

8. Conclusion

Concluding this dissertation, I will review the research presented and discuss its meaning for the literature and policy debates. I will recap the research question and the main findings in a first step (chap 8.1). The second part will consider the limits of my research and formulate further research desiderata (chap 8.2). The final part will discuss what these findings mean against the background of current debates described in chapter 2 of this thesis (chap 8.2).

8.1 Summary

My research endeavor was inspired by the ongoing international debate about the regulation of large-scale land deals. Commentators following a human rights or a market-based approach both argued for global rules but in different forms and with different contents. While a human rights-based perspective demands a veto right for local actors and binding instruments, a market-based perspective focuses on consultations and the persuasiveness of voluntary best practice standards.

Several new international instruments were developed containing traces of both approaches. Civil society and academic reactions varied between radically questioning the usefulness of regulation, being critical of missing bindingness and optimistic assumptions. Yet, existing research on the use of legal arguments, legal representation or legal institutions was so far inconclusive: Legal mobilization seemed to take place in large-scale land deals. However, the conditions under which legal mobilization by local actors was successful had not been subject to systematic research. This is the gap the dissertation helped to fill through answering the question: *Under which conditions can local actors successfully pursue their goals through legal mobilization?*

Addressing the research question required the development of a framework, which was able to consider different perspectives – a legal, a social mobilization and a business management approach. Viewed through the lens of bargaining power, I brought the three aspects together with the help of a configurational approach. I derived three core conditions: The favorability of the national legal opportunity structure, the strength of sup-

port networks and the receptivity of the company. These core conditions served as a heuristic tool for my empirical analysis, which had the aim to specify the relationship between the conditions and legal mobilization success and add possible additional conditions.

My empirical analysis focused on two cases of large-scale land deals in two countries: Sierra Leone and the Philippines. Both countries differ considerably in regard to their national legal opportunity structure. While smallholders in Sierra Leone do not have formalized decision-making rights concerning large-scale land deals, many farmers in the Philippines have means of claiming legitimate tenure rights and a veto right in land investments. The national legal opportunity structure was evaluated in both countries with the help of a 'collective optimum', created through a human rights perspective on land. The effects of the respective national legal opportunity structures were then analyzed through process tracing in two cases of large-scale land deals in each country: Addax and Socfin in Sierra Leone, and GFII and Agumil in the Philippines. The analysis aimed to show the relationship between and the relevance of the three core conditions. Further insights were created by comparing the findings within and across countries. Data used in the analysis came from 102 interviews conducted during field research in Sierra Leone and the Philippines as well as a variety of documents from media, NGOs, companies, activist groups, governments or academics.

Overall, my analysis showed how the national legal opportunity structure shaped the possibilities of local actors in mobilizing for their goals in both countries. In the case of Sierra Leone, these possibilities were very limited for local smallholders. In this context, the receptive company, Addax, which followed international guidelines, offered more space than Socfin, which relied on local authorities to suppress local mobilization. In both the Addax and the Socfin case, NGOs played an important role in supporting local actors. In the Philippines, the favorable national opportunity structure created a situation for local smallholders, in which they could protect their rights through legal mobilization. Nonetheless, local actors were dependent on strong support networks, which could help them pressure the administrative system and companies. Apart from the outside support network, internal unity appeared as another important condition –, especially in the Agumil case.

The findings from the analysis can be summarized on an abstract level to answer the research question. *Legal mobilization of local actors should be successful if the national legal opportunity structure is favorable and if local actors are unified and receive strong network support. In cases in which the nation-*

al legal opportunity structure is unfavorable, local actors also need to be unified and receive strong network support. However, in these cases the success of the legal mobilization will depend on the receptivity of the company and the role of political elites.

8.2 Limitations and future research desiderata

There are certain boundaries to my research as well as open questions that point out future research desiderata. I will discuss some general limits before going into more detail regarding the three literature strands identified as relevant in the introduction.

My dissertation focused on the way legal mobilization is employed by local actors to achieve their goals. I identified particular ‘local actors’ in each of my cases without further discussing their status in the overall affected population. The focus was not necessarily on the ‘most marginalized’ groups. I mentioned this in the chapter from Sierra Leone, where I pointed out differences between landowners and land users in customary law. However, I did not focus on these differences in the analysis. Similarly, I did not delve into the relationship between cooperatives and indigenous people in the Agumil case.

