reformed' customary tenure since the end of the war, as analysed above. Instead of the small group of elites comprising of the investor, the paramount chief, and government representatives, "[t]hey [the communities] decide where you plant." (Interview with company representative, 29 May 2019).

c) Conformity to international guidelines and involvement of NGOs

The case of the Miro Forestry investment presents is similar to some other case studies outlined in this section, whereby a company changed its course of action and land acquisition strategy for the purpose of ensuring sustainability, avoidance of conflict, and to conform with global governance mechanisms. Despite having initially acquired a 'blanket' lease of 21,000 hectares and the government's authority to cultivate trees in the entirety of that concession area, the company changed their investment strategy to a more time-intensive, costly, and complex one in order to conform best practice standards. Aligned with the VGGT, CFS-RAI, the principles of FPIC and other global norms for responsible investment, the company overhauled the 'blanket' lease agreement and re-negotiated numerous 'acknowledgement agreements' and new lease agreements with individual families.

The company further claims to fully adhere to international best practice standards, mainly the IFC Performance standards and the standards of the International Labour Organisation (Miro Forestry and Timber Products, 2020). In 2017, the plantation became certified by the Forest Stewardship Council (FSC), which is considered a highly prestigious international certification scheme for forestry operations. Further, the Miro Forestry project made their commitment to following international best practices explicit by becoming one of four pilot investment projects in Sierra Leone that is currently testing out the new Agribusiness Investment Approval Process (AIAP), which is supported and financed by the UN Food and Agriculture Organisation and is based on the VGGT.

6.1.5 Goldtree Sierra Leone Ltd. (former Daru Oil Palm Company)

Goldtree (S.L.) Ltd. is an oil palm investment located near Daru, Kailahun District, in Sierra Leone's Eastern Province. The company is a subsidiary of Goldtree Holdings, owned by three investors, the African Agriculture Fund (AAF), managed by Phatisa, the Finnish Fund for Industrial Cooperation (Finnfund), and Planting Naturals. Goldtree's operations in Sierra Leone began in 2007, when private investors Andrew Beveridge and the Marriott family bought and rehabilitated an abandoned oil palm mill and adjacent plantation of the erstwhile Daru Oil Palm Company (DOPC) – an investment project from the 1960s, financed by the World Bank. The mill built by the DOPC project had been destroyed during Sierra Leone's civil war (1991 – 2002) and the project abandoned. In 2008, the Marriott family also acquired a land lease of 5,500 hectares. The current managers of Goldtree (S.L.) Ltd. took over from the founding investors in 2014 and embarked on changing the production to organic palm oil production in 2018.

a) Shape of Lease area

Upon taking charge of operations at Goldtree (S.L.), the current managers inherited two existing lease contracts, the old pre-existing palm oil plantation and the large-scale 5,500-hectare concession area. Since then, the company acquired two new land leases for the development of oil palm plantations in Lower Jawei and Malema chiefdoms, both in Kailahun District. Within the area demarcated under the two new land leases, however, Goldtree is only cultivating tree plantations on land that is secured through additional 'agreements' directly with individual landowners. In contrast to the two older land leases, this had the effect that the newer

investment area resembles a collection of individual scattered plots, instead of a large-scale ('blanket') lease, as depicted in Figure 20 below.

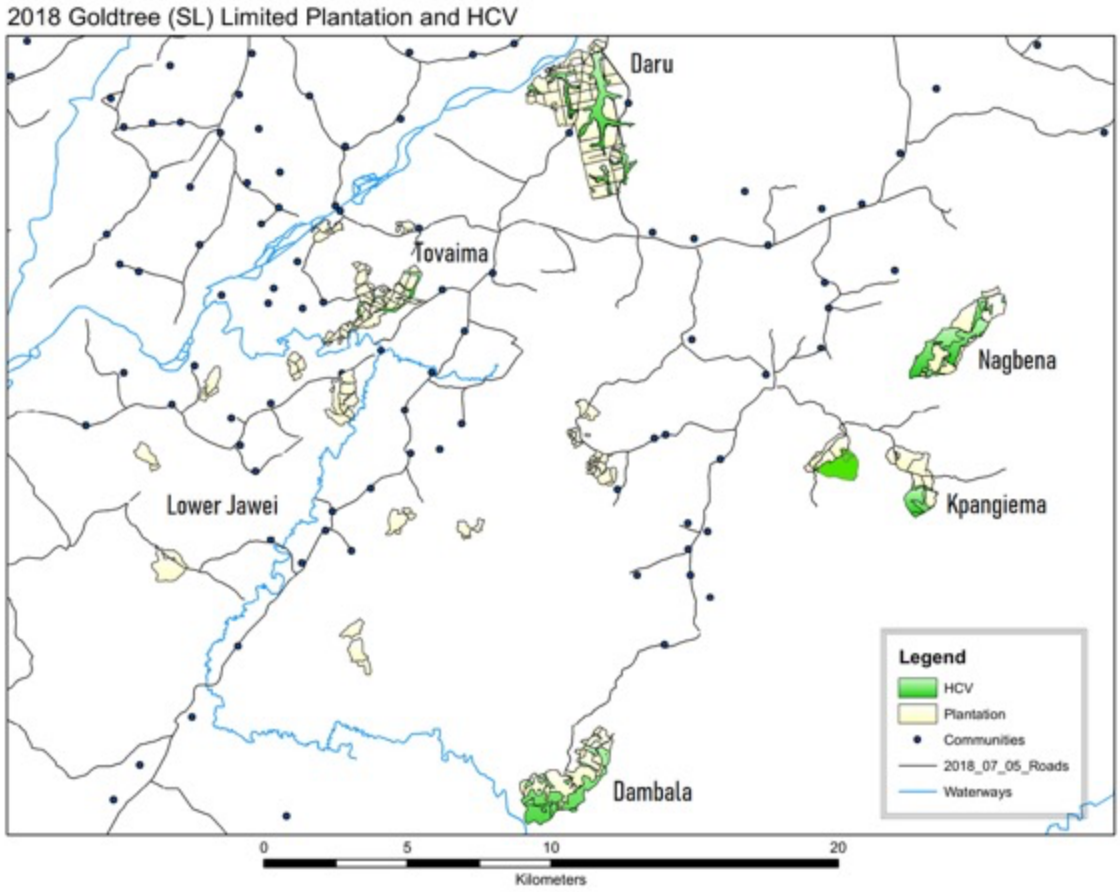

Figure 20. *Map of Goldtree (S.L.) Ltd.'s plantation areas in form of scattered farms across a 40-km radius and spanning numerous chiefdoms in Kailahun District*
Source: Goldtree (S.L.) Ltd. (2019).

At the time of research (2019), Goldtree (S.L.) Ltd. managed 2,650 hectares of land for oil palm cultivation under its leases, of which nearly 500 hectares were designated High Conservation Value (HCV) areas and other protective areas (RSPO, 2019). The company further runs extensive smallholder (outgrower) farming operations, involving around 10.000 oil palm farmers in more than 500 villages spread across ten chiefdoms and covering around 15.000 hectares of land (Figure 21).

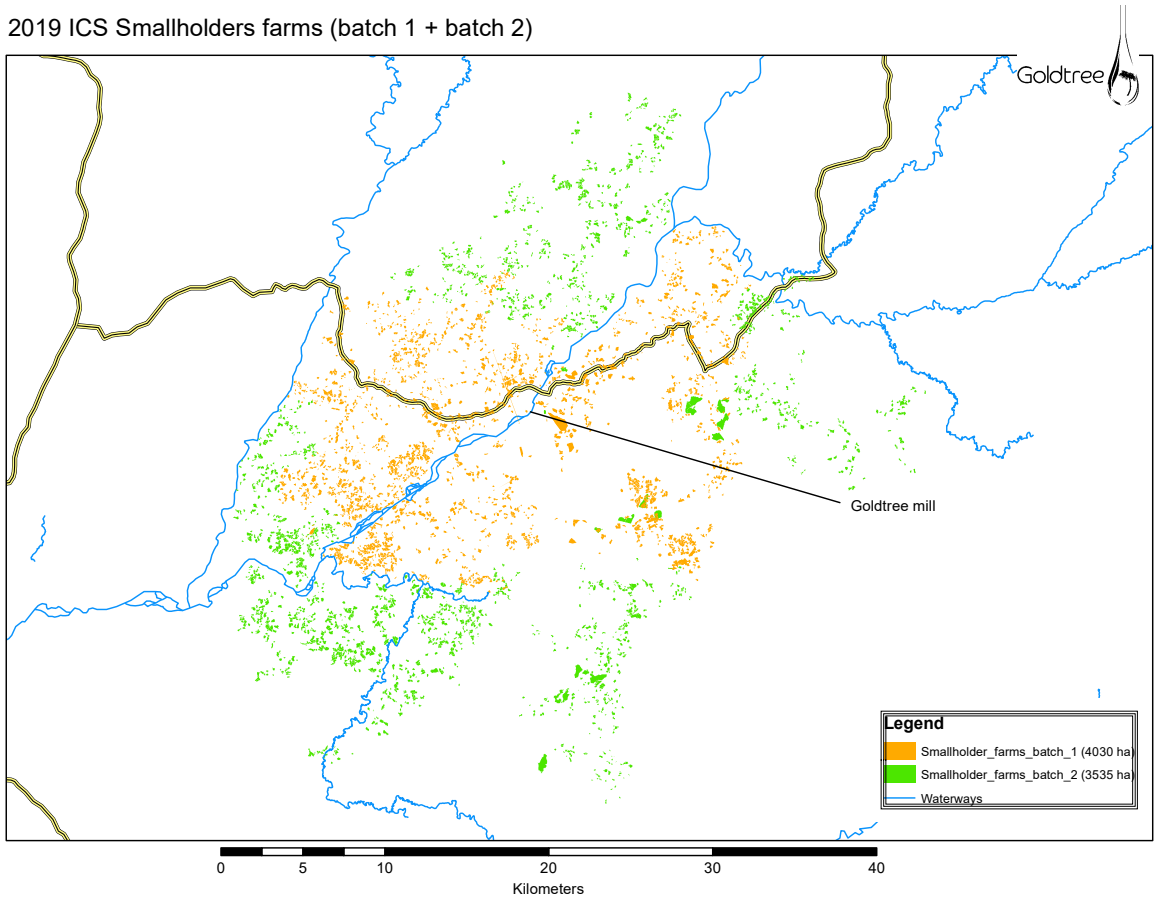

Figure 21. *Map showing Goldtree's registered smallholder farmers covering about 15.000 ha*
Source: Goldtree (S.L.) Ltd. (2019)

b) Scale of decision-making

The main difference between the two older and the newer lease contracts lies in the scale and locus of decision making in the lease agreement process. The two older lease contracts were acquired in a 'top-down' manner, including only a small group of elite decision makers. The oldest lease (the pre-existing and abandoned plantation from the 1960s, including the destroyed mill) was bought directly from the government. The other pre-existing lease agreement of 5,500 hectares was negotiated and signed by a small group of elites, including only the investors, government representatives, the paramount chief and some sub-chiefs. In both these older leases, the landholding families were barely notified or involved (Interview with company representative, 7 August 2019). The current investors, upon taking over the project and the existing two lease agreements, decided to change the project's strategy and policy drastically, acknowledging the problems with this way of lease-making:

> [Th]e problem here was that the old plantation, this World Bank plantation, was established by force. (…). It's very difficult because for these people, their trust has been, let's say, dented two times. Once by this World Bank project, and the next time when these 5,500 hectares were leased. (…) There was never a participatory mapping done there. That was just the way an old lease was done, the *wrong* way.
> (Interview with company representative, 7 August 2019)

The two new leases in Lower Jawei and Malema Chiefdoms within Kailahun District, acquired in 2014, were negotiated and concluded in a completely different way: The company informed, discussed, and negotiated the lease contracts with local stakeholders including local communities and landowning families in various chiefdoms in a 'bottom-up' manner (Interviews with landowner, 7 August 2019). First, the demarcations for the larger lease areas were agreed upon, and, in a second step, so-called 'Landowner Agreements' (LOAs) were set up between the company and individual landowning families within these areas. Goldtree (S.L.) Ltd. proceeded to plant oil palm trees only on areas under LOUs. The company currently has over 200 such individual landowner agreements. While these are not legally valid title deeds themselves, they still provide a layer of formalisation of the agreement between the company and the landowning families, as they require a demarcation of the farm plot and the signature of neighbours, town chiefs, the paramount chiefs alongside the landholding families.[59] Figure 22 shows an example of a LOA, depicting the demarcated farm plot in question and the consent of the landowners and witnesses. On the role of the paramount chief in this case, there was little information from interviews.

[59] According to a company representative, the process to get these LOA's formalised into individual title deeds is extremely time-consuming, laborious and costly (Interview 7 August 2019).

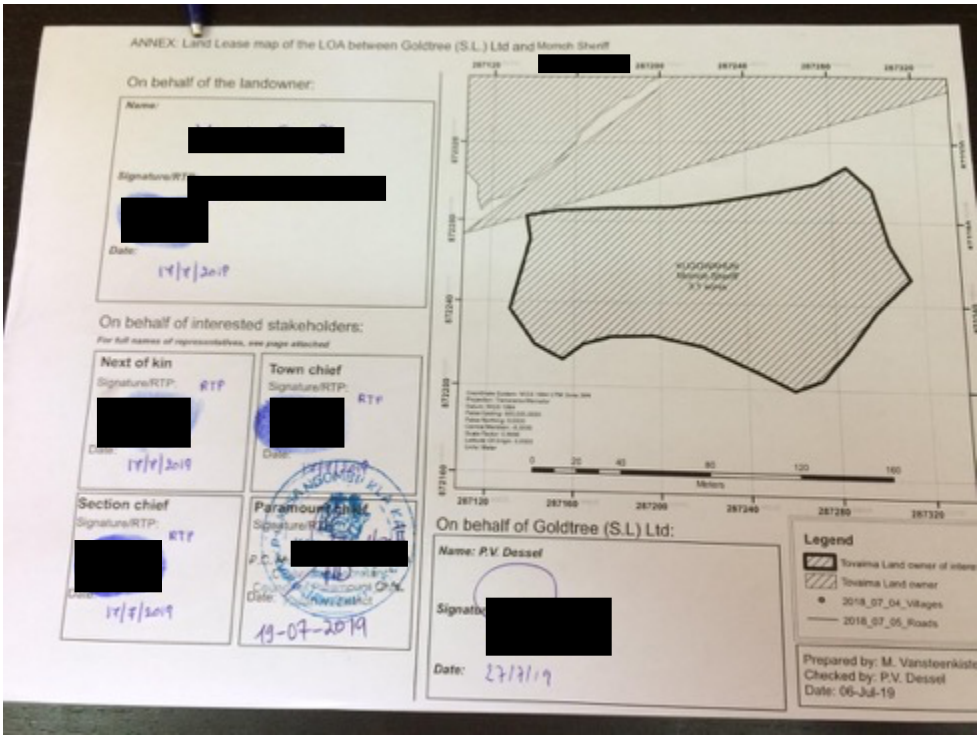

***Figure 22**. Example of a 'Landowners Agreement' (LOA) between Goltdree and a landowner Source: Goldtree (S.L.) Ltd. (2019).*

c) Conformity to international guidelines and involvement of NGOs

At first glance, the adherence to international guidelines represents are mixed picture in this case since the oil palm project is currently still made up of two leases that were acquired seemingly without adherence to international guidelines in 2007, and two newer leases seemingly with adherence to the guidelines since 2014.

However, the commitment by the company's current managers to change the investment strategy and policy to conform to international best practice guidelines is quite clear. For one, at the time of conducting fieldwork on this case (August 2019), the company was in the process of switching operations to organic palm oil production and becoming certified by the prestigious Roundtable on Sustainable Palm Oil (RSPO) - certification. The hope, I was told, was that Goldtree would become profitable (at the time of research it was not) through the benefits of RSPO-certified organic production of palm oil, which include access to new markets and customer bases, being paid substantial premiums for products, and receiving payment in US Dollars instead of the strongly devaluating Sierra Leonean Leone (Interview with company representative, 7 August 2021). Goldtree has been an RSPO member since late 2015 but becoming an RSPO-*certified* member is a lengthy and complex process. The RSPO

certifies the sustainable and responsibly sourced production and defines numerous social, environmental and economic benchmarks and guidelines for sustainable oil palm production. It further requires independent third-party auditors and oversight. One of the requirements, for example, is to conduct a land use change analysis.

