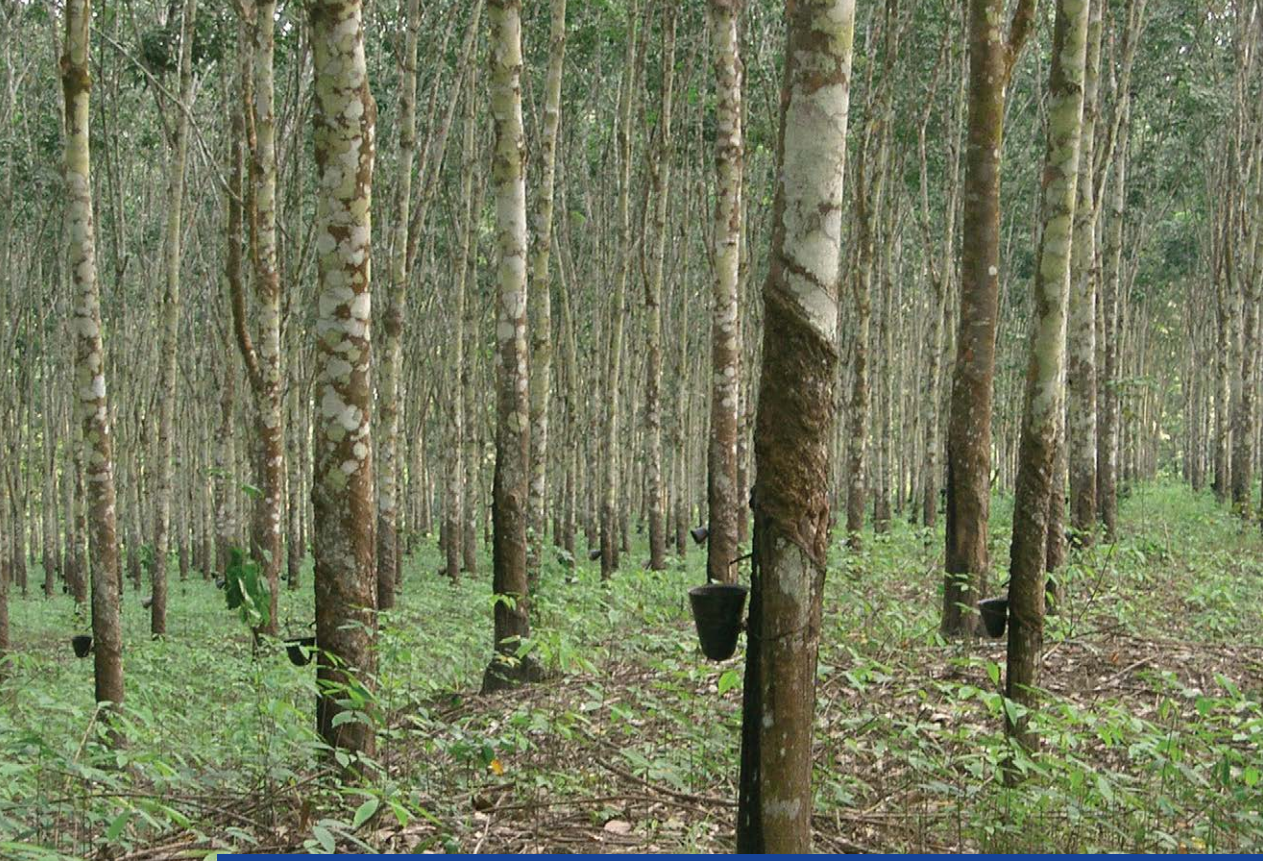

Land investments, accountability and the law: Lessons from West Africa

Lorenzo Cotula and Giedre Jokubauskaite
with Mamadou Fall, Mark Kakraba-Ampeh,
Pierre-Etienne Kenfack, Moustapha Ngaido,
Samuel Nguiffo, Téodyl Nkuintchua and Eric Yeboah

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Acronyms

CED	Centre pour l'Environnement et le Développement
CFS	Committee on World Food Security
IDRC	International Development Research Centre
IED Afrique	Innovation Environnement Développement en Afrique
LRMC	Land Resource Management Centre
NGO	Non-governmental organisation
UN	United Nations
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

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Executive summary

How the law affects accountability

The recent wave of large-scale land deals for agribusiness investments has highlighted the widespread demand for greater accountability in the governance of land and investment. Legal frameworks influence opportunities for accountability, and recourse to law has featured prominently in grassroots responses to the land deals – typically in conjunction with collective action and political mobilisation.

It is widely accepted that social, economic and political realities can constrain the effectiveness of legal avenues. But beyond broad-brush analyses, the place of law in accountability processes is yet to be properly understood. Improving accountability requires more fine-grained analysis of legal levers for accountability, of the real-life challenges of making these levers work, and of options for reform and better implementation.

Drawing on comparative socio-legal research in Cameroon, Ghana and Senegal, this report explores how the law enables, or constrains, accountability in land investments. The report develops a conceptual framework for understanding accountability, and assesses how national law in the three countries influences opportunities for accountability. In addition to promoting debate on law reform and implementation, the report aims to inform the design of tailored legal empowerment interventions to promote accountability in each country context.

The findings point to the great diversity of situations, issues and actors in land investments and in accountability efforts, but they also point to important recurring features. These features create some opportunities and many challenges for strategies to hold authorities to account in relation to agribusiness investments.

The features relate to four core elements of accountability: the authorities to be held to account; the standards against which the conduct of the authorities can be assessed; the agents seeking accountability; and the channels that the agents can use in pursuit of accountability.

The four core elements of accountability:

1) the authorities

Much debate on land investments has focused on holding companies to account. A focus on authority re-centres the question of accountability around the role of those responsible for the governance of land and investment – e.g., depending on the context, central government agencies, local government bodies and customary chiefs.

The three countries present both differences and commonalities in patterns of authority. They involve complex and diverse constellations of state and non-state authorities at local and national levels, with the key sites of decision making ranging from the central government (Cameroon) to customary authorities (Ghana), through to local government bodies (Senegal). Overlapping responsibilities mean that relations of accountability can affect multiple authorities at the same time, challenging traditional accounts that emphasise the binary relationship between "citizen" and "state".

The three country studies point to problems concerning the accessibility, effectiveness and coordination of the authorities. Uncoordinated action by different authorities can facilitate land acquisition processes, and can result in overlaps between agribusiness leases, forestry concessions, extractive industry contracts and even protected areas. In addition to technical issues, political economy considerations may be at play: apparently dysfunctional systems may suit powerful vested interests.

In this context, highly centralised governance (as in Cameroon) can compound barriers to accountability, particularly in rural areas. At the same time, diverse experiences with more devolved governance in Ghana and Senegal caution against simplistic solutions in terms of "local is beautiful": local authorities may abuse their prerogatives, vested interests and power imbalances may affect local governance systems too, and geographic proximity alone is by no means an indicator of stronger accountability.

2) the standards

The accountability standards define how authorities are expected to behave, and provide a benchmark to review the conduct of the authorities. They may be based on national and international law and guidance, or customary tenure systems. International guidance calls for the legal recognition and effective protection of all socially legitimate tenure rights. Yet in all three countries there is at least some mismatch between national law and local perceptions of social legitimacy.

Indeed, local land tenure systems tend to be poorly reflected in national legislation, particularly in Cameroon and Senegal where customary systems enjoy little or no recognition. Where national law makes legal protection conditional on land registration, costly and cumbersome procedures may place legal protection outside the reach of most rural people. Poorly thought through productive use requirements and vaguely defined public purpose requirements can also expose holders of legitimate tenure rights to the risk of dispossession.

At the same time, merely recognising customary rights is no panacea for securing rights and ensuring accountability. In Ghana, for example, the land claims of "migrants" old and new enjoy diverse but often limited protection under customary tenure, and thus ultimately under national law. Customary systems can also raise difficult questions in terms of gender relations. Particularly difficult issues arise where customary systems lose their perceived social legitimacy; where they are

eroded by socio-economic change; or where customary authorities abuse their powers.

Besides tenure rights issues, the accountability standards also influence opportunities for accountability in relation to other matters as well, including public revenues and benefit sharing. Addressing these issues in national law typically involves navigating tensions between the authorities' need for a degree of flexibility to deal with diverse and difficult-to-foresee situations, on the one hand; and the need for clear standards that can impose discipline on discretionary powers and provide an effective basis for accountability, on the other.

3) the agents

The accountability agents are those who can act to hold authorities to account. Depending on the case, an accountability agent can be an individual, an organised group, an institution or all citizens. This research considered three groups of potential accountability agents: legitimate tenure rights holders affected by the conduct of the authorities; other groups that, while not holding tenure rights, are also affected, such as farm workers; and public-interest advocates that, while not directly affected by the conduct in question, are concerned about it.

The country studies documented how diverse groups of legitimate tenure right holders and affected people have activated legal, social and political levers to pursue accountability in land investments. They also documented how national and international public-interest advocates can support grassroots efforts. But tensions can also arise between the competing demands of different groups, such as youths and elders, or landholders and farm workers, and in any given locality the balance of opinion about land investments can shift over time.

Whether potential accountability agents become agents in practice depends on long-term processes and specific triggers. Multiple factors can get in the way, including asymmetries in power, knowledge and resources. Besides these practical barriers, features of national law also influence opportunities and constraints for actors to become agents of accountability.

For example, rules on legal standing, provisions that make access to justice conditional on the existence of a legal right, and requirements for communities to establish legal entities may be necessary to structure legal and political processes. But if not properly thought through, they can unduly restrict the range of possible accountability agents. Legislation granting government authorities intrusive powers to control the activities of non-governmental organisations can also curtail space for accountability.

4) and the channels

The channels available to the accountability agents vary depending on the country and the authority whose conduct is at stake. These channels cannot be assessed in isolation but must be considered in light of the overall "package" they are part of. In addition, the channels that link authorities and accountability agents can only be

understood in light of the unique system of governance in which those channels operate.

National law in all three countries provides multiple channels for agents to hold authorities to account – at least on paper. These include administrative, judicial and quasi-judicial arrangements for consultation and recourse. However, the operation of these channels is often impaired by both legal and socio-economic factors.

In terms of legal factors, legislation may lack necessary detail, leading to inadequate application. For example, legislative provisions on consultation tend to be unspecific. And even if correctly implemented, a single "public hearing" can prove inadequate to enable diverse local voices to be heard on complex development choices that can irreversibly transform territory and livelihoods.

In addition, using the courts to challenge government decisions can involve long and cumbersome proceedings. Features of judicial systems have influenced the nature of the disputes taken to court (as reflected in the prevalence of private litigation over judicial review of government action in Cameroon), and the legal avenues pursued (for example, with some claimants in Ghana bringing cases to the Commission on Human Rights and Administrative Justice, rather than the courts system).

Moving forward: reforming the law…

Overall, no single legal set-up emerges as the obvious blueprint for best aligning legal frameworks with the pursuit of accountability. All three country contexts present some openings, such as the legal recognition of customary land rights in Ghana, and the geographic accessibility of decentralised land governance in Senegal. At the same time, much can be done to strengthen accountability in all three countries. This requires tailored interventions to improve the working of the core element of accountability in each country setting.

It is often said that laws are good on paper and the challenge lies in implementation. But this research has also highlighted problems stemming from the design of laws – for example, where the law only grants weak protection to socially legitimate tenure rights, or where it establishes barriers preventing people from becoming accountability agents.

