

**THE EMERGING GLOBAL FRAMEWORK FOR  
THE GOVERNANCE OF LARGE-SCALE LAND-  
BASED INVESTMENT: A LITERATURE REVIEW**

Nanna Lynggaard and Helle Munk Ravnborg

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### **Nanna Lynggaard**

Research assistant

nanna-sara@hotmail.com

### **Helle Munk Ravnborg**

Senior researcher

hmr@diis.dk

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DIIS · Danish Institute for International Studies

Østbanegade 117, DK-2100 Copenhagen, Denmark

Tel: +45 32 69 87 87

E-mail: [diis@diis.dk](mailto:diis@diis.dk)

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## INTRODUCTION

### **Large-scale land-based investments<sup>1</sup> in developing countries: a catalyst for rural development?**

Increased investment, both foreign and domestic, in land since the global spike in food prices of 2007-2008 has sparked debate in policy and academic circles on the opportunities such investments present for development in the rural areas of low- and middle-income countries. The interest in the acquisition of agricultural land is driven by both expectations of the growing demands for food and biomaterials and persistently high food prices. Key actors include agribusinesses and energy companies interested in primary production, financial operators expecting to profit from increasing land values and governments encouraging agricultural investments in order to enhance national food security or promote the production of biofuels (Cotula, 2012). In this scenario, the Global North and the Global South are both sources and sites of investment. While ties of investment span the globe, large-scale land-based investments seem to be located mainly in middle- and lower-income countries. The African continent is especially targeted: of the top twenty land-providing countries, nine are located in sub-Saharan Africa (UNECA, 2013).

Proponents of these on-going investments note how the current interest in agricultural land in sub-Saharan Africa and other developing regions such as East Asia and Latin America presents a range of opportunities for improving rural livelihoods. An influx of capital, know-how and technology could lead to the modernisation of low-yielding agriculture along with the creation of jobs and the strengthening of infrastructure. Thus, in addition to providing business opportunities for companies and institutional investors, the anticipation is that increased land-based investments will catalyse economic activity, enhance food security and generate public revenues. A further hope is that the sourcing of local products and services will lead to improved economic opportunities, including for smallholders, all of which would ultimately contribute to reducing poverty (e.g. Deininger, 2011, Grow Africa Secretariat, 2014; Oya, 2012; Mirza et al., 2014). However, the current pattern of land acquisitions and land-based investments is also a cause for apprehension. As land rights are taken over by investors, rural communities risk losing their means of production and thus their livelihoods,

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<sup>1</sup> The phenomenon of increasing investment in agricultural land was first dubbed 'land-grabbing' (GRAIN, 2008), based on the observation – and fear – that land was being acquired without the informed and free consent of former land-users and without proper compensation. To reflect the fact that investments in agricultural land could also involve 'willing' land transactions, the World Bank introduced the more neutral terms 'land acquisition' and 'land transaction', among others (Deininger *et al.*, 2011). We use the term 'land-based investment' to describe the phenomenon broadly, encompassing a range of transactions from acquisitions to leases, which may contribute to sustainable development under the right circumstances, but may also carry serious harm, socially, economically and environmentally. Throughout the review the terms 'land investment' and 'land deal' are used interchangeably with 'land-based investment'.

while the promise of employment in corporate agribusinesses as farm labourers or indirectly as out-growers or contract farmers may never materialise (e.g. Borras et al., 2011; Li, 2011; Cotula et al., 2014; Deininger and Byerlee, 2011). Thus, activists and scholars have raised concerns over the potentially detrimental effects of land investments, not only in terms of land access, but also with respect to, for example, access to water, arguing that deals are often carried out in a non-transparent manner associated with very low levels of public consultation and with insufficient respect for the rights of rural communities living off the land (e.g. Borras et al., 2010; Cotula, 2012; Narula, 2013; Zoomers, 2010). Rural communities, it is argued, are often at a disadvantage when it comes to negotiating leases or sales agreements with more powerful foreign or domestic investors, especially when the latter's wishes are backed by the host state (e.g. von Braun and Meinzen-Dick, 2009). Underlying factors include weak land governance and administrative systems. In sub-Saharan Africa, land governance is characterised by the uneven and uncoordinated enforcement of national laws, in addition to a complicated and sometimes ambiguous overlap between customary and statutory systems of land management (UNECA et al., 2009). This leaves rural communities vulnerable to infringements of their rights when land is taken over by an investor, just as it leaves external investors vulnerable to local resistance.

## **Governing large-scale land-based investment at the global level**

### **An emerging system of transnational land governance**

In the hope of disciplining investments in land to ensure that rural communities benefit from deals *and* are guarded against their possibly detrimental impacts, a host of actors have engaged in creating new regulatory instruments, especially for transnational investments. As such, land-based investment has emerged as a 'significant issue in contemporary global governance'<sup>2</sup> (Margulis et al., 2013: 1), and also as a controversial issue. Regulatory instruments have been developed by and negotiated between multilateral organisations, states, global civil society and corporate actors, creating an emerging transnational system for the governance of land and land-based investments (Margulis and Porter, 2013: 65). Land-based investment has been taken up in the work of the United Nations (UN) system, especially by the UN's Food and Agriculture Organisation (FAO) and the Committee of World Food Security (CFS); by the Bretton Woods institutions, especially the World Bank; by regional organisations, including the European Union (EU) and the African Union (AU); and at G8 and G20 summits (Margulis et al. 2013: 4). Global civil society, here understood as non-governmental organisations and social movements, has played a key role in documenting cases of human rights abuses in connection with investments in land and in helping catapult the issue of 'land-grabbing' on to the global agenda (ibid., 9-10). The transnational peasant movement, La Via Campesina, and its allies have helped

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<sup>2</sup> For the purposes of this review, we use the term 'global governance' to describe a multi-level, overlapping system for the creation and implementation of policies to regulate transborder issues and/or flows, characterised by the diffusion of authority among a range of state and non-state actors (for a definitional introduction to global governance, see Margulis et al., 2013).

bring rural peoples' own voices into the debate over regulation and have pushed for more inclusive deliberations in global policy institutions (e.g. Brem-Wilson, 2015; McKeon, 2013). The most prominent instruments coming out of the arrival of land on the global governance agenda are the Principles for Responsible Agricultural Investment (PRAI), which respects rights, livelihoods and resources and was developed at the initiative of the G8 by experts from the World Bank, FAO, the UN Conference for Trade and Development (UNCTAD) and the International Fund for Agricultural Development (IFAD); the Voluntary Guidelines for the Responsible Governance of Tenure (VGGT) of Land, Fisheries and Forests in the Context of National Food Security developed through a multi-stakeholder process at the CFS; and the Principles for Responsible Investment in Agriculture and Food Systems, also developed at the CFS and commonly abbreviated as CFS-RAI. At a regional level, the African Union (AU) has issued the Framework and Guidelines on Land Policy in Africa (AU F&G) and the Guiding Principles on Large-Scale Land-Based Investments in Africa (AU Guiding Principles). These regulatory instruments contain a range of voluntary principles to be put into action, mainly by host governments and investors, in order to address the potential risks associated with land-based agricultural investments and to maximise the potential benefits.

### **An emerging field of responsible business and investment governance**

The emerging field of global governance instruments covering land investments is evolving rapidly, making a complete mapping of it close to impossible. Regulation is envisaged at and emerging from multiple institutional sites involving a diversity of actors from the public and private spheres, and targeting different types of investments, actors and issues related to the investment process. Furthermore, instruments designed specifically for land-related investments are adding to an already elaborate field of responsible business and investment governance, which has produced a myriad of regulatory initiatives since the 1990s to ensure that a range of social and environmental concerns are integrated into the operations of businesses and investors. Some of these initiatives have been developed under the auspices of multilateral organisations, including the well-known UN Guiding Principles on Business and Human Rights (UNGPR) and the Global Compact (UNGC),<sup>3</sup> the OECD's Guidelines for Multinational Enterprises (OECD MNE), and the IFC's Environmental and Social Performance Standards (IFC PS). Others, however, are private initiatives spearheaded by industry associations or NGOs, often in some variant of multi-stakeholder collaboration. This includes regulatory initiatives that create standards for individual sectors, crops or products associated with investments in land, such as the Extractive Industries Transparency Initiative (EITI), Bonsucro, the Forest Stewardship Council and the Roundtable on Sustainable Biofuel.

<sup>3</sup> The Global Compact started as a voluntary private-sector initiative, which it still is. It is based on CEOs' commitments to implement universal sustainability principles and to take steps to support UN goals.

## **Aim of the present review**

The aim of the present review is to arrive at an overview of the academic literature by describing some of the most prominent global governance instruments, including their origin and implementation, relating to large-scale land-based investments. This includes instruments designed to deal specifically with land and agricultural investments, as well as those designed to promote responsible business and investment practices more generally, and therefore also applicable to investments in land. Thus, the review examines the scope and nature of the body of academic literature that deals with the development, implementation and current or potential impacts of these instruments and highlights the potential gaps in knowledge in relation to possible further research.

## **Scope and limitations**

Recognising the complexity of the field of the governance of land and investment, the present review concentrates on a *select* group of governance instruments. As such, therefore, it does not present an exhaustive mapping of such instruments but focuses instead on prominent instruments with a global or regional focus developed or endorsed by multilateral institutions. In addition to searching for literature covering specific selected instruments, the review draws on an open-ended search coupling the term 'global governance' with search terms related to land-based investments, thus opening up the review to additional instruments, including private initiatives. These instruments are briefly described in the following section, while a more detailed account of the processes through which they were developed and implemented, prepared on the basis of the literature review, is presented in the section 'Findings'.

# **METHODS**

## **Literature search**

The literature search was carried out using two broad academic databases, namely Web of Science and Scopus, covering the years 2008-2017.<sup>4</sup> Bibliographical details retrieved through this search were exported to Endnote and duplicates removed. In order to compensate for the fact that the academic literature can fall somewhat behind in dealing with the latest developments, a manual literature search was conducted in the archives of the World Bank's 2016 and 2017 Land and Poverty conferences.<sup>5</sup> This selection of sources means that the results consist

<sup>4</sup> The search was concluded in April 2018.

<sup>5</sup> The World Bank Land and Poverty conferences have taken place annually since 2000 and have become one of the largest international events on land governance as a forum where academia, civil society and the public and private sector discuss policy and exchange the latest research. Particularly more recently, the issues of governance and of the impacts of both foreign and domestic large-scale land-based agricultural investments have figured prominently at this conference. At the time our literature search was concluded, the only databases of conference papers that were available on-line were for the 2016 and 2017 conferences.

predominantly of academic, peer-reviewed literature with the addition of some of the newest materials presenting the perspectives of key actors and experts in land governance.