Further, the process for acquiring the two new land leases in Lower Jawei and Malema Chiefdoms included many steps that are in line with the recommendations outlined in numerous best practice standards for responsible investments, such as the VGGT, CFS-RAI and the FPIC principle. These steps include, for example

- awareness raising and information campaigns about the investment in the villages within the wider region,
- voluntary offering of land for lease agreements by the landowning families,
- participatory mapping and demarcation of boundaries of land plots offered,
- environmental and social impact assessments (ESIA) and carbon use assessment by an independent auditor (ProForest) and a High-Conservation Value (HCV) – assessment, as required for a RSPO certification,
- provision of public disclosure statements and organisation of multi-stakeholder meetings,
- development of a community development action plan.

The project is also one of the four pilot projects for the FAO- funded Agribusiness Investment Approval Process (AIAP). With regards to the two older lease areas, the company rehabilitated the old palm oil mill and cleared and re-planted some of the area in the old plantation, since aged palm trees render little yield. However, they decided not to utilize the whole of the other pre-existing concession area. Following community consultations, the company only planted 300 hectares of the 5,500 hectares of land under the lease, despite having formal-legal rights to plant trees in the entire concession area (Interview with company representative, 7 August 2019).

In line with my own observations, company staff of Goldtree showed strong awareness of an apparent ‘trend’ of changing investment strategies in cases of large-scale land investments in Sierra Leone. There was seemingly a general sense of pressure on the Goldtree project from the international community in Sierra Leone to adhere to guidelines and apply ‘best practice’ standards in their operations. Some of this pressure seems to stem from media coverage and

international reporting on rampant landgrabbing in Sierra Leone, which may threaten the reputation of international companies. As the company's general manager explained,

> When I came [in 2014], I saw that these people [on the existing lease] never got compensation, so I paid them compensation in retrospective. Not because I'm a nice guy but because, you know, my investors are from European governments. And they want all the boxes to be ticked. That's also why I paid a little bit more than I should because I know that sooner or later, there's always an issue.
> (Interview with company representative, 7 August 2019)

6.2 Land Investments on 'Unreformed' customary tenure

The case studies presented in this section are those investment projects featuring dynamics typical of the so-called 'unreformed' customary tenure (strong chiefs, elite deal brokering, consolidated large-scale concessions areas, absence of NGO activity, and non-adherence to international guidelines). These cases include the large-scale palm oil project Socfin SL Ltd. and the mining concessions in Kono District generally.

6.2.1 The Socfin Agriculture Company Sierra Leone Ltd.

The Socfin Agricultural Company SL Ltd. is a subsidiary of the Socfin (Société Financière des Caoutchoucs) Group, an investment holding company listed in the Luxembourg Stock Exchange and specialised in oil palm and rubber plantations and operations across Africa and South-East Asia. The company's largest investor is the French Bolloré Group and the Belgian investor Hubert Fabri. In 2011, the company acquired a lease for 6,575 hectares for 50 years (subject to renewal for another 25 years) for the purpose of palm oil production in the Sahn Malen Chiefdom, Pujehun District in the Southern Province of Sierra Leone. Part of this lease area includes an abandoned, pre-existing palm oil plantation from the 1950s, established by the colonial government under the parastatal Sierra Leone Produce Marketing Board (SLPMB).

a) Shape of lease area

Since 2011, Socfin continued to expand the initial concession area of 6,575 hectares. At the time of research (2019), the company controlled nearly 18,000 hectares of the 27,000 hectares of land in the chiefdom of Sahn Malen, with over 12,000 hectares of planted standing oil palms. The consolidated plantation (Figure 23) is structured into four administrative estates. According to a report by the Socfin Agricultural Company, "Estate A comprised 3,002 ha, Estate B 3,905 ha, Estate C 3,995 ha and Estate D 1,447 ha." (Socfin Agricultural Company, 2017).

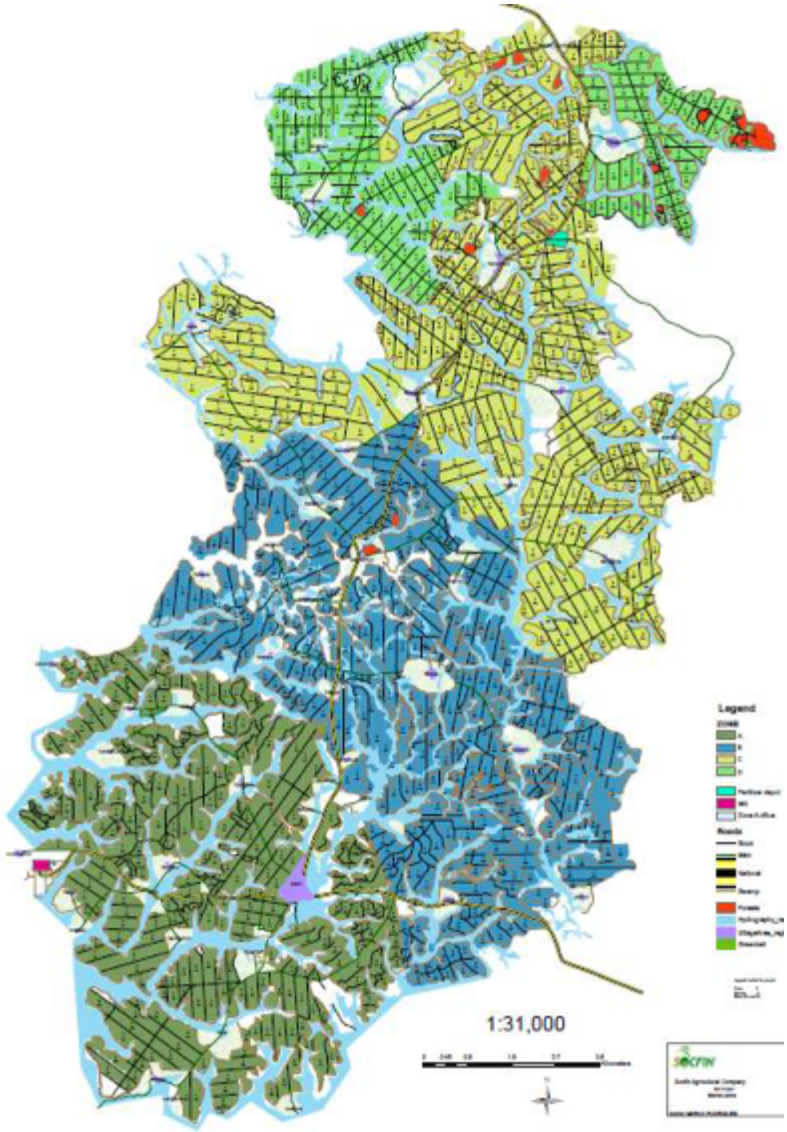

Figure 23. *Map showing the lease area of the Socfin Agricultural Company organised into four administrative estates*
Source: Socfin Agricultural Company, 2017.

Within Socfin's consolidated lease area, the palm oil plantations have encircled and isolated numerous villages in the chiefdom, as shown in depicted in Figures 24 and 25 below. This stands in stark contrast to the concession maps of large-scale investments under the so-called 'reformed' customary tenure outlined above, in which the plantations and individual farms resemble 'islands' on the map, instead of the human settlements amidst the plantations, as in the case of Socfin.

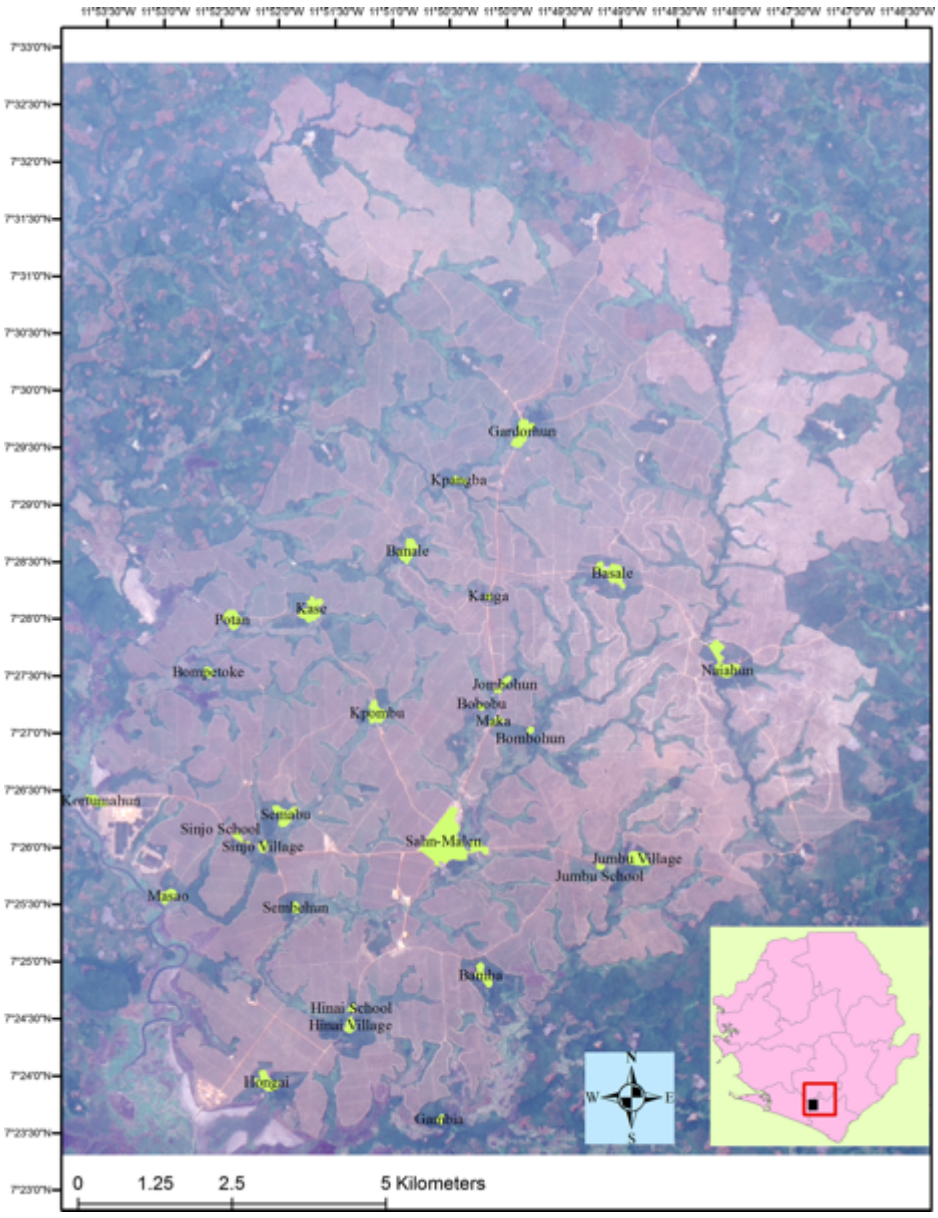

Figure 24. *The consolidated concession area (blanket lease) of the Socfin Agricultural Company in Sahn Malen Chiefdom*
Source: Yengho and Armah (2016).

Using satellite data, Yengho and Armah (2016) studied the land use change of the Sahn Malen chiefdom between 2007 and 2014. Figure 25 depicts the changes in land use and landscape observed by the authors in this time period, showing how one large consolidated plantation has been established in the area. It also shows the scattered villages in between the palm oil plantations and the mandated social and environmental buffer zones around the villages. The authors argue that these buffer zones have been violated as the Socfin plantations are encroaching into much-needed farmland and village land (Figure 25).

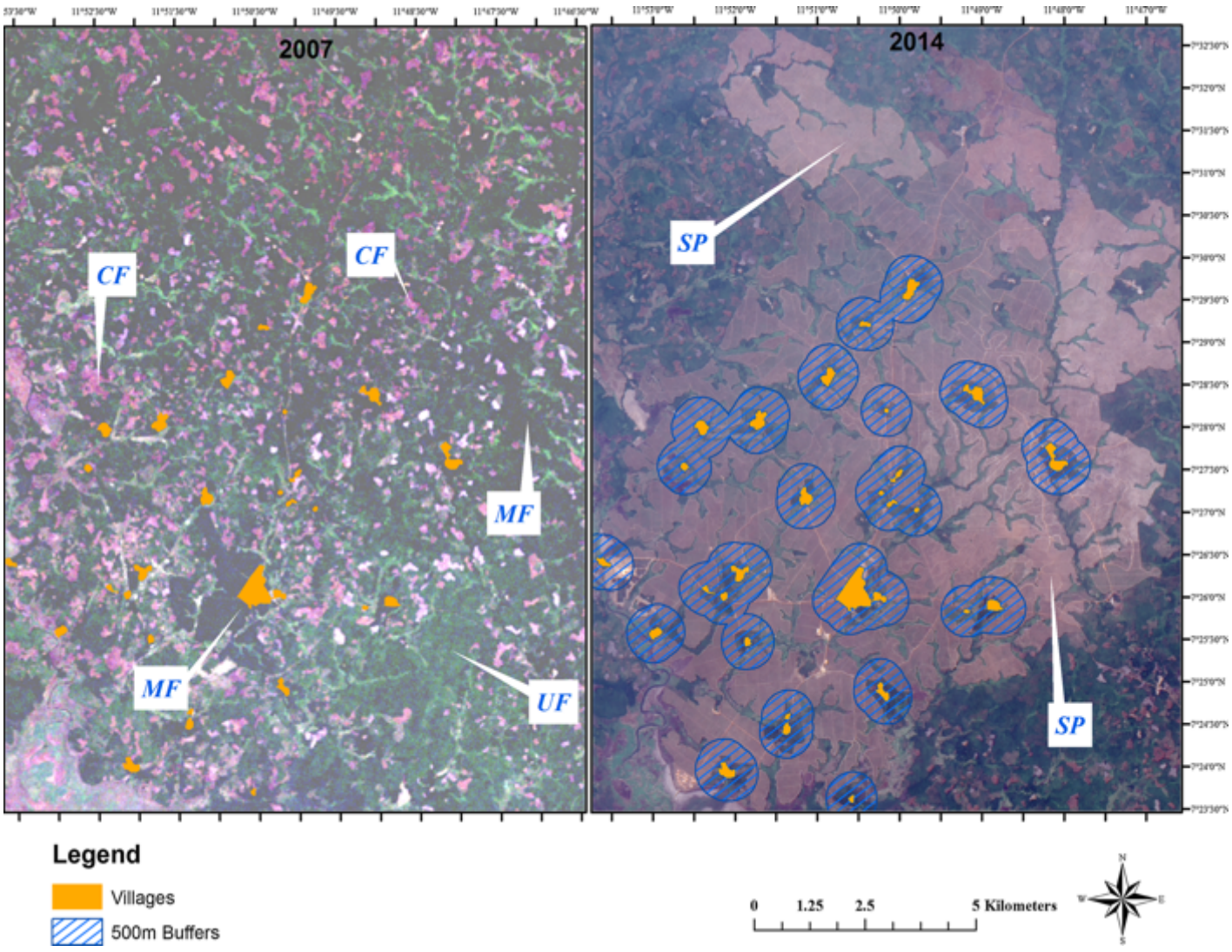

Figure 25. *Land use changes between 2007 and 2014 in the Socfin concession area in Sahn Malen chiefdom*
Source: Yengho and Armah (2016). LEGEND: CF=cultivated farmland, UF=uncultivated farmland, MF= mature forest, SP=Socfin palm plantations (Yengoh & Arma,h 2016, 114).

b) Scale of decision-making

In 2011, the Sierra Leonean Ministry of Agriculture, Forestry and Food Security (MAFFS) acted as an intermediary in the land deal between the Socfin Agricultural Company Ltd. and the communities by leasing land directly from the paramount chief of Sahn Malen chiefdom (on behalf of the communities), and then sub-leasing it to Socfin. The first lease agreement between the government and the chiefdom authorities was signed only by a small group of elite decision-makers: The Minister of Agriculture, Forestry and Food Security himself, Dr. Joseph Sam Sesay, the paramount chief of Sahn Malen chiefdom, B.V.S. Kebbie, as well as some sub-chiefs and select heads of landowning families. The subsequent 50-year sub-lease between the government and Socfin for 6575 hectares of land was similarly signed only by a small select group of people, including the minister, the paramount chief, and the representatives of the Socfin group. No individual lease agreements were made with landowning families (Interviews with NGO staff members, 6, 15, and 29 May 2019).