In these cases, even correct implementation would fall short of the standards set by international guidance. This finding points to the important role that well designed laws can play in responding to citizen demand for accountability. The specifics inevitably vary depending on the context. In more general terms, however, reforms should ensure that the law:

- Establishes tailored arrangements to promote accountability within different configurations of state and non-state **authorities** at local to national levels, including mechanisms for the "downward" accountability of authorities towards

their constituents, and arrangements enabling the state to ensure that action by local authorities complies with applicable standards;

- Articulates clear and enforceable accountability **standards**, based on the legal recognition and effective protection of all socially legitimate tenure rights, including customary rights where relevant, and on clear parameters to scrutinise public action in a wide range of areas including land allocations, public revenues and labour relations;
- Minimises arrangements that can marginalise potential accountability **agents**, including by lifting any legal requirements that can unduly restrict access to justice or to public decision making, and by preventing abuse of administrative controls over the activities of public-interest organisations;
- Ensures the proper functioning of accountability **channels**, including by creating effective arrangements for people to influence decisions over and above existing consultation or "public hearing" requirements, and by providing effective and accessible legal recourse to challenge adverse decisions.

… and pushing the boundaries of existing law

Ongoing law reform processes in the three countries reviewed can provide entries for initiating or deepening dialogue on these issues. But law reform is technically difficult and politically fraught. Vested interests can get in the way of technically advanced reforms.

There is also an important time dimension, as legal change tends to involve slow processes and often struggles to keep up with rapid social, political, ecological and economic change. Further, merely amending the law does not in itself translate into real change. Practical interventions to support imaginative implementation are essential for laws to make any difference on the ground.

So in addition to the policy work, there is a real need for governments and advocates to develop tools, approaches and strategies that can allow both authorities and accountability agents to push the boundaries of existing law. Land and investment are inherently political, so these tools, approaches and strategies would need to address the politics as well as technical problems. They would also need to respond and be tailored to the specific contexts, and be upscaled through informing national law reforms.

Developing these tailored responses requires sustained investment in testing new ways to promote accountability in practice. Building on this report, organisations in each of the three countries started testing "legal and social accountability tools" to support people affected by land investments. The aim is to make the most of the opportunities for accountability provided by applicable national law, and to generate lessons for ongoing national policy processes. These tools include:

- Mobilising "junior lawyers" to support community-based organisations in their interactions with companies and the central government (Cameroon);
- Developing checklists and support tools for more inclusive local-level decision making and for the negotiation of community-investor agreements (Ghana);
- And establishing locally negotiated agreements supported by community "paralegals" to ensure the downward accountability of local government officials (Senegal).

Concluding remarks

Land relations in rural Africa are undergoing profound transformations. Much remains to be done to develop models of investment that can respond to both local aspirations and commercial considerations. Ongoing and expected transformations in rural land relations are a function not only of long-term socio-economic change but also of deliberate policy choices.

This role of public policy raises questions about socially desirable directions of change, about how change should be managed, and – importantly – about who should make such far-reaching choices and how. In this context, the challenge of promoting accountability in the governance of land and investment is likely to remain a strategic arena for research and action in the years to come.

1. Introduction and key concepts

1.1 Framing the issue

In recent years, a new wave of large-scale land deals for agribusiness investments in low and middle-income countries has triggered lively debates about the future of food, agriculture and control over land and natural resources. While many recognise that more and better investment could be a force for good, the weak rights and limited opportunities for influence that rural people have in many countries have raised widespread concerns about land dispossession and ill-thought through investment models.

Effective mechanisms to promote accountability are widely recognised as essential in securing the land rights of rural people, and in ensuring that private sector investments contribute to inclusive sustainable development. New opportunities have emerged to strengthen accountability in the governance of land and investment.

At the international level, recently adopted guidance provides clearer pointers for responsible governance of land and investment – including the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT, Box 1). International guidance has also been developed at the regional level, particularly the African Union's Framework and Guidelines on Land Policy in Africa. The "global-to-local" challenge ahead is to translate this international guidance into real change on the ground.

At the grassroots, land investments have triggered diverse reactions "from below". Partly reflecting social differentiation based on gender, generation, status, wealth, income and livelihood strategies, these reactions range from demands for inclusion in agribusiness ventures as farm workers or outgrowers; to efforts to obtain better terms for consultation or compensation; through to resistance strategies aimed at terminating the deals and pursuing alternative development pathways (Borras and Franco, 2013; Polack *et al.*, 2013; Hall *et al.*, 2015). Alliances between diverse actors in different countries have escalated responses from local to global levels (Polack *et al.*, 2013; Cotula and Blackmore, 2014).

The law lies at a critical juncture between these global-to-local and local-to-global developments. On the one hand, translating international guidance into "hard" law is an important step towards promoting real change on the ground (see e.g. VGGT paragraphs 4.4 and 5.3, and FAO, 2016). On the other, legal frameworks influence opportunities for bottom-up accountability strategies, and recourse to law has featured prominently in responses to land investments – typically in conjunction

Box 1. The Voluntary Guidelines on the Responsible Governance of Tenure

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) are the first comprehensive global instrument that provides guidance to states and non-state actors on how to promote responsible land governance.

The VGGT were unanimously endorsed on 11 May 2012 by the Committee on World Food Security (CFS), which is the top United Nations (UN) body in matters of food security. Endorsement by CFS followed two years of extensive multi-stakeholder consultations and one year of inter-governmental negotiations.

The VGGT take a holistic approach to natural resource governance, covering forests and fisheries as well as land. They explicitly tie governance of tenure to promoting food security, and recognise the strong connections that exist between land rights and human rights. The VGGT call for the recognition and protection of all "legitimate tenure rights" and provide guidance on diverse issues such as land restitution, land redistribution, land tenure reform, land investments and land administration.

The concept of legitimate tenure rights marks an important shift in thinking about land rights. It recognises that alongside rights created or acquired through formal procedures ("legal" tenure rights), policy and practice should recognise and respect rights that enjoy social legitimacy e.g. by virtue of customary use, local perception or fairness of land acquisition.

While not legally binding per se, the VGGT have received widespread expressions of high-level political support, including from the UN General Assembly, the G8 and the G20. Some VGGT provisions reflect binding international law, including provisions on gender equality and respect for human rights.

with collective action and political mobilisation (see e.g. Polack *et al.*, 2013; Hall *et al.*, 2015; Grajales, 2015; Sampat, 2015).

In a broad sense, use of legal discourse has involved invoking the language of rights to frame and advance struggles (Hall *et al.*, 2015). But accountability strategies have also included legal actions before national courts, international human rights bodies and national courts in countries where parent companies or end buyers were located (Cotula and Blackmore, 2014).

At the same time, the recent wave of land investments has exposed the limits of law. Rights have been trumped and contracts have been awarded in breach of mandated procedures. Recurring features of national law undermine the legal protection available to people affected by the deals (Cotula, 2007; Alden Wily, 2011a and 2012). These trends raise real questions about whether the law can provide effective avenues for local-to-global and global-to-local accountability strategies.

But beyond big-picture analyses, the political economy of deal making is diverse and highly context-dependent. This diversity of situations presents important legal dimensions too, and has far-reaching implications for accountability. Improving accountability in the governance of land and investment requires more fine-grained analysis of the legal levers available in diverse contexts, of the real-life challenges of making these levers work, and of options for reform and better implementation.

1.2 About this report

This report explores how the law shapes opportunities for accountability in relation to land deals for agribusiness investments. It follows an earlier study that synthesised the literature and framed broad research questions (Polack *et al.*, 2013). The report aims to promote debate on policies and practices to improve accountability. In more practical terms, it aims to inform the design of tailored legal empowerment interventions to improve accountability in specific contexts.

International law importantly shapes the governance of land and investment, including international human rights and investment law (Cotula, 2015; Cordes *et al.*, 2016). But this report focuses on national law, which remains the foundation of land governance in most contexts. National law also provides a particularly important arena to implement international guidance, including the VGGT, and to enable bottom-up accountability strategies.

The report draws on country studies in Cameroon (Kenfack *et al.*, 2016), Ghana (Yeboah and Kakraba-Ampeh, 2016) and Senegal (Fall and Ngaido, 2016). All three countries have experienced considerable levels of land acquisition for agribusiness investments. Also, all three countries are in the process of revising their legislation governing land and investment, which makes policy-oriented research particularly relevant.

Further, the three countries present diverse configurations of authority in deal making: in Cameroon, the central government has been the key actor in allocating land to agribusiness investments; in Ghana, customary authorities have driven much land deal making; while in Senegal considerable powers to manage land are devolved to local governments.

In addition, colonial legacies mean that Ghana's legal system has historically been influenced by the English legal tradition, Senegal's legislation by the French legal tradition, and Cameroon combines, at least on paper, elements from both traditions. The three contexts are not necessarily representative of wider trends. But this diversity of configurations and legal traditions provides an opportunity to interrogate the relationship between land investments, accountability and the law in different national settings.

In each country, the research involved legal analysis and qualitative field research, based on similar methods. By drawing on both legal and social research methods, the research fits within a socio-legal tradition of comparative law (Siems, 2014). The legal analysis involved assessing national law in light of international guidance, particularly the VGGT.

Field research generated evidence on local perceptions about the governance of land and investment, the role of law within it, the real-life challenges affecting accountability relations, and local demand for legal empowerment interventions to improve accountability. Indeed, the notion of "legitimate" tenure rights, which underpins the VGGT (see Box 1), means that assessing legal frameworks in light of the VGGT requires more than just technical legal analysis.

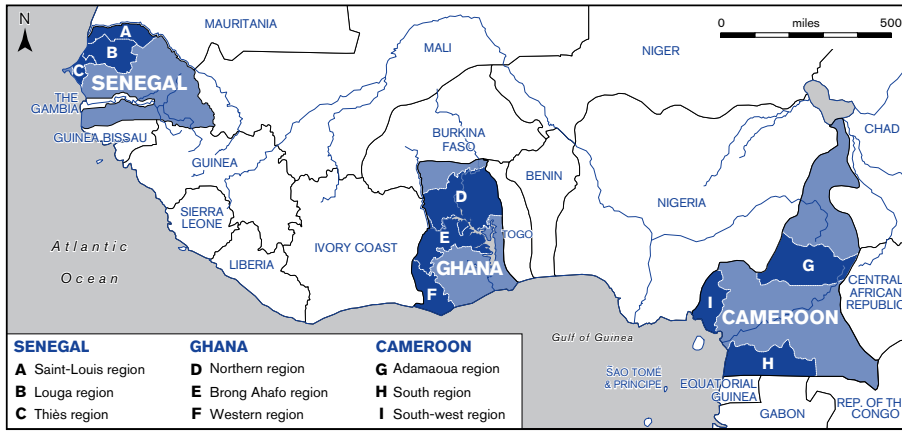
It calls for participatory reflection on what rights are perceived to be socially legitimate in any given context, and by whom; on whether adequate processes are in place to mediate potential disputes about what counts as "legitimate"; and on local perceptions about the adequacy of the legal protections available, both in law and in practice.

In interrogating these issues, the fieldwork relied on interviews and focus group discussions. Participants included diverse categories of rural people, including men and women, and youths and elders, as well as rural producer organisations, customary authorities, government officials and where possible company officials. A total of 830 people participated in the interviews or focus group discussions. Field research was conducted in the Adamaoua, South and Southwest regions of Cameroon; in the Northern, Brong Ahafo and Western regions of Ghana; and in the Louga, Saint-Louis and Thies regions of Senegal (Map 1).