### **Inclusion criteria**

The literature search focused on three sets of governance instruments, namely those specifically developed to guide land-based investments globally (Box 1) as well as regionally (Box 2), and governance instruments more generally addressing responsible business and investment conduct (Box 3). In addition, a search was also conducted for references to governance instruments dealing with water in the context of land-based agricultural investments, focusing particularly on the UN's CEO Water Mandate and the Alliance for Water Stewardship Standard. However, despite growing concerns related to the demand for and distribution of freshwater resources as a consequence of land-based agricultural investments, these literature searches did not yield any results.

#### **Box 1. Selected global governance instruments for responsible land-based agricultural investment**

##### **PRAI**

The Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods, and Resources are the result of collaboration between UNCTAD, FAO, IFAD and the World Bank. Released in a discussion paper in 2010 (FAO et al., 2010), the seven principles are one of the first major initiatives to promote responsible agricultural investment. The premise of the document is the understanding that the lack of rural growth in Africa is related to low levels of investment to increase productivity. As such, 'any investment – public or private, domestic or foreign – in lower income countries and rural areas that can contribute to close this gap is desirable in principle' (ibid.). The PRAI are designed to ensure the smooth facilitation of investments while mitigating the risk of negative social, environmental and economic outcomes. They emphasise the obligation on investors to respect human rights and rights-based codes for responsible business and underline the need to conduct investments in a transparent manner within a proper regulatory environment (ibid.). The PRAI have received endorsement from the G8 and the G20, but have also faced substantial criticism from global civil society for legitimising land-grabbing (Stephens, 2013).

##### **VGGT**

The Voluntary Guidelines for the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security were negotiated from 2009 to 2012 under the auspices of the Committee on World Food Security (CFS). The guidelines were formulated and negotiated through an inclusive process involving stakeholders from government institutions, civil society, the private sector, academia and UN agencies (FAO, 2012). The point of departure that motivated the drawing up of these guidelines was the recognition that tenure systems, whether based on written policies and laws

or on unwritten customs and practices, face increasing stress as the global population grows and as environmental degradation and climate change take their toll of natural resources. The VGGT prescribe secure tenure rights and equitable access to land, fisheries and forests in order to resolve issues of food insecurity and poverty. They provide an authoritative guide to improving the governance of land and natural resources in line with international best practice, thus binding law together with human rights obligations (ibid.). However, some NGOs and social movements have dismissed the guidelines on the grounds that voluntary initiatives are insufficient to prevent land-grabbing (Seufert, 2013).

### **CFS-RAI**

The CFS Principles for Responsible Investment in Agriculture and Food Systems were developed through multi-stakeholder deliberations in the Committee on World Food Security (CFS) during the period from 2012 to 2014. The negotiation of the principles followed a discussion within the CFS in 2010 over whether to endorse the PRAI. According to a broad group of civil-society organisations, some governments, like the US and Japan, were in favour, while others, including South Africa, Egypt on behalf of the Near East group and China, expressed strong opposition due to the absence of an appropriate consultative process. Also the UN's Special Rapporteur on the Right to Food publicly criticised RAI for being 'woefully inadequate', stating that 'it is regrettable that, instead of rising to the challenge of developing agriculture in a way that is more socially and environmentally sustainable, we act as if accelerating the destruction of the global peasantry could be accomplished responsibly.' This ended in the forum deciding to create its own regulatory framework. Rather than making the PRAI its basis, civil society, social movements and a range of G77 countries insisted that the CFS start afresh by developing a framework giving preference to investments coming from or supporting small-scale producers (Stephens, 2013) rather than the larger-scale, often foreign investments, which had appeared to be the starting point in negotiating the PRAI. Thus, the resulting ten principles constituting the CFS-RAI apply to all types of agricultural investments at all stages of the value chain and provide a guide to their regulation in accordance with the human rights framework and other relevant binding and non-binding international regulations. The core concern is to ensure that investments contribute to realising the right to food and sustainable development.

## **Box 2. Selected regional governance instruments for responsible land-based agricultural investments**

### **AU F&G**

The Framework and Guidelines on Land Policy in Africa (AU F&G) (AUC-ECA-AfDB Consortium, 2010) were created by the Land Policy Initiative (LPI), a collaboration between the African Union (AU), the UN Economic Commission for Africa (UNECA) and the African Development Bank (AfDB). Endorsed by the African heads of state in 2009, the framework represents a consensus among governments on the need to revise national land policies and upgrade legal and institutional frameworks to secure their implementation in order to strengthen land rights, improve agricultural productivity and secure livelihoods. The central premise of the framework is the acknowledgement that the governance of land plays a major role in national development. The AU F&G outline best practice in drawing up a land policy, including official recognition and codification, but also the updating of indigenous and informal systems of tenure to secure land rights for customary owners and users *and* to facilitate robust and transparent markets for transfers of rights in land.

### **AU Guiding Principles**

The Guiding Principles on Large-Scale Land Based Investments (LSLBI) in Africa were agreed in 2014 (AU, AfDB and UNECA, 2014), also as part of the Land Policy Initiative (LPI), to provide AU member states with specific guidance on the implementation of legal and policy reforms to land governance and LSLBI. The objective is to create the conditions to encourage land-based investments that contribute to inclusive and sustainable development. This means drawing lessons from related instruments such as the VGGT to ensure that human rights are observed, including by respecting customary rights to land and paying special attention to gender equity. Furthermore, the principles prescribe the careful consideration of different models of investment, but give a preference to short- or medium-term leases as opposed to longer term leases and permanent transfers of land rights, as these are expected to create jobs for local producers, as well as underlining the need for transparent, accountable and inclusive land management.

### **Box 3. Selected global governance instruments for responsible business and investment**

#### **UNGP**

The UN Guiding Principles on Business and Human Rights were endorsed by the UN Human Rights Council in 2011 (United Nations, 2011). The principles define the distinct responsibilities of states and companies to address and prevent human rights abuses related to business operations. They represent a global standard covering companies of all sizes and have become an integral aspect of the agenda for responsible business, as witnessed by their adoption by, for instance, the OECD, the World Bank and the EU.

#### **UNGC**

Launched in 2000, the UN Global Compact is a voluntary network of companies that commit themselves to ten core principles for responsible business covering human rights, labour, the environment and the tackling of corruption. Companies in all industries can sign on to express their commitment to implementing these principles, provided they produce an annual progress report. The Global Compact encourages responsible business practices through education, dialogue and advocacy and enjoys wide recognition.

#### **OECD MNE**

The OECD Guidelines for Multinational Enterprises provide standards for responsible business conduct in a global context that are consistent with applicable laws and internationally recognised norms. Initially developed in 1976, the guidelines have been revised several times. The latest update in 2011 was developed in consultation with a range of stakeholders, including business, labour unions and NGOs, and now includes a new chapter on human rights that is consistent with the UNGP. The adhering countries have officially endorsed the guidelines.

#### **IFC PS**

The IFC Performance Standards on Environmental and Social Sustainability (IFC, 2012) define the responsibilities of IFC (International Finance Corporation) clients in managing environmental and social impacts. According to the standards, developers must set up appropriate systems to identify and mitigate the negative impacts of projects, as well as providing for consultations with stakeholders and for grievance mechanisms. Introduced in 2006, the standards have become a widely recognised benchmark adopted by the majority of financial institutions around the world.

These specific literature searches for governance instruments were complemented by a search in which the specific instruments were replaced with the term 'global governance' in order to retrieve literature dealing with the governance of land-based investments more broadly.

Finally, the archives of papers presented at the 2016 and 2017 Land and Poverty conferences, held at the World Bank, were also consulted. The manual process of identifying the relevant literature started by testing search terms in the conference archives. The search included both governance instruments specific to land and those covering responsible business and investment in general. Then the titles, abstracts and, if necessary, full-text versions were screened in accordance with the review's inclusion criteria.<sup>6</sup>

### **Search strings for Web of Science and Scopus**

*Search for global as well as regional governance instruments covering land-based investments*

In searching for literature on the respective governance instruments, search strings were developed to include both the full name of the instruments and relevant abbreviations. The strings were modified to fit each database (see Table 1 for search strings for global land-based investment-specific instruments and Table 2 for search strings for regional instruments respectively).

*Search for individual governance instruments covering responsible business and investment*

This part of the search sought to identify literature examining the relevance or application of selected responsible investment and business instruments in relation to land-based investments. As such, search strings were developed to combine the names and abbreviations of each instrument with a combination of terms related to land-based investments (see Table 3 for search string).

### **Search results**

Tables 1-3 below present the search strings employed and the results from Web of Science (WoS) and Scopus for searches made with reference to global and regional land-based investment-specific governance instruments respectively, as well as for governance instruments covering responsible business and investment more broadly, but applied in the context of land-based investments. Finally, Table 4 presents the search strings used and results from Web of Science and Scopus for the searches made with respect to global governance in relation to land-based agricultural investments, though without dealing with particular governance instruments.

<sup>6</sup> Due to the manageable amount of material in the two conference archives, the screening was conducted simultaneously with the search.

**Table 1. Search strings and results from Web of Science (WoS) and Scopus databases on global land and agriculture specific governance instruments**

Instrument	Database	Search item	Search string	Number of results
VGGT	WoS	VGGT	('Voluntary Guidelines on Tenure' OR 'Voluntary Guidelines on the Responsible Governance of Tenure' OR 'Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security' OR VGGT OR 'Voluntary Guidelines')	41
	Scopus	Articles or reviews published after 2007 on VGGT	{Voluntary Guidelines on Tenure} OR {Voluntary Guidelines on the Responsible Governance of Tenure} OR {Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security} OR VGGT) AND DOCTYPE ( ar OR re ) AND PUBYEAR > 2007	108
PRAI	WoS	PRAI7	('Principles for Responsible Agricultural Investment that respects rights, livelihoods and resources' OR 'Principles for Responsible Agricultural Investment' OR 'Principles that respects rights, livelihoods and resources' OR (World Bank AND PRAI))	1
	Scopus	Articles or reviews published after 2007 on PRAI	{Principles for Responsible Agricultural Investment that respects rights, livelihoods and resources} OR {Principles for Responsible Agricultural Investment} OR {Principles that respects rights, livelihoods and resources} OR (World Bank AND PRAI) AND DOCTYPE ( ar OR re ) AND PUBYEAR > 2007	55
CFS-RAI	WoS	CFS-RAI	('Principles for Responsible Investment in Agriculture and Food Systems' OR 'Principles for responsible investment in agriculture' OR CFS-RAI OR PRIAFS OR (CFS AND principles) OR ('committee on world food security' AND principles) OR ('committee on world food security' AND (RAI OR CFS-RAI OR PRIAFS)))	64
	Scopus	Articles or reviews published after 2007 on CFS-RAI	{Principles for Responsible Investment in Agriculture and Food Systems} OR CFS-RAI OR PRIAFS OR ({committee on world food security} AND principles) OR ({committee on world food security} AND (RAI))) AND DOCTYPE ( ar OR re ) AND PUBYEAR > 2007	67

<sup>7</sup> Used alone, the abbreviation PRAI was found to provide a large number of irrelevant results. However, when used to refer to the Principles for Responsible Agricultural Investments, the abbreviation PRAI was found to be used in association with the World Bank. Therefore, in the search for PRAI relevant results, the term 'World Bank' was used as the delimiter to include only relevant results in the search.