The paramount chief of Sahn Malen played a particularly central role in this case, which is emblematic of investment cases on land on so-called 'unreformed' customary tenure. The latter strongly promoted and personally facilitated the investment and seemingly largely excluded the majority of the communities from this process. Land-related grievances have led to substantial conflict in the Socfin case, including violent conflict with casualties, which were extensively reported on by national and international media, civil society organisations, scholars, think tanks and activists in support of the communities of Sahn Malen (Phoenix et al., 2019; Melsbach & Rahall, 2012; The Oakland Institute, 2012; Schneider, 2020).[60]

According to my interviews, communities in Sahn Malen chiefdom were initially told that a new company was coming to resuscitate the old pre-existing plantation and bring economic development to the area (Focus Group Discussion, 30 May 2019, Interviews with landowners, 31 May 2019; Interviews with NGO staff members, 6 and 7, May 2019). They did not think that the plantation was going to extend further than the boundaries of the pre-existing abandoned plantation from the 1950s. Instead, many villages now find themselves encircled by oil palm plantations and argue that the government-mandated buffer zones have been

[60] The Food First Information Network (FIAN), an international human rights organisation advocating for the right to adequate food and nutrition, has collected a plethora of reports from civil society actors, media, academia, and international organisations, as well as legal documentation on the case of Socfin and made it available to the public on their website: https://www.fian.be/Landgrabbing-by-SOCFIN-in-Sierra-Leone-documentation?lang=en.

violated, as shown in Figure 25 (Interviews with NGO staff members, 6 and 7 May 2019; Focus Group Discussion, 30 May 2019).

Further, the signatures of sub- and section chiefs and several elders (as heads of families) on the lease agreement are not without controversy and have been reported as being the product of pressure and intimidation by the paramount chief, as well as the lack of knowledge and absence of literacy (Interviews with NGO staff members, 6, 7, and 15 May 2019; Welthungerhilfe, 2012). Most family representatives in Sahn Malen are illiterate and signed the lease agreements in the form of a thumbprint, not fully aware of the content of the lease agreement or informed what the project would entail (Welthungerhilfe, 2012). Others who were outspokenly against the investment from the start faced intimidation and threats from the Paramount Chief (Interviews with NGO staff members, 6, 7, and 15 May 2019). Further grievances included the lack of documentation over farmland used by individual families nor compensation paid for the removal of existing crops or 'economic trees'. (Interviews with landowners and users, 31 May 2019).

Violence erupted at several stages. In October 2011, local protests against the land deal erupted near the Socfin plantation leading to the arrest and detention of 40 people. Protests and arrests continued in subsequent years. Detained people often faced prosecution for riotous conduct and conspiracy, amongst other charges (SiLNoRF et al., 2019). At the time of conducting fieldwork on this case (May and June 2019), the most recent bout of violence occurred in January 2019, when hundreds of armed people organised a protest against the company and built barricades on the access roads throughout the plantation to boycott the production. This protest led to the death of two protestors, who were shot dead by government security forces inside the concession area of Socfin (Schneider, 2020; SiLNoRF et al., 2019).

'Two strongmen fighting' – A power struggle over local authority?

The conflict dynamics around the Socfin case are characterised by two main factions, led by two elite political figures. On the one side of the conflict is the Paramount Chief and his direct subordinates, together with the investment company, and the central government, who brokered and concluded the land deal in a 'top-down' fashion. Several landowning families have been reported to side with this group, albeit under reports of being pressured by the

paramount chief.[61] The paramount chief, Brima Victor Sedi Kebbie, is one of the most powerful chiefs in Sierra Leone and has played a key role in the investment project (Schneider, 2020). "Until recently he was a Member of Parliament in Freetown, a position he has used to his advantage, according to critics of Socfin's operation" (Schneider, 2020, p.1).

On the other side of the conflict is the Member of Parliament for Sahn Malen, Honorable Shiaka Sama., who has rallied numerous groups of landowners and land users in the area behind him. Hon. Shiaka Sama is an independent MP, not affiliated with any political party, and has openly spoken out against the Socfin investment, citing land rights- and human rights violations. In 2011, he formed and led a pressure group against the investment, the Malen Affected Land Owners Association (MALOA), whose members have continuously mobilised and protested against the project (Interview with MP, 7 May 2019).

It is apparently widely known that Shiaka Sama and the paramount chief of the area are old rivals and vying for power (Interviews with NGO staff members, 6, 7, and 15 May 2019; Interview with company representative, 1 June 2019). This conflict could therefore be as much about vying for votes and support in upcoming elections as it is about the land rights of local people in relation to the Socfin project. Hon. Shiaka Sama, for instance, has been viewed critically by the central government and in the media in Sierra Leone (Interviews with NGO staff members, 7 and 15 May 2019). Some perceive him as a hero fighting for the rights of aggrieved communities, while others believe he plays a key role in having incited violence, and 'brainwashing' people with false information to support his own role as a community leader (Interviews with NGO staff members, 15 May 2019). He was also criticised for blocking attempts at conflict mediation and dialogue with other stakeholders (Interview with company representative, 1 June 2019).

c) Conformity to international guidelines and involvement of NGOs

Many international and national NGOs were involved in the case. They raised the alarm bell to far-reaching human rights violations and 'land grab' allegations. For example, one of the

[61] According to my interviews, these families 'loyal' to the Paramount Chief have been benefitting from the project or were 'paid off', which was facilitated directly through the Paramount Chief. It seems that the inclusion (by signature) of some select landowning families in the lease arrangements was then used to serve as a legitimation / justification by the Paramount Chief to argue that 'the communities' had been consulted and were in favour of the investment (Interviews with NGO staff members, 6, 7 and 15 May 2019).

main criticisms against the Socfin project was the lack of transparency in the initial stages of the investment, the absence of consultations, inclusion or option of participation in the investment for the communities in the chiefdom (Welthungerhilfe, 2012). This goes directly against the international principle of Free, Prior, Informed Consent (FPIC) and numerous other recommendation inherent in international guidelines and best practices, such as the generation of shared benefits, and the fair inclusion and participation of all stakeholders.

Further, the reports of oppression, blackmail, and threats by the paramount chief against potential resistance to the investment, combined with numerous reports of continuous arrest, harassment and illegal prosecution of protesters have been considered human-rights violations by national and international media and civil society and activist groups (Schneider, 2020, The Oakland Institute, 2012; SiLNoRF, 2019). Further grievances in stark contrast to best practices standards for responsible investments included the lack of documentation over farmland used by individual families and the lack of compensation paid for the removal of existing crops or 'economic trees'. (Interviews with landowners and users, 31 May 2019)

However, concerning other international guidelines and regulations, the company has been certified by ISO 14001 since May 2017, which is the standard for proper environmental management set by the International Organisation for Standardization. According to a company representative, the company is currently working towards becoming certified by the Roundtable for Sustainable Palm Oil (Interview with company representative, 1 June 2019).

In sum, this case is representative of the 'old way' that land leases were done, under the so-called 'unreformed' customary tenure: An investment deal brokered through the paramount chief, who exerted his power and influence to promote his own agenda in cooperation with the politicians at the central state level. The deal brokering and the decisions over land rights and access to land were done at the scale of a small elite group of people and the lease agreement is characterised by one singular ('blanket') lease. In contrast to the five case studies analysed under the so-called 'reformed' customary tenure, there was no mapping and demarcation of individual land parcels done and no individual lease contracts or landowner agreement negotiated, or any other form of recognition, demarcation and certification of an individual landowning family's right to land. This conflict led by two elite figures, the paramount chief and the local member of parliament of Sahn Malen captures important political dynamics at the sub-national and national level in post-war Sierra Leone. For one, the control and access to natural resources and the

promises of lucrative investments are still driving powerful people in the country. This is also the case, for example, in the mining sector, as the next case study will show.

On the other hand, the salient media backlash against the investment and particularly against the despotic role of the paramount chief in the land deal may be indicative of changes in the nature of customary land governance and large-scale land investments in Sierra Leone. This is also evidenced in the notable involvement of numerous national and international NGOs and activist groups. For example, the national NGOs Green Scenery and NAMATI provided legal aid to detained protestors since 2011 while numerous media reports and NGO studies continuously reported on the developments around the project. In 2019, a large-scale 'fact finding mission on the human rights situation in Sahn Malen' was carried out by the so-called 'Land Rights Defenders' group – a network of 22 national and international NGOs and activist groups (including notable names like Amnesty International and the Food First Action Network (FIAN)).

It seems that the 'old way' of deal-making is no longer accepted in many or most places. The paramount chief, particularly powerful and well-connected as a former member of parliament, has exerted substantial power over his constituents in the brokering of the land deal, from which he financially benefitted from. However, facing the opposition of the local member of parliament, as well as numerous human rights activist groups and civil society protest, the struggle to cling on to power and authority of the paramount chief in the light of this opposition can be seen as indicative of the changing and weakening role of paramount chiefs in most regions of Sierra Leone. This would be the case at least in regions in which there is an international 'spotlight', and where local populations can really threaten to disrupt investments or agricultural activity.[62]

6.2.2 Mining concessions in Kono District

Kono District in the Eastern Region is and has been the epicentre of the diamond mining trade in Sierra Leone and keeps attracting international investors. According to the magazine *Mining Review Africa*, since 2018 alone, three new large-scale precious minerals mining licenses have

[62] Given the interactions and dynamics between transnational activist networks and local societal resistance groups, and the pressure they are mounting on investor and the government in this case, the Socfin project can be well embedded in phases 1-3 of Risse et al.'s (1999) Spiral Model of norm socialisation (see Chapter 2).

been issued by the Sierra Leonean government in Kono District (i.e., Seawright Mining Company Ltd., Wongor investment Mining Company Ltd., and Meya Mining Company Ltd.)

The mining investments in Kono District seem to be emblematic of the dynamics on the 'unreformed' type of customary land tenure. Similar to dynamics before the civil war, paramount chiefs are key figures in managing and controlling the access to land and natural resources and facilitating lucrative land leases and concessions, which are brokered amongst small elite groups of decision-makers. This 'top-down' nature of deal brokering is reflected in a singular large ('blanket') lease contract over one consolidated area. This stands in contrast to the 'bottom-up' process of deal-making on land under 'reformed' customary tenure, which is characterised by numerous individual smaller lease agreements made with landowning families.

Due to constraints in accessing mining concession sites and representatives of mining companies in Kono District, my fieldwork in this region was more limited than in other cases of large-scale investment projects. I was, however, able to interview numerous chiefs, including three paramount chiefs and, several town and sub-chiefs, local communities affected by large-scale mining operations, artisanal miners in the region, as well as local government representatives in Kono District. The overwhelming majority of my interviewees confirmed the dynamics around customary tenure that I described as so-called 'unreformed', in which the paramount chief plays a powerful and despotic role and local families have little say in land-related matters or deal-making. While a case-by-case analysis of all the mining companies in Kono was beyond the scope of my research, given the access constraints mentioned above, I have nevertheless collected information on some of the most prominent mining companies in this region, particularly on the companies Koidu Limited and Meya Mining.

Koidu Limited, a kimberlite diamond mining company located mainly in Tankoro Chiefdom of Kono District, is a subsidiary of the Octea Diamond Group. The latter is owned by Israeli billionaire Benny Steinmetz under the Benny Steinmetz Group Resources (BSGR) and is currently the largest mining company in Sierra Leone and operates another notable mining subsidiary, Tonguma Limited, alongside Koidu Limited. Koidu Limited acquired a lease agreement from the Government of Sierra Leone in 2010 for a surface area of approx. 4.9 square kilometres (Koidu Limited, n.d.). Several communities had to be resettled for the

implementation of the project. Meya Mining is a subsidiary of the Namibia-based Trustco Group conglomerate. The company acquired an exploration license in 2016 and was issued a 25-year mining license by the Government of Sierra Leone in July 2019. The company's operations encompass an area of 130 square kilometres that spans across four chiefdoms in Kono District (Interview with company representative, 23 May 2019).

a) Shape of lease area

Typical of lease agreements on land under unreformed customary tenure, mining companies in Kono District have acquired single ('blanket') leases over a consolidated area. The lease area of Koidu Limited spans an area of 4.9 square kilometres within Tankoro chiefdom, as shown in Figure 26.

Figure 26. *Map showing surface area leased to Koidu Limited*
Source: Koidu Limited (n.d.).

Even larger than the area leased to Koidu Ltd., Meya Mining's operations encompass an area of 130 square kilometres that spans across four chiefdoms, namely Gbense, Nimikoro, Kamara and Tankoro chiefdoms (Interview with Paramount Chief, 17 July 2019).

b) Scale of decision-making

Mining concessions in Sierra Leone seem to be concluded in a 'top-down' way, negotiated and agreed on by a small group of elite decisionmakers. This is already resembled in the regulations around mining concessions and the procedures of acquiring land for mining purposes: A mining investor will first acquire an exploration license from the central government in Freetown for a specific area to search for suitable mineral deposits. The paramount chief of the region in question is notified, and supposed to, in turn, notify the local communities in his constituency. At that stage, there is still no interaction with the communities living on the land in question nor an option for them to veto exploration activities (Interview with senior government official, 22 August 2019; Interviews with district-level government officials, 17 and 18 July 2019; Interview with Paramount Chief, 17 July 2019). After the exploration phase is concluded and if the company is content with the mining prospects, the company is issued a mining license by the central government. The issuance of the mining license is also done at the level of the central government and the paramount chiefs, not in negotiation with the local communities. However, to acquire a mining license, the investor is supposed to negotiate a land lease agreement with the paramount chief and provide a so-called Diamond Area Community Development Fund (DACDF) for the support of mining communities (GoSL, 2009; Interview with senior government official, 22 August 2019).

'De money is ours to chop'[63] – Paramount chiefs in mining investments

Scholars have already noted that the scale of decision making in mining investments is notably contained in the specific relations between central government actors, mining actors, and paramount chiefs – reminiscent of the way that large-scale mining projects were implemented and governed during the colonial era already (Frankfurter et al., 2019). The role of the paramount chief, as part of this elite group of decision-makers, has been and still is particularly crucial in this process. Frankfurter et al. (2019) analysed the endurance of the 'strategic partnership' between paramount chiefs and foreign mining actors. In what they term "indirect rule redux" (2019, p.522), the authors argue that by engaging directly and exclusively with

[63] In the Sierra Leonean language of Krio, 'to chop' means 'to eat' / 'to consume'.

paramount chiefs (and central government actors), foreign mining companies in Kono District are employing neo-colonial strategies of indirect rule in order to gain preferential access to mining resources in Sierra Leone.

The historically elevated authority and power of paramount chiefs as gatekeepers to mining areas in Kono (as discussed above) seems to make this 'indirect rule redux' possible (Frankfurter et al., 2019). In fact, my interviews with paramount chiefs, sub-chiefs, local communities, artisanal miners, and local government representatives suggest that the idea of paramount chiefs as omnipotent landlords is deeply ingrained in Kono District (Focus Group Discussions, 17 and 18 July 2019; Interviews with Paramount Chiefs and sub-chiefs, 17 and 18 July 2019). In the words of one Paramount Chief:

> In Kono, we do not have landowning families. Let me take you through this: We have different forms of landowning systems in SL. In Freetown, you have the freehold. In much of the northern province and parts of the south-east, you have landowning families. In Kono District, you have a communal land-owning system. Kono is unique. The land is placed under the custodianship of the chief on behalf of the people. The chiefs are the landlord. (…) And you know what, – ours [the land tenure system] is the best! (…) It's simpler, I can just allocate land. If you want to set up a factory or a business here, you'll do it much quicker than in Kenema or any of those other areas because, [there,] you're going to have to contend with a lot of landowning families.
> (Interview with Paramount Chief, 17 July 2019)

A local government representative confirmed this idea of landlordism of paramount chiefs: "Here in Kono, land does not belong to families. The land belongs to the whole community, but the paramount chief is the landowner. He owns the whole land on behalf of the community." (Interview with district-level government official, 18 July 2019). The strong role of paramount chiefs, in Kono District was further acknowledged in interviews in Freetown with central government representatives (Interviews, 20, 22 and 27 August 2019).