We recognise the limitations of the research, particularly the limited reach and scope of the fieldwork. Also, the vast and complex array of relevant legal instruments in each of the three countries means that the analysis presented is inevitably synthetic, and much detail had to be glossed over. The fact that governance contexts in Cameroon, Ghana and Senegal are very different, and that they are not necessarily representative of wider trends, makes it difficult to draw comparisons and generalisable conclusions.

The remainder of this chapter develops the conceptual framework underpinning the research. Chapter 2 summarises key findings across the three countries, while Chapter 3 distils lessons learned and outlines next steps.

Map 1. The field sites in Cameroon, Ghana and Senegal



1.3 Key concepts

The core elements of accountability

Practitioners and researchers talk of accountability in different ways, and there is no consensus on the precise contours of the concept (e.g. Bovens *et al.* 2014; Fox 2014). At the same time, the extensive literature on accountability provides insights on the core elements that frame any relationship of accountability – namely, who should be accountable to whom, against what standard, and how (Black, 2008; Bovens, 2007; Corthaut *et al.*, 2012).

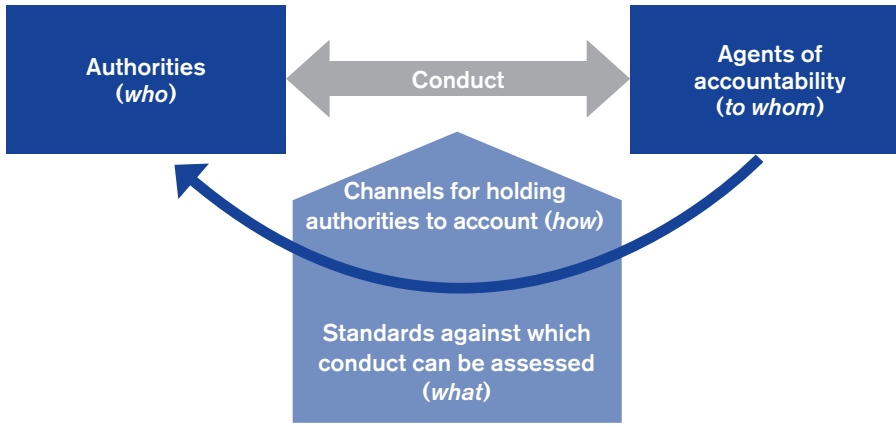
Broadly speaking, relationships of accountability are established between a decision-making "authority" and those working to hold that authority to account, i.e. the "agents" of accountability. Authority is typically not unlimited – it must be exercised according to a set of "standards" established e.g. by international law, national legislation or a community-based system. For authority to be circumscribed, the accountability agents need to have "channels" to influence and control the conduct of the authority.

While recognising that the governance of land and investment is closely intertwined with a country's overall political, legal and institutional system, this report discusses accountability in the relationships between the authorities responsible for land and agribusiness investment, on the one hand; and diverse categories of agents working to hold those authorities to account, on the other.

Figure 1 visualises the relationships among these core elements of accountability. The diagram is a simplified depiction of often complex realities that may involve tangled webs of agents, authorities, agent-authorities (e.g. where local government bodies perform both roles vis-à-vis the central government and local constituents,

respectively) and other actors, including complex "investment chains" of private sector entities (Cotula and Blackmore, 2014).

Figure 1. The core elements of accountability



Accountability and the VGGT

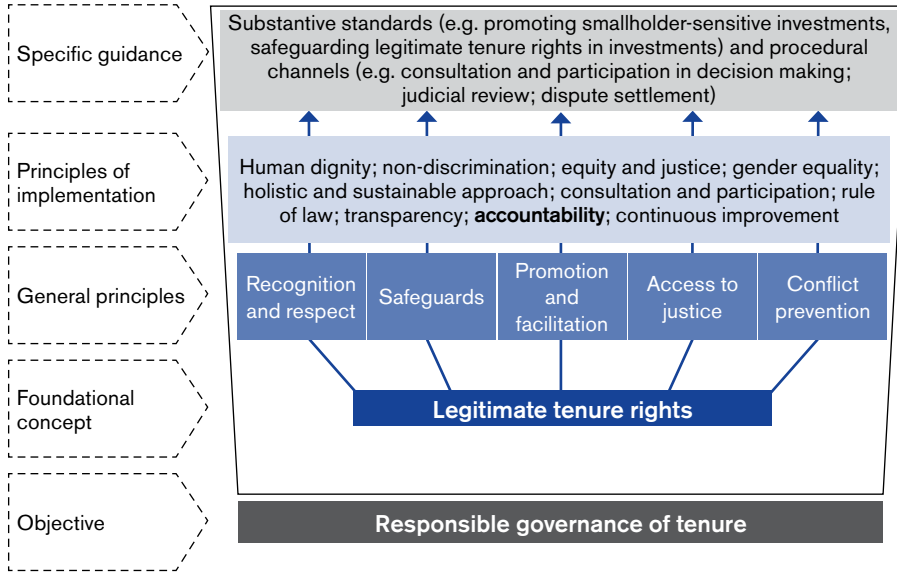
The VGGT reflect the central place of accountability in the governance of land and investment (see Figure 2). First, they establish five "guiding principles" of responsible governance that are directly connected to accountability (for example, access to justice and preventing corruption; VGGT paragraph 3A). The notion of "legitimate tenure rights" underpins all these principles, is arguably the foundational concept underlying the VGGT, and has important implications for identifying the accountability agents.

Second, accountability is one of the "principles of implementation" of the VGGT (paragraph 3B), alongside other principles regulating the exercise of public authority such as transparency, rule of law, and consultation and participation. This "principle" of accountability involves holding authorities to account for their conduct (paragraph 3B.9). The VGGT cover action by a wide range of state and non-state authorities.

Third, the VGGT provide more specific guidance both on the conduct of authorities (i.e. the standards) and on the procedural arrangements (i.e. the channels) to translate the principle of accountability into practice. Examples of the former include provisions calling on states to support investments by smallholders and smallholder-sensitive investments (VGGT paragraph 12.2), and to establish safeguards protecting legitimate tenure rights in the context of land investments (VGGT paragraph 12.6).

Examples of procedural arrangements include facilitating consultation and participation in decision making (e.g. VGGT paragraphs 5.5, 7.3, 8.7 and 9.9); promoting mechanisms of judicial review (VGGT paragraphs 6.6 and 6.9); and ensuring access to timely and affordable dispute resolution mechanisms (VGGT paragraphs 4.9 and 6.3). Border lines between substantive and procedural guidance are often blurred.

Figure 2. Accountability in the VGGT



The multiple dimensions of accountability

Interrogating accountability in the governance of land and investment requires examining multiple dimensions – namely, the legal, political and social dimensions of accountability; its "specific" and "systemic" dimensions; and its backward and forward-looking dimensions. These multiple dimensions are reflected, in more or less explicit terms, in the VGGT, and are briefly outlined in the next few sections.

Legal, political and social dimensions. Exploring accountability requires combining legal, social and political perspectives – not least because governance systems operate within, and are function of, their wider legal, social and political contexts (see e.g. VGGT paragraph 5.9).

The legal perspective may involve, for example, examining the use of legal procedures for redress or judicial review (e.g. VGGT paragraphs 6.6 and 6.9). But accountability cannot be reduced to legal avenues alone, particularly in contexts where the law has only limited reach. The complex political economies of vested interests, patronage networks and power imbalances affecting state action in Africa

(Bayart, 1993; Chabal and Daloz, 1999) highlight the importance of the social and political dimensions of accountability (see also VGGT paragraph 5.9, which refers to the social and political context of tenure rights).

While the political dimensions refer to the accountability of government to its constituents (through electoral processes and beyond), the social aspects involve considering the functioning of real-life governance arrangements beyond clearly defined institutional relations. For example, it is only possible to grasp the relationship between customary authorities and rural communities in Ghana if we consider socially embedded relations of kinship and custom, beyond the legal and political arrangements established in the Constitution.

Specific and systemic dimensions. Interrogating accountability raises issues both about specific land investments and about the systemic governance arrangements (see e.g. VGGT paragraphs 12.8 and 12.10). Taking the individual land investment as the unit of analysis can shed light on the accountability strategies pursued by people affected by that investment, or concerned about it. Equally important, however, are the strategies to promote accountability in the framing of broader governance structures and policy choices "upstream" of individual land investments.

From a legal perspective, the relationship between the "specific" and "systemic" dimensions of accountability raises issues about the intersection between private and public law. By entering into a land deal with a private enterprise, an authority may be harnessing its governance structures to implement its wider economic policy. These land investments clearly present a strong public law dimension, which coexists with the enterprise's primarily commercial motive.

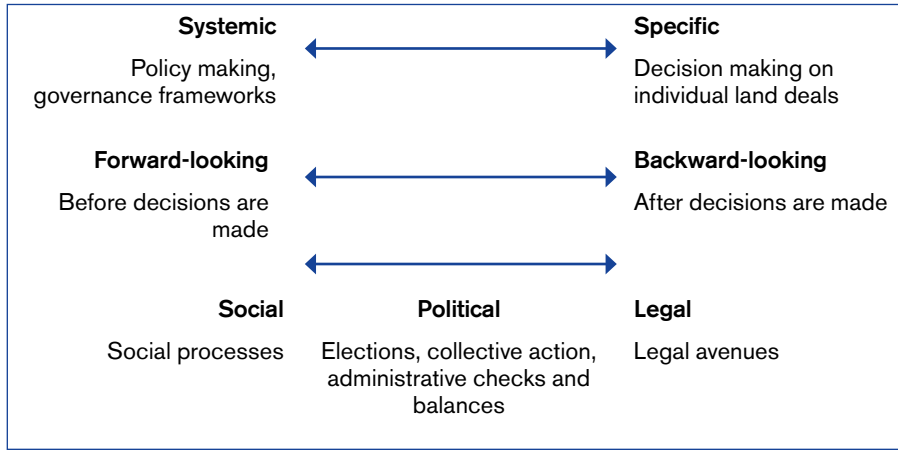
Yet contracts also evoke private law aspects, which are particularly pronounced where the land deals are concluded with customary rather than government authorities. Traditionally considered as the "custodians" of common lands, some customary chiefs are reinterpreting their prerogatives in more privatised terms (see e.g. Ubink, 2008, writing on Ghana). Efforts to advance a private law framing of land deals would tend to reduce scope for public scrutiny and accountability, creating tensions with the important public law dimensions at play.

Backward and forward-looking dimensions. Finally, it is useful to situate accountability in relation to the stages of decision making. Many talk of accountability in narrow terms, effectively as equivalent to redress for adverse decisions that have already been made. In this sense, accountability involves scrutinising the exercise of "account giving" about decisions in the past (Schedler, 1999; Bovens, 2007; see also VGGT paragraphs 3.1.4, concerning access to legal remedy for infringements of tenure rights, and 3B.9, which defines accountability primarily in backward-looking terms).

But accountability can be forward-looking too, encompassing the arrangements to promote responsiveness of authorities before decisions are taken (Kingsbury *et al*., 2005, and Fox, 2014; see e.g. VGGT paragraph 12.9, concerning consultation

before investment approval). This forward-looking horizon may rest on legal arrangements to promote transparency and public participation in decision making, and on social and political struggles and mechanisms to scrutinise, challenge and influence decision-making processes before any final decisions are made. Figure 3 visualises the spectrum of these different dimensions of accountability.