**Table 2. Search strings and results from Web of Science (WoS) and Scopus databases on regional land and agriculture specific governance instruments**

<b>Instrument</b>	<b>Database</b>	<b>Search item</b>	<b>Search string</b>	<b>Number of results</b>
AU F&G	WoS	AU F&G	('Framework and Guidelines on Land Policy in Africa' OR 'African Union Framework and Guidelines' OR 'AU Framework and Guidelines' OR 'AU F&G')	1
	Scopus	Articles or reviews published after 2007 on AU F&G	{Framework and Guidelines on Land Policy in Africa} OR {African Union Framework and Guidelines} OR {AU Framework and Guidelines} OR {AU F&G}) AND DOCTYPE ( ar OR re ) AND PUBYEAR > 2007	12
AU Guiding Principles	WoS	AU Guiding Principles	('Guiding Principles on Large Scale Land Based Investments' OR 'African Union Guiding Principles' OR 'AU Guiding Principles' OR 'LPI Guiding Principles' OR 'Principles on Large Scale Land Based Investments')	0
	Scopus	Articles or reviews published after 2007 on AU Guiding Principles	{Guiding Principles on Large Scale Land Based Investments} OR {African Union Guiding Principles} OR {AU Guiding Principles} OR {LPI Guiding Principles} OR {Principles on Large Scale Land Based Investments}) AND DOCTYPE ( ar OR re ) AND PUBYEAR > 2007	0

**Table 3. Search strings and results from Web of Science (WoS) and Scopus databases on general human rights based or social and environmental governance instruments in the context of land-based and agricultural investments**

Database	Instrument or Search Item	Search String	Number of results
WoS	Land-based and agricultural investments	('large-scale land acquisition*' OR 'foreign agricult*' OR 'land deal*' OR 'land-based investment*' OR 'large-scale land dispossession*' OR 'farmland investment*' OR 'investor rush*' OR 'land rush' OR ('contract farming' AND investment) OR ('contract farming' AND 'land grab*') OR 'land grab*' OR outgrower OR 'out-grower' OR 'acquisition of land' OR ('water grab*' AND land) OR ('water grab*' AND agricult*) OR (fdi AND land))	
	AND		
	UNGP	('UN Guiding Principles' OR 'United Nations Guiding Principles' OR 'UNGP' OR 'Principles on Business and Human Rights' OR 'Guiding Principles')	0
	OECD Guidelines for MNEs	('Guidelines for Multinational Enterprises' OR 'Guidelines for MNEs' OR 'MNE Guidelines')	0
	IFC Performance Standards	('Performance Standards on Environmental and Social Sustainability' OR 'IFC Environmental and Social Performance Standards' OR (IFC AND 'Performance Standards') OR ('International Finance Corporation' AND 'Performance Standards'))	8
UN Global Compact	('Global Compact' OR UNGC)	0	
Scopus	Articles or reviews published after 1999 on land-based and agricultural investments	(( TITLE-ABS-KEY ( 'large-scale land acquisition*' OR 'foreign agricult*' OR 'land deal*' OR 'land-based investment*' OR 'large-scale land dispossession*' OR 'large-scale investment*' OR 'farmland investment*' OR 'investor rush*' OR 'land rush' OR 'contract farming' ) OR TITLE-ABS-KEY ( 'land grab*' OR outgrower OR 'acquisition of land' OR ( 'water grab*' AND land ) OR ( 'water grab*' AND agricult* ) OR ( fdi AND land ) ) ) AND DOCTYPE ( ar OR re ) AND PUBYEAR > 1999 )	
	AND		
	UNGP	(( {UN Guiding Principles} OR {United Nations Guiding Principles} OR {Principles on business and human rights} OR ungp ))	6
	OECD Guidelines for MNEs	(oecd AND ( {Guidelines for Multinational Enterprises} OR {Guidelines for MNE's} OR {Guidelines for MNEs} OR {MNE Guidelines} ) )	1
	IFC Performance Standards	( {Performance Standards on Environmental and Social Sustainability} OR {IFC Environmental and Social Performance Standards} OR ( ifc AND {Performance Standards} ) OR ( {International Finance Corporation} AND {Performance Standards} ) )	38
UN Global Compact	( {Global Compact} OR {UNGC} )	4	

**Table 4. Search strings and results from Web of Science (WoS) and Scopus databases on (global) governance of land-based and agricultural investments**

Database		Search item	Search string	Number of results
WoS		Land-based and agricultural investments AND Governance	('large-scale land acquisition*' OR 'foreign agricult*' OR 'land deal*' OR 'land-based investment*' OR 'large-scale land dispossession*' OR 'farmland investment*' OR 'investor rush*' OR 'land rush' OR ('contract farming' AND investment) OR ('contract farming' AND 'land grab*') OR 'land grab*' OR outgrower OR 'out-grower' OR 'acquisition of land' OR ('water grab*' AND land) OR ('water grab*' AND agricult*) OR (fdi AND land)) AND Governance	112
Scopus		Articles or reviews published after 1999 on land-based and agricultural investments AND Governance	(( TITLE-ABS-KEY ( 'large-scale land acquisition*' OR 'foreign agricult*' OR 'land deal*' OR 'land-based investment*' OR 'large-scale land dispossession*' OR 'large-scale investment*' OR 'farmland investment*' OR 'investor rush*' OR 'land rush' OR 'contract farming' ) OR TITLE-ABS-KEY ( 'land grab*' OR outgrower OR 'acquisition of land' OR ( 'water grab*' AND land ) OR ( 'water grab*' AND agricult* ) OR ( fdi AND land ) )) AND DOCTYPE ( ar OR re ) AND PUBYEAR > 1999 ) AND ( TITLE-ABS-KEY ( governance ) )	132
Scopus	Global governance	Articles or reviews published after 1999 on land-based and agricultural investments AND Global Governance	(( TITLE-ABS-KEY ( 'large-scale land acquisition*' OR 'foreign agricult*' OR 'land deal*' OR 'land-based investment*' OR 'large-scale land dispossession*' OR 'large-scale investment*' OR 'farmland investment*' OR 'investor rush*' OR 'land rush' OR 'contract farming' ) OR TITLE-ABS-KEY ( 'land grab*' OR outgrower OR 'acquisition of land' OR ( 'water grab*' AND land ) OR ( 'water grab*' AND agricult* ) OR ( fdi AND land ) )) AND DOCTYPE ( ar OR re ) AND PUBYEAR > 1999 ) AND ( {global governance} )	84

In total, 734 results were identified from the searches in the Web-of-Science and Scopus databases, including 192 duplicates, thus yielding 542 unique results.

### **Results of search and screening in Land and Poverty conference archives**

As already mentioned, the Land and Poverty conference archives were also consulted, from which eight references were identified as relevant from the 2016 conference archive and nine from the 2017 archive.

## **RESULTS**

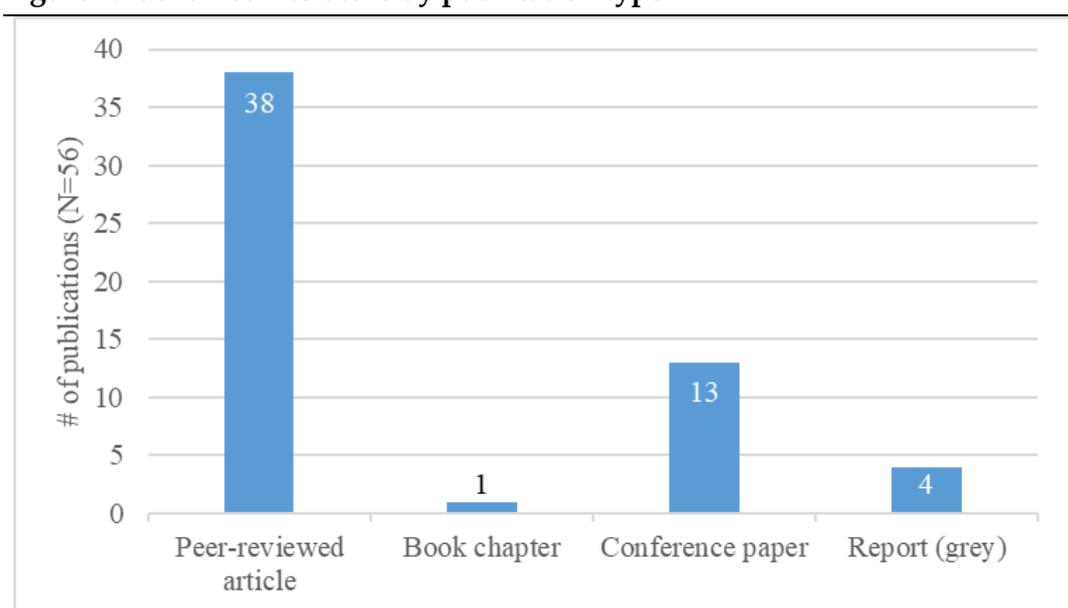
Based on the reading of titles and abstracts<sup>8</sup> of all the results identified from the Web-of-Science and Scopus databases, a first screening was conducted to identify those references that deal specifically with the governance of agricultural investments. A subset of 56 references was established on this basis, broken down further according to type of publication, main theme and governance instrument, geographical focus, the extent to which the publication contains theoretical or background considerations, whether the publication draws upon its own case study or other empirical material, and whether the publication reports on a meta-analysis drawing upon other published results. On this basis, the following section provides a classification of this subset of references.

### **General characterisations of the literature**

The subset of 56 references, identified as relevant according to the inclusion criteria, consisted of 38 peer-reviewed articles, one book chapter, four reports and thirteen conference papers (Figure 1). All the references were published between 2011 to 2017 (Figure 2). While both land- and water-related literature was sought, the literature overwhelmingly deals with governance instruments in relation to land-related issues (54 references); only two references deal with governance in relation to water-related issues.