> In Kono, we have realised that the situation is a bit different. That is where the chiefs are saying 'land belongs to *them*'. And what I think is responsible for this is the level of relationship between the paramount chiefs there and the

> politicians. Because they are strongly connected, you know, the politicians also need the minerals there. Yes, they are really very strongly backed, the one who has the gold, sets the rules, right? (laughs).
> (Interview with senior government official, 27 August 2019)

Still today, paramount chiefs seem to "continue to benefit financially from industrial mining, especially in terms of 'community' income derived from surface rents and the DACDF." (Fanthorpe & Maconachie, 2010, p.268). The potential downwards-trickle of surface rent payments that are supposed to reach local communities seems to be often captured and controlled by paramount and sub-chiefs. In a focus group discussion with a section chief and two town chiefs from Tankoro Chiefdom, Kono District, I was told that the paramount chief has the discretion to decide who may benefit from surface rent payments by investment companies. Usually, those benefitting from surface rent payments are the chief himself and members of the chiefdom council, sub-chiefs, and other people of authority, but not the local communities.

> The paramount chief oversees this [the distribution of surface rent money], knowing that who is important gets more than this and that guy. (…) He decides! (…) [I]n some other areas, all that money is shared among the people. Here, all that money - we can decide what to do, even use it for community projects…but that surface rent, it's ours to chop! It's ours to chop!
> (Focus Group Discussion, 18 July 2019)

Particularly in the case of Koidu Limited, the paramount chief of Tonkolili District is apparently intimately intertwined with the company's management team and directly benefits from the investment (Wilson, 2015; Frankfurter et al., 2019). For one, the paramount chief is a paid board member on the company's board of directors (Wilson, 2015; Frankfurter et al., 2019). Further, the paramount chief was made manager of a company-funded football association, directly receiving and managing the funds for the football club, which was funded by the company in a bid to mend relations between the company and the communities following public outcry over the expansion of the mining project and associated resettlement of communities (Wilson, 2015). The dual role taken on by the paramount chief as representative and board member of the company as well as a representative of the community seem to be at odds with one another (Wilson, 2015, p. 711). As Frankfurter et al. (2019) note,

> Koidu Holdings touts the paramount chief as an indigenous ruler who can serve as an agent of development – the company's close relationship with him thus constituting a sort of ultra-culturally competent form of community engagement – but these 'customary' trappings shroud more extractive power relations at play between the company and the chief, and the chief and his subjects.
> (Frankfurter et al., 2019, p.529)

c) Conformity to international guidelines and involvement of NGOs

In stark contrast to many other regions in Sierra Leone, adherence to international guidelines for responsible investment (i.e., VGGT, CFS-RAI, FPIC) is much less visible in cases of large-scale mining investments in Kono District than elsewhere. I argue this is because these investments take place on land under the so-called 'unreformed' customary tenure. In contrast to other regions of the country, the post-war decentralisation reforms and the influx and influence of the global donor community that, as I argued, paved the way for the proliferation of global codes of conduct and international guidelines, seemingly had little effect in Kono District.

The Government of Sierra Leone indeed took several steps toward a tighter regulation of mining investments, strongly promoted by the international donor community. This was perhaps most clearly signalled by government (and donor) efforts to join the Extractive Industries Transparency Initiative (EITI) in 2006. The Extractive Industries Transparency Initiative (EITI) is a global accountability and transparency standard for the oil, gas and mining sectors. Focused on revenue management, it requires, for example, the disclosure of financial flows between mining companies and the government. Supported with grants and technical assistance by the World Bank's EITI Multi-Donor Trust Fund, Sierra Leone was recognized as an EITI compliant country by the EITI board in 2014 (EITI, 2014).

Further, in an attempt to regulate the country's mining industry, the government passed the Mines and Minerals Act in 2009, which contains provisions towards greater community inclusion and shared benefits. Article 138 specifies that mining companies "shall assist in the development of mining communities affected by its operations to promote sustainable development, enhance the general welfare and the quality of life of the inhabitants, and shall

recognize and respect the rights, customs, traditions and religion of local communities." (GoSL, 2009). Further, Article 139 (4) of the Act specifies that a 'community development agreement' needs to be in force and that 0.1 percent of the gross revenue earnings by the mining company should go towards community development (GoSL, 2009). In 2012, the National Minerals Agency was established under the Ministry of Mines and Mineral Resources and was tasked by the Government of Sierra Leone with the overall governance of the country's mining sector including the implementation of the Mines and Minerals Act, the management of mineral rights, geological surveying, environmental protection, and overseeing licensure and taxation procedures.

Several studies suggest, however, that the impact of these initiatives and regulations, running alongside a broader decentralisation reform in post-war Sierra Leone, only had a negligible impact on the wellbeing and development of mining communities (Wilson, 2015, p.705; Frankfurter et al., 2019). Frankfurter et al (2019) see the reason for this in the continuation of colonial patronage politics, elite deal-making and uncurbed authority of paramount chiefs.

> [L]icensure requirements and environmental regulations are essentially made null through the strategic and lucrative relationships between mining entities and paramount chiefs who ultimately call the shots and who can open up diamondiferous land to foreign exploitation without regard for legal requirements.
> (Frankfurter et al. 2019, p.530)

Frankfurter et al. (2019) further argued, "paramount chiefs, who wield the authority to grant access to diamondiferous land, often operate as more beholden to foreign entities than to Sierra Leonean regulatory institutions" (p. 531).

The absence of NGOs and international advocacy actors

Cases of large-scale mining concessions also do not seem to be in the purview of international donor organisations, or national and international NGOs and civil society organisations promoting the conformity with and use of international guidelines such as the VGGT, CFS-RAI, or FPIC. Speaking with a representative of the UN Food and Agriculture Organisation (FAO) in Freetown revealed that there is very little engagement directly or indirectly with Kono District. For example, sensitization and information campaigns on the Agribusiness Investment

Approval Process (AIAP), a recent initiative funded and supported by the UN FAO, together with the government of Sierra Leone, in order to ensure more responsible land-based investments, has not yet reached Kono (along with four other districts) (Interview with donor organisation representative, 19 August 2019).

6.3 A 'hybrid' case: Sunbird Energy Sierra Leone (former ADDAX Bioenergy project)

The following case is emblematic of the changing context of customary tenure in Sierra Leone and features characteristics that are typical of the so-called unreformed as well as reformed customary tenure. This project exhibits a mix of strategies for land acquisition, community relations, and a contradictory and unclear role of the paramount chiefs involved in the investment.

In 2008, the sugarcane and bioenergy project Addax Bioenergy (SL) Limited (ABSL), owned by the Addax and Oryx Group (AOG) from Switzerland, was initiated in Sierra Leone's Northern Province. In a 2010 Memorandum of Understanding with the Government of Sierra Leone, the company acquired over 50,000 hectares of land in the three chiefdoms of Makari Gbanti, Bombali Shebora and Malal Mara in the country's northern districts of Bombali and Tonkolili. Apart from the projected capacity to produce 83 million litres of fuel grade bioethanol and 20 million litres of extra neutral alcohol (ECREEE, 2020), the project was also supposed to generate 30 per cent of the country's electricity coverage to the national power grid (Focus Group Discussion, 15 July 2019). With these promising projections of economic and social development for the country, the project was supported and financed by six European and two African Development Finance Institutions.[64] Unprecedented, the investment amounted to 455 million Euro, of which the loans from the development financial institutions provided 55.6 per cent of the funding and the remaining 44.6 percent coming from equity capital (ECREEE, 2020, p.5).

[64] The DFIs funding the Addax project are the African Development Bank (ADB); the German Development Bank/ Bank for Reconstruction (DEG/KfW); the Entrepreneurial Development Bank, Netherlands (FMO); the Belgian Investment Company for Developing Countries (BIO); two funding bodies under the Private Infrastructure Development Group (PIDG); the Industrial Development Corporation of South Africa Limited (IDC); Swedfund (Lanzet, 2016).

Following failed crop yields and financial problems in the aftermath of the 2014 Ebola outbreak, Addax was forced to substantially downsize the investment in 2015. In September 2016, Sunbird Bioenergy Africa bought 75.1 percent of ownership shares (along with Faber Capital and a consortium of other investors), changing the name of the project to Sunbird Energy Sierra Leone Limited. The project again changed owners in 2019, when Browns and Company Plc, belonging to the Sri Lankan conglomerate Lanka Orix Leasing Company, bought the main shares and changed the name of the project to its current name, 'Sunbird Bioenergy Mabilafu Project' (Saffa, 2020). Originally meant to become a showcase example of responsible land investments in the developing world, the Sunbird Energy project has attracted substantial negative attention in national and international media outlets and policy arenas in the last years due to reports of human rights and land rights abuses and 'land grabbing', local conflict, and financial mismanagement. The project has been covered extensively by academics and journalists.[65]

a) Shape of Lease area:

Initially, the company acquired over 50,000 hectares of land spanning across two chiefdoms. Figure 27 shows this initial concession area (with the green circles representing the installed irrigation pivots for the sugarcane fields). Following the Ebola crisis and a change of ownership in 2015, the operation was substantially downsized. Over half of the land acquired in 2010 was released back to local communities and landowners, leaving the project with 23.500 hectares (out of an initial 54,000 hectares) (ECREEE, 2020, p.2). While the land of communities and landowners in the project area was initially mapped with the help of geographic information system software (Marfurt et al., 2016, p.267), no individual land parcels were leased directly to the company. The concession area remained a consolidated area, as is typical under the so-called 'blanket' leases.

[65] Amongst many other reports and writings, notable studies on the Addax case based on fieldwork include Botazzi et. al (2016); Marfurt et al. (2016); Lanzet, P. for *Bread for the World* (2016); Fielding et al. for the *Stockholm Environment Institute* (2015) etc.

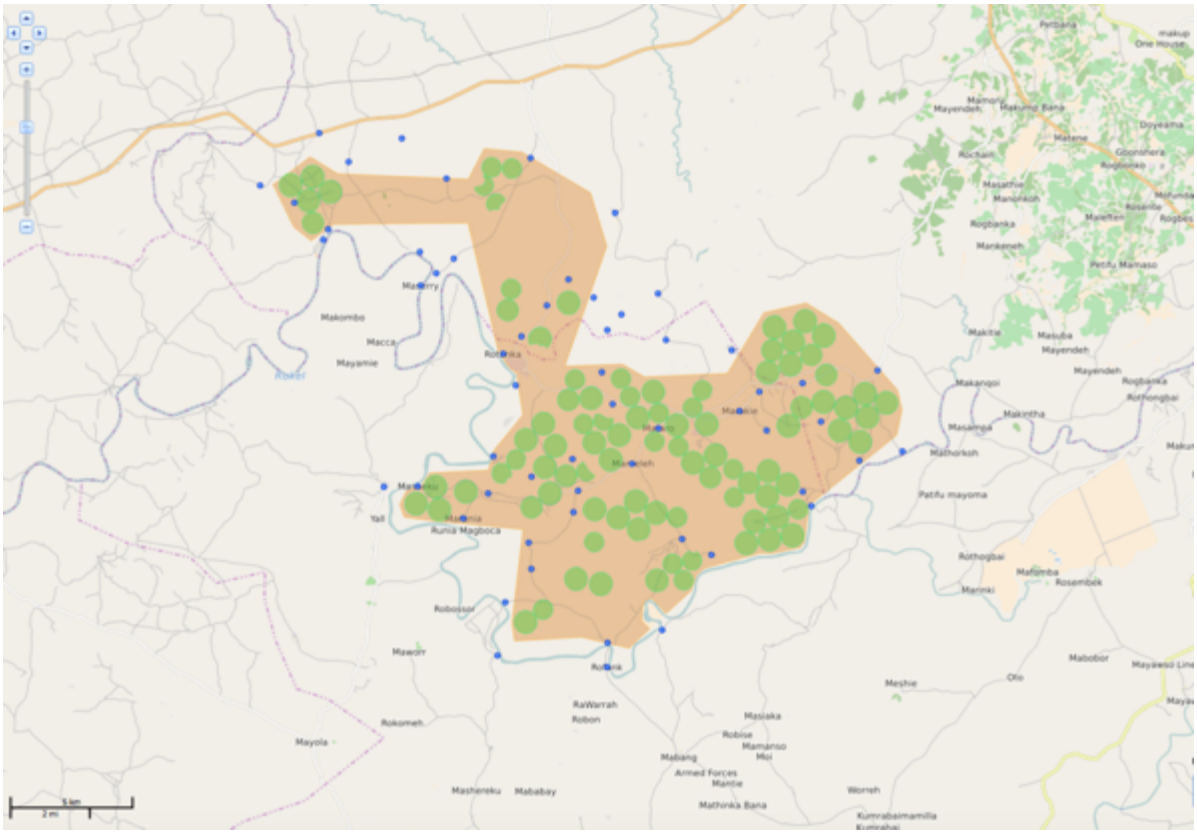

Figure 27. *Concession area of Sunbird Energy, initially covering over 50,000 hectares Source: Thelandusemonitor (2021).*

Figure 28. *Satellite image showing the Sunbird Concession Area*
Source: Adapted by author from Google Earth Satellite Data (accessed 25 June 2021)

b) Scale of decision-making

One the one hand, the initial stages of the project resemble a top-down way of deal making, typical of dynamics around investments on 'unreformed' customary land. In 2010, a Memorandum of Understanding (MoU) was signed between the Government of Sierra Leone, Addax Bioenergy, and the paramount chiefs of the three chiefdoms involved in the project. On the other hand, some credible steps were taken in this project to introduce participation of local communities and acknowledgement of their land rights in the land lease arrangement. For example, the original Addax lease arrangement included a new institutional and contractual arrangement that was seen by some scholars as inclusive and guaranteeing local land rights (Botazzi et al., 2016). In their study of the project, Botazzi et al. (2016) observe that "the institutional arrangement is a three-level contractual relationship between the company and the government, the company and the chiefdom council, and the company and the 'landowning' families in which the land was demarcated, and the modalities of access, use and

compensations were defined for a duration of 50 years.". They argue, "The case of large-scale land acquisition (…) is the first-time landowners' rights have been contractually confirmed by a company in Sierra Leone" (English and Sandström, 2014, p.3, cited in Botazzi et al., 2016).

However, in contrast to case studies under 'reformed' customary tenure discussed above, no individual lease arrangements were made directly with landowners at any stage of the project. Despite the demarcation and acknowledgement of landowners' land, the scale of decision-making was still largely contained at the level of elite authorities, such as the paramount chiefs, government actors and company representatives, despite the participation of some heads of households as representatives for the landholding families (Focus Groups Discussion, 15 July 2019). At the time of my fieldwork in July 2019, the land lease that was concluded in 2010 was under re-negotiation following substantial local conflict and community resistance to the project. Renegotiations included demands for higher and more transparent land lease fees to be paid to communities and were undertaken between the government, the Sunbird company, the paramount chiefs, as well as the local communities who were supported by NGOs and advocacy groups (i.e., the Sierra Leone Network for the Right to Food (SiLNoRF)) and a community lawyer. The involvement of the communities and civil society actors in this process signals a step towards greater transparency and greater participation of communities in land deal-making. The new land lease agreement was signed on 11 July 2019 and included re-negotiated land lease fees to be paid out directly to communities for the coming year (Interview with NGO staff member, 15 July 2019).

However, the new lease agreement remained a 'blanket' lease and was not based on individual signatures from landowning families living within the concession area. Instead, it was signed only by government actors, the company, the paramount chiefs and selected sub-chiefs of the three chiefdoms hosting the investments, as well as three representatives of landowning families from each of the three chiefdoms. The signing of the lease lacked transparency. The NGO SiLNoRF that has supported communities in the negotiation phase and that was centrally involved in this case was not invited to witness the signing of the lease agreement, nor were they given a copy of the final lease agreement before it was signed. The communities were also not shown a copy of the final lease document and were not aware of what their 'representatives' had signed (Focus Group Discussions, 15 and 16 July 2019).

In sum, while re-negotiations took place in later stages and NGOs and land lawyers were involved to advocate for the communities, the process remained top-down in nature and the decision-making was contained at the level of a small group of elites. However, this was not without repercussions, and ensuing protests and local conflicts indicates that such top-down dynamics might no longer be accepted.