Figure 3. The multiple dimensions of accountability



The concepts applied

The concepts discussed thus far provided the foundation for the research. In summarising the findings of the three country studies, this report organises the material on the basis of the core elements of accountability (authorities, standards, agents and channels), and considers these elements in the multiple dimensions of accountability (legal, political and social; specific and systemic; and backward and forward-looking). The report specifically relates these conceptual aspects and the analysis of national law to guidance from the VGGT.

To lighten up the text, references to national laws are usually not provided. They can be found in the underlying country studies (Fall and Ngaido, 2016; Kenfack *et al.*, 2016; and Yeboah and Kakraba-Ampeh, 2016). The emphasis on the development and application of a conceptual framework for assessing accountability makes for somewhat technical reading, and the report primarily targets an audience of researchers and analytical practitioners.

Overall, the results highlight the important ways in which the law – on the books and in practice – shapes spaces for accountability in the context of land deals for agribusiness investments. Engaging with the law emerges as a key arena for advancing accountability and implementing the VGGT. Besides providing pointers for law reform, the report charts legal empowerment interventions to improve accountability in Cameroon, Ghana and Senegal.

2. How national law shapes opportunities for accountability

2.1 Authorities: towards clearer and more effective lines of accountability

Identifying the "authorities" to be held to account is essential for assessing the opportunities and constraints that affect accountability. While power is widely understood to be diffuse within society, and while authority does not necessarily require delegation of power through formal sources such as a national constitution, "authority" does entail some systemic and widespread adherence to a certain mode of governance.

Much debate on land investments has focused on holding companies (the "land grabbers") to account. A focus on authority re-centres the question of accountability around the role of those responsible for the governance of land and investment. It is these authorities that allocate land to companies and that, in most polities, are meant to be legally, politically and/or socially accountable to their constituents.

Who decides? Differences and similarities among the three countries

The VGGT allow considerable latitude for diverse configurations of authority. While providing important pointers for the conduct of non-state actors (e.g. paragraphs 3.2 and 12.12, concerning business enterprises), the VGGT are predominantly addressed at the conduct of state-based authorities.

The VGGT mention specific authorities within state structures, including implementing agencies, judicial authorities and local governments. Reflecting the great diversity of contexts, issues and arrangements, the VGGT usually contain few specifics on the institutional nature and location of these authorities.

Rather, the VGGT call on states to place responsibilities "at the level of governance that can most effectively deliver services to people" (paragraph 5.6), though in places they specifically emphasise the benefits of decentralised systems (e.g. paragraphs 16.6 and 19.2). These open formulations mean that it is not always self-evident which authorities are meant to be held to account on what.

The three country studies present both similarities and differences in the configuration of authorities. Starting with the similarities, the law in the three countries devolves (diverse and often limited) powers to local government bodies. As a result, all the three cases show that land investments occur in "polycentric" governance contexts (Black, 2008) characterised by the multiple and possibly overlapping responsibilities of different levels and sectors of government. However, only in Senegal does the law establish a direct relationship between political

decentralisation and land governance, with local government bodies having important land management responsibilities.

All three contexts also involve, to differing degrees, both state and non-state authorities. State authorities range from central ministries to statutory bodies that have – on paper at least – a degree of autonomy from the executive branch of government. In Ghana, for example, the latter include the Lands Commission and the Office of the Administrator of Stool Lands. Customary institutions feature prominently among the non-state authorities, though their status under national law varies from explicit constitutional endorsement (Ghana) to lack of any legal recognition (Senegal).

In each country, authority can shift depending on the size of the investment project, or on the "systemic" or "specific" nature of decision-making (i.e. whether the authority is adopting general policies or concluding individual land deals). The overlapping responsibilities of these state and non-state authorities at local to national levels mean that relations of accountability can affect multiple authorities at the same time, challenging traditional accounts of accountability that emphasise the binary relationship between "citizen" and "state".

In addition, all three countries present systems of tenure that are predominantly based on public or collective land ownership. This means that authorities do not simply manage land governance and related administration systems. Rather, they often hold ultimate ("radical", "allodial") title to the land, and in any case they make decisions about whether to allocate rights to third parties.

This legal set-up grants authorities considerably greater powers than is the case in jurisdictions where private property prevails – even though the VGGT do provide guidance on how to manage public lands, including by protecting land use rights (VGGT paragraph 8.7).

Beyond these similarities, the three countries also present major differences in governance structures, and in patterns of authority and accountability. As discussed, in Cameroon the central government plays a key role in allocating land to large-scale business operators; in Senegal, local government bodies have important responsibilities; while in Ghana customary chiefs have been driving the deal making.

These diverse configurations of authority have long-term historical roots – in Ghana, for example, the protectorate arrangements that, in colonial times, preserved and strengthened the central role of customary chiefs in rural areas (Amanor, 1999). This cross-country diversity is reflected in important differences in the specifics of national law, and in the socio-political constellations of actors driving the land deals – for example, with Ghana's customary authorities playing a prominent role in the political economy of deal making.

Besides these diverse primary institutional locations of decision-making power (central government in Cameroon, local government bodies in Senegal and customary authorities in Ghana), the country-specific institutional configurations also involve differences in the wider polycentric governance. In Senegal, the primary responsibility for allocating much of the national land lies with local government bodies, but the state can compulsorily acquire and re-allocate land for a public interest.

In Ghana, land is managed by customary authorities, but the deals concluded by these authorities must be approved by the government (through the Lands Commission). And here too, the president has the power to acquire land for a public purpose on a compulsory basis, and one of the field sites covered by the research in Ghana involved a land lease awarded by the central government.

Even in Cameroon, where virtually all decisions on land allocation are made by the central government, local-level advisory committees have a statutory role in land allocation processes – confirming the relevance of polycentric governance. However, the Cameroon country study documented the limitations of these committees, not only in terms of their purely advisory powers, but also with regard to the representativeness of their members, the capacity of committee members to perform their role, and their accountability to their constituents.

Recurring law reforms provide opportunities to reconfigure authority, including through de- or re-centralising powers. Ongoing discussions in Senegal about new law reforms affecting decentralisation involve alternative options that could strengthen devolution, or recentralise important decision-making powers – for example, by reconfiguring rural municipalities as lessees of state-owned land.

These processes highlight that the contours of polycentric governance are never fixed once and for all. Rather, the border lines of institutional responsibilities at local and national levels are fluid and constantly renegotiated, particularly where politically and economically sensitive assets such as land are at stake.

Implications for accountability

Implementing the VGGT principle of accountability requires tailored arrangements that can respond to these diverse configurations of authority. For example, electoral processes can be an important channel for accountability where decision-making power is located with local government bodies (Ribot, 2004). But electoral processes would have few answers where key decisions are made – in law and in practice – by customary authorities. In these latter cases, other accountability channels may be available, such as recourse to higher customary authorities, to customary deliberative bodies or to state institutions.

One question is whether locating responsibilities with a particular type of authority can itself improve opportunities for accountability (Polack *et al.*, 2013). This

question is difficult to answer, partly because of the great diversity of contexts, issues and arrangements, and because of the often stark contrast between theory and practice. For example, while democratic elections are often considered a model of accountability arrangement, in practice elected officials may be more accountable to their political party than to their voters (Ribot, 2004).

That said, the field research suggests that, compared to highly centralised systems, the proximity of devolved decision making is perceived to increase opportunities to hold authorities to account. On the one hand, the Cameroon country study points to the real difficulty for rural people to access centralised systems of governance, and to local perceptions that geographic, economic and cultural barriers place the central government beyond the reach of many people affected by the land investments.

On the other hand, legal set-ups that vest considerable control over land with local bodies (Ghana, Senegal) can improve opportunities for representation through smaller political units and reduced distance between authorities and accountability agents. Because of their proximity to the land users, local authorities can effectively function as mediators between the investor and the "community", including where problems arise during project implementation. This issue came up in Senegal, where a newly elected municipal council took up the concerns voiced by local groups, and facilitated a mediation process with the investor that ultimately led to a mutually satisfactory outcome.

In these decentralised contexts, important questions concern the legal arrangements that can ensure the accountability of local authorities. In Senegal, formalised accountability arrangements are centred on the periodic election of rural councillors. In Ghana, the Constitution emphasises the "fiduciary" duties of customary authorities as land managers on behalf of their constituents, and the Chieftaincy Act of 2008 conditions any disposal of land by customary authorities on the consent of the elders.

But in the presence of vested interests and power imbalances, even at the local level, there are real questions about the effectiveness of these legal provisions in practice. Overall, the experiences of Ghana, Cameroon and Senegal provide important warnings against simplistic narratives of accountability that frame solutions in terms of "local is beautiful".

Indeed, local authorities may well abuse their powers and be partial in the performance of their responsibilities. Vested interests, power imbalances and even outright corruption may affect local governance systems, and geographic proximity alone is by no means an indicator of stronger accountability. Local authorities may also make decisions based on the wrong considerations, not least because capacity constraints may be particularly acute.

In Ghana, for example, the research identified cases where villagers resorted to protests to hold customary authorities to account, or appealed to a hierarchically superior chief to sanction the authority involved in adverse decision making. But these instances seem to be relatively rare.

Widespread local perceptions point to the central role of customary authorities in adverse land allocation, and to important shortcomings in the accountability arrangements affecting those authorities. Culturally, rural people may see themselves as "subjects" of the chief, a concept that emphasises the imperative to obey commands and display allegiance over pursuit of accountability.

In Senegal, municipal councils are elected, but electoral processes alone are no panacea for ensuring accountability in the day-to-day practice of local governance. In addition, the research from Senegal points to the great diversity of real-life patterns of influence and decision making, even within the same legal and institutional set-up.

In one Senegalese site, the municipal council allocated land to an agribusiness company, apparently following direct instructions from central government officials. In another site, the municipal council appears to have allocated land autonomously of central government, and after consulting villagers.

These diverse patterns partly reflect the diverse legal status of land in Senegal, and the varying degree of control that the central government can exercise on different categories of rural land. But socio-political dimensions can also affect the nature of the relationship between central and local government.

More generally, contestation about land allocations made by local governments in Senegal and customary authorities in Ghana highlights that merely devolving powers without establishing the corresponding accountability systems merely transfers bad governance to the local level. These experiences are a reminder of the need for effective accountability arrangements at the local as much as the national level.

The above discussion focuses on the "downward" accountability of authorities to their local constituents. However, central state authorities also have important responsibilities to ensure that local authorities comply with constitutional safeguards. The "primary" authorities, i.e. those that take decisions about land allocation, may well involve local actors within or outside government. But when local systems result in abuse, the "auxiliary" duty of the state to intervene when necessary always remains – not least because the state is ultimately the guardian of the constitution and, on the international plane, it is legally responsible (and in that sense accountable) for the conduct of its decentralised authorities.

However, the country studies illustrate the real challenges that state agencies face when intervening in local arenas. In Ghana, for example, the Lands Commission is

tasked with formally vetting and approving land transactions, including land leases awarded by customary authorities. Yet the country study showed the practical challenges that limit the performance of this role, and some land transactions appear not to have been formalised with the Lands Commission.