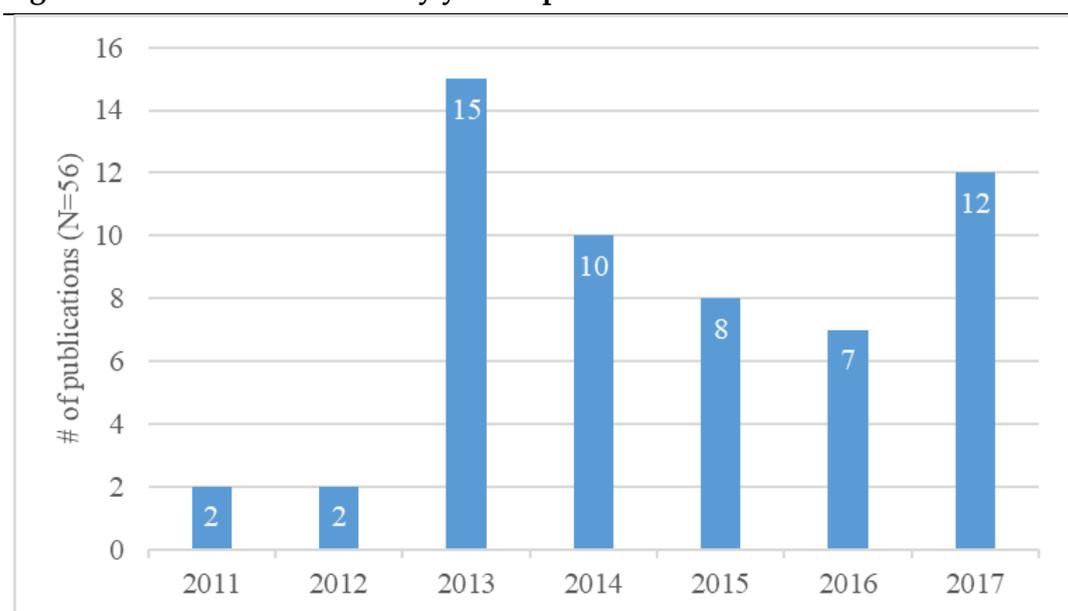
<sup>8</sup> Only references for which English abstracts were available were included.

**Figure 1. Identified literature by publication type**



Note: N = 56 publications

**Figure 2. Identified literature by year of publication**



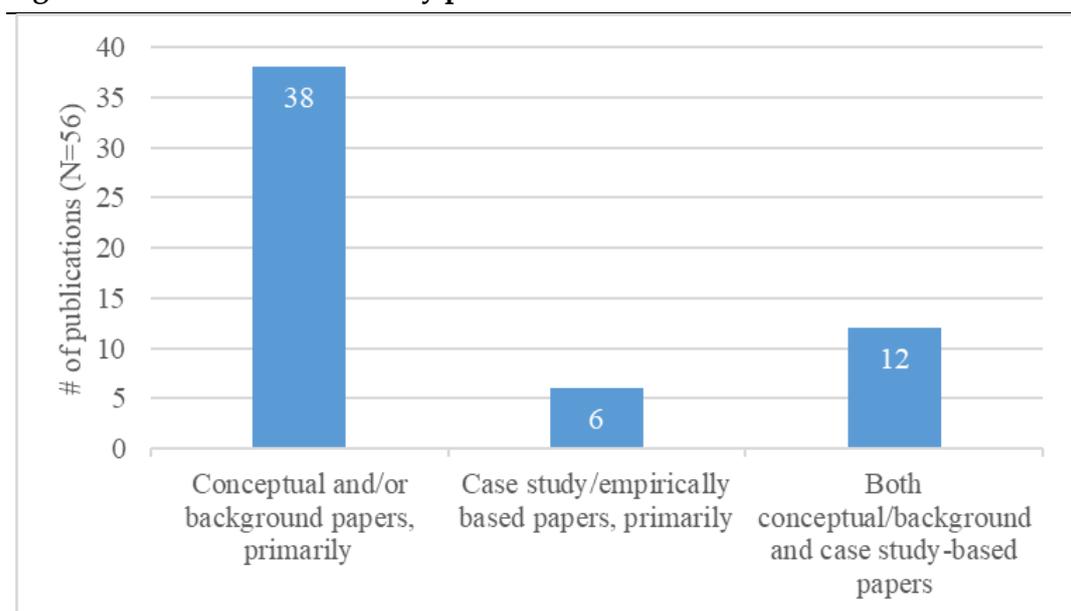
Note: N = 56 publications

Overall, this body of literature contains few case studies (Figure 3). The majority of references (38) are classified as conceptual or background papers, while a further eighteen references were classified as drawing on case studies or other forms of empirical evidence of the implementation or impact of attempts to govern agricultural investments.<sup>9</sup> Furthermore, the distribution of references based on

<sup>9</sup> The two categories are not mutually exclusive, as illustrated, e.g., in Figure 3.

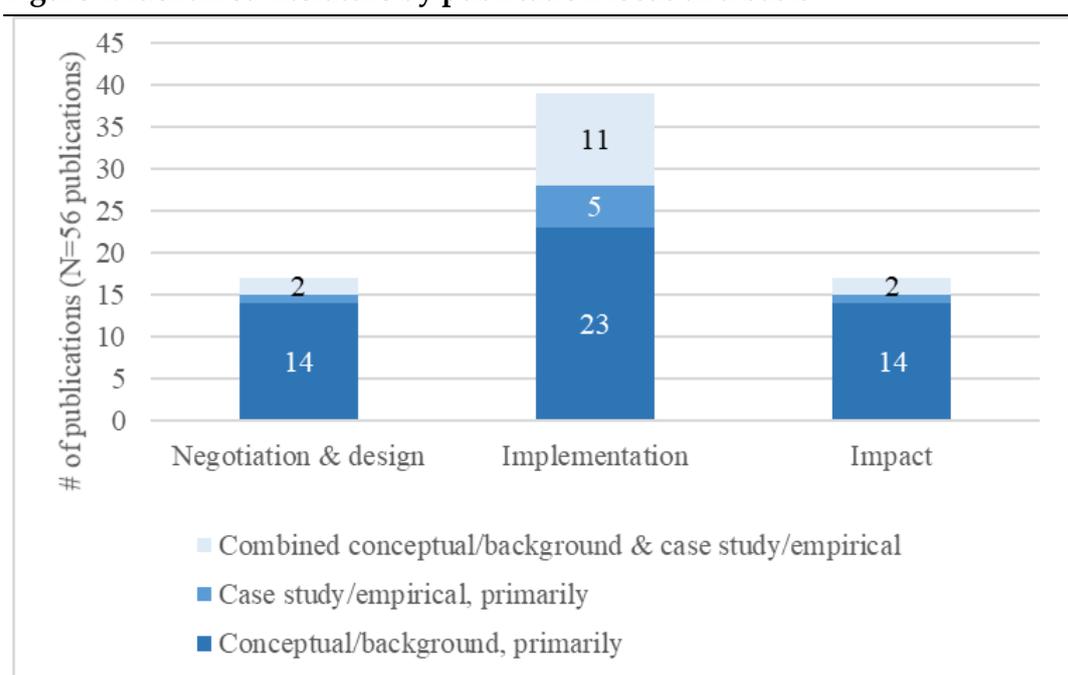
their focus on the negotiation, design, implementation and impact of the governance instruments, or any combination thereof (Figure 4), shows that implementation is the topic most frequently explored, partly through case studies and empirical work, while the negotiation and design of the governance instruments and their (potential) impacts are primarily addressed in conceptual background papers. However, a number of authors of the papers dealing with negotiation processes appear to have been close to those processes, particularly with respect to the VGGT, PRAI and CFS-RAI, resulting in their being quite well described.

**Figure 3. Identified literature by publication basis**



Note: N = 56 publications

**Figure 4. Identified literature by publication focus and basis**



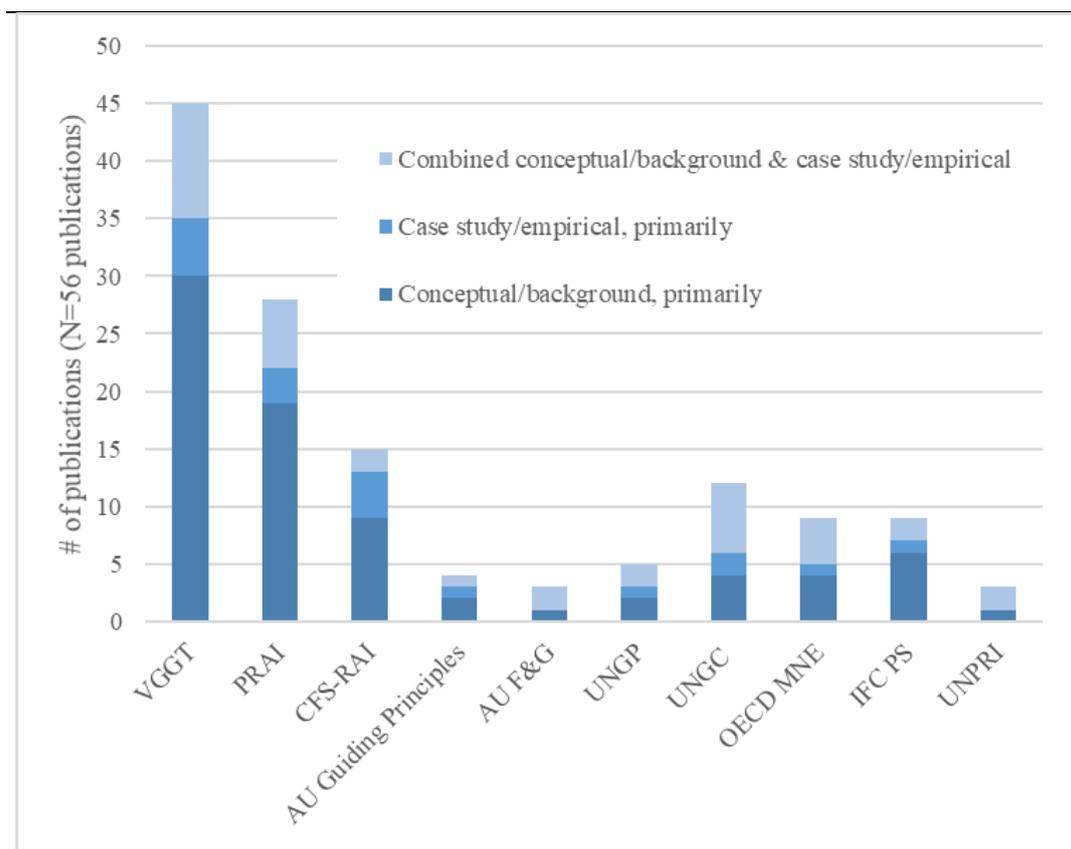
Note: N = 56 publications

The limited availability of case studies obviously reflects the fact that most of the instruments have not been in existence for very long. Many investors, as well as financial institutions, are in the process of becoming aware of and identifying the implications of the new governance instruments such as the UNGPs. Thus, a considerable amount of academic literature focuses on comparing the different instruments in respect of their texts, scopes and mechanisms in order to assess, for example, their potential impact (or lack of impact), while the empirical basis for undertaking this assessment is still in the making.

In terms of the governance instruments covered by the literature (Figure 5), the VGGT is the instrument most frequently dealt with, followed by the PRAI and the CFS-RAI.<sup>10</sup>

<sup>10</sup> The distribution of references by governance instruments was calculated from the number of references that mention individual instruments.