Furthermore, my research did not take into consideration gender-specific aspects of tenure systems and surrounding dynamics in large-scale land deals (Alano 2015; Ryan 2017). My research did not focus on how company investments influenced these existing societal inequalities and the role different local actors played in these settings. It would, however, be of interest, under which conditions legal provisions could mitigate or worsen inequalities between societal groups or gender in large-scale land deals.

Furthermore, this dissertation did not assess the economic benefits or losses of local actors on a systematic basis. However, from anecdotal evidence collected during interviews, it seems that the GFII case was probably the most beneficial to local smallholders. The smallholders who cooperated with the company saw it as one additional source of income, sometimes using land that was otherwise not valuable to them. In contrast, the farmers in the Agumil case were highly indebted and hardly received any financial outputs. The investment clearly did not improve their economic well-being. The situation was more complicated in the Sierra Leonean cases as the investments changed the local economy significantly. A household survey comparing communities in the Addax investment area to outside communities showed that the average household income in the Addax area was

indeed higher. However, prices for food had also increased in the project area to nearly the same degree that income had risen (Rist et al. 2016: 5). Determining economic benefits in such settings is a complex endeavor and depends to a considerable degree on the methods used. It should be noted that my 'success' cases do not automatically imply 'economic success'; instead, success in my cases showed that locals were able to influence the investment project in a way that they wanted. I do, however, assume that this should at least protect local actors from economically detrimental effects.

In addition, my dissertation is not representative of all large-scale land deals. As mentioned in the case selection chapter (4.2.2), I was focusing on land investments, which had created some attention and subsequent mobilization efforts by locals and civil society organizations. There can be investment projects, which are less problematic and respect local rights. However, I regard my selected cases as typical for large-scale investments that create national and international attention. I, therefore, expect that my findings around local dynamics and legal mobilization attempts are similar in other cases. My abstract model is furthermore applicable to other private sector investment cases such as mining projects, even though state actors usually play a more significant role in sub-soil resource exploitation.

Apart from some general boundaries of my dissertation, my study points to future research desiderata for the legal studies, social mobilization and business management literature.

As described in the introduction, the dissertation contributes to the legal studies literature by focusing on legal mobilization processes that take place outside the courtroom in countries with a relatively weak rule of law. I thereby provide a much broader picture of how people use and negotiate the law in the context of large-scale investment projects in developing countries. I did focus on legal possibilities and actions taken by local actors and did not further discuss the legal protection of companies on the national and international levels. I thereby left out the international investment regime, which has received considerable criticism as being overprotective of investors at the expense of local populations (Johnson 2016: 73). More specifically, bilateral investment treaties have been criticized for limiting governments in their regulatory responses regarding foreign investment in agriculture (Ewelukwa Ofodile 2014). The effects these treaties have on individual cases would be a relevant further research endeavor. In my examples, the role of international investment law did not surface, as

no bilateral investment treaty had been signed between host governments and countries of origin of the investors (UNCTAD 01/03/2019).

At the same time, my research leads to follow up questions such as the long-term effects of legal mobilization on different levels: Does legal mobilization leave local people feeling empowered and lead to new collective rights claims (McCann 1994: 11)? Or does the experience with the law lead to disenchantment and further marginalization (Gallagher/Yang 2017: 188)?

Furthermore, can legal mobilization attempts lead to broader changes on the societal level? This question is especially relevant in Sierra Leone. As described in chapter 5.1.3, a civil society network formed around the issue of large-scale land deals. The network has considerable influence on the political level, for example, in the development of the new National Land Policy. Besides, the network frequently brings together affected people from different regions of the country, who might, as a result, claim their rights more vocally. Simultaneously, the land deals themselves can lead to a questioning of existing customary rules, which start to be renegotiated (Bottazzi et al. 2016). These dynamics might change understandings of statutory and customary land rights and the role of chiefs. Mobilization efforts and rights discourses employed by civil society against large-scale land deals might have considerable long-term effects, as suggested by Alden Wily:

“[T]he land rush is generating such increasing local reaction that subordination of majority rural rights shows signs of becoming less easy. This may prove to be the case even in the most recalcitrant of cases [...] If only for political reasons, those governments may later, if not sooner, feel bound to modify their land laws [...]” (Alden Wily 2014: 222)

These macro-level dynamics should be studied further in the next couple of years, which should show moves towards more inclusive land legislations if the optimistic assumption formulated by Alden Wily was correct.