Increasing contestation to the authority of the paramount chiefs

My interviews revealed the prevalent yet increasingly contested role of the paramount chiefs in this case. It seems that the salient engagement of national and international NGOs and donors around this investment project has deeply challenged the historical role of the paramount chief. The civil society group Sierra Leone Network for the Right to Food (SiLNoRF) has over the last years held awareness raising workshops and trainings on land rights and principles of responsible investment in many of the villages surrounding the investment site. After one of the paramount chiefs had signed off the renegotiated lease agreement without fully consulting the landowning families and seeking their consent, the two villages that were subjected the most to SiLNoRF advocacy and awareness raising activities decided to challenge their paramount chief (Focus Group Discussions, 15 and 16 July 2019). They protested the new lease agreement by refusing the compensation money and surface rent payments offered to them as part of the lease agreement (Focus Group Discussions, 15 and 16 July 2019). With the support of SiLNoRF, they aimed for an overhaul of the entire lease agreement to be made more equitable and on the basis of individual lease contracts – as is now done in many other 'newer' investment cases across the country (Interviews with NGO staff members, 29 April 2019 and 6 May 2019; Focus Group Discussion, 15 July 2019). This behaviour by constituents of a paramount chief would have been unheard of in earlier (pre-war) times, where paramount chiefs enjoyed full landlord-like powers over land. In line with my argument, this case indicates a context of changing customary tenure and political authority over land. While the authority of paramount chiefs seems to be weakening, family- and communities are increasingly becoming empowered in their own land rights and land-based decision making, supported by national and civil society actors.

c) Growing influence of global norms

Most notable in this case is that the project received substantial interest and attention amongst the international donor community as it was intended to become "a benchmark for sustainable investment in Africa" (Fielding et al., 2015, p.vii). Efforts were indeed undertaken to comply

with global codes of conduct and best practice standards, at least in the initial stages of the project: the Addax Bioenergy Project undertook lengthy and thorough social and environmental impact assessments, engaged in substantial stakeholder negotiations and community consultations concerning the land lease arrangements, implemented community development and food security programs (i.e., farmer field schools, crop nurseries etc.) and pledged to employ over 3000 workers. In 2013, the project was also the first in Africa to be certified by the Roundtable on Sustainable Biomaterials (RSPO) (Fielding et al., 2015). Numerous national and international NGOs were involved in monitoring the project and aiding the stakeholder negotiations. In particular, the NGO SiLNoRF accompanied the project from the start, taking up a crucial 'watchdog' function.

However, a 2016 study commissioned by the German NGO Brot fuer die Welt (Bread for All) examined in detail to which extent the Addax/Sunbird project adhered to specific global codes of conduct, such as the Voluntary Guidelines for the Responsible Governance of the Tenure of Land, Fisheries and Forests (VGGT), the IFC -Performance Standards, and the OECD- 'Do No Harm' principle (Lanzet, 2016). The study concludes that not enough has been done to ensure full adherence to these international principles.

In sum, the Addax / Sunbird Energy project is a case of a hybrid land investment. It exhibits features of land investments typical for both the 'unreformed' and 'reformed' customary tenure, indicating that customary tenure is currently transitioning and changing in many parts of the country. The project was initiated in 2008, at a time when most investments were still done 'the old way': Three large-scale 'blanket' lease agreements were signed in 2010, one for each of the involved chiefdoms. However, at that time, the project was also to some extent a pioneering project in the way that it attempted to include more participatory and pro-poor-contract negotiations. It was also closely monitored by the international donor community advocating for best practice standards and several NGOs and advocacy groups were involved in the case, which is more indicative of investments on land under 'reformed' tenure.

Particularly emblematic of the transitory nature of customary tenure in this case is the changing level of authority of the paramount chiefs. At first, they were the central authority figures in the land deal, making decisions on behalf of the communities in their chiefdoms. Over time, however, with the pressure from advocacy groups and NGOs, as well as rising international interest in 'responsible' land investments, the authority of the paramount chief is seemingly

growing weaker. Communities in the project area are more empowered and have, with the active support of NGOs, started to take control over land decisions, claiming their rights, and resisting and protesting the authority of the chief. These contradictory developments very much depict an investment project that is in a process of transition and struggling to harmonise multiple claims to authority over land by numerous actors, echoing the broader changing nature of the socio-political fabric of customary tenure in Sierra Leone.

6.4 Conclusion

In this chapter I have presented case studies on two different types of customary land tenure, on so-called 'unreformed' and 'reformed' tenure. These two types varied along three main factors: The shape of the lease area, the scale of decision-making, and the involvement of NGOs and conformity to global norms. The cases studies on 'reformed' customary tenure revealed a clear infusion of global norms. This was evidenced by local-level contract negotiations between the investor and individual landholding families and the conclusion of individual land lease agreements. This resulted in a concession area marked by 'scattered' individual plots of land rather than one consolidated piece of land. Moreover, numerous NGOs were present these cases and observed, assisted and advised investors, communities, and local government representatives on proper adherence to global norms. In the case studies on so-called 'unreformed' customary tenure, in contrast, global norms for responsible investments seemingly did not gain traction. Lease agreements were negotiated amongst a small number of elite actors, such as paramount chiefs, the investor, and politicians. Leases covered huge, consolidates areas of land, often entire chiefdoms or parts thereof. Civil society groups, NGOs, and international (donor) organisations were largely absent in these cases.

These cases thus relate to my main argument, that variations in the (customary) land tenure regimes have differential impact on the way that global codes of conduct for responsible land investments appear and are leveraged by diverse actors on the ground. In the context of Sierra Leone, two additional contingencies appeared to play a significant role in this. For one, the dependence of the Sierra Leonean government on the international (donor) community enabled the mainstreaming of donor-promoted policies, reforms, and guidelines in most of the country, including global norms for responsible investment practices. On the other hand, the high stakes

of the Sierra Leonean government in some particularly lucrative and historically important investment projects also worked to prevent the influence of the international community and the implementation of global norms for responsible investment in those cases.

Chapter 7: Conclusion

In concluding this thesis, I first summarise the main arguments and how the evidence relates to these. Section 7.2 offers reflections on the conceptualisation and framing of global norms. Section 7.3 analyses the role of investors in using global norms in innovative, indirect, and creative ways that seem to pre-empt or 'go around' the government to assume a *de facto* role in formalizing land rights on customary tenure. I then discuss potential implications of the post-conflict setting for the way that global governance norms are instantiated in section 7. 4. The concluding section offers an outlook of wider implications of this work.

7.1 Summary of arguments and findings

The thesis explored the conditions under which international guidelines and codes of conduct for responsible large-scale investment can are instantiated locally in investment projects to protect land rights and mitigate conflict in the post-conflict contexts of Uganda and Sierra Leone. This project is informed by literature on human rights norms implementation, which emphasises the need for receptive domestic conditions for the way that such norms are implemented. In line with this, I have shown that the theory and concept of variation in domestic land tenure regimes offers good leverage in explaining why global governance mechanisms around large-scale land investments might work differently in different local settings.

I argued that in both Uganda and Sierra Leone, variation in land tenure regimes was influential in determining the variation, uneven applicability, and uneven effectiveness of global governance mechanisms. Land tenure regimes, varying at the sub-national level, define the access to and recognition of land rights, which forms the basis on which diverse actors can effectively invoke or leverage international guidelines. I further argued that where land tenure regimes are vague, fluid, or in the process of changing, as I observed particularly on customary tenure, two other important domestic contingencies are likely to influence the way that global norms gain traction locally. These are the autonomy of the national government vis-a-vis the international community, and the stakes of the national government in particular investment projects.

In Uganda, where I studied cases of large-scale land investment on various land tenure regimes, the use of global governance norms by the state, investors, and civil society is shaped and constrained by whether and how the land rights in question are legally recognised and protected by the state, as defined by the land tenure regime. Case studies featured land investments on three different land tenure regimes with varying degrees of formal-legal recognition and protection of local land user rights, ranging from a 'strong' recognition (Mailo) to a more ambiguous level of recognition (customary), to the absence of such recognition of land rights altogether (state land).'

In cases of large-scale investments on private (Mailo) land, where land rights of Mailo landlords and tenants are firmly enshrined in the formal-legal framework, various actors successfully invoked international guidelines to not only hold the state accountable to complying with national laws in protecting these rights, but also to adhere to additional global norms and best practice standards of responsible investment. Investors thus tended to '*over-comply'* with national laws, as civil society actors invoked guidelines *beyond* the national legal framework. Diametrically opposed to the above case studies, in cases of large-scale investments on state-land (state-owned forest reserves), global governance mechanisms were unable to gain traction in protecting local land rights and mitigating land rights-related conflict. This is because these rights were not recognized by the land tenure regime and by the country's formal-legal framework. Actors invoking global norms in these cases thus had no legal grounding to engage with land rights issues. In turn, in cases of large-scale land investments on customary land in post-war Northern Uganda, where the recognition of land rights is often ambiguous, contested, and dependent on the government's recognition of such rights in individual cases, there was a wide scope for the instantiation of guidelines in various, innovative, and indirect ways. In the absence of clear government regulation on land rights, investors sometimes collaborated with local families to identify and secure land rights with the aim to lease land from them. Norms were often invoked in indirect ways by companies applying 'bottom-up' and supposedly inclusive investment strategies. However, if the government had high stakes in a particular investments case, these practices of 'self-regulation' by the private companies were largely absent.

In Sierra Leone, where I studied cases of large-scale investments on customary land, I argued that *de facto* variation between two types of customary tenure systems meant that global governance norms gained traction in land investments on one, but not the other type of

customary land. On what I called 'unreformed' customary tenure, characterised by strong chiefly powers, the advocacy for global codes of conduct to protect local land rights was absent in investment cases. In turn, on so-called 'reformed' customary tenure, characterised by the empowered role of families and the weakened role of chiefs, the adherence to global codes of conduct worked to protect land rights and to avoid/mitigate land-related conflict during investment projects. This variation in the adherence to international guidelines, I argue, is linked to two additional contingencies, namely the autonomy of the state from the international community, and the high stakes of the government in specific investment cases.

Regarding the former, Sierra Leone's compromised sovereignty and receivership status towards the international community in the post war era largely shaped governance reforms in the country. The international donor community was able to substantially influence the country's policies, political agenda, and priorities, which included the implementation of numerous projects and programs to promote and 'test out' global governance norms for responsible land investments. In particular, the international community, via the UN FAO and the German government, played a key role in institutionalising such guidelines through their inclusion in in the Sierra Leonean formal-legal framework by rehauling and launching the National Land Policy in line with the VGGT. This, combined with other important donor-driven policies and reforms, such as the decentralization and local governance reforms and the restoration and reform of the chieftaincy institutions, I argue, has led to substantial changes in the customary tenure system in most parts of the country. Based on the strong promotion of 'good governance' principles by the international community and the relative empowerment of landholding families, a new type of customary tenure system effectively emerged. In this new type, the role and powers of the paramount chiefs were substantially weakened, the role of local families reinforced, and global governance norms have become key guiding principles for large-scale foreign investment projects. Under this kind of 'reformed' customary tenure regime, investors seemingly cannot afford to blatantly disregard best practice standards to safeguard land rights and mitigate conflict. Similar to my analysed cases on customary tenure in northern Uganda, there seemed to be scope for the creative use of guidelines by investors themselves on the 'reformed' type of customary tenure in Sierra Leone. As in Uganda, this involved 'bottom-up' strategies that included the identification and documentation of the land rights of (supposedly) legitimate landowners by the investors themselves.

However, the influence of the international community and the reforms of the customary land tenure regime did not take hold evenly everywhere in the country. In some parts of Sierra Leone, the high stakes of the national government in particular investment projects were influential for the way that international guidelines gained traction (or not). For example, in Sierra Leone's Eastern region, particularly in the diamond-mining region of Kono District, the government has high stakes in maintaining control over natural resources and investment flows. Here, the government was particularly invested in maintaining the 'status quo ante,' in which a small number of elite members of society including chiefs, government representatives, and investors controlled the diamond mining projects to ensure that the revenue flows were channelled to these actors. In these regions, I did not find any evidence of the use of global norms in innovative or 'bottom-up' ways as was the case on the 'reformed' customary tenure. In sum, my case studies in both Uganda and Sierra Leone showed that the way that global governance norms appear and find meaning (or not) in protecting land rights and mitigating conflict in local settings is dependent on the set of actors and the politics governing land under each tenure regime.

7.2. Reflections on Global Norms

While the global norms literature emphasises the role of normative actors at the global and transnational levels, and the international agreements and conventions themselves, this study focused on the domestic level and analysed the way that global norms for responsible investments were instantiated locally, in the receiving context of local land politics and land tenure regimes. As discussed in Chapter 2, the work of Risse, Ropp and Sikkink (1999, 2003) and their five- stage 'Spiral Model' of norms socialisation was particularly instructive for a broader understanding of global norm diffusion. In this model, the first three stages trace the process of human rights norm diffusion at the international level, and the last two stages depict the process of norms adoption at the national (country) level. My thesis thus complements and provides empirical evidence to Phases 4 and 5 of the Spiral Model by shedding light on what happens on the ground in terms of norm diffusion. Case studies from Uganda and Sierra Leone extend our understanding of the domestic political processes necessary to turn rhetorical commitments into norm-conforming behaviour. This is a gap in the Spiral Model (Hochstetler, 2003, p.37) and in the literature on norm diffusion more generally.

Phase four of the Spiral Model entails policy reforms and a broad acceptance of the human rights norm, while norm-violating behaviour may still occur. In phase five, states act in accordance with the human rights norm. Given the extensive legal-institutional reforms and evidence of the empowerment of local land holding families in land investment projects, Sierra Leone (at least in most parts of the country) seems to exhibit characteristics of the final stage of the model where norm-conforming behaviour is present. In Uganda, in contrast, it seems that global norms for responsible land investments have, by and large, not yet achieved 'prescriptive' or consensual status. Uganda could thus be located between stages 3 and 4 of the Spiral Model.

Global governance norms are often conceptualized as transformational tools. I expected to find clear indications of when international norms were leveraged in the inception phase of investment projects. As argued in Chapter 2, I focused my analysis particularly on the implementation phase of investment projects to identify the particular 'meeting point' where the international norm and the domestic structures intersect in the set-up of large-scale investment projects. Some of my cases presented clear intersections and 'meeting points' of the global and the domestic spheres, where global norms were firmly established in the outset of a project within the defining context of the land tenure regime. This was for example the case in most of the 'showcase' projects I observed in Sierra Leone (i.e., Lizard Earth, Goldtree, Natural Habitats). In those cases, investors often cast a particular spotlight on the project's adherence to global norms. These cases were usually heavily funded by international donor organisations and seemed to attempt to be instructive (or exemplary) in the way guidelines are applied.

In some cases, however, global norms appeared to have been leveraged in more indirect ways. For example, in some cases, there was no explicit invocation of formal guidelines by an investor, but the behaviour of the investor was consistent with many of the principles laid out by international guidelines on responsible investment. The Atiak Sugar Factory in northern Uganda is an example. While no explicit reference to global guidelines was made in this project, principles of global norms for responsible investment seemed to feature in this case.[66]

[66] As discussed, it is not the aim of this project to trace the causal mechanisms of why some investment projects adhere to some global norms or not, but rather to study the enabling domestic structure of land tenure that allows for the appearance of norms in numerous ways.

7.3 Going 'around' the government: Innovation in Norm Implementation on Customary Land

A major focus of this thesis was to analyse how international guidelines can work to protect (legitimate) land rights and mitigate conflict in settings of changing, vague, illegible, or contested land rights, as on customary land. Based on my case studies in northern Uganda and in Sierra Leone (where unwritten customary land tenure prevails), I observed processes of innovation, learning, and adaptation by various actors in response to the often ill-fit between global codes of conduct and local land tenure regimes in which land rights were not clearly define

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The global norms literature, especially the literature on private forms of global governance (Green, 2013; Dashwood, 2012), has extensively commented on the idea of 'overcompliance' with national laws by private actors in situations of poor state regulation. Similarly, this literature has analysed the phenomenon of private firms taking up a (state-like) regulatory role in the provision of infrastructure and goods for local communities in investments cases (i.e., the construction of housing for farm workers, roads, schools, and hospitals). Negotiating land deals directly with the landowners and users rather than with the central government is in line with a 'bottom-up' rather than 'top down' approach and is a much- praised principle in many global governance norms for responsible investments. The IFC Performance Standards, for example, instruct their clients to launch initiatives "to identify the persons who will be displaced by the project, determine who will be eligible for compensation and assistance, and discourage ineligible persons, such as opportunistic settlers, from claiming benefits. In the absence of host government procedures, the client will establish a cut-off date for eligibility." (IFC PS, PS5, p.4). Other guidelines have similarly emphasised the need to engage at the local level. The Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods ('PRAI') suggest that in the absence of land tenure security, "private negotiations between investors and the communities without state involvement is crucial" (Johnson, 2016, p.76).