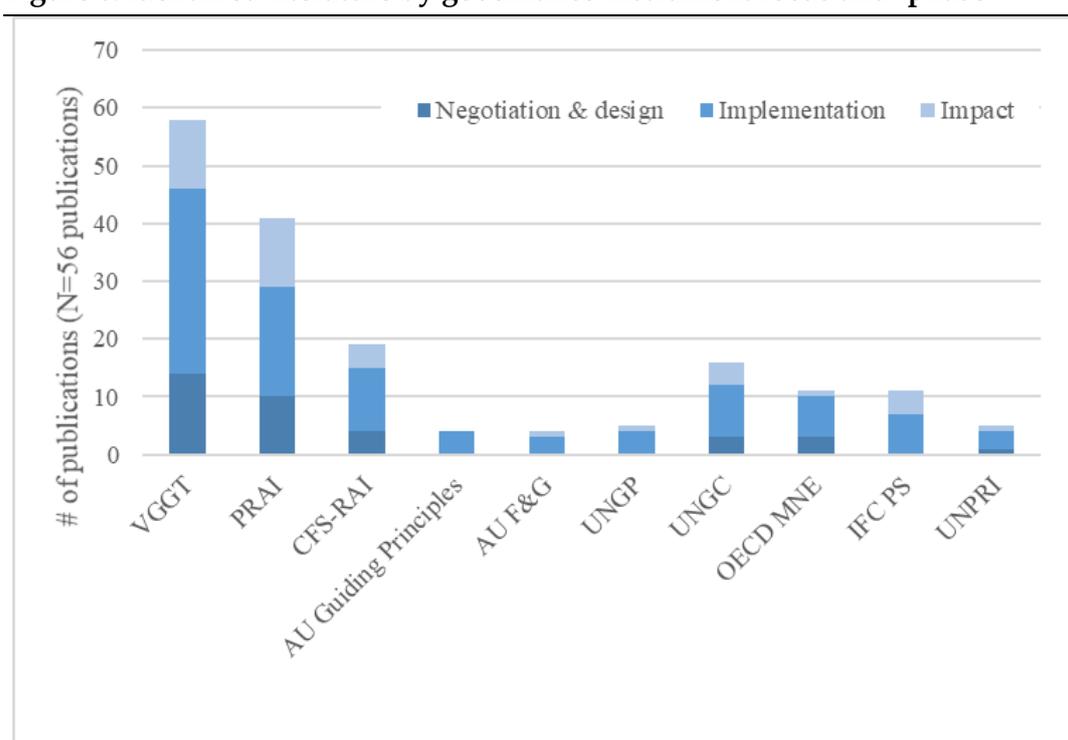
**Figure 5. Identified literature by governance instrument focus and publication basis**



Note: N=56 publications; each publication may focus on more than one governance instrument

In comparison, the two regional instruments developed under the auspices of the Land Policy Initiative of the African Union have received little attention. In fact, no studies were found that cover the negotiation, implementation or impact of these two instruments in any depth (Figure 6). This is also the case regarding responsible business and investment instruments in general, given our focus on agricultural investments. Even though a number of references do provide useful information on the applicability of these instruments to the issue of governing land-based investments (e.g. Boudreaux, 2015, on IFC PS, UNGC and UNGP; German, 2014, comparing a number of voluntary frameworks, including the IFC PS; Vanclay, 2017, and Smyth and Vanclay, 2017, examining the IFC PS in relation to resettlement), the literature offers only sparse elaboration of this topic. As such, the fact that some responsible business and investment instruments score quite high in terms of the distribution of references by governance instrument (Figures 5 and 6) does not imply that the literature concentrates on these instruments in any qualitative sense.

**Figure 6. Identified literature by governance instrument focus and -phase**



Note: N=56 publications; each publication may focus on more than one governance instrument and may address more than one phase

Finally, the body of literature considers a number of private initiatives, including the Roundtable on Sustainable Palm Oil (RSPO) (Bracco, 2015; Byerlee and Rueda, 2015; Voget-Kleschin and Stephan, 2013; Boudreaux, 2015; Fortin and Richardson, 2013); the Roundtable on Sustainable Biofuel (RSB) (Goetz, 2013; Voget-Kleschin and Stephan, 2013; German, 2014; Boudreaux, 2015); the Better Sugarcane Initiative (Bonsucro) (Bracco, 2015; Fortin and Richardson, 2013; Selfa et al., 2014); and the Rainforest Alliance and UTZ (Byerlee and Rueda, 2015; Smaller et al., 2016).

## FINDINGS

### **What does the literature say about the negotiation processes of the individual governance instruments?**

This section summarises the findings from the literature search on the negotiation processes of the selected governance instruments with a view to identifying central actors, agendas and controversies. While the literature covers the central discussions surrounding those of the negotiations that directly target investments in land, i.e. the PRAI, the VGGT and the CFS-RAI, the regional instruments negotiated under the auspices of the Land Policy Initiative have received little attention in this regard. Nor does the literature describe the negotiations of any of the governance instruments that are designed to promote responsible business

and investment in general. This is to be expected, since none of these instruments was created specifically with agricultural investments in mind. As a result, literature describing their negotiations would not include any terms related to land-based investment, therefore failing to come up in our literature search.

As described above, various state and non-state actors have taken part in discussions on land-investment governance globally. The World Bank, the FAO and the African Union have all played a critical role in launching and hosting negotiations for regulatory instruments with varying degrees of inclusion of civil society. The resulting principles and guidelines all tackle similar core issues such as the recognition of customary tenure rights, transparency and the concern to ensure food security, but from different perspectives and coming out of different processes. They describe power struggles of varying intensities between competing actors seeking to influence not just the governance of land investments, but from a broader perspective the governance of rural development as well. Looking at the terrain of the transnational governance of investments in land, Borras and colleagues identified three main political positions which speak to different notions of development and the role of the state in them, namely '*regulate to facilitate land deals*', '*regulate to mitigate negative impacts and maximise opportunities*' and '*regulate to block and roll back land grabbing*' (Borras et al., 2013). These three positions are visible in the negotiations associated with and leading to the four instruments set out below, but they are also likely to compete in interpreting the instruments, that is, judging to what extent they should be translated into action. It should be noted that key state and non-state actors and their political positions are dynamic and constantly changing, meaning they often straddle two or three tendencies at a time (ibid.: 171).

### **Development and reception of the PRAI**

The first instrument dealing directly with land-based agricultural investments to be published was the PRAI, or 'Principles for Responsible Agricultural Investments that Respects Rights, Livelihoods and Resources. Stephens (2013) describes how the principles were drawn up at the initiative of the Group of Eight (G8) in an effort to accommodate the concerns over land-grabbing that spread rapidly in response to a civil-society publication which catapulted the issue on to the global agenda in 2008 (GRAIN, 2008). Public concern over land-grabbing induced the G8 to commit to drawing up principles and best practices for agricultural investments in collaboration with partner countries and international organisations. This quickly translated into action in the form of a Roundtable hosted by the government of Japan along with the World Bank, FAO, IFAD and UNCTAD at the UN General Assembly in September 2009. Attended by representatives of 31 governments and thirteen organisations, including private actors, this meeting produced a blueprint for the PRAI. Stephens notes that, although this blueprint recommended consultation with a range of stakeholders on policy options, the actual drafting process was a 'top-down endeavour' managed by the four multilateral organisations (ibid.:188).

#### **Box 4. Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources (PRAI)**

##### **Principle 1**

Existing rights to land and associated natural resources are recognised and respected.

##### **Principle 2**

Investments do not jeopardise food security but rather strengthen it.

##### **Principle 3**

Processes relating to investment in agriculture are transparent, monitored, and ensure accountability by all stakeholders, within a proper business, legal, and regulatory environment.

##### **Principle 4**

All those materially affected are consulted, and agreements from consultations are recorded and enforced.

##### **Principle 5**

Investors ensure that projects respect the rule of law, reflect industry best practice, are viable economically, and result in durable shared value.

##### **Principle 6**

Investments generate desirable social and distributional impacts and do not increase vulnerability.

##### **Principle 7**

Environmental impacts of a project are quantified and measures taken to encourage sustainable resource use, while minimising the risk/magnitude of negative impacts and mitigating them.

The seven principles were launched in 2010 in a discussion paper issued by the World Bank, FAO, IFAD and UNCTAD. In the opening paragraph of the paper, the organisations behind the PRAI affirm the need for private investment in agriculture, arguing that it is necessary to increase the productivity of smallholder agriculture and thus in effect to reduce poverty in lower income countries. The paper goes on to describe the ‘significant potential’ of such investments as a complement to public resources that have brought benefits in the form of ‘better access to capital, technology and skills, generation of employment, and productivity increases’ to ‘many countries’ (FAO et al., 2010: 1). Suggesting that large-scale investment is the key to rural growth, the paper states that ‘new technology, the emergence of value chains, demands for traceability, the need to adhere to rigorous standards, and consumer demands arguably favour greater scale and integration’ (ibid.). This is consistent with the framing of increasing investment in land as an *opportunity*, characteristic of the ‘regulate to facilitate’ tendency described by Borras et al. (2013). An important aspect of this framing is the assumption that there exist masses of marginal, empty and therefore readily available land in the world amounting, according to a World Bank report from 2010 (published as Deininger and Byerlee, 2011), to somewhere between 445 million and 1.7 billion hectares. From this perspective, any governance solution must facilitate investment through the ‘two most fundamental assumptions in

neoclassical and new institutional economics: clear property rights and functioning of free market forces' (Borras et al., 2013). This translates into a focus on land-titling in order for land transactions to take place within a clear institutional framework (ibid.). As such, the first principle of the PRAI concerns the need for the identification, demarcation, recognition and registration of use or ownership rights to land. However, it is also acknowledged that genuinely unoccupied land is hard to come by and that failure to recognise rights of use, access and management based on custom 'will deprive locals of key resources on which their wealth and livelihoods depend' (FAO et al., 2010: 2). The PRAI recognises the potential negative impacts of large-scale land-based investments, including 'displacement of local populations, undermining or negating of existing rights, increased corruption, reduced food security, environmental damage in the project area and beyond, loss of livelihoods or opportunity for land access by the vulnerable, nutritional deprivation, social polarisation and political instability.' The Principles therefore seek to strike a balance between opportunities and risks (ibid.:1).