This issue of broader societal change touches on core questions of the social mobilization literature. The dissertation contributes to this literature by focusing on a ‘middle ground’ of social mobilization, in which social actors try to achieve their goals by referring to legal norms and pushing for their enforcement. The cases represent local social actors who are not necessarily interested in societal change but rather want to improve their living situation. My research furthermore raises issues, which can be answered with the help of a social mobilization perspective in future re-

search. One question refers to the strategies employed by local actors and their support networks. In many cases, legal mobilization such as the calling on a national institution such as Congress in the Philippine cases or the Human Rights Commission in the Socfin case, are only part of broader advocacy campaigns and other activities. The case of GFII raised the question of violence in contributing and explaining the success of local actors. The question arises under which condition which combination of strategies might be most successful. As discussed in chapter 7.1, I assume that the strategies used by local actors have to fit societal contexts. Nonetheless, future research could focus more systematically on commonalities across cases and countries.

The question of strategy is especially interesting as many civil society campaigns around large-scale land deals involve the cooperation of local actors from the Global South with NGOs from the Global North. Typically, these relationships face certain difficulties due to the differences in financial resources, organizational background (Pieck 2013), but also regarding ideological or strategic views (Hahn/Holzschneider 2013). There are signs that these challenges can be mitigated by applying the principle of affectedness, which is prevalent among civil society in the realm of food security governance (Schramm/Sändig 2018). In this regard, mobilization in large-scale land deals can serve as an example of successful cooperation between locally affected people and international NGOs across borders.

Another issue is the process of opinion formation on the local level. My research question focused on a point when people had already come together to take action. However, as indicated by the additional condition of unity among local actors, this cannot be automatically assumed. Some authors suggest that communities are usually divided among potential ‘winners’ or ‘losers’ of an investment (Schoneveld 2017: 127; Borras/Franco 2013: 1730). However, there is evidence that opinions take form on a collective level as interviews from villages in Kenya indicated:

“Only one location, village 5, had a mixture of opinions for or against. Elsewhere, villagers were united, even if they varied in their reasons. Interviews revealed heterogeneity in respondents’ livelihoods, education levels and life-worlds. [...] this might suggest villagers’ discursive positions are shaped collectively.” (Smalley/Corbera 2012: 1049)

This finding underlines social mobilization approaches that assume that the existence of grievances alone is not enough for collective action to appear (Granzow et al. 2015). Instead, framing processes take place that help people to interpret events. In many cases of large-scale land deals, opinions

form before an investment has taken place, which leaves further room for interpretation as outcomes are only anticipated. Community leaders, politicians, outside NGOs and other social actors might try to influence opinion-making processes in local communities. Studying these micro-processes further would elucidate existing local power structures and their possible changes in the light of incoming investors.

Finally, my dissertation also contributes to the business management literature, through linking considerations about company stakeholders with social mobilization and legal issues. The role of law has not been studied explicitly in relation to the stakeholder salience model. However, as my dissertation suggests that whether companies perceive certain groups as relevant stakeholders depends on the legal situation, for example, whether customary landowners and users have a veto right or not. A company's decision about who they regard as relevant stakeholder is dependent on the legal situation in a country. This relationship can be further specified for different economic fields in future research.

The empirical material of my dissertation did point to another critical issue, which should be studied further from a business standpoint: The economic viability of large-scale agricultural investment projects. While I do not have data on profit margins, anecdotal evidence implies that only three out of the four projects were economically profitable, namely the investment of Socfin. As described, the Addax investment had failed mostly due to low yields. Yields were also substantially lower than projected in the Agumil case, and the mill seemed to be running only at half capacity. Finally, GFII was not able to encourage enough sugar cane growing and therefore did not have enough raw material for the bioethanol refinery. The economic difficulties raise two important follow-up questions that need further research.

Under which conditions are large-scale land deals economically viable? Large-scale investments seem to be especially risky, as mentioned in chapter 3.1.1. In a World Bank study on 39 agricultural investment projects, only 45 % were financially profitable (World Bank 2014: 17). Furthermore, large-scale agricultural plantations are difficult to manage and often struggle to achieve higher yields than small-scale farming (Schönweger/Messlerli 2015). However, if investing companies struggle, local populations are likely to be negatively affected. This became apparent during the scale down of the Addax project: Workers had to be laid off (SiLNoRF 2016), rent payments were late, and social programs like a garden project for local women were stopped (interview SL15). Furthermore, a company that is struggling financially will, of course, have a harder time giving in to local demands,

for example, for higher rent payments. For locally affected communities, non-viable investment projects are, therefore, an additional risk. There is a clear need to assess the economic viability of large-scale land deals more critically. Some investments appear to be based on unrealistic yield expectations and fail to take conditions on the ground into consideration.