Similarly, a central government body in Ghana (the Office of the Administrator of Stool Lands) is tasked with collecting land revenues and distributing them according to a constitutionally defined formula. National law established this system to regulate revenue sharing and ensure effective and transparent governance. But the country study found that lump-sum and possibly periodic payments made directly to the chiefs appear to simply bypass the system.

Acting as one?

All three country studies point to problems of coordination among multiple authorities, which the VGGT identify as an important attribute of responsible governance (VGGT paragraph 5.6). As the Cameroon study illustrates, uncoordinated action by different ministries can result in overlaps between agribusiness leases, forestry concessions, extractive industry contracts and even protected areas.

The lack of a clear division of responsibility between local and national authorities, or between different sectoral authorities, can itself facilitate large-scale land allocation, by offering multiple institutional entry points for investors seeking land. This lack of coordination raises questions about whether institutional arrangements are solid enough to manage the growing multi-source pressures on land.

Tackling inter-agency coordination may require greater clarity on roles and more effective communication. It may also involve enhancing the practices of spatial planning (see VGGT section 20), which would allow central and local authorities to clarify institutional responsibilities as well as a vision for development pathways in given geographies.

But problems of coordination also point to complex political economies that technical tools alone cannot disentangle. Apparently dysfunctional systems may suit powerful vested interests, particularly where land allocation by authorities provides an important vehicle for strategies of accumulation that place public apparatuses at the service of private gain (Bayart, 1993; Chabal and Daloz, 1999).

This latter consideration compounds the relevance of accountability as a mechanism to improve the governance of land and investment. But it also highlights the challenges in ensuring accountability where powerful vested interests are at play. Even identifying who should be held to account for the issuance of overlapping concessions can become a challenging endeavour.

2.2 Standards: legitimate tenure rights and beyond

Broadly defined, the standards determine how the authorities are expected to behave. They provide a benchmark for reviewing the conduct of the authorities. The sources of standards can vary significantly, depending on the authority and the conduct at stake. They include binding law and various gradations of "soft-law" or non-binding instruments.

National law typically provides an important source of standards for the conduct of government authorities. In addition, customary law typically establish standards for the conduct of traditional authorities, and depending on the jurisdiction they may have legal backing from national law. In other cases, there may be tensions between the standards set by national law and those based on customary systems. International law is another important source of standards, including human rights treaties, though as discussed this report focuses on national law.

Legitimate tenure rights

"Legitimate tenure rights" is the foundational concept that frame responsible governance of tenure in the VGGT. This concept provides a basis to assess the standards that (should) guide the conduct of authorities – that is, the national legal framework.

The VGGT do not provide a definition of "legitimate tenure rights", though they do provide some guidance on the process that should be followed for identifying legitimate rights (paragraphs 3A.1, 4.4 and 9.4 of the VGGT). The origins of the concept of "legitimate tenure rights" can be traced to analytical work highlighting that land rights can draw their legitimacy from law but also from social perceptions, and calling for the legal recognition of socially legitimate land rights (Palmer *et al.*, 2009).

Building on these analytical foundations, the VGGT make it clear that "legitimate tenure rights" encompasses both legal legitimacy (i.e. rights that are recognised by law) and social legitimacy (i.e. rights that are perceived to be legitimate in a given social setting, even if they are not currently protected by law; see VGGT paragraphs 4.4, 5.3 and 7.1, and FAO, 2016).

Social legitimacy relies heavily on perceptions about what claims should be considered to be legitimate. At first sight, this circumstance might appear to create inherent tensions with the law, which values predictability and objectivity, whereas perceptions of social legitimacy can vary in different groups and can change over time.

However, anchoring legal protection to social legitimacy does not necessarily translate into undesirable uncertainty, and is in fact essential in ensuring that legal frameworks are well adjusted to their country-specific political context, history, economy and society. Arguably, the notion of social legitimacy is deployed precisely to address shortcomings in national legal arrangements, which if left unaddressed

could result in doubts being raised about those arrangements' own perceived legitimacy.

Bridging social and legal legitimacy

The three country studies point to some common challenges in the interface between social context and applicable law. In all three countries, customary systems of governance play an important role in shaping attitudes towards what is right or wrong. And in all three countries, the research has identified at least *some* mismatch between customary practice and national law.

These tensions appear particularly acute in Cameroon and Senegal, where national law only provides very limited recognition, if any, to customary land tenure arrangements. As a result, rights that rural people perceive to be socially legitimate may be nominally protected but remain highly insecure.

Take the case of Cameroon. In this country, as in many other parts of rural Africa, land is traditionally viewed as an integral part of a community's culture: people are part of the earth and have a close relationship with it. Traditionally, this relationship was not framed in terms of ownership, which assumes a clear separation between the owner and the owned. But it does involve a strong, intimate connection between people and land. And while profound changes are reconfiguring livelihood strategies and socio-economic relations, the strong cultural, spiritual and socio-economic values of land remain a recurring feature in rural areas.

These systems are poorly reflected in national legislation. Land tenure in Cameroon is still regulated by legislation that was developed over 40 years ago and was in turn inspired by colonial responses to land governance. This legal regime is centred on registration as the only mechanism for establishing land ownership; on state control over all unregistered lands; and on legal arrangements allowing the government to allocate land to those it deems best able to use it "productively".

In practice, costly and cumbersome procedures place registration outside the reach of most rural people. It is estimated that less than 10% of the land in Cameroon has been registered, primarily in urban and peri-urban areas. Around 90% of the land is in a "national domain" administered by the government. This land includes vast areas claimed by small-scale farmers, forest dwellers and pastoralists.

Cameroon's legislation protects existing use rights, but only subject to severe conditions and restrictions – for example, the requirement for people to demonstrate that they are using the land productively. The law provides little guidance on how this requirement should be interpreted. Ill-defined productive use requirements can undermine the ability of legitimate tenure right holders to choose the forms of land use they think are best for the land that they live on.

Indeed, notions of productive use are coloured by assumptions and prioritisations about desirable forms of land use, which may clash with local perceptions and aspirations – echoing "idle land" narratives that have supported the appropriation

of land in Africa since colonial times. As such, productive use requirements can undermine the land claims of pastoralists and hunter-gatherers, who often struggle to provide evidence of productive use.

Ill-defined productive use requirements also subject tenure right holders to the extensive discretionary powers of the authorities. In addition, the field research suggests that these requirements can promote unsustainable land management, because they create an incentive for villagers to clear forests in order to demonstrate "productive" use and secure their land rights.

National law in Cameroon allows the government to allocate commercial rights on lands in the national domain, including to agribusiness ventures, thereby extinguishing the land rights claimed by rural people. The criteria for allocating land in the national domain vary from one sector to the other (e.g. forest, mining, agriculture), which creates uncertainty about the standards that might be invoked in each case. Overall, this situation leaves the occupants of 90% of the land in Cameroon with insecure rights, making them "de facto squatters" on their customary lands (to cite a provocative expression used by Alden Wily, 2011b).

More generally, the mismatch between national and customary law can create uncertainty and tensions between different claims to legitimacy. While presenting specificities linked to the important role of local government in land governance, Senegal's legal system also involves a disconnection between national law and customary practices. In addition, it involves a pre-eminence of government-issued and -sanctioned land use rights over customary claims, and the conditioning of legal protection to proof of productive land use.

In practice, much depends on the extent to which the authorities legally in charge are willing to accommodate land claims that draw their legitimacy from customary tenure – for example, through issuing formal land allocation documents that merely validate underlying customary claims, a practice that was documented in the Senegal country study.

In Ghana, national law including the Constitution does recognise customary land tenure arrangements. But even here gaps can arise between national law and local perceptions of legitimacy. For example, customary systems struggle to accommodate external claims to land and to catch up with changing social circumstances – particularly the increased mobility of people amongst different communities.

In some of the research sites in Ghana, "migrants" old and new may feel that they have some legitimate claims to the land. These claims enjoy diverse but often limited protection under customary tenure, and thus ultimately under national law. In other words, accountability standards may be invoked more effectively by some agents (such as members of the local landowning families) than others (e.g., depending on the circumstances, migrants).

Customary systems may also raise difficult issues in terms of gender relations. Generalisations must be avoided, and the coexistence of matrilinear and patrilinear systems in Ghana highlights that customary arrangements are very diverse. But customary systems often do place women in a disadvantaged position compared to men, in terms of both substantive tenure rights and voice in decision making. Finally, particularly difficult issues arise where customary systems lose their perceived social legitimacy; where they are eroded by socio-economic change; or where customary authorities abuse their powers.

These considerations remind us that merely recognising customary rights is no panacea for securing rights and ensuring accountability. They highlight the need to consider social differentiation in assessing opportunities and constraints for accountability, including differentiation based on gender, generation, status, income, wealth or socio-economic activity.

They also point to the challenge of how the law can accommodate continuously evolving claims, practices, needs and trends – including the renewed business interest to develop land on a large scale. Both customary and state systems in the three countries seem to struggle to deal with fast-evolving socio-economic contexts.

The notion of "public purpose"

In all three countries, national law allows the government to acquire and transfer land even against the will of affected landholders, if a public purpose (or a "public interest", e.g. in Cameroon) so requires. The VGGT call for a clear definition of what constitutes a public purpose, and for mechanisms to challenge adverse decisions (paragraphs 4.3 and 16.1).

The latter may involve judicial review of the legal instruments declaring the existence of a public purpose. In this sense, the notion of public purpose provides an important arena for mediating multiple local and national interests, and – potentially – for defining standards to hold authorities to account.

However, a common feature of national law in the three countries is the lack of clear parameters of what constitutes a public purpose. Where parameters exist, they seem to have been largely ineffective in the face of the growing commercial pressures on land. For example, Cameroon's legislative provisions restricting the type of private actors that can benefit from compulsory acquisition appear to have been ignored.

At one level, it is understandable that legislators may wish to preserve flexibility for decision making in a wide range of situations that may be difficult to foresee and translate into clearly bounded criteria. At the same time, the use (and abuse) of public purpose declarations has been an important driver of the sustained contestation about "land grabbing".

Indeed, a key issue is whether the establishment of private, commercial plantations can legitimately be deemed to be a public purpose allowing the government to transfer land on a compulsory basis. In this context, the notion of "public purpose" frames many of the contentious issues around agribusiness investments, including how to reconcile possible tensions between local land rights and national development agendas.

And yet, the lack of clear or effective parameters empties the legal concept of public purpose of much of its potential as a tool for setting standards of accountability. The VGGT's call for clear definitions and effective recourse indicates that the conventional, unfettered framing of public purpose requirements is outdated and at odds with international best practice.

Where visions of what constitutes public purpose are contested and polarised, a key issue is whether the law can provide processes to arrive at a shared understanding of public purpose, establish safeguards for local rights (including through the application of the principle of free, prior and informed consent, where relevant), and provide effective arrangements for accountability.

Beyond tenure rights

Applicable safeguards to protect legitimate tenure rights are a key part of determining the standards for holding authorities to account. Their centrality flows from the important social, economic, cultural and spiritual values that land has in many rural societies. It also flows from the foundational nature of the notion of legitimate tenure rights in the VGGT.

However, accountability standards necessarily go beyond issues directly associated with the recognition and protection of legitimate tenure rights. The VGGT contain numerous provisions on local consultation and public participation, creating scope for procedural standards of accountability that cannot be framed exclusively in terms of tenure rights. For example, the VGGT encourage states to "welcome and facilitate the participation of users of land, fisheries and forests in order to be fully involved in a participatory process of tenure governance" (VGGT paragraph 4.10).