Since their launch in 2010, the PRAI have received substantial recognition at the global policy level, for example, through endorsement by the G8 and G20, including in 2010. However, the principles have also been subject to harsh criticism and even outright rejection by certain civil-society groups (Stephens, 2013). Campaigns such as 'Why We Oppose the Principles for Responsible Agricultural Investment', launched by the global food sovereignty movement, have rejected the PRAI as legitimising the corporate appropriation of rural people's farmland (ibid.). In their view, the PRAI are more concerned with enabling a stable investment climate for corporations than with securing rural livelihoods. They point out that the principles are not linked to the international human rights framework and that they undermine the rights of smallholders to secure productive resources to produce and be self-sufficient in food by their own means (Guttal et al., 2011). Several references in the literature mirror this sentiment by providing an academic critique of the PRAI. Margulis and Porter (2013) note how the principles lack 'a normative basis for weighing the different types of risks and [emphasise] a procedural approach where transparency and disclosure are preeminent' (ibid.: 75). Akram-Lodhi (2012) addresses the World Bank report mentioned above, which established the existence of large areas of under-utilised land and underlined the need for private investment to transform low-yielding agriculture (World Bank, 2010). Importantly, he argues, the report represents a shift away from a long established practice within the global public policy institutions that focus on agriculture – the World Bank, the FAO, IFAD and the International Food Policy Research Institute – of promoting smallholder agriculture (based on the often occurring inverse relationship between size of farm and productivity). Since 2007, the World Bank has taken a new approach, one that permeates its attempts to boost private agricultural investment, namely that large-scale, industrialised farms are the answer to the high-yielding food and energy production that will be required in the future. In this context, autonomous smallholder agriculture is no longer to be preferred; rather, petty commodity-producing peasants must be integrated into corporate commodity chains as wage-

labourers, contract farmers or out-growers. For this process to function properly, there is a pressing need for the establishment of 'clear and well-defined property rights in land and water, (...) well-functioning, efficiency-enhancing product and labour markets, (...) [and] an enforceable regulatory framework' (Akram-Lodhi, 2012: 130). Consequently, Akram-Lodhi views the PRAI as an attempt to realise a transition from smallholder production to large-scale, industrial agriculture by establishing the institutional framework mentioned above in the name of the regulation of investment, in effect rejecting the survival of smallholder petty commodity production as a 'distinct and unique form of agricultural production' (ibid.). The UN Special Rapporteur on the right to food from 2008-2014, Olivier de Schutter, has made a similar case against the PRAI, arguing that investment regulation is not the right response to the then recent wave of farmland acquisitions (De Schutter, 2011). In fact, he contends, the burning question is whether rural development is better achieved through completely different measures than large-scale private investment, namely agrarian reform strengthening small-scale farming and equitable access to land and water. When private investment in land becomes a question of risks versus opportunities and when the potential result is measured from a baseline in which the land is considered 'available', 'under-producing' or both, he argues that this introduces a bias in the debate in favour of such investment (ibid.: 258).

Stephens (2013) frames the solutions advocated by PRAI as 'risk-management', saying that: 'The prominence of risks – risks to investors, risks to capital, risk to land rights – is notable throughout the inter-agency discussion paper' (ibid.: 189). Moreover, PRAI refers to different industry self-regulation initiatives, thus emphasising the importance of 'industry-led forms of governance' (ibid.).

### **Development of VGGT**

The impetus to develop the Voluntary Guidelines for the Governance of Tenure emerged with concerns over land-tenure<sup>11</sup> issues in developing countries long before the concept of land-grabbing came to global prominence (Seufert, 2013). In 1999 La Via Campesina, the transnational peasant movement and its allies, launched the Global Campaign for Agrarian Reform (CGAR), which helped to put land reform and the link between land and human rights on the international official agenda, especially at the FAO. The International Conference on Agrarian Reform and Rural Development (ICARRD), organised by the FAO in 2006, was an important next step in that the final declaration adopted by 92 FAO member states underlined 'the fundamental importance of secure and sustainable access to land, water, and other natural resources and of agrarian reform for hunger and poverty eradication' (Seufert, 2013: 182). The conference was in itself an exercise in inclusive participation at the global policy level, an expression of the gradual

<sup>11</sup> Citing the EU Land Policy Guidelines, Paolini and Onorati describe land tenure as a 'system of access to and control over land and related resources'. It determines the rules and rights that govern the appropriation, cultivation and use of natural resources on a given space or piece of land. However, it is not land itself that is owned, but the rights and duties relating to it. The rights and duties held by individuals or families are themselves embedded in a set of rules and norms, defined and enforced by authorities and institutions that may be those of rural communities and/or of the state' (Paolini and Onorati, 2014: 372).

opening to civil society of the policy spaces organised by the FAO (McKeon, 2013). Thus, as noted by Margulis et al. (2013), the ICARRD gathered together states and rural social movements in articulating a common 'new normative basis' for land governance, which underlined not just the importance of secure tenure, but also the recognition of collective land rights and the cultural and social dimensions of land (ibid.: 7). On this basis, the FAO decided to start the process of developing voluntary guidelines for land tenure. This process picked up speed once the issue of land-grabbing caught the attention of the global public in 2008 (ibid.). Formal consultations to identify key issues, options and challenges took place throughout 2009 and 2010 involving ten regional consultations, four consultations with civil society and one with the private sector. Following this, the FAO published a zero draft for open, web-based consultation during which all interested parties were invited to comment (Seufert, 2013).

Meanwhile, the global hikes in food prices and the ensuing food riots that erupted in several places in 2007-2008 revealed a crisis in multilateral governance and highlighted the need for leadership and coordination on transnational food security issues (McKeon, 2013; Müller and Cloiseau, 2015; Paoloni and Onorati, 2014). According to McKeon (2013), the UN moved to fill the governance gap through collaboration with the Bretton Woods institutions and the World Trade Organisation, while the G8 launched its own initiative, but both of these high-level policy responses were strongly criticised by civil society. Instead, the G77 allied with civil-society organisations (CSOs), social movements and the FAO to push for a restructuring of CFS from an 'ineffectual talk-shop' into an inclusive and authoritative global policy forum on food security (ibid.: 108). The reform document adopted in October 2009 included important gains for social movements and CSOs. Key points included recognition of the structural causes of the food crisis and acknowledgement that the CFS would be the foremost international and intergovernmental forum for food security, with the power to make decisions on key food-policy issues. While governments retained the exclusive right to vote on these issues, the right of civil-society organisations to negotiate as full participants was acknowledged (ibid.). As such, the CFS underwent a transformation to become the central international platform for food-security issues, and it opened its multilateral negotiations up to a broader field of participants, including food-insecure populations in the form of organisations representing small-scale food producers. This was an innovative shift in global food policy-making, meaning that '[f]or the first time in the UN history, at the CFS meetings in Rome, civil society organisations and private sector organisations were sitting with representatives of governments around the negotiating table to make proposals and negotiate about food policy issues' (Müller and Cloiseau, 2015: 43). After the CFS reform, civil society pushed to have the VGGT created through intergovernmental negotiations in this body. As such, the first draft of the guidelines was subject to three rounds of negotiations at the CFS before the VGGT was finally endorsed in 2012 (Seufert, 2013).

The resulting instrument contains five general principles and ten principles for implementation (Box 5). Compared to the PRAI, the VGGT is a more holistic framework in the sense that it links the governance of land tenure to the

governance of tenure of other natural resources – an important innovation, since loss of land-use rights ‘brings a wide range of consequences in terms of loss of access to various other natural resources, including water, fisheries, forest woods and others, on which local livelihoods depend’ (Mulleta et al., 2014: 423). However, despite the initial ambition that the guidelines should also specifically address water, this was effectively blocked by some member states (Seufert, 2013).

Whereas the PRAI were introduced because of a concern to avoid and mitigate the potentially negative impacts associated with large-scale land-based investments, the VGGT sprang from the ‘overarching goal of achieving food security for all and to support the progressive realisation of the right to adequate food in the context of national food security’<sup>12</sup> in accordance with the mandates of the FAO in general and the CFS in particular. Despite being voluntary, the VGGT repeatedly make reference to and thus invoke the human rights obligations of states and non-state actors under international law. In comparison, the PRAI make only brief reference to human rights, grouping them under ‘high standards of business practice and ethical behaviour by investors’, along with a range of voluntary CSR initiatives. Also, the VGGT address the gendered implications of land deals, an aspect that was repeatedly highlighted during the consultative process which led to their formulation (Collins, 2014; Daley and Pallas, 2014; Wisborg, 2014). Such aspects are less consistently addressed in the PRAI.

**Box 5. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)**

**General principles**

1. Recognise and respect all legitimate tenure rights holders and their rights.
2. Safeguard legitimate tenure rights.
3. Promote and facilitate the enjoyment of legitimate tenure rights.
4. Provide access to justice.
5. Prevent tenure disputes, conflicts and corruption.

**Implementation principles**

1. Human dignity.
2. Non-discrimination.
3. Equity and justice.
4. Gender equality.
5. Holistic and sustainable approaches.
6. Consultation and participation.
7. Rule of law.
8. Transparency.
9. Accountability.
10. Continuous improvement.

<sup>12</sup> <http://www.fao.org/3/a-i2801e.pdf>

Going back to the classification provided by Borras et al. (2013) of the three tendencies in transnational land-investment governance, namely '*regulate to facilitate land deals*', '*regulate to mitigate negative impacts and maximise opportunities*' and '*regulate to block and roll back land grabbing*', it becomes clear that an instrument such as the VGGT straddles more than one of these approaches to regulation. During the CFS negotiations on the guidelines, representatives of all three governance approaches came together to produce a compromise in the form of a somewhat ambiguous instrument that may be interpreted and practised in accordance with either approach. For instance, CSOs representing the 'block and roll back' approach, were not successful in their attempt to insert a ban on land-grabbing in the guidelines. However, as Paoloni and Onorati note (2014), the final guidelines do contain several safeguards against land-grabbing that can be used to organise local and national resistance. Also, despite efforts by civil society and other actors such as the European Union to incorporate water into the guidelines and the fact that water was in the original title proposed by the FAO, the final document only mentions water briefly (Brüntrup et al., 2014).

### **Development of CFS-RAI**

The VGGT and the PRAI came together in October 2010 at the first session of the reformed CFS (McKeon, 2013). Aware of the legitimacy problems from which the PRAI suffered due to the lack of extensive consultation during their development, the proponents of the PRAI made efforts to obtain the endorsement of the CFS and that of the G77 countries and civil society (Stephens, 2013), representing respectively the countries receiving and the voices opposing the investments. But the social movements that had united behind the Global Campaign for Agrarian Reform (GCAR) continued to oppose the PRAI precisely because of the top-down process through which they had been developed and because they basically saw them as a move to legitimise the corporate take-over of rural people's farmland (McKeon, 2013; Guttal et al., 2011). This led to many civil-society participants calling on the CFS to reject the PRAI. Instead it was agreed that the forum would create its own set of principles for responsible agricultural investment once the negotiations concerning VGGT had been completed (McKeon, 2013). Like the process through which the VGGT had been drawn up, the new set of principles for responsible agricultural investments was developed through an inclusive consultation process based on regional consultations covering governments, UN agencies, civil-society organisations, international agricultural research institutions, private-sector associations, private philanthropic foundations, and international and regional financial institutions (Castellanelli and Cunha, 2015).

## **Box 6. Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI)**

### **Principle 1**

Contribute to food security and nutrition.

### **Principle 2**

Contribute to sustainable and inclusive economic development and the eradication of poverty.

### **Principle 3**

Foster gender equality and women's empowerment.

### **Principle 4**

Engage and empower youth.

### **Principle 5**

Respect tenure of land, fisheries, and forests, and access to water.

### **Principle 6**

Conserve and sustainably manage natural resources, increase resilience, and reduce disaster risks.

### **Principle 7**

Respect cultural heritage and traditional knowledge, and support diversity and innovation.

### **Principle 8**

Promote safe and healthy agriculture and food systems.

### **Principle 9**

Incorporate inclusive and transparent governance structures, processes, and grievance mechanisms.