The second question is linked to the realization that the project that seemed to be economically successful was the investment of Socfin, which was the least receptive company out of the four cases studied. This puts the ‘business case’ for voluntarily following guidelines, mentioned in the introduction, into question. Are companies that are self-committing to following international principles and guidelines really more successful economically? The ‘business case’ argues that the costs of unresolved land conflicts will be higher for investing companies than doing proper consultation right from the beginning (World Bank 2014: xvii). However, the case of Addax shows that following best practices is costly. A former employee estimated the cost of the social affairs department, compensation paid locally and the running of the Farmers Development Program at 10 to 12 million USD (interview SL54). Nonetheless, the investment project still faced criticism:

“[...] when you do apply best practice and you work with best practice, you still get bad press. [...] best practice can be done, but it costs. And a lot of investors were not prepared to even pay a fraction of the money that Addax paid out.” (interview SL54)

If done correctly, consultations and keeping up good relations between companies and local communities will be costly, especially if you consider the amount of people that might need to be involved: 13,500 and 20,000 affected people in the cases of Addax and Socfin respectively. Economists should engage in realistic calculations of what these processes cost. Sadly, the case of Socfin might be an example of how ‘consultations’ can be done ‘cheaper’: by negotiating with the government and Paramount Chief and leaving it to them to deal with local discontent. Of course, my data are limited in this regard, however, I question that there is always a ‘business case’ for applying voluntary standards. This is in line with existing research on the relationship of corporate social responsibility and financial performance of companies, which so far generated ambiguous results (Schreck 2011). Future research should analyze if and under which conditions a ‘business case’ exists for applying international soft law standards in large-scale land investment deals.

8.3 Implications of my findings for regulating large-scale land deals

What do my findings and my final answer mean for the existing debates about regulating large-scale land deals? I will present implications for the existing literature on large-scale land deals as well as policy debates.

My research findings provide evidence for all three positions taken about regulating large-scale land deals described in chapter 2.3.1. Looking back, an optimistic position emphasized the possible positive role played by voluntary standards. In contrast, a critical position demanded binding regulations as the way forward and a radical position stayed highly sceptical of the usefulness of regulation overall. My dissertation shows that all positions are justified in specific settings.

My findings from Sierra Leone clearly show how missing recognition of customary tenure rights puts local actors in a tough situation. They hardly have any say in large-scale land deals and their participation in decision-making processes relies on the discretion of companies and local chiefs. Legal reforms protecting customary land rights are therefore clearly needed. This finding underlines the need for binding law (critical view) and protection of customary and collective tenure rights.

The case of Addax shows that settings of problematic land legislation, international soft law instruments can make a difference. In the case of Addax, these were the RSB principles, the IFC standards and generally international best practices⁷⁸. The company added agreements with landowning families, which created space for direct negotiations between communities and Addax. The case study shows that international soft law does make a difference and provides some evidence for the optimistic position, even though the extent to which local actors were able to negotiate with the company were highly limited.

The two cases from the Philippines show how legal protection of tenure rights can be helpful for local smallholders but does nonetheless require collective mobilization to be enforced, such as in the GFII example.

The Agumil case does show the limits of legal regulation in regard to ensuring economic benefits for local smallholders. When the cooperatives signed the contracts with Agumil, they were missing a clear understanding of legal implications and financial risks. The example supports radical views on regulation, which argue that smallholders will always lose out when faced with influential agribusiness investors. At the same time, the case highlights the importance of ‘informed’ in free, prior and informed

78 The VGGT had not been passed yet at the time when the investment was set up.

consent and gives some indications of what this should include: for example an understanding of legal consequences of agreements signed and the awareness of economic risks, especially in cases, which requires smallholders to take out a loan.

Overall, my findings show the chances of legal reform but also the challenges in enforcing and claiming them in developing countries such as Sierra Leone and the Philippines. Legal norms do not automatically lead to better outcomes for local smallholders. Nonetheless, binding national law can provide affected people with important arguments and puts them in a better bargaining position vis-à-vis TNCs. In cases in which national law is weak, international norms gain in importance. They are particularly relevant in cases in which companies are obliged to them due to voluntary self-commitment or their funding structure.

My findings underline the importance of ongoing efforts to translate the VGGT into national law, such as in Sierra Leone (Koch/Schulze 02/12/2017). As described in chapter 6.2.2, the new National Land Policy of the country contains several central provisions of the VGGT and goes even further in providing FPIC for future large-scale land investment deals. International soft law instruments, therefore, have a role to play in guiding national reforms. These efforts should be further supported.