In line with this, in many of my cases on customary land with legally ambiguous land rights, I observed behaviour by private investors that seemed to go 'around' the government or pre-empt government, to take up a regulatory or administrative role themselves, and to deal with

land rights conflicts and ambiguity in new ways. Importantly, private firms tended to go beyond the provision of physical infrastructure and into the realm of land rights definition and securisation. They thus went a step further in their assumed roles to behave as *de facto* authorities in identifying, defining, and protecting land rights.

7.3.1 Sierra Leone: Learning and Innovation Processes by Private Firms

In Sierra Leone, as discussed in chapter 6, most investors investing on land under so-called 'reformed' customary tenure have acquired land via lengthy procedures of identifying the (supposed) rightful landowning families on the land and negotiating land deals directly with each of these families over an individual plot of land. I argued that this was indicative of the changes in customary land tenure that occurred after the war, where the power of paramount chiefs was greatly weakened, the power of families, in turn, increased, and where the international community was able to shape and influence substantial reforms, including land tenure reforms. However, the initiatives taken by some private investors in Sierra Leone are also indicative of larger donor-driven transformation processes towards 'good governance' approaches to foreign private investments. Their actions shine a light on an emerging, more proactive role of investors to assume a role in actually defining land rights in ways that avoid land conflicts in this context. Some donor-funded projects, as I argued, seem to particularly find their raison d'être in becoming showcases of international good governance norms for responsible investment.

These include, for example, the DFID-funded projects Lizard Earth and Natural Habitats that were part of the DFID LEGEND programme. These investors seem to have taken the principle of 'bottom-up' to a new level and have developed their own initiatives for (supposedly) inclusive and fair land acquisition, which included collaborating with local communities to identify and define (legitimate) land rights.

The Lizard Earth project, for example, emerged out of a previous project commissioned by the DFID LEGEND challenge fund, in partnership with the German NGO Welthungerhilfe, to develop and test an alternative and sustainable business model. The Lizard Earth project follows a 'sustainable block farming' approach, in which the leased land is subject to joint management agreements with the landowners based on revenue-sharing (Werner & Scholler, 2019). Since its inception in 2018, the Lizard Earth project embarked on a lengthy, complicated, and costly two-year consultation process with local communities to identify the

rightful landowning families who were willing to lease their land to the company, and to negotiate a deal with them based on inclusivity of all stakeholders, sustainability, and mutual benefit. The land lease for each of the company's 17 land plots, spanning 1000 hectares, was signed by all relevant stakeholders from various landowning families. The many steps in the lengthy 'bottom-up' implementation process of the project involved such activities as participatory land mapping, future projection and visioning, and joint action planning (Interview with company representative, 23 August 2019).

Similarly, the Natural Habitats project, also funded by the DFID LEGEND challenge fund, has produced a new way of 'bottom-up' - deal making. Faced with protracted land conflict and grievances after purchasing a large-scale 'blanket' lease from the previous owners, the Natural Habitat investors downsized the project, dismantled the large-scale 'blanket' lease, and restarted the process of land acquisition from scratch via community-level consultations and family-level lease contracts. In these cases, thus, 'what works' and 'what does not' has been adapted and changed by these investors themselves (Observation / Field day with farmers, 9 August 2019; Interview with landowners, 9 August 2019; Interviews with NGO staff members, 6 May and15 May, 2019). In these cases, investors appear to have transitioned from "norm-consumers to norm-entrepreneurs" (Deitelhoff & Wolf, 2013, p. 223) as part of a wider process of learning and adaptation with regards to the implementation of global governance norms.

Further, the eight largest investors in the country have formed a knowledge exchange network, which has been instrumental for exchanging experiences and learning from one another. In interviews, some newer companies claimed to have learned from the experiences of older companies and to have adapted and changed their investment strategies accordingly. This was apparently in the case for the pineapple company Sierra Tropical, whose owners, when starting operations in 2018, had witnessed the protracted land conflict and accusations of 'land grabbing' surrounding the Socfin case (Interview with company representative, 7 August 2019). Having communicated and consulted with Socfin representatives via the learning platform, the Sierra Tropical project was implemented in a decidedly diverging way to the Socfin investment. Sierra Tropical engaged in a lengthy and costly bottom-up land acquisition process in an effort to ensure that rightful local landowners and users were not dispossessed from their land (Interview with company representative, 7 August 2019).

Given the focus of this research on the enabling domestic structure of land tenure regimes, rather than the normative actors in the diffusion of global norms at the international level, this work cannot comment on the logic and reasons *why* a private investor may endeavour to act in a socially and environmentally responsible way in a particular investment project. However, it can be assumed that not all investors in Sierra Leone are engaging in these 'bottom-up' approaches to land acquisition out of altruistic reasons, or out of their own desire to promote the 'good governance' agenda of donors in Sierra Leone. Apart from these 'showcases' of responsible investment, most other investors that are engaging in such 'bottom-up' activities seem to do so also out of other reasons. These include responding to pressure by international funders and organisations, sector-specific certification schemes, and/or private corporate governance (SCR) guidelines. But in the case of Sierra Leone, there is undeniably a trend towards new investment models that are based on efforts to ensure community inclusion and participation and shared benefits. Simply put by a company employee, "It's the new way, we have to do it this way, the whole CSO base is pushing for that." (Interview with company representative, 23 August 2019). A general manager of an investment company that has markedly changed his project's investment strategy from a top-down to a bottom-up approach to land acquisition in recent years, explained:

> My investors are, you know, European governments. And they want all the boxes to be ticked. That's also why I pay a little bit more [rent] to the communities] than I should because I know that sooner or later, there's always an issue. (…) And so, since 2016 and 2017, there are two new leases which fully followed the right approach, the bottom up one, with the RSPO certificate and all that. But this also means that our land looks scattered…like I said, we do not have one big block, we have scattered fields, which from a business point of view is very bad. You don't want that because of the transportation costs and all that. There is nothing beneficial about it. Except it's a bit better with the communities. But that is what they say, 'the new African model'! And we do it because it fits in with our organic RSPO certification. (…)
>
> (Interview with company representative, 7 August 2019)

This shows that in Sierra Leone, pressures from funders as well as a general trend towards new and bottom-up investment practices is creating momentum for developing potentially more participatory land governance practices.

7.3.2 Northern Uganda: Commercialisation of Land and Emerging Landlordism?

I also observed this trend of investors engaging directly with land users to acquire land in new and innovative ways in northern Uganda. Across the Acholi sub-region, a number of newer investors have engaged directly with local families on customary land and were directly involved in identifying the supposedly rightful landowners. In this way, these investors were working from the *bottom up* to circumvent the problem of the legal ambiguity around customary land rights and the often-ensuing land conflicts between the government and local communities in this region, as discussed in several case studies in Chapter 4. However, in contrast to Sierra Leone, there is another important dynamic at play in northern Uganda: Investors are going *beyond* the identification of the (supposedly) rightful landowners but are actively helping to formalize the land rights at the District Land Boards for these families, which entails a conversion from (unregistered) customary to freehold or leasehold land.

For example, the case of the Amatheon Agri stands out in this regard. This case was praised as an example of best practice standards for their alignment with global governance norms such as the VGGT, and, in particular, for their direct engagement with local communities and their efforts to identify and 'secure' the land rights of the people who were 'rightfully' occupying the land (Vorlaeufer et al., 2017). Prior to implementing the investment project, the company undertook a lengthy mapping exercise, a land rights and landownership assessment, and a multi-stakeholder verification process to establish who had 'rightful' or ancestral claims to the land and who did not. Amatheon proceeded to set up lease and sub-lease agreements with the selected lessee families and, during this process, helped to formalise the land rights claims of some of them at the Nwoya District Land Board. Similarly, in the case of the Atiak Sugar Factory, the company directly negotiated a lease contract with one extended landowning family who claimed rightful customary land ownership to the land destined for the project. During the contract negotiation process, the company helped to formalise the family's (unregistered) customary land claims by facilitating the issuance of a freehold title in the family's name at the Amuru District Land Board, which granted the family the land rights over the land in question 'in perpetuity.' Another example of an investor engaging directly with local land users to negotiate land deals and helping to formalize their land rights in this process is the Omer

Farming Company. Here, the investor negotiated land lease contracts with four families that they identified and approved as rightful landowners and helped to secure registered leasehold titles for them at the Amuru District Land Board. These initiatives by investors have often been commended for being in line with global best practice standards and in their 'bottom-up' nature, but there are several problems the idea of private firms becoming an authority on identifying and solidifying the (supposedly) legitimate land rights of local people: For one, these initiatives by investors in northern Uganda have triggered new land-related conflict between different customary land users at the local level. In all examples outlined above, local conflict erupted between the company-identified landlord families whose land rights were formalised and the surrounding neighbours, communities, and land users, who also claimed customary rights to the land or parts of the land in question.

As discussed by Boone (2019), titling and formalisation of land always generates winners and losers, as was the case in these cases. While identifying and solidifying the land rights of *some* (usually wealthy and well-connected) families, other claims to customary land rights by neighbouring communities and families were either ignored and/or erased. The already privileged seem to benefit while the poor tend to lose out. Thus, the apparent conformity with international guidelines by the investors in terms of engaging at the local level and securing the families' land rights thus actually worked to *de*legitimise customary land claims for other people.

Next, the endorsement of global governance norms of the formalization and transformation of (unregistered) customary land into a more 'legible' and formalised tenure system (i.e., Freehold, Leasehold), indicates, again, the ill-fit of international guidelines with undocumented and ambiguous customary land claims as such. These cases demonstrate again that actors invoking or making reference to international guidelines are often unable to engage with ambiguous, undocumented, contested, and unprotected land rights.

Lastly, these formalisation processes and the conversion of unregistered customary land tenure into private property rights, as has been the case in particular with the Atiak Sugar Factory, are contributing to an emerging African (elite) landlord class. The Ugandan elite families leasing land to international investors benefit from formalization processes '[b]y laundering power as legitimate authority and by taking possession of land as property through government instruments of law and policy' (Peluso & Lund, 2011, p. 647).

Northern Uganda as a new frontier zone?

The Acholi sub-region of northern Uganda can be potentially seen as a 'frontier zone,' in which the pre-existing social order based on customary land tenure is slowly being dismantled and replaced by a new form of resource control that is individualised, private land titles and commercial large-scale farming by foreign investment (Peluso and Lund 2011; Rasmussen and Lund 2017). Frontier zones of resources control are "transitional, liminal spaces in which existing regimes of resource control are suspended." (Rasmussen and Lund 2017:388). Following Rasmussen and Lund (2017), emerging resource frontiers exhibit certain characteristic, such as a) the undoing or undermining of existing social orders and replacement with new social order, b) the commodification of natural resources, and c) catering to the narrative of 'free', 'vacant' and 'ungoverned' land, ready for exploitation. The latter has been a narrative often used by high-level politicians and the Ugandan Investment Authority in Kampala to advocate for foreign investments in the country's North (Interview with senior government official, 1 June 2018).

The rise of large-scale land investments and the ongoing eradication of customary land by commodification, commercialization, and privatization of land in northern Uganda is a central aspect of this frontier dynamic. In northern Uganda, customary tenure, seen as inferior and weaker in comparison to private land rights, is being increasingly demarcated, sold, leased, and converted to other land tenure regimes. Often, land is bought and held in speculation by wealthy business elites from Kampala or other the bigger cities in Uganda. The commodification of land is also due to widespread poverty and economic decline following the war years. Land is brought on the market in the form of distress sales by poor families.

Large-scale commercial agriculture is also driving this trend of commercialization and privatization, but also land acquisitions by private wealthy individuals, who are investing in land. The abovementioned trend of foreign private investors leasing land directly from local families and formalizing their land in this process – a 'bottom-up'- approach in line with best practice standards – seems to contribute to this rising trend of commercialization, privatization, and formalization of land in northern Uganda. The rising trend of donor and NGO-driven programmes to issue Certificates of Customary Ownership (CCOs) can also be seen as part of this transition from customary to individualized private land (despite a still small scope of these

initiatives). CCO titles help customary owners enter the land market and allows for easier market-based transactions, such as selling, sub-dividing or mortgaging the land.

Finally, Northern Uganda has also been depicted as a zone of ample available and uninhabited prime farmland, ready for exploitation. It is true that the population density in Acholi and surrounding regions is less than in the other regions in Uganda. However, what is often overlooked in this narrative is that the 'myth' of 'free vacant land', promoted by the Ugandan pro-investment lobby is built on a history of population displacement and forced resettlement due to colonial- era sleeping sickness control campaigns, continuous gazettement and de-gazettement of national parks, which moved the population in and out of 'off-limits' state lands, as well as the effects of the war and the displacement of the Acholi population into IDP camps.

7.4 The post-conflict setting

Some scholars argue that states coming out of periods of political violence or civil war, such as Sierra Leone and (northern) Uganda, exhibit particularly conducive environments for widespread land acquisitions by foreign investors (van der Haar & van Leeuwen, 2013). Within the mainstream realm of liberal peacebuilding, private foreign investment is often perceived as vital for peacebuilding and economic recovery in post-conflict countries (Mills & Fan, 2006, p.5) and has been strongly endorsed by international (donor) organisations and financial institutions. For example, the United Nations Development Programme argues that peacebuilding efforts in post-conflict settings should be geared towards facilitating private sector companies to engage in post-conflict environments at an early stage (UNDP, 2008). Others have argued that the rise of foreign private investments in post-conflict settings are detrimental to peacebuilding and reconstruction efforts (Klein, 2007; Van der Haar & Van Leeuwen, 2013). In her book *The Shock Doctrine: The Rise of Disaster Capitalism* (2007), Naomi Klein argues that international donors, governments, and private corporations, inspired by Western free-market ideologies, have exploited post-conflict populations worldwide. "[T]he reconstruction industry works so quickly and efficiently that the privatizations and land grabs are usually locked in before the local population knows what hit them" (Klein, 2005). Notwithstanding this debate on the effects of foreign private investment for the prospects of post-war recovery, this section introduces another dimension of the issue and discusses what

may be driving the differential levels of uptake of global governance norms for responsible investments in these settings.

Both Uganda and Sierra Leone are post-conflict countries, and both have experienced a marked rise in foreign private large-scale investment projects throughout the last two decades, after the end of hostilities in the early 2000s. In Uganda, this rise in the number and scale of investment projects is particularly salient in the North, where the violent conflict between the government and the Lord's Resistance Army (LRA) that ended in 2006, was concentrated. Both countries were also subjected to a myriad of donor-driven development programmes and projects focused not only on post-conflict reconstruction, but also notably on the countries' land and agriculture sectors and particularly on the implementation of 'good governance' norms (particularly the VGGT) on responsible land investments. For example, both countries were focus countries of the UN FAO's Umbrella programme to support the implementation of the VGGTs (2012-2016).

In Uganda, however, while global governance norms for responsible investments did gain traction in investment cases on private (Mailo) land (as discussed earlier in this dissertation), they never garnered as much attention and awareness on a national scale as they did in Sierra Leone. The VGGT were promoted in Uganda particularly in 2014 and 2015, but then largely fell off the radar of government representatives and the private sector (Interview with land expert, 4 February 2020, Kampala). Most key stakeholders I interviewed across the central and local government and private sectors were generally unaware of these guidelines during my fieldwork in 2018. The picture was quite different in Sierra Leone: During my fieldwork there in 2019, there was wide awareness amongst my interviewees at the local and central government levels, the private sector, land experts, local leaders and, to some degree, even local communities.

It seems that Uganda has retained and regained a much higher level of autonomy, both financially and politically, from the international community in the last two decades. Post-war Sierra Leone, on the other hand, is often seen as a ward of the international community. Since the end of the country's devastating civil war in 2002, Sierra Leone was one of the least developed countries in the world and completely dependent on foreign aid, which averaged at 60 percent of GDP in 2003 and 50 per cent of GDP in 2006 (Bender, 2011, p.79). Even when looking at the picture over a longer period, from 1970 – to 2007, with an average of 14.2 per cent

of GDP, foreign aid in Sierra Leone is much higher than the average of 4.8 per cent of GDP for sub-Saharan Africa (Kargbo, 2012, p.2). Ranking 182nd out of 189 with a value of 0.452 in 2019, Sierra Leone still ranks extremely low on the Human Development Index (UNDP, 2020).