### **Principle 10**

Assess and address impacts and promote accountability.

The resulting 'Principles for Responsible Investment in Agriculture and Food Systems' (CFS-RAI)<sup>13</sup> acknowledge the need for investment in order to enhance food security and support realisation of the right to adequate food. The principles are anchored in the human rights framework, give particular attention to women and youth, underline the vital role of smallholders and stress that 'Responsible investment includes priority investments in, by, and with smallholders, including those that are small-scale producers and processors, pastoralists, artisans, fishers, communities closely dependant on forests, indigenous peoples, and agricultural workers' (CFS, 2014: 4). Overall, the current body of literature does not go into much detail about the CFS-RAI, probably because this instrument has only recently been adopted. Several authors point out that, like the VGGT, the CFS-RAI are considered legitimate by a wide range of stakeholders due to the inclusivity of their negotiation process (e.g. Brüntrup et al., 2014; Collins, 2016; Mbengue and Waltman, 2015). Also, the principles draw on the language of at least two dozen international treaties, which was expected to make them easier to negotiate and

<sup>13</sup> <http://www.fao.org/3/a-au866e.pdf>

accept (Brüntrup et al., 2014) and which has the added benefit of reinforcing existing legal regimes. As Mbengue and Waltman note (2015), the CFS-RAI demonstrate progress toward greater coherence of the various legal regimes covering investments in land and water rights, for example, international investments and freshwater, environmental and human rights law. By taking issues and language from various international treaties, the principles enhance the chances of coherence in the area of land investment and cement existing law, obligations and rights (ibid.). However, this very aspect of the instrument has troubled some civil-society organisations, who disagree with the simultaneous endorsement of international trade regulations, which they perceive will undermine food security and human rights law (Collins, 2016). Similarly, while some may consider the CFS-RAI to be strong on gender issues (Smaller et al., 2016), others argue that, like the PRAI, they perpetuate a neoliberal notion of empowerment through economic participation, a discourse which may ultimately contribute to deepening existing inequalities (Collins, 2016).

### **Policy responses from the African Union**

While the literature we identified provides an overview of the development processes of the PRAI, VGGT and CFS-RAI, and especially the power struggles within and around the CFS, only one article (Lumumba, 2017) actually provides details of the negotiations around the instruments launched by the African Union. Quoting from the *Framework and Guidelines* document (AUC, UNECA and AfDB, 2010) and drawing upon his own experiences as a civil-society expert who participated in drawing up the text, Lumumba describes how the intended outcome was ultimately to strengthen land rights, enhance productivity and secure livelihoods (ibid.). According to the consortium behind the framework consisting of the AUC, UNECA and the AfDB, the framework was developed through a 'highly consultative process' (AUC et al., 2010:42). This, combined with its endorsement by the highest decision-making organs of the African Union, means that the Framework and Guidelines document is 'widely acknowledged in the continent as a valid and legitimate tool' (ibid.). The document describes how the consultation process started with a continent-wide workshop in March 2006 bringing together land experts, representatives of African governments and their development partners, regional economic institutions, civil society, including farmer's organisations, and the African private sector. The workshop produced a background document summarising the main issues to be addressed by the future land-policy framework. Following the workshop, assessments were conducted within each of the five Regional Economic Communities and were followed by five regional consultative workshops revisiting the initial outline and background document. From this, an enriched draft framework was presented at a meeting of key experts from the land-related line ministries of all AU member states for extensive discussion. A refined draft was then submitted to a meeting of the African ministers responsible for land, who reviewed and adopted the experts' recommendations. This led to the final document, which was endorsed at the AU Summit in July 2009 (ibid.: 3-4).

The description above does not tell us much about the motives involved or the discussions between the different actors in the negotiation process. Lumumba (2017) explains that he contributed to a restructuring of the focus on the land governance system with the aim of 'redressing weak and bad land governance across the continent that gave the impression that Africa had abundant, unused and under-utilised land available to foreign land investors' (ibid.: 17). This indicates a different narrative around land investments than that used as the basic premise for the PRAI. The Framework and Guidelines express an emerging consensus among African stakeholders that developing a land policy is central to economic growth and sustainable development; that, given the highly sensitive nature of land as a political issue, the process of the development, implementation and evaluation of land policies must be as inclusive and participatory as possible; that indigenous and local principles can inform national policies; and that deliberate steps must be taken to ensure the full participation of women, as Africa's main users of land, in policy development and implementation (AUC et al.: 23). German (2014) notes that 'the strong grounding of the African Union Land Policy Initiative in lessons learned from history and the wider scholarly literature suggests a growing awareness within the region and among political leaders of the deficiencies of current land-policy frameworks in safeguarding the rights of customary users, women and other vulnerable communities, and the environment. To the extent that this represents true political will among Member States, it raises some hope that the current tensions between poverty alleviation and market-driven development trajectories will be gradually reconciled' (ibid.: 243). The associated Guiding Principles on Large-Scale Land-Based Investments in Africa (AU et al., 2014) provide specific recommendations for the operationalisation of the more general principles put forward in the Framework and Guidelines document. Although the literature search did not produce any information on the negotiation of the Guiding Principles, the document itself details an inclusive consultation process involving stakeholders such as senior representatives of governments, traditional leaders, civil-society organisations, academia and representatives of the African private sector.

### **What does the literature say about the implementation of governance instruments?**

Overall, the literature does not comprehensively describe the on-going implementation of the individual frameworks. Hence, assessing the state of implementation is not possible from the evidence at hand, especially using a framework-by-framework approach. However, the PRAI and especially the VGGT represent exceptions, since a number of studies presented at the Land and Poverty conferences in 2016 and 2017 concentrate on their implementation, such as Dixie et al. (2016); Brett et al. (2017) on the PRAI and Villarreal (2017), Dabrundashvili (2017), Vhugen (2017), Hilton (2017) and Kaindane (2016) on the VGGT. However, for the most part the references that focus on implementation do so from a theoretical standpoint and mainly in a general sense, describing the various challenges associated with the operationalisation of voluntary governance instruments at different scales.

Based on the literature we identified and reviewed, this section sets out three main challenges to the implementation of the various governance instruments for responsible investment in land. It should be noted that most of the instruments included in our search address the roles and responsibilities of both host states and investors in that they offer a mixture of 1) prescriptions for policy and legal reform, and 2) recommendations for responsible business conduct. However, most of the academic literature that touches on implementation tends to focus either on the host governments or on the business sector. Thus, this section is divided into two parts, focusing first on the implementation challenges at the level of the host states and then at the level of the investors.

### **Implementation at host-state level**

*The challenge: limits to the state-centric approach*

Voluntary frameworks that call for legal and procedural reforms rely on the willingness and capacity of host states to implement and enforce safeguards to protect local communities from potential harm arising from large-scale investments in land. For instance, the PRAI centres on the legal recognition of the existing use or ownership of land, ‘whether statutory or customary, primary or secondary, formal or informal, group or individual’ (FAO et al., 2010: 2). Once such legal rights have been established, recognised and recorded, they can be transferred to investors through lease or sale. The PRAI prescribe measures of good governance to ensure smooth transfers of land rights. Such measures include transparency, monitoring and consultations with all those materially affected in order to produce documented agreements between investors and landrights holders. In a similar vein, the VGGT call for states to ‘identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not’ (ibid.: 3), and to ‘provide and maintain policy, legal and organisational frameworks that promote responsible governance of tenure’ dependent on ‘broader reforms to the legal system, public service and judicial authorities’ (ibid.: 7). Such prescriptions are found in all the frameworks that address the host states. And while some of the latter may need to adopt new legislation in order to meet these recommendations, for others it is a question of the implementation and enforcement of already existing legislation.

A 2011 World Bank study documented a tendency for large-scale, land-based agricultural investments to concentrate in countries with weak governance of the land sector and weak security of tenure (Narula, 2013). Addressing this issue, the AU Framework and Guidelines (AUC et al., 2010) provide a detailed overview of the problems facing many African countries with regard to land governance. These include a lack of coherent, cross-sectoral policy development, leading to uncoordinated approaches and the fragmentation or duplication of authority (ibid.: 2, 21); the co-existence of customary and state systems of land-tenure management (ibid.: 14); land rights delivery systems in various forms of disuse and mismanagement (ibid.: 20); cultures of patronage, nepotism and corruption in land governance institutions (ibid.); and a lack of the capacity to design and undertake comprehensive policy development, coupled with the slow

implementation of new land policies (ibid.: 26, 31). Hence, it is not surprising that voluntary frameworks addressing host states focus on strengthening policy and institutional frameworks around land governance. However, this approach relies on the premise that states that often lack sufficient human and institutional capacity will go through a comprehensive and capacity-demanding process to develop and implement a coherent land policy. As De Schutter noted with regard to the need for intensive capacity-building, while 'the race towards farmland is accelerating, time is the most important limiting factor' (2011: 266).

Of the few case studies identified as part of this review, a significant number focus on the deficient enforcement of land policies in host countries. These include Nolte and Voget-Kleschin (2014), who focus on the gap between de jure and de facto consultation in connection with three land investment projects in Mali; Mkama (2017), who focuses on the inadequate implementation of land investment policy in Tanzania; and Lumumba (2017), who describes the slow implementation of the new land governance system in Kenya, as illustrated by the Yala Swamp land deal.

Scholars focusing on the limitations of legal and procedural reform have criticised the various voluntary frameworks for focusing too narrowly on state regulation. Narula, writing about the PRAI, says that they 'assume a self-executing, trickledown quality of the law wherein top-down processes can effectively navigate entrenched power dynamics' (Narula, 2013: 158). Instead, Narula argues, legal empowerment is much more a question of civil society and bottom-up approaches (ibid.: 159). In a similar vein, Mulleta et al. (2014) observe that the legal entitlements of communities or individuals on paper do not automatically guarantee the enforcement of rights on the ground. Thus, state-centric approaches, such as the PRAI and the VGGT, are criticised for simplifying problems related to land deals as 'regulatory failures' within the control of the host state (ibid.: 423). In a similar vein, and writing from a feminist perspective, Collins (2014) observes that many host states have already passed land reforms and constitutional amendments promoting gender equality in land ownership and political participation, but that women's participation in public fora is still frowned upon in many parts of rural East Africa. This means that, even if women are present at meetings, they are unlikely to participate in the face of threats from their spouses, relatives or the broader community (ibid.: 568). Similarly, noting the huge difference in power between local elites and the rural poor, Voget-Kleschin and Stephan express a concern that guidelines prescribing the involvement of stakeholders may implicate minority elites' claims to represent the poor but not act in the latter's interests (Voget-Kleschin and Stephan, 2013: 1172). A similar concern is raised by Margulis and Porter (2013). What these scholars are suggesting is that, while the emphasis on legal rights of tenure and procedural safeguards such as inclusive consultation and clear contracts is to be recommended, the road from paper principles to local practice is by no means straightforward. What is needed is a steady effort dedicated to the implementation of voluntary principles in a way that is sensitive to the socio-economic, cultural and political environments in which land deals take place, and that acknowledges

that social change depends on the bottom-up mobilisation of weaker and often marginalised groups.