Also, job creation is often presented as a major expected benefit of land investments, raising issues about standards of quality in the jobs created, and about access to employment opportunities. The VGGT call for compliance with both national law and international labour standards, including those established by the conventions of the International Labour Organization (paragraph 12.4). In addition, labour rights are human rights that agribusiness ventures should respect (see VGGT paragraph 3.2, and principle 12 of the United Nations Guiding Principles on Business and Human Rights).

The distribution of land-based revenues is another illustrative area where standards of accountability go well beyond the imperative to protect tenure rights. While the VGGT are fairly succinct on issues of taxation (VGGT section 19), in a broader

sense several VGGT provisions have implications for the distribution of land-based revenues (e.g. paragraph 12.4, calling for equitable sharing of benefits from public lands).

Limited space prevents a fuller discussion of these wide-ranging issues. Suffice it to say that the three countries present similarities and differences, and that in all cases giving full effect to the VGGT would require careful (re)consideration of law design and/or implementation, albeit in different ways and to different extents.

With regard to the issue of benefit sharing, for example, legislation in Cameroon and Ghana contains specific provisions that regulate the distribution of land-based revenues. But the two country studies show that national law lacks detail or is poorly implemented. In addition, estimates and calculations developed by the Cameroon study based on actual land rental fees and alternative land uses raise questions as to whether even a correct application of the legislative formula would give affected people an attractive deal.

On the other hand, national law in Senegal does not prescribe specific benefit-sharing arrangements in relations between local communities and commercial operators. In addition, in none of the three countries does the law provide specific guidance on the content of contracts concluded between businesses and the authorities, or on the links between the investor-state and community-investor contracts where both exist.

While authorities may indeed need some flexibility to structure the terms of a deal in the ways that are most appropriate to the specific circumstances, the lack of any pointers leaves authorities with wide discretionary powers. It also deprives accountability agents of standards they could rely on in their efforts to hold authorities to account. Ultimately, this tension between the authorities' need for a degree of discretionary power and the need for clear accountability standards is at the centre of policy choices about how to frame those standards.

An additional set of issues arises where the land is allocated by authorities that are outside the sphere of government – such as customary authorities in Ghana. The principle of freedom of contract, which is applied in many jurisdictions, means that the parties enjoy considerable latitude in determining the content of the contracts they sign, and that – outside cases involving duress, fraud or misrepresentation – these contracts are ordinarily binding.

Ghana's Contracts Act of 1960 largely reflects this position. However, the Conveyancing Decree of 1973 enables the state to intervene in cases of "unconscionable" contract. In practice, the implementation of this provision is fraught with difficulties, not least because the law provides no clear definition of what is unconscionable. As discussed, some land deals have been concluded without subjecting the transaction to vetting by the Lands Commission, which further reduces scope for government intervention.

Options to "domesticate" the VGGT into national standards

A final, more general point relates to how best to translate international guidance into national-level standards. Unlike their counterparts in Cameroon and Senegal, authorities in Ghana (namely, the Lands Commission) developed draft Guidelines for Considering Large-Scale Land Transactions for Agricultural and Other Purposes in Ghana.

In a sense, these national guidelines could be viewed as a way to "domesticate" and operationalise international guidance, including the VGGT. However, the initial draft of these guidelines presents significant weaknesses, so that even full compliance would arguably not ensure "responsible" investments.

For example, the guidelines are gender neutral, despite the well documented gender differentiation in land access, tenure security and representation in decision making (King and Bugri, 2013). Also, several key institutions were not involved in the drafting process. The Lands Commission recently initiated public consultations to improve the draft guidelines.

That said, proper implementation of these national guidelines would be an important step forward. For example, it could open new spaces for local consultation. The outcomes of these consultations are meant to provide the basis for decision making by the Lands Commission. As the Lands Commission can approve, reject or alter proposed land transactions, the national guidelines could offer significant leverage.

However, the Ghana country study found that, in practice, awareness of these national guidelines is limited, even among Lands Commission staff. Land deals between customary authorities and investors appear to be viewed as private transactions, and the parties often do not report the deals to the Lands Commission. This circumstance effectively insulates the deals for any real scrutiny based on the national guidelines.

More fundamentally, a non-binding instrument might be appropriate to provide global-level, flexible guidance on a politically sensitive issue, capable of being adapted and implemented in a wide range of national contexts. But in operationalising international guidance such as the VGGT at the national level, the case for legally enforceable accountability standards would appear particularly strong.

2.3 Agents: ensuring legal capacity to take part in the governance process

Accountability presupposes two active subjects. Action underpins the notion of "agent" (as reflected in the French verb *agir* – "to act"), which is broadly defined here to identify those who can act to hold authorities to account. Depending on the case, an accountability agent can be an individual, an organised group, an institution or all citizens. An entity can be an authority in a relationship and an agent in another one.

Mapping the accountability agents

As with authorities, the identity of accountability agents depends largely on national contexts and legal and political systems. It also depends on the circumstances of decisions, whether on individual land investments ("specific") or policy choices upstream ("systemic").

Multiple actors could operate as accountability agents in the governance of land and investment. Our interpretation of the VGGT led us to identify (at least) three groups of accountability agents, namely: i) legitimate tenure rights holders affected by the conduct of the authorities; ii) other groups that, while not holding tenure rights, are also affected, such as farm workers; and iii) public-interest advocates who, while not affected by the conduct in question, are concerned about it.

The first category refers to holders of legitimate tenure rights affected by a specific investment project or policy choice. As discussed, the notion of legitimate tenure rights is the cornerstone of the VGGT. The considerable diversity of tenure rights that could be deemed to be "legitimate" in any given context means that this category of accountability agents is potentially very broad.

Depending on context, it could include indigenous peoples, small-scale farmers, pastoralists, forest dwellers, fisherfolk and other resource users, both men and women, claiming a wide range of individually or collectively held rights to diverse land-based resources – not just land ownership. The VGGT make it clear that legitimate tenure rights include rights that are currently not protected by law (VGGT paragraphs 4.4, 5.3 and 7.1), including customary rights (e.g. VGGT paragraph 5.3).

The country studies provide several examples of how holders of legitimate tenure rights have acted as accountability agents, activating legal, social and political levers in response to land deals for agribusiness investments. In Ghana's Western Region, for example, the reallocation in 2012 to an agribusiness operator of land expropriated without compensation back in the 1980s triggered protests, which in turn resulted in community-investor dialogue and ultimately better terms for local tenure right holders.

Comparable instances of resistance and/or dialogue have emerged from other sites in the three countries. In at least two cases, accountability strategies were activated

by pastoralists, who are also holders of legitimate tenure rights in the context of the VGGT – though recognition of pastoralists' rights in national law is highly variable. In Senegal, the allocation of land to a biofuel venture within a natural reserve used by pastoralists led to sustained contestation by the latter, and by advocates supporting them. This dispute is ongoing.

In another case from Ghana, Fulani pastoralists raised concerns that the allocation of about 50,000 hectares of land to an agribusiness operator would curtail their grazing rights. The action led to an agreement whereby grazing would be allowed on identified, uncultivated parts of the leased land, while pastoralists committed themselves to preventing livestock from straying unto the farms.

Besides holders of legitimate tenure rights, other actors also have a direct interest in the governance of land and investment. The second category of accountability agents concerns the wider range of people who, while not holding tenure rights, may be affected by the conduct of authorities.

Although the VGGT are primarily anchored to the notion of legitimate tenure rights, they do recognise the role of "anyone else who could be affected" by governance processes (expression used in VGGT paragraph 7.3; for a similar formulation, see paragraphs 8.6 and 8.7). Specifically in an investment context, the VGGT call on states to identify all legitimate tenure rights, but also "the rights and livelihoods of other people also affected by the investment" (VGGT paragraph 12.10). In addition, the VGGT give "affected parties" a role in monitoring the implementation and impacts of investments (paragraph 12.14), thereby creating a direct link with accountability.

This second category of accountability agents may include, for example, water users downstream, and workers on an agribusiness plantation. Labour has been a much-neglected issue in "land grab" debates, not only in relation to situations where people's "land is needed, but their labor is not", so that the land investments displace labour as well as dispossessing land (Li, 2011:286); but also in situations where agribusiness ventures do create jobs but questions are raised about livelihood outcomes.

This research could not fully tackle labour issues. But it is important to recognise that labour can have profound reverberations for efforts to implement the VGGT in relation to land investments. Indeed, there are strong links between control over land and control over labour in agrarian societies. Land investments may transform affected people from landholders to farm workers, or attract workers from elsewhere, with far-reaching repercussions for local societies. As discussed, the VGGT call for compliance with international labour standards.

In one of our cases from Ghana, farm workers advocated for better wages. There were also disputes linked to community demands for preferential access to skilled jobs (e.g. mechanics, drivers). The latter demands ultimately floundered due to lack of the necessary skills, so villagers were primarily hired as farm workers.

However, negotiations led to the establishment of funds to train community members and improve access to jobs in the medium to longer term. This instance points to the overlaps that can exist between the different categories of accountability agents (e.g. landholders and farm workers). Some households, and even individuals, might occupy both positions.

Beyond the people affected by the conduct of an authority, there is a third broad category of accountability agents. This category refers to the vast and diverse constellation of individuals, organisations and diffuse actors, and ultimately citizens at large, that can pursue accountability in defence of a public interest ("public-interest advocates"). This may include, for example, organisations of rural producers; non-governmental organisations (NGOs); activists concerned about the reverberations that land investments can have for people and the environment; journalists; and even engaged researchers.

The VGGT recognise the important role that rural producer organisations and "civil society" can play in the governance of land and investment (e.g. VGGT paragraphs 1.2.4, 2.3, 5.7, 5.8, 6.5, 12.2, 15.4 and 26.5). This may involve an autonomous role in the pursuit of accountability, and work to support actors in the previous two categories to pursue their own accountability strategies.

The field research provided numerous examples of the important role that advocates can play in accountability strategies. In one case from Senegal, a national NGO provided legal and other support to villagers mobilising against a land allocation by the local government to an agribusiness venture. That support facilitated the release of community activists who had been detained by the authorities. It also led to a favourable court decision on the land dispute itself.

The three groups of accountability agents (legitimate tenure right holders; affected people; and public-interest advocates) may have converging or diverging agendas, depending on context. Their accountability actions may be mutually reinforcing, and fruitful alliances of diverse agents spanning the three categories can improve access to accountability channels and augment the impact of the action.

For example, mobilisation against a large agribusiness venture in Cameroon involved alliances between local villagers and grassroots NGOs, national NGOs capable of escalating the issue to the national level, and international NGOs with the clout to bring concerns to the investor's home country and in international fora.

But tensions can also arise between the competing demands of different groups. In a case from Ghana, youths resented elders for having agreed to land allocations. A case from Cameroon highlights that different sections of the "community" can voice different demands (from termination of the deal to its renegotiation for more favourable terms), and that attitudes can shift over time (as the company's continued presence has led some to emphasise renegotiation over termination).

How the law shapes opportunities for accountability agents

The previous section highlighted the wide range of actors that could seek to hold authorities to account. Whether potential accountability agents become agents in practice (and identify themselves as such) depends on long-term processes and specific triggers. Multiple factors can get in the way – including weaknesses in space and organisations for collective action and asymmetries in power, knowledge and resources.