At the same time, creating new international instruments is another important avenue to enhance the legal opportunity structure of local actors. My research points to the importance of a veto right for affected smallholders. As discussed in chapter 2.2.3, there are developments towards a right to land. However, the UN Declaration on the Rights of Peasants and Other People Living in Rural Areas only provides affected people with a participation right and not a right to give or withhold consent. This is a shortcoming, as ‘participation’ or ‘consultation’ puts local smallholders in a weaker position when viewed from a bargaining theoretical perspective, such as I have taken in the thesis. The investment of Socfin provides an example of how ‘consultation’ was interpreted: A few meetings took place with some landowning families, who voiced their general interest in leasing part of their land. This was considered as a general ‘yes’ of local communities by the company to the investment. Against this background, the specification of consultations in UNDROP, which demands “active, free, effective, meaningful and informed participation” (UN General Assembly 12/17/2018: Art. 2.3), is already a step forward. My findings, nonetheless, echo calls for FPIC for communities in large-scale land deals.

In addition to supporting calls for FPIC, my results show the importance of legal empowerment projects that have gained international atten-

tion in the last years (Commission on Legal Empowerment of the Poor 2008; Goodwin/Maru 2017). Going beyond legal aid, legal empowerment focuses on capacitating people “to exercise their rights” (Goodwin/Maru 2017: 158). This is especially relevant in the context of large-scale land deals, where local actors usually need support in understanding the legal documents that they are confronted with and future implications. At the same time, the mere provision of legal expertise is not necessarily enough, as communities might need help in terms of decision-making. Lawyers and paralegals providing legal explanations should, therefore, know consensus building and dialogue methods. Two guides developed by Namati, in collaboration with the Columbia Center on Sustainable Investment, give some insights into how negotiation processes within communities and with investors can be organized. They do, for example, include a pre-investment stage, which aims at formulating a common vision for the community, and establishes an understanding of the value of existing land and natural resources (Columbia Center on Sustainable Investment/Namati). Attempts in this regard have already been made by the International Institute for Environment and Development, who implemented different legal empowerment projects in regard to strengthening local land governance in the face of incoming investors in Ghana, Cameroon and Senegal (Cotula/Berger 2017). Overall, legal empowerment projects make sense for improvement of local land governance and in the face of large-scale land deals and should not only be implemented but also studied further.

Despite these positive policy recommendations for legal reform and legal empowerment projects, my research points to limits. One condition that showed up was the role played by local and national political elites. While legal empowerment projects might help to hold officials accountable in some instances, political elites can pose a considerable challenge for local communities. As mentioned in the discussion in chapter 7.1, research shows that customary authorities and national politicians often misuse their power position for their own personal gains. This is not surprising, as the land sector is one of the most corrupt sectors in many countries (Transparency International/FAO 2011).

Large-scale land investments usually lead to a considerable influx of capital, which is often exploited accordingly:

“Corruption in the administration of land remains rampant. It occurs at all phases and all levels of large-scale land deals. These various forms

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of corruption make it easy for investors to circumvent even the most carefully crafted regulations.” (De Schutter et al. 2016: 85)

Procedural regulations might be able to help create transparency and move decision making power away from the individual to whole communities (German et al. 2013: 11). However, corruption in the land sector is often linked to corruption in other public sectors, and therefore a much broader challenge.

One last issue needs mentioning: The issue of suppression and the rising violence against land rights activists. In 2017, 207 environmental and land rights defenders were killed globally according to data from the NGO Global Witness. It was not only the deadliest year yet but also the first time that killings in relation to agribusiness overtook the number of people killed in the mining sector (Global Witness 2018: 8). These are just the extreme cases. In many instances, local activists are silenced through legal proceedings. The Special Rapporteur on the Rights of Indigenous Peoples Victoria Tauli-Corpuz has noted an increase in criminal charges against indigenous land rights defenders, a dynamic she calls a ‘silent epidemic’ (Zweynert 4/10/2017). These developments show the difficult situation of local activists in many places, such as MALOA faces in the case of Socfin. After the research for this dissertation was finished, 15 MALOA members were again arrested under false pretexts in January 2019 (Human Rights Defenders in Sierra Leone 2019). The incidence shows that, while legal mobilization worked in some cases discussed in this dissertation, the struggle for land rights continues.