The strong initiatives in Sierra Leone to promote and push international guidelines have to be seen in the wider context of global 'good governance' promotion, which seem to have taken hold in a more fundamental way in Sierra Leone than in Uganda, as evidenced in the institutionalisation of some international guidelines (i.e., the VGGT) in the Sierra Leonean legal framework as part of a new land policy, and in the way that the customary tenure regime has been fundamentally changed in some parts of the country. "The country massively depends on the World Bank right now, and I'm sure the World Bank exerts massive pressure. And this new [Agricultural Investment Approval Process] can be seen as one part of that." (Interview with company representative and staff, 7 July 2019).

These considerations raise important questions. In countries that are coming out of conflict and where the international community is fundamentally involved in reconstructing and reforming the country's economic and political institutions, where does state sovereignty stop, and international sovereignty begin? Is it necessary for a country to be of 'post-conflict' status, and basically a 'ward' of the international community in order for global governance norms on responsible investments to gain traction in fundamental or transformational ways? What happens when the country regains full sovereignty? Further research on the uptake of global governance norms in other post-conflict settings could shed some light on this.

7.5 Wider implications

Changes in land tenure regimes

While I built the main structural argument in this work around the salience and variation of local land tenure regimes, it also shed light on how land tenure regimes themselves are subject to change. Land tenure regimes are subject to change by what can be described as top-down as well as bottom-up processes. Concerning the former, in many parts of Sierra Leone, the international (donor) community successfully exerted 'outside' pressure to change and reform the land tenure regime. In Uganda, in contrast, the central government has gained power over time. Under Museveni's 35-year rule, the state has continuously consolidated its power over

the territory, particularly over the north and northeast of the country, which has historically been outside of the purview of the central government (Kandel, 2018). The country's North has also historically been governed under forms of unwritten customary tenure, including pastoralism in the country's North-East. My case studies in northern Uganda revealed that with increasing government control over the region, unregistered customary land seems to slowly make way for formalized and private forms of land rights. This was particularly evident in the conversion of customary rights to both leasehold and freehold tenure during large-scale land investments as well as the slow emergence of an African landlord class. Concerning more 'bottom- up' dynamics of changes in the land tenure regime, it seems that changes in the balance of power between actors 'on the ground' seem to be influential. For example, in many regions of Sierra Leone, paramount chiefs – historically, the main source of authority over land – are losing power, and the customary land tenure regimes are changing in favour of the landholding families. In Uganda, the opposite dynamics seems to be happening: Customary families and communities seem to be increasingly subjected to threats to their land rights and/or pressured to lease or sell (part of) their land by rural and urban elites, international and domestic investors, and the government itself.

While a contrast between 'top-down' and 'bottom-up' processes is helpful to understand the dynamics involved in changes in land tenure regimes, in reality, these are hybrid, simultaneous, and interrelated dynamics. As such, changes in the balance of power and authority at the local level are happening hand in hand with larger top-down processes and 'outside' influence coming in.

Land documentation

By examining different kinds of land tenure regimes and the recognition of specific land rights in formal legal settings, this research has touched on the topic of land documentation in several ways. It seems that where land rights were firmly enshrined in formal-legal frameworks, documented, and legible, they tended to be safeguarded by both national laws as well as global governance norms in investment projects. In contrast, where land rights were not recognized or documented, international guidelines were less certain to protect these rights during investment cases. These findings thus indicate and confirm the value of documenting land rights. This project thereby connects with a larger scholarship in favor of land rights documentation.

I further found that where land rights were recognized in principle by the country's laws but were often ambiguous and contested and not protected in practice (as where customary land is protected by law), some investors have taken the initiative to identify and secure legitimate land rights themselves. This, I argued, has helped to protect land rights for *some*. But it is also problematic and has led to local conflict between the 'winners' and 'losers' of this process. Thus, while this work is tentatively in support of land rights documentation, it crucially depends how and by whom such documentation is done. In this regard, there is scope to further explore methods of securing land rights through locally appropriate forms of formalization, such as documentation of land rights via state-sanctioned protocols that could result in wider legibility of ambiguous land rights. Further research could also trace how such processes of titling and registration could help streamline the use of global norms in more systematic ways at the local level.

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Annex

Annex I: Overview of Global Norms for Responsible Investment

The following table is a summary and overview of the most important global governance norms for responsible land investments.[67]

Nr.	International guideline / instrument	Created by Whom?	When?	Target Audience	Main Features + understanding of land rights
Intergovernmental, human-rights based global initiatives					
1	**Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT or Voluntary Guidelines)** 	UN Committee for World Food Security (CFS), together with the Food and Agriculture Organisation of the UN (UN FAO)	Adopted in 2012	Mainly governments; but also meant for civil society, private sector and	- 2-year multi-stakeholder "bottom-up" negotiation process -strong involvement of NGOs and agrarian justice movements -VGGTs aim to promote food security and sustainable development by improving secure access to land, fisheries and forests, especially for small food producers, and protecting 'legitimate' tenure rights against land grabbing, concentration, commodification and privatization of land -Land tenure rights framed as 'human rights' and linked to the principle of Free Prior Informed Consent (FPIC)

[67] This overview table is not a comprehensive list of all global initiatives for responsible land governance but outlines some of the most well-known global instruments.

Nr.	International guideline / instrument	Created by Whom?	When?	Target Audience	Main Features + understanding of land rights
2	**+ Corresponding VGGT *Technical Guide* on 'Safeguarding Land Tenure Rights in the Context of Agricultural Investment'**	UN Food and Agriculture Organisation (UN FAO)	Published 2015	Intended for government authorities at the national level	Intended to support the application of the VGGT at the national level by helping governments to create an enabling environment for responsible and sustainable investments -aims to remove obstacles to investment, support safeguards for land users, help to solve the problems faced by existing or potential investors (Part 1.3, p.7)
3	**+ corresponding VGGT Technical Guide "Responsible Governance of Tenure: A technical Guide for investors"**	UN Food and Agriculture Organisation (UN FAO)	Published 2016	Intended for private sector investors	Intended to support the application of the VGGT by helping investors pursue their projects in ways that respect legitimate tenure rights and human rights, as outlined in the VGGT -aims to guard against irresponsible and harmful investments that are financially unsustainable for investors -investors should avoid projects that require expropriation and eviction
4	**CFS Principles for Responsible Investments in Agriculture and Food Systems (CFS rai)**	UN Committee on World Food Security (CFS)	Adopted in 2014	Intended for stakeholders involved in, benefitting from, and affected by investments in agriculture and food systems	-aim to promote responsible investment in agriculture and food systems that contribute to food security and nutrition -set of 10 principles that apply to all types and sizes of agricultural investment - grew out of collaborative multi-stakeholder negotiation process -includes labour standards (referencing ILO), justice and grievance mechanism, review and accountability procedures -Aim to guard against and mitigate risks to food security and nutrition as well as ensure respect and non-infringement of human rights and legitimate tenure rights - CFS-rai complements the VGGT Guidelines
5	**Principle of Free, Prior Informed Consent (FPIC)**	-Defined by UN Permanent Forum on Indigenous	Emerged officially in 2007 with adoption of	-Intended mainly for governments	-FPIC is an international human rights standard that derives from the collective rights of indigenous peoples to self-determination and to their lands, territories and other properties.

Nr.	International guideline / instrument	Created by Whom?	When?	Target Audience	Main Features + understanding of land rights
		Issues, UN Declaration on the Rights of Indigenous Peoples (UNDRIP); features in the International Labour Organisation (ILO) Convention 169 on Indigenous and Tribal Peoples	the UN Declaration on the Rights of Indigenous Peoples - making specific mention of FPIC	(22 countries ratified the ILO Convention 169)	-allows indigenous peoples to give or withhold consent to a project that may affect them or their territories; to negotiate conditions under which the project will be designed, implemented, monitored and evaluated. -internal conflict about the meaning of "consent" versus "consultation" among advocates -Referring to land rights as indigenous, common, "informal" and indigenous; recognition of land as cultural spiritual, economic, environmental and political value for indigenous peoples (in contrast to land rights as only private, registered freehold titles)
6	**+ corresponding VGGT Technical Guide on "Respecting free, prior and informed consent"**	UN Food and Agriculture Organisation (UN FAO)	Published 2014	Intended for governments, companies, indigenous peoples, communities, and NGOs	- gives recommended actions to provide practical guidance on how to respect FPIC, as endorsed by the VGGT Guidelines (Section 9.9) - aims to ensure that legitimate tenure rights, incl. customary rights, are respected and the FPIC of the indigenous peoples is obtained for any investment project -Acknowledgement that land has cultural spiritual, economic, environmental and political value to indigenous peoples and customary communities (Part 2, p. 18).

Nr.	International guideline / instrument	Created by Whom?	When?	Target Audience	Main Features + understanding of land rights
7	**the UN Guiding Principles on Business and Human Rights ("Ruggie Principles")** 	developed by the UN Human Rights Council, by Special Representative of the Secretary-General (SRSG), John Ruggie	Endorsed in 2011	Intended for all states and to all business enterprises,	-set of 31 principles -first global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity -inclusion of imperative "do no harm"
Transnational private governance initiatives (i.e., non-state, market-driven governance instruments)					
8	**IFC Performance Standards on Environmental and Social Sustainability** 	International Finance Corporation (IFC)	Adopted in 2012	-directed towards clients (both IFC investment clients and clients to whom IFC provides advisory services)	-Set of 8 performance standards - adopted by many organizations as a key component of their environmental and social risk management -mandatory for IFC clients (financial institutions) to verify compliance as part of their environmental and social due diligence process -have become globally recognized good practice in dealing with environmental and social risk management. -reference to Free, Prior, Informed Consent (FPIC) in 'special circumstances' (IFC PS, par.13-17), but FPIC not seen as veto right - 'legitimate' land rights as those recognized under national law

Nr.	International guideline / instrument	Created by Whom?	When?	Target Audience	Main Features + understanding of land rights
9	**Equator Principles (EP)**	launched by 10 leading financial institutions -based on IFC Performance Standards and World Bank Environmental, Health and Safety Guidelines	Launched in 2003, subsequent review updates (4th update adopted in 2019)	Private multinational banks (signatories dubbed the 'Equator Banks')	-a credit risk management framework with a set of 10 principles, adopted by financial institutions, for determining, assessing and managing environmental and social risk in project finance. -So far, 104 financial institutions in 38 countries adopted the EP -based on IFC Performance Standards - 4th review update of Equator Principles (2019) now includes new commitments relating to human rights, climate change, indigenous peoples and biodiversity -legally binding but no enforceability / no formal screening or monitoring mechanisms -mentions FPIC, but not seen as veto right
10	**Principles for Responsible Agricultural Investment that Respect Rights, Livelihoods and Resources (PRAI)**	World Bank, together with the UN Food and Agriculture Organisation (FAO), the International Fund for Agricultural Development (IFAD), and the UN Conference on Trade and Development (UNCTAD)	Presented by the World Bank in 2010 at a CFS plenary meeting	Intended for adoption by governments, NGOs, investors and other actors	-PRAI were rejected at 36th meeting of Committee on World Food Security (CFS) due to lack of consultation and perceived regulatory inadequacies, strongly opposed by civil society organisations -no references to national laws regulations or human rights law -as a response, CFS initiated a 2-year inclusive multi-stakeholder process to develop the CFS rai (adopted in 2014) -Aim to reduce economic hurdles that would hamper large-scale investments -Market-centred approach about land rights
11	**Food & Agriculture Business Principles (FABs) (formerly**	UN Global Compact (UNGC)	2012	Intended for UNGC signatories	-UN Global Compact is world's largest corporate social responsibility framework with 13000 corporate participants and other stakeholders over 170 countries (Wikipedia)

Nr.	International guideline / instrument	Created by Whom?	When?	Target Audience	Main Features + understanding of land rights
	'Sustainable Agriculture Business Principles')			(mostly private sector businesses)	to promote more responsible and ethical business conduct in the private sector -based on the 10 UNGC Principles.
12	**OECD Guidelines for Multinational Enterprises**	Organisation for Economic Co-operation and Development (OECD)	First version published in 1976, revised 5 times since then, (last in 2011)	Multinational Enterprises within OECD countries	-A set of recommendations for responsible business conduct for multinational enterprises, including such topics as human rights, labour rights and environmental aspects. -offers unique international grievance mechanisms for companies and individuals who are negatively impacts by investments -not legally binding on companies, but binding for signatory governments who are required to ensure guidelines are observed -unique implementation mechanism of National Contact Points (NCPs), agencies established by adhering governments to promote and implement the OECD Guidelines. The NCPs assist enterprises and their stakeholders to take appropriate measures to further the implementation of the Guidelines.
13	**Principles for Responsible Investment in Farmland (UNPRI) ("Farmland Principles")**	developed by a group of six pension funds associated with the UN Principles for responsible investments (PRI)	Developed in 2011	Intended for asset owners investing in farmland and asset managers (There are currently 17 signatories (50% pension funds / 50% asset managers)	-aim to improve the sustainability, transparency and accountability of investments in farmland -set of 6 principles: environmental sustainability (Principle 1), labour and human rights (Principle 2), existing land and resource rights (Principle 3), high business and ethical standards (Principle 4), Reporting on activities (Principle 5), Signatories commit to comply with these principles when buying or operating land
14	**Analytical Framework for Responsible Land-**	Leadership Council of the New Alliance for	2015	Intended to help investors in aligning their	-provides a guide for aligning internal policies and actions with existing international and regional documents such as

Nr.	International guideline / instrument	Created by Whom?	When?	Target Audience	Main Features + understanding of land rights
	Based Agricultural Investments	Food Security and Nutrition (New Alliance) and *Grow Africa*		policies and actions with global guidelines on responsible land-based investments	the (VGGT) and the LPI *Guiding Principles on Large Scale Land Based Investment in Africa*. -loosely based on the USAID Operational Guidelines for Responsible Land-Based Investment
International Transparency and Reporting Initiatives					
15	**Extractive Industries Transparency Initiative (EITI)**	Emerged from a statement of principles agreed on by a group of countries, companies and civil society OGs	2019	Intended for governments of resource-rich countries	-provides a framework and a process for promoting greater transparency and accountability in the oil, gas, and mining sectors. -a unique, living document, shaped by the 52 countries which implement it. -a public-private partnership designed to help resource-rich countries avoid corruption in the management of extractive industry revenues. Firms in EITI-countries are held accountable to certain standards (i.e., reporting on revenue flows etc.)
16	**GRI Sustainability Reporting Standards**	Global Reporting Initiative (GRI)			-establishes standardized templates that firms can voluntarily follow for their corporate social responsibility (CSR) reporting - the first global standards for sustainability reporting. They feature a modular, interrelated structure, and represent the global best practice for reporting on a range of economic, environmental and social impacts.
Regional initiatives:					
17	**Guiding Principles on Large Scale Land Based Investments in Africa**	drafted by the Land Policy Initiative (LPI) and endorsed by	2014	Intended for AU members states and stakeholders	- designed to help develop large-scale agricultural investments that are more likely to prove sustainable, beneficial, and successful for communities, investors and governments.

Nr.	International guideline / instrument	Created by Whom?	When?	Target Audience	Main Features + understanding of land rights
		tripartite consortium of African Union (AU), African Development Bank (AfDB) and the UN Economic Commission for Africa (UNECA)			- emphasis on the importance of recognizing and respecting customary rights to land and resources, and of community participation in consultations and negotiations. -based on a set of 6 principles, and a foundation of human rights and gender equality -In line with the VGGT
Voluntary certification programs for global commodity chains					
18	**FSC Forest Guidelines**	Forest Stewardship Council (FSC)	Established in 1993	Intended for actors in the forest and logging sector and supply chain	-promotes responsible forest management by certifying the environmental and social standards of forests - focuses on both forest management and logging operations, as well as operations along the supply chain. - based on 10 certification criteria, which mainly cover such issues as compliance with laws and international treaties (if applicable), the social and economic wellbeing of workers and local communities, indigenous peoples' rights, environmental impacts and conservation, and monitoring, evaluation and management.