Besides these practical barriers, features of national law also influence opportunities and constraints for actors to become agents of accountability. For example, some accountability channels require agents to have a particular legal status. Such status is often not acquired automatically – it may presuppose, for example, the assertion of a particular factual, legally relevant set of circumstances, or the establishment of a legal entity. Barriers in access to legal status can undermine a relationship of accountability before it even begins.

One context where legal status is particularly important is access to justice – for example, in order to seek land restitution or compensation, or to ask courts to scrutinise the public purpose invoked by authorities to justify compulsory land acquisition. Access to justice has an important place in the VGGT, both as a "general principle" (VGGT paragraph 3A.1.4) and in the context of specific VGGT provisions (e.g. VGGT paragraph 7.3, last sentence).

The country studies illustrate the important ways in which legal requirements can restrict access to justice. For example, the Cameroon study indicates that rules on legal standing allow people to initiate judicial proceedings and challenge the conduct of authorities only if they can prove that legal rights are at stake and that they have a sufficient direct interest in the issue.

This requirement restricts the range of possible agents. It can make it more difficult for public-interest advocates to challenge land investments, or specific aspects of them, as they may not be directly affected by those investments. Even people claiming legitimate tenure rights to the contested land might struggle to meet this requirement if national legislation does not recognise their rights and prevailing discourses deny their legitimacy. Burdensome land registration procedures can make it difficult for holders of legitimate tenure rights to acquire legally sanctioned rights and stand on firmer ground in accountability relationships.

Further, legal requirements for communities to acquire legal personality in order to be able to register land or bring lawsuits (as in Cameroon), coupled with cumbersome and costly procedures for doing so, can reduce the capacity of communities to act as accountability agents through legal processes. Also, acquiring legal personality may involve creating new institutions (e.g. associations, cooperatives) the functioning of which could overlap and create tensions with established bodies and traditional roles, including customary authorities where these exist. It also raises questions about the accountability of local leaders to their constituents.

Legal contexts in Ghana and Senegal present important differences compared to the situation in Cameroon. In Ghana, for example, customary landowning families and groups ("stools" in the South of the country, "skins" in the North) can sue and be sued, i.e. they are effectively recognised as legal entities. There are also some commonalities, however. For instance, the Senegal study documented cumbersome land registration procedures comparable to those found in Cameroon, with knock-on effects on accountability strategies.

An additional issue concerns legal requirements for NGOs to be registered with the authorities and subject to various forms of government control. These requirements might create room for abuse and curtail the ability of these organisations to play their watchdog role effectively. The power of state authorities to suspend or even shut down NGOs allows those authorities to put a brake on accountability efforts – an issue that came up in the research in Cameroon.

In effect, the authorities are legally empowered to select their accountability agents. A recent wave of legislation restricting space for civil society in several countries worldwide (see e.g. Sherwood, 2015) provides a stark reminder of how government controls on civil society and mandatory registration procedures can affect accountability strategies.

In all these cases, the law restricts the ability of certain people to take part in accountability strategies. At one level, requirements of legal status may be necessary to structure the decision-making process: authorities cannot be expected to engage with everybody for all decisions, and the courts need predictable criteria to filter lawsuits. However, if not properly thought through, arrangements designed to structure legal and political processes can reduce the capacity of certain people to use legal routes to voice their concerns.

2.4 Channels: tackling barriers and bottlenecks

The VGGT identify multiple channels to enable and enhance accountability. These channels cover all the three dimensions identified in Chapter 1: forward and backward looking (e.g. VGGT paragraphs 6.6 and 12.9); systemic and specific (e.g. VGGT paragraphs 12.8 and 12.10); and legal, political and social (for instance, VGGT paragraphs 16.1, 5.9 and 9.2).

In practice, the channels available to the agents of accountability tend to differ from country to country. They also depend on the authority whose conduct is at stake. For example, the channels can differ considerably when scrutinising the conduct of customary authorities and that of the president.

In addition, accountability always remains open to change and to new and unexplored methods of holding authorities to account. Therefore, it is impossible to provide a comprehensive review of the many and evolving accountability channels relevant to land investments.

Finally, accountability channels cannot be assessed in isolation but must be considered in light of the overall "package" they are part of. This is because each country presents a specific combination of channels. Also, the operation of one channel can have implications for other channels too. The absence of a particular channel in one system might be offset by features of other channels, which may be absent or different in other systems.

That said, the research does point to some recurring trends. National law in the three countries provides multiple channels for agents to hold authorities to account – at least on paper. These include administrative, judicial and quasi-judicial arrangements for consultation and recourse.

However, the operation of these channels is often affected by obstacles and bottlenecks. This is particularly so once we place the legal analysis within the wider social, economic and political context in which land investments take place – including the major asymmetries in information, resources and power that affect relations between state, companies and citizens. But features of national legal frameworks are also at play.

Take the case of local consultations prior to decisions on land allocations. National law in the three countries provides some mechanisms for local consultation to occur, potentially creating spaces for forward-looking accountability in line with the VGGT (VGGT paragraphs 3B.6, 4.4, 7.3, 8.6, 9.9, 12.7-10, 16.2 and 16.8, among others).

These mechanisms may involve public hearings in the context of environmental impact assessment studies (under environmental legislation in Cameroon, Ghana and Senegal), of land allocation processes (e.g. in Cameroon, with regard to the advisory land committees discussed above: and in Ghana, under section 5(n) of the Lands Commission Act of 2008) and of development planning (e.g. under Ghana's National Development Planning (Systems) Act of 1994).

Yet shortcomings in consultation processes have been a recurring finding in the three country studies. Poorly thought through consultations, inadequate official records and a sense of power imbalances often made consulted people feel that they were being misunderstood, or even used to legitimise decisions already taken. Some people also referred to significant political and social pressures affecting consultation exercises. Several land disputes encountered during the fieldwork were rooted, at least partly, in local perceptions that people had not been adequately consulted.

Besides the weight of socio-economic factors in real-life consultations, the research also highlighted issues that interrogate the design of legal frameworks. For example, legislation may lack necessary detail, leading to inadequate application. Indeed, legislative provisions on consultation tend to be unspecific. And even if correctly implemented, a single "public hearing" can prove inadequate to enable diverse local voices to be heard on complex development choices that can irreversibly transform territory and livelihoods.

Similar considerations can be developed with regard to backward-looking accountability – that is, channels for holding authorities to account after decisions have been made. The country studies documented several cases where agents contested decisions. Limited trust in the legal system led many people to resort to political, rather than legal, avenues.

In one case from Senegal, for example, aggrieved people brought the dispute to the rural council – the local government body responsible for land management. In response, the rural council facilitated a mediation process also involving the investor and local groups that supported the investment project. The process ultimately led to a satisfactory outcome for the petitioners, suggesting that extra-judicial processes can be effective.

The success of the mediation owed much to the fact that the investor agreed to be part of the process, and to a change in municipal leadership after new local elections. This experience also provides a reminder of the divisions that may exist within the same "community", and that dispute settlement linked to land investments may be relevant to intra-community issues as well as external relations.

Some cases documented by the research also involved use of formal dispute settlement processes, both customary and statutory. In Senegal, for example, a group of 99 farmers brought a legal case to reclaim land they felt they had been dispossessed of. The farmers claimed that, in allocating the land to an agribusiness operator, the municipal council breached national laws on decentralisation. The court case delivered some results, in good part thanks to the legal and other assistance provided by a national NGO. After the judgment, an alliance of local to national advocates lobbied to have the municipal allocation decision rescinded.

However, socio-economic barriers constrain the ability of legal processes to deliver on demands for accountability. These barriers include the considerable expenses needed for hiring legal experts, the geographic remoteness of courts and the prolonged duration of judicial proceedings. The legal analysis conducted in the three countries highlighted that legal barriers are also relevant.

Issues affecting legal status or standing have already been discussed. Other issues vary considerably depending on country context. In Cameroon, for example, while disputes with private parties, including agribusiness companies, can be taken to ordinary courts, petitions to seek the judicial review of government decisions to allocate land would need to be taken to the administrative courts. The latter can involve particularly protracted proceedings, and the administrative court system is not as decentralised as that of ordinary courts.

In practice, the legal cases documented by the research in Cameroon mainly involved more circumscribed lawsuits before ordinary courts, brought against companies and relating to crop damage or asset loss. Action to question the deals in more fundamental terms primarily followed extra-legal channels, including protests, demonstrations and public mobilisation.

Again, legal contexts in Ghana and Senegal present both similarities and differences compared to the situation in Cameroon. Unlike Cameroon, for example, Ghana's court system does not distinguish between ordinary and administrative courts. But cumbersome procedures and considerable backlogs are still a recurring problem. As a result, the more accessible Commission on Human Rights and Administrative Justice, which has powers comparable to those of a high court, has ended up taking on a significant (and perhaps originally not fully foreseen) role in land disputes.

Difficulties in marshalling evidence to satisfy the burden of proof, for example to demonstrate adverse impacts and their causation, have also come up as a constraint in the country studies. For example, documentary proof of land rights is often critical in land disputes, and failure to provide such proof can considerably weaken a claimant's case. In countries where land transactions are mainly oral or poorly documented, especially in rural areas, these legal requirements could impair people's ability to obtain justice through the court system.

In addition, the country studies raised questions about the effectiveness of court proceedings. In one case from Cameroon, a court-issued provisional measure ordering an agribusiness venture to halt activities appears to have been ineffective. The Cameroon study also documented instances where the company pursued legal action against local advocates, highlighting that court proceedings can be an avenue to undermine as well as advance accountability strategies.

Customary systems for dispute settlement can present problematic aspects too. Under customary law, traditional authorities may play a prominent role in both land allocation and land dispute settlement. In this context, the person whose actions may have created the dispute may also be involved in dispensing justice to adversely affected people – a problem that came up in the Ghana study.

As already discussed, the VGGT place considerable emphasis on access to justice. Among other things, they call for provision of free legal aid (e.g. VGGT paragraphs 7.4, 9.10 and 10.3), and for considering the possibility of creating specialised tribunals where this could improve access to land dispute resolution mechanisms (paragraph 21.2 of the VGGT).

These pointers do have budgetary implications, and economic necessity has recently increased pressure on legal aid systems in many contexts. But there is scope for rethinking justice systems in more comprehensive and imaginative ways so as to improve access to justice for rural people.

3. Conclusion

3.1 Lessons learned and possible ways forward

Drawing on comparative socio-legal research in Cameroon, Ghana and Senegal, this report has documented diverse accountability strategies at local, national and international levels. The recent wave of land deals for agribusiness investments has highlighted the widespread demand for greater accountability in the governance of land and investment. Where emotive and politically sensitive issues such as land are at stake, citizens expect authorities to listen.

The report has also shed light on how the law influences opportunities for accountability in the governance of land and investment. The findings point to the great diversity of contexts, situations and issues, challenging or qualifying "big-picture" narratives and calling instead for more granular analyses and tailored responses. The diverse configurations of authorities that drive deal making in Cameroon, Ghana and Senegal are a case in point.

Faced with this diversity, the VGGT refrain from putting forward a one-size-fits-all model of land governance. The VGGT allow considerable latitude for states to pursue the social, political and legal set-ups they deem most appropriate. However, the VGGT do provide important pointers applicable to a wide range of governance contexts. Also, the three country studies point to recurring features of national law, even in such diverse settings. These features create some opportunities and many challenges for strategies to hold authorities to account.