Nr.	International guideline / instrument	Created by Whom?	When?	Target Audience	Main Features + understanding of land rights
19	**Roundtables on Responsible Palm Oil (RSPO), Soybeans (RTRS), Biomaterials**  **(RSB – formerly Biofuel), and Sugar and Ethanol (Bonsucro)**	Stakeholder groups in a variety of commodity sectors	RSPO: 2004, Bonsucro: 2013, RTRS: 2006,	Intended for value chain and civil society actors in the palm oil, soy, beef, cocoa, cotton, sugarcane, biofuels, biomaterials, and forests sectors	- voluntary environmental programs aimed to promote the growth and use of sustainable or responsibly sourced commodities and products to prove commodities have been sustainably produced - RSPO and the RTRS certifications require oversight by independent third-party auditors -roundtable certification schemes define social, environmental, and economic guidelines for production and also contain social benchmarks such as participation, transparency, and accountability
20	**UTZ (formerly UTZ Certified)**  	Founded by a coffee grower and coffee roaster	Launched in 2002; merged with Rainforest Alliance in 2018	Intended for farmers and companies along the coffee, cocoa, tea, rooibos, and hazelnuts value chains	-UTZ is the largest product certification scheme for the coffee and cocoa industry -UTZ Code of Conduct sets environmental and social standards for farm management, social and living conditions, crop production that investors need to follow in order to get certified
Individual donor approaches					
21	**Guide to due diligence of agribusiness projects that**	French Development	Published in October 2014		- aims to help all stakeholders and companies around investments that affect land and property rights to apply due diligence in their operations

Nr.	International guideline / instrument	Created by Whom?	When?	Target Audience	Main Features + understanding of land rights
	affect land and property rights -Operational Guide 	Cooperation (AFD)			-provides guidance to better monitor compliance with the VGGT, and other relevant instruments
22	**Operational Guidelines for Responsible Land-Based Investment**	USAID	Published in 2015		- designed to help companies identify practical steps to align their policies and actions with provisions of the VGGT and the IMC Performance Standards (IFC PS) and other relevant instruments -reducing risks and facilitating responsible projects that benefit both the private sector and local communities

Source: Compiled by author.

Appendix

Appendix I: List of Interviews and Focus Group Discussions in Uganda

Interview descriptions below have been mostly anonymised. Smaller localities (villages, municipalities) have also been anonymised. The following list of interviews does not include informal conversations.

Nr.	Sector	Anonymised Description	Interview Date	Interview Location
1	**International and national NGOs**	Action Aid (AA) staff member	17 January 2018	Kampala
2		Transparency International (TI) staff member	25 January 2018	Kampala
3		Avocats Sans Frontières (ASF) staff member	31 January 2018	Kampala
4		Shared Value Foundation (SVF) staff member	8 February 2018	Via Skype
5		Two LANDnet staff members	23 May 2018	Kampala
6		LANDnet staff member	5 February 2018	Kampala
7		Uganda Land Alliance (ULA) staff member	16 April 2018	Kampala
8		Shared Value Foundation (SVF) staff member	16 April 2018	Kampala
9		Action Aid (AA) staff member	17 July 2018	Kampala
10		Action Aid (AA) staff member	25 July 2018	Kampala
11		Oxfam staff member	18 July 2018	Kampala
12		Uganda Land Alliance (ULA) staff member	17 July 2018	Kampala
13		Land and Equity Movement Uganda (LEMU) staff member	16 August 2018	Gulu
14		Partnership for Community Development (PCD) staff member	28 July 2018	Gulu
15		Action Aid (AA) staff member	25 July 2018	Gulu

16		Participatory Ecological Land Use Management (PELUM) Uganda staff member	19 July 2018	Kampala
17		Participatory Ecological Land Use Management (PELUM) Uganda staff member	22 November 2018	Kampala
18		Action Aid (AA) staff member	27 January 2020	Gulu
19		Partners in Development (PID) staff member	28 January 2020	Gulu
20		Participatory Ecological Land Use Management (PELUM) Uganda staff member	3 February 2020	Kampala
21		Eastern and Southern Africa Small-scale Famer's Forum (ESAFF) staff member	6 February 2020	Via Telephone
22		LANDnet staff members	7 February 2020	Kampala
23		Two staff members of ZOA	30 July 2018	Gulu
24	**Unions / local resistance groups**	National Union of Plantation & Agricultural Workers (NUPAWU) representative	16 May 2018	Mubende
25		Land rights Activist (Wake Up and Fight for your Rights Movement	15 May 2018	Mubende
26		Member of Kalangala Outgrowers Trust	4 September 2018	Kalangala
27		Hans R. Neumann Foundation staff member	11 May 2018	Mubende
28		Atiak Outgrowers Cooperative Society member	14 August 2018	Amuru
29		Atiak Outgrowers Cooperative Society member	15 August 2018	Gulu
30	**Consultant / expert**	Agribusiness expert	17 January 2018	Kampala
31		Land expert	11 July 2018	Kampala
32		Land expert and researcher	13 August 2018	Gulu
33		Businessowner	12 January 2018	Kampala
34		Business development expert	25 January 2018	Kampala

35		Agribusiness expert	4 February 2020	Kampala
36		Land and agribusiness expert	5 February 2020	Kampala
37		Land consultant	7 February 2020	Kampala
38		Business development expert	7 February 2020	Kampala
39	**Journalist**	Journalist	13 August 2018	Gulu
40	**Government**	Senior Official at Ministry for Lands, Housing, and Development (MLHUD)	25 January 2018	Kampala
41		Senior Official of Uganda Investment Authority (UIA)	31 January 2018	Kampala
42		Senior Official at the Kampala Capital City Authority	29 January 2018	Kampala
43		District-level Government Official	15 May 2018	Mubende
44		District-level Government Official	16 May 2018	Mubende
45		District-level Government Official	16 May 2018	Mubende
46		District Chairperson (LC5)	15 May 2018	Mubende
47		District-level Government Official	29 May 2018	Jinja
48		District-level Government Official	30 May 2018	Jinja
49		District-level Government Official	4 June 2018	Jinja
50		Senior Official of National Forestry Authority (NFA)	6 June 2018	Jinja
51		District-level Government Official	4 June 2018	Jinja
52		District-level Government Official	28 June 2018	Jinja
53		District-level Government Official	28 June 2018	Jinja
54		Busoga Kingdom Official	20 July 2018	Jinja

55		District Chairperson (LC5) for Gulu	26 July 2018	Gulu
56		Busoga Kingdom Official	5 June 2018	Jinja
57		Senior Official at National Forestry Authority (NFA)	6 September 2018	Jinja
58		Senior Official at Ministry for Lands, Housing and Development (MLHUD)	1 June 2018	Kampala
59		District Land Board (DLB) representative	27 July 2018	Nwoya
60		District Land Board (DLB) representative	2 August 2018	Amuru
61		District-level Government Official	1 August 2018	Amuru
62		MP of Buvuma	3 September 2018	Kampala
63		District-level Government Official	31 July 2018	Nwoya
64		District-level Government Official	26 July 2018	Nwoya
65		District-level Government Official	26 July 2018	Nwoya
66		District Chairperson (LC5) for Nwoya	30 July 2018	Nwoya
67		MP for Nwoya	30 July 2018	Nwoya
68		District-level Government Official	30 July 2018	Gulu
69		MP for Amuru	30 July 2018	Gulu
70		District Chairperson (LC5) for Amuru	30 July 2018	Gulu
71		Official at Department of Surveying and Mapping (MLHUD)	26 June 2018	Entebbe
72		District-level Government Official	17 August 2018	Amuru
73		District-level Government Official	17 August 2018	Amuru
74		District Chairperson (LC5) for Nwoya	27 January 2020	Nwoya

75		District-level Government Official	29 January 2020	Gulu
76		Senior Official at Ministry for Lands, Housing and Development (MLHUD)	3 February 2020	Kampala
77	**Lawyer**	Land lawyer	8 August 2018	Kampala
78		Land Lawyer	10 September 2018	Kampala
79		Land lawyer	16 August 2018	Gulu
80		Lawyer	28 January 2020	Gulu
81	**Researcher / Academic**	Researcher at Makerere University	23 January 2018	Kampala
82		Researcher at Makerere University	3 May 2018	Kampala
83		Geographer, University of Paris	24 January 2018	via Skype
84		Historian, University of South Carolina	7 August 2018	Via Skype
85		Researcher at Great Lakes Institute for Strategic Studies (GLiSS)	17 July 2018	Kampala
86		Professor	30 January 2020	Gulu
87	**Donor / International Organisation**	Officer at GIZ	10 May 2018	Kampala
88		Officer at GIZ	11 June 2018	Kampala
89		Two officers at Gesellschaft für Internationale Zusammenarbeit (GIZ)	17 May 2018	Mityana
90		Officer at GIZ	5 August 2018	Kampala
91		Officer at GIZ	7 February 2020	Kampala
92		EU representative	10 February 2020	Kampala
93	**Local community / family members**	Land user	27 January 2020	Amuru
94		Land user	28 January 2020	Amuru
95		Teacher	9 August 2018	Mityana
96		Landholding family member	20 August 2018	Amuru

97		Landholding family member	1 September 2018	Kampala
98		Landholding family member	18 August 2018	Gulu
99		Land user	16 January 2018	Mukono
100	**Local leaders/ chiefs**	Community leader (chief)	9 August 2018	Kasanda
101		Representative of Kwer Kwaro Acholi	28 January 2020	Gulu
102		Opinion leader	29 January 2020	Gulu
103		Chief	30 January 2020	Gulu
104		Chief	30 January 2020	Gulu
105		Chief	30 January 2020	Gulu
106	**Private investment company**	Company representative	24 May 2018	Mubende
107		Company representative	5 June 2018	Jinja
108		Company representative	6 June 2018	Jinja
109		Company representative	31 May 2018	Mukono
110		Company representative	19 June	Mukono
111		Company representative	28 May 2018	Jinja
112		Company representative	30 May 2018	Jinja
113		Company representative	19 June 2018	Jinja
114		Company representative	30 August 2018	Kalangala
115		Company representative	4 September 2018	Kampala
116		Company representative	31 July 2018	Nwoya
117		Company representative	1 August 2018	Gulu
118		Company representative	31 July 2018	Nwoya
119		Company representative, Omer Farming Company	2 August 2018	Amuru
120		Company representative, Atiak	31 August 2018	Kampala
Focus Group Discussions				
121	Local communities		17 May 2018	Mubende

122	Local Communities	9 August 2018	Mityana
123	Local Communities	13 July 2018	Mayuge
124	Sub-district government officials and community leaders	1 August 2018	Amuru
125	Local Communities	31 July 2018	Nwoya
126	Local Communities	2 August 2018	Amuru
127	Local communities	17 August 2018	Amuru
Observations / Workshops			
128	Observation of court case of Mailo land dispute	16 January 2018	Mukono
129	Press Conference on Apaa land conflict	20 July 2018	Kampala
130	Apaa Exit Conference	15 August 2018	Gulu
131	GIZ Workshop	15 January 2018	Kampala
132	Northern Uganda Land Platform (NULP) Meeting	23 – 24 April 2018	Lira
133	Northern Uganda Land Platform (NULP) Meeting	16 – 17 August 2018	Gulu
134	OXFAM Workshop on Land and Inequality	3 May 2018	Kampala

Appendix II: List of Interviews and Focus Group Discussions in Sierra Leone

Nr.	Sector	Anonymised Description	Interview Date	Interview Location
135	**International and national NGOs**	Namati staff member	6 May 2019	Freetown
136		Namati staff member	29 April 2019	Bo
137		Green Scenery staff member	7 May 2019	Freetown
138		Welthungerhilfe staff member	15 May 2019	Freetown
139		Director of Welthungerhilfe	15 May 2019	Freetown
140		Solidaridad staff member	17 May 2019	Freetown
141		Partnership in Conflict Transformation (PICOT) staff member	30 May 2019	Bo
142		Partnership in Conflict Transformation (PICOT) staff member	30 May 2019	Bo
143	**Community-based organisations / local resistance groups**	Member of Community Empowerment and Poverty Alleviation (CEPA)	9 August 2019	Kenema
144		Member of Makpele Land Owners and Users Association (MAKLOUA)	3 June 2019	Zimmi
145		Member of Makpele Individual Landowners Association (MILA)	3 June 2019	Zimmi
146		Member of Malen Affected Land Owners Association (MALOA)	1 June 2019	Pujehun
147	**Small/ medium-sized business owners**	Businessowner (fertilizer)	10 May 2019	Freetown
148		Businessowner (cocoa)	9 August 2019	Kenema
149	**Consultant / expert**	International land expert	20 May 2019	Via Skype
150		Land expert	28 April 2019	Freetown
151	**Government**	Senior Official at the Sierra Leone Investment & Export Promotion Agency (SLIEPA)	15 May 2019	Freetown
152		Senior Official at the Sierra Leone Investment & Export Promotion Agency (SLIEPA)	20 August 2019	Freetown

153		Senior Official at National Mineral Agency (NMA)	22 August 2019	Freetown
154		Senior Official at Environmental Protection Agency (EPA)	22 August 2019	Freetown
155		Senior Official at the Ministry of Lands, Country Planning and Environment (MLPE)	22 May 2019	Freetown
156		Senior Official at the Ministry of Lands, Country Planning and Environment (MLPE)	27 August 2019	Freetown
157		District-level government official	17 July 2019	Bombali
158		District-level government official	18 July 2019	Kono
159		District-level government official	18 July 2019	Kono
160		Senior official at The Ministry of Agriculture, Forestry and Food Security (MAFFS)	9 September 2019	Freetown
161		District-level government official	3 June 2019	Zimmi
162		District-level government official	2 June 2019	Pujehun
163		District-level government official	2 June 2019	Pujehun
164		Official at Office of National Security (ONS)	2 June 2019	Pujehun
165		MP for Pujehun	7 May 2019	Freetown
166		Member of Police Force	31 May 2019	Pujehun
167	**Researcher / Academic**	Academic	26 July 2019	Freetown
168		Academic	26 July 2019	Freetown
169	**Donor / International Organisation**	FAO Consultant	19 August 2019	Freetown
170		FAO Official	21 May 2019	Freetown
171		FAO Official	27 August 2019	Freetown
172	**Local community / landowners**	Landowner	4 September 2019	Bonthe
173		Landowner	29 May 2019	Tonkolili
174		Landowner	29 May 2019	Tonkolili
175		Landowner	31 May 2019	Pujehun

176		Landowner	9 August 2019	Pujehun
177		Landowner	7 August 2019	Kailahun
178		Landowner	7 August 2019	Kailahun
179		Landowner	3 June 2019	Pujehun
180		Landowner	3 June 2019	Pujehun
181	**Paramount chiefs and sub-chiefs**	Deputy Paramount Chief and chiefdom speaker	15 July 2019	Bombali
182		Regent Chief	15 July 2019	Bombali
183		Paramount Chief	15 July 2019	Bombali
184		Paramount Chief	16 July 2019	Tonkolili
185		Member of chiefdom council	18 July 2019	Kono
186		Village-level chief / leader	18 July 2019	Kono
187		Paramount Chief	17 July 2019	Kono
188		Paramount Chief	17 July 2019	Kono
189		Paramount Chief	4 September 2019	Bonthe
190		Section chief	4 September 2019	Bonthe
191		Member of chiefdom council	3 September 2019	Pujehun
192		Paramount Chief	3 September 2019	Pujehun
193		Chiefdom speaker	2 June 2019	Pujehun
194		Town chief	31 May 2019	Pujehun
195		Paramount Chief	3 June 2019	Pujehun
196	**Private Investment company**	Company representative	23 May 2019	Mubende
197		Company representative	7 August 2019	Daru
198		Company representative	9 August 2019	Kailahun
199		Company representative	23 August 2019	Freetown
200		Company representative	3 September 2019	Bonthe
201		Company representative	4 September 2019	Bonthe
202		Company representative	29 May 2019	Tonkolili
203		Company representative	14 May 2019	Freetown
204		Company representative	1 June 2019	Pujehun

205		Farm managers	31 May 2019	Pujehun
206		Company representative	3 June 2019	Pujehun
Focus Group Discussions				
207	Local communities (village 1)		16 July 2019	Bombali
208	Local communities (village 2)		16 July 2019	Bombali
209	Local communities		16 July 2019	Tonkolili
210	Local staff of NGO Sierra Leone Network on the Right to Food (SiLNoRF)		15 July 2019	Makeni
211	Local staff of NGO Welthungerhilfe		9 August 2019	Kenema
212	Local staff of Solidaridad and Natural Habitats		3 June 2019	Zimmi
213	Artisanal Miners		17 July 2019	Kono
214	Local communities		18 July 2019	Kono
215	Section chiefs and town chiefs		18 July 2019	Kono
216	Local communities		30 May 2019	Pujehun
Observations / workshops				
217	FAO VGGT Implementation workshop		16 May 2019	Freetown
218	NGO Workshop and Presentation		11 July 2019	Freetown
219	Field Day with cocoa producing farmers		9 August 2019	Kailahun

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