As land investments started attracting public attention, many demands for accountability targeted the companies acquiring land. The official endorsement of the VGGT triggered several initiatives to develop more operational guidance for the private sector. While efforts to promote more responsible business conduct are welcome, this research points to more systemic shortcomings of governance that the action of individual, "responsible" operators ultimately cannot by-pass.

Those systemic shortcomings of governance can expose even responsible investors to the risk of contestation, and undermine their "social license to operate" (Morrison, 2014; Bursey, 2015). Indeed, similarly to the gap that may exist between legal recognition and social legitimacy of tenure rights, agribusiness operations may also face a disconnection between their licensing by authorities under national law on the one hand, and the social perceptions of their legitimacy on the other. Addressing these issues requires aligning legal frameworks with societal expectations.

Taking such a systemic approach is also in line with the important public law dimensions of the land deals. Far from being mere commercial transactions primarily requiring private responses in terms of responsible business conduct,

the deals present overarching public law dimensions – not only because they are commonly negotiated by public authorities, but also because they directly affect public-interest issues such as control over land and natural resources, taxation, the concentration of wealth within society, and the role of public regulation in local land relations.

Overall, no single legal set-up emerges as the obvious blueprint for best aligning legal frameworks with pursuit of accountability. All three country contexts present some openings, such as the legal recognition of customary land rights in Ghana, and the geographic accessibility of decentralised land governance in Senegal. At the same time, much can be done to strengthen accountability in the three countries. This requires tailored interventions to improve the working of the core elements of accountability in each country setting.

It is often said that laws are good on paper and the challenge lies in implementation. But this research has shown that features of law design also matter a great deal in creating or constraining opportunities for accountability – for example, where the law only grants weak protection to socially legitimate tenure rights, or where it establishes barriers preventing people from becoming accountability agents.

In these cases, even correct implementation would fall short of the standards set by international guidance. This finding points to the important role that well-thought out law design can play in responding to citizen demand for accountability. The specifics inevitably vary depending on the context. In more general terms, however, reforms should ensure that the law:

- Establishes tailored arrangements to promote accountability within different configurations of state and non-state **authorities** at local to national levels, including mechanisms for the "downward" accountability of authorities towards their constituents, and arrangements enabling the state to ensure that action by local authorities complies with applicable standards;
- Articulates clear and enforceable accountability **standards**, based on the legal recognition and effective protection of all socially legitimate tenure rights, including customary rights where relevant, and on clear parameters to scrutinise public action in a wide range of areas including land allocations, public revenues and labour relations;
- Minimises arrangements that can marginalise potential accountability **agents**, including by lifting any legal requirements that can unduly restrict access to justice or to public decision making, and by preventing abuse of administrative controls over the activities of public-interest organisations;
- Ensures the proper functioning of accountability **channels**, including by creating effective arrangements for people to influence decisions over and above existing consultation or "public hearing" requirements, and by providing effective and accessible legal recourse to challenge adverse decisions.

Ongoing law reform processes in the three countries reviewed can provide entries for initiating or deepening dialogue on these issues. But law reform is technically difficult and politically fraught. Vested interests favouring the status quo can get in the way of technically advanced reforms.

There is also an important time dimension, as legal change tends to involve slow processes and often struggles to keep up with rapid social, political, ecological and economic change. Further, the "limits of law" imposed by social, economic and political realities have been widely documented, and it is well known that merely amending the law does not in itself translate into real change.

So practical interventions to support imaginative implementation are essential for laws to make any difference on the ground. In addition to the policy work, there is a real need for tools, approaches and strategies that can allow both accountability agents and authorities to push the boundaries of *existing* law.

Land and investment are inherently political, so these tools, approaches and strategies need to address the politics as well as technical problems. They need to tackle the social and political as well as the legal dimensions of accountability. Further, they need to respond and be tailored to the specific contexts they relate to, if they are to be relevant at local and national levels.

In turn, action on the ground can generate important insights for policy reform, ensuring that national law making builds on local practice. International lesson sharing can enrich efforts to address comparable challenges in different contexts. There is a need for interventions both to develop tools and to share lessons at national and international levels.

3.2 Our next steps: testing legal and social accountability tools

As this research drew to a close, the project entered a new phase. As discussed, a key aim of this research was to inform the design of tailored legal empowerment interventions that could enable agents to make the most of opportunities for accountability in each country context. Building on this report, organisations in each of the three countries started testing "legal and social accountability tools" to support people affected by land investments.

This legal empowerment work focuses on a subset of the field sites covered by the research. Tool selection responded to local demand and to the specific opportunities for accountability provided by national law. Priority was given to tools that were deemed capable of being sustained and scaled up after project completion. The next few sections briefly outline interventions in each country, and at the international level.

Senegal

As discussed, national law in Senegal vests elected local government bodies with significant powers in the governance of land investments. Yet land investments have exposed the limits of electoral processes alone in meeting local demands for accountability in the day-to-day management of public affairs.

In this context, Dakar-based organisation Innovations Environnement et Développement en Afrique (IED Afrique) initiated activities to explore the feasibility of new, locally negotiated "charters" ("*Chartes foncières*") in three sites – Beud Dieng, Mboro and Dodel, respectively located in the Louga, Thiès and Saint-Louis regions. The charters would set ground rules on how local government bodies should manage rural land.

More specifically, the charters would clarify roles and lines of accountability, and create spaces for local deliberation and ongoing dialogue between elected officials, their constituents and all other land-related actors including the private sector. For example, the charters would establish arrangements for elected local officials to report on their land-related decisions at specified intervals, and inclusive and transparent processes that those officials must follow in approving proposed investment projects.

There is considerable experience with developing locally negotiated agreements in Senegal, particularly with regard to the decentralised management of natural resources (see e.g. IED Afrique, 2003; Granier, 2006). Local governments have been at the centre of that experience, and in different parts of the country local conventions have been enacted into municipal bylaws. In effect, the project explores the potential for adapting this well-known tool to the governance of land and agribusiness investments.

At the time of writing, activities were at an early stage. Working in collaboration with municipal authorities, IED Afrique was training and supporting 45 community paralegals – that is, community members with basic legal training who can promote awareness about land and investment issues and laws, facilitate local debate and raise "difficult" questions with local authorities.

The work of the paralegals was seen as essential in enabling informed local dialogue about possible local charters, and in accompanying their implementation should those charters be adopted. In Dodel, grassroots discussions about a possible charter were at a more advanced stage, and a draft text was starting to emerge.

Ghana

In Ghana, customary authorities play a central, constitutionally sanctioned role in land governance. They have also been at the centre of much large-scale land deal making. As discussed, the Constitution emphasises the fiduciary duties of the chiefs as custodians of collective lands. However, accountability is often constrained by power imbalances and engrained socio-cultural practices.

Accountability is also constrained by rapidly unfolding socio-economic changes that in many places are eroding traditional arrangements. In this context, efforts to improve accountability in the governance of land and agribusiness investments need to consider customary authorities as a key part of the equation.

The Kumasi-based Land Resource Management Centre (LRMC) initiated activities to test tools for improved accountability in three sites – Daboase (Western Region), Yapei (Northern Region) and the Kadelso, Kawumpe and Gulumpe enclave (Brong Ahafo Region). At the time of writing, the intervention was still at an early stage. It involves developing and testing a guide and checklist to help communities navigate community-investor negotiations, providing pointers for possible contracts but also for local decision-making processes.

Further, the intervention involves supporting community land management committees. These committees would be composed of representatives of customary authorities, elected councillors, youths, men and women, migrants and recognised stakeholders such as local NGOs. The fact that some committee members were migrants – traditionally a vulnerable group in Ghana's customary land relations – reflects an effort to promote inclusiveness.

The committees would play an important role in implementing the guide and checklist – for example, leading participatory land needs assessments prior to granting any land to investors, recognising that demographic growth can expand a community's future land needs. The hypothesis was that, while the signing of any land leases remains the responsibility of customary chiefs, the development of locally agreed arrangements for handling decisions can open up new spaces for local dialogue.

In effect, the committees constitute an attempt to diffuse the concentration of decision-making powers away from the chiefs and improve transparency in the local governance of land and investment. At the time of writing, it was still too early to assess how the local politics around vested interests would play out, and how they could be navigated.

Cameroon

As discussed, Cameroon's legal context differs considerably, as substantial powers and control over land are vested with the central government. As a result, the central government has played a particularly prominent role in making land available to prospective investors.

Barriers to accountability include not only objective constraints determined by law and socio-economic realities, but also local perceptions about distant and inaccessible decision-making fora. Little support is available for rural people to overcome these constraints and perceptions. Yet the law schools are producing new graduates eager to gain new experience and put their legal expertise to fruitful use.

In this context, the Yaoundé-based Centre pour l'Environnement et le Développement (CED) has been supporting the work of "junior lawyers" (*jeunes juristes*), that is new law graduates that are seconded to spend up to six months in the field to assist rural people. The junior lawyers are provided with new training, are hosted by a grassroots-based organisation and are supported on an ongoing basis by CED's more senior staff lawyers.

Once in the field, the junior lawyers are expected to act as a first port of call for advice to villagers and local advocates, and to communicate with CED to deal with more difficult matters. In the past, CED has supported junior lawyers in forest areas, and over the years these junior lawyers have provided legal support in numerous contexts (see Nguiffo, 2012). The intervention involves adapting this approach to the challenges created by land investments. At the time of writing, activities were at a particularly early stage, and arrangements were being made with the host institutions.

National and international lesson sharing

In all the three countries, the field-level interventions are on a small scale, the issues tackled are difficult and politically fraught, and realistic time horizons for any real change are not in line with the project's relatively short timeframe. The intention is to test approaches and to learn and disseminate lessons, rather than provide definitive solutions.

At the time of writing, the main positive effect in the field sites, particularly in Ghana and Senegal, involved creating new spaces for dialogue, and promoting grassroots participation in debates about the governance of land and investment. Beyond the specific tools being tested, this emergence of engaged local "citizenship" might turn out to be the project's most important contribution to advancing accountability. Feeding lessons into ongoing reforms and developing alliances for sharing and collaboration, in the three countries and beyond, are expected to be essential in maximising the impact of the field-level efforts.

3.3 Concluding remarks

Land relations in rural Africa are undergoing profound transformations. The recent wave of land deals for agribusiness investments is one manifestation of these changes. There have been widespread, legitimate concerns about the effects that these developments will have on poorer and more vulnerable groups. There is also real demand for positive change, as many rural people aspire to better livelihoods for themselves and for their children. Much remains to be done to develop models of investment that can respond to both local aspirations and commercial considerations.

Ongoing and expected transformations in rural land relations are a function not only of long-term, structural socio-economic change but also of deliberate policy choices, for example in land governance and in international investment. Agency, not just structure, is at play, and public action matters a great deal. An explicit policy thrust to "modernise" agriculture, often equated with larger-scale, more mechanised farming, has been an important driver of the recent wave of large-scale land deals for agribusiness investments in Africa.

Of course, public action can be more or less effective, it can have intended and unintended consequences, and implementation can take policies in places other than those originally envisaged. But the role of policy in processes of change raises questions about socially desirable directions of change, about how change should be managed, and – importantly – about who should make such far-reaching choices and how. In this context, the challenge of promoting accountability in the governance of land and investment is likely to remain a strategic arena for research and action in the years to come.

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