*The challenge: global trade agreements*

Another factor which may hamper the implementation of voluntary instruments is the broader legal regimes that govern foreign investments. Based on a mapping of the system of governance covering agriculturally related FDI at the macro-level, Häberli and Smith note that, while host states are obliged by human rights conventions to protect the food security of their citizens, they are simultaneously legally bound by Bilateral Investment Treaties (BITs) and regional and international investment law that overprotects the investor and under-regulates investments, which they call a 'governance gap' (Häberli and Smith, 2014: 221). For instance, during the pre-investment stage, international investment law does not require the investor to consider the impact of an investment on the food security of the host state. Often, the only legally binding limitation is that the investor must operate in accordance with the existing domestic law of the host state, 'the assumption being that the state already has adequate, enforceable domestic laws in place that would protect human rights and general well-being of its citizens (...)' (ibid.: 204). While the host state may negotiate the terms of the investment to achieve a mutually beneficial agreement, there is a risk that weak host states are so keen to attract 'agri-FDI' that they allow investment agreements that undermine national or local food security (ibid.). In many cases, civil society and affected communities are not able to influence negotiations between host states and investors, as land contracts are agreed without public participation (Coleman and Cordes, 2017). Thus, Coleman and Cordes argue that host states need to disclose land contracts in order to enable affected publics to hold governments and investors to account. As such, both host states and their citizens need more room to affect the negotiation of land deals.

Once the investment has been implemented, BITs oblige host countries to treat foreign investors in a non-discriminatory way and may include prohibitions on performance requirements. As such, host states may be unable to impose conditions related to, for example, restrictions on exports, sales of products within their territories, employment creation or the establishment of joint ventures with domestic participation (De Schutter, 2011). The duties on host states to protect foreign investors can be and are enforced by investors in international arbitration tribunals, but except for some recent treaties, BITs lack binding language allowing host states to create regulations and make no specific reference to sustainable development (Brüntrup et al., 2014). Generally, scholarly analyses of voluntary frameworks with respect to the broader legal frameworks that govern FDI are pessimistic about the potential of non-binding measures to ensure responsible land investment practices. As BITs and other trade agreements work to standardise and, in the eyes of several authors, to narrow the policy space of the host country, they constitute serious constraints on the successful implementation of the voluntary frameworks that aim to regulate investment.

*Recommendations emerging from the literature*

The Global Donor Working Group on Land,<sup>14</sup> which is working to support the implementation of the VGGT, has published a guide for donor countries on achieving policy coherence across their own governments in order to make a concerted effort to improve land governance in partner countries (Wehrmann, 2015). Cross-sectoral coordination is needed in donor countries to align policy and action related to land governance issues, from development cooperation policies to public procurement standards and bilateral trade and investment agreements. The sometimes conflicting divide between, on the one hand, the ‘economic efficiency or fiscal approach’ represented by the ministries of economy, trade and finance interested in promoting domestic business and, on the other hand, the ‘sustainability and human rights approach’ represented by development agencies interested in sustainable development should be addressed through inter-ministerial mechanisms or even multi-stakeholder fora. Wehrmann (2015) finds that common objectives or standards concerning responsible land governance rarely exist nationally. One exception to this is France, which has adopted an official policy stating that ‘[p]rivate investment can be a good leverage, but only if it does not harm the development of smallholder farming’ (ibid.: 21). As another example of good practice described by Wehrman, the ministries of Foreign Affairs and Economies in France have been developing a joint strategy for French companies to follow in doing inclusive and social business in Africa (ibid.: 24). Also, a number of companies have endorsed the VGGT, thereby assuming the responsibility for promoting better land governance (Boudreaux, 2015). Boudreaux, however, questions the value of adopting the VGGT as a new standard unless it is accompanied by new certification mechanisms or funding requirements and comments (ibid.).

#### *The challenge: generating buy-in*

In situations in which host governments are poorly equipped to provide a solid regulatory environment, voluntary instruments for investment governance include welcome rules and recommendations for investors. As part of a risk-management strategy, voluntary instruments may help ensure the sustainability of investment projects in providing guidance for how to manage relations with local communities and institutions. Acknowledging and following internationally recognised frameworks is a way for investors to steer clear of conflicts that may halt operations locally or cause bad publicity in consumer markets, which ultimately may hurt the financial bottom line.

However, the current body of literature points to the fact that voluntary frameworks for responsible land-based investments addressed to investors suffer from the usual weaknesses that are inherent in the voluntary approach to business

<sup>14</sup> Committed to supporting improved land governance worldwide, the Global Donor Working Group on Land was established in 2013, being facilitated by the Donor Platform and currently being chaired by the French Ministry of Foreign Affairs. The Global Donor Working Group on Land is a network of 24 bi- and multilateral donors and international organisations cooperating on land-related issues worldwide. Its core functions are to improve coordination and knowledge exchange on land governance programmes, and to jointly advocate the relevance of land issues in policy processes which affect international development. See <https://www.donorplatform.org/land-governance.html>

regulation. While the uptake of CSR and the notion that businesses can and should contribute to global development have prompted corporations and investors to take on new responsibilities, the fact remains that most of these responsibilities are operationalised through self-regulation. Voget-Kleschin and Stephan see the voluntary nature of this situation as its 'main downside', as principles, guidelines and certifications are not legally enforceable (Voget-Kleschin and Stephan, 2013: 1171). Investors may choose to follow such frameworks to 'avoid civil unrest and political instability in their investment regions, or because of pressure from consumers, non-governmental organisations and the media', but they do not have to do so (ibid.). Fortin and Richardson make the same point about certification schemes, noting that there is nothing requiring companies to sign up and that even the established schemes cover only small fractions of their designated industries (Fortin and Richardson 2013:145; see also Byerlee and Rueda, 2015). Clapp (2017) links low participation rates in voluntary CSR initiatives with the weakness of the 'business case'. There is mixed evidence as to whether the incorporation of environmental and social considerations into a firm's management or financial investment leads to a better financial performance. Thus, the impetus to engage in voluntary frameworks applies to only a small subset of all firms, namely those that have adopted environmental and social responsibility as a key feature of their business models and products, or high-profile firms whose brand reputation is at risk if they do not demonstrate responsibility to the public (ibid.). Bledsoe et al. (2016) describe how external criticism, often championed by a variety of vocal NGOs, has prompted companies like Coca-Cola and Illovo and other corporations to formulate policies and commit to international land-governance guidelines and practices (Bledsoe et al., 2016).

Besides low participation rates, common issues addressed in the current literature on voluntary frameworks include:

- the complexity arising from the large number of different frameworks serving the same or similar needs, which allows investors to pick and choose and may, in the case of member-funded frameworks such as certification schemes, lead to a lowering of standards in order to attract members (e.g. Clapp, 2017; Fortin and Richardson, 2013; German, 2014; Voget-Kleschin and Stephan, 2013);
- the legitimacy of investor self-regulation, i.e. the legitimacy of non-state actors to set standards, and the extent to which stakeholder inclusion and accountability mechanisms may increase the legitimacy of voluntary frameworks (e.g. Byerlee and Rueda, 2015; Fortin and Richardson, 2013; Voget-Kleschin and Stephan, 2013); and
- the substance of frameworks, i.e. whether the focus on legal rights, transparency and procedural justice actually translates into social justice on the ground (e.g. Fortin and Richardson, 2013; Voget-Kleschin and Stephan, 2013) and whether voluntary principles are too imprecise and broad in scope to be effectively implemented (e.g. Clapp, 2017; Goetz, 2013).

### **Recommendations emerging from the literature**

As is the case with host governments, clear guidance is needed (cf. Bledsoe et al., 2016, who, referring to the case of the sugar producer Illovo, identify the need for more specific ‘how to’ guidance in the effort to implement overarching principles such as the VGGT and the UNGP). On the other hand, Smaller et al. (Smaller et al., 2016) show that private standards may be easier to implement due to their being more specific in terms of indicators and monitoring (see also Gollinelli, 2016). Such private and voluntary standards may also find their way into legislation and thus be promoted and strengthened accordingly. For example, in order to promote sustainably sourced biofuels, the EU Renewable Energy Directive (RED) in effect turns voluntary standards into partly mandatory standards (Bracco, 2015). The RED requires the EU to source at least 20 per cent of its total energy needs from renewables by 2020, to be achieved through the attainment of individual national targets.<sup>15</sup> According to the RED, biofuels, as one form of renewable energy, must conform to sustainability criteria in order to receive government support or count towards the mandatory national targets. The EU Commission has approved a number of voluntary frameworks (e.g. Bonsucro, the Roundtable on Sustainable Palm Oil, the Roundtable for Responsible Soy) which meet the sustainability criteria and may be used by companies to demonstrate compliance.<sup>16</sup> This is one way to overcome the weakness of the voluntary approach to business regulation; yet curiously, Bracco’s examination shows that only a minority of EU investors that have acquired land for biofuel purposes in Africa have joined an EU-approved voluntary framework (Bracco, 2015; see also German, 2014). Finally, several authors point to the fact that certification schemes, even if voluntary and difficult to implement, can bring discursive power to NGOs and civil society at large in their advocacy of better land deals, scrutiny and transparency (Byerlee and Rueda, 2015; Fortin and Richardson, 2013; Goetz, 2013).

### **What does the literature say about the current and potential impact of governance instruments on directing investments and their societal outcomes?**

The literature on impact mainly adopts a theoretical standpoint, the small number of case studies we found being insufficient to produce a coherent and conclusive assessment of the impact of the individual instruments. Furthermore, those studies that hypothesise about potential impacts tend to review several instruments at once, often covering a mixture of legal regimes, including human rights, private standards and investment treaties, meaning that the total amount of information about any one instrument is limited. As such, it is not possible to assess the potential impact using a framework-by-framework approach from the evidence at hand.

Two general trends, however, emerge from the existing literature addressing the issue of impact. The first trend is the tendency to review and compare instruments from various legal regimes in order to hypothesise about their potential impact, most often based on formal features such as the range of issues covered, the reach

<sup>15</sup> <https://ec.europa.eu/energy/en/topics/renewable-energy/renewable-energy-directive>

<sup>16</sup> <https://ec.europa.eu/energy/node/74>

or level of participation and the mechanisms for enforcement. The second trend encompasses studies that, taking a broader perspective, question the regulatory approach, which posits governance as the solution to the problems associated with large-scale land-based investments. These tendencies may co-exist in the same reference, but they are treated separately in the next section.

*Reviewing and comparing instruments from various legal regimes*

Clapp (2017) provides a preliminary assessment of the likely success of the PRAI, the VGGT and the CFS-RAI in curbing the negative impacts of land-based investments, comparing these with instruments for responsible business and investment. She states that they are all likely to suffer from similar weaknesses (as described in the section above on implementation by the investors) that are inherent in the voluntary approach, including low participation rates, weak requirements and a lack of enforcement mechanisms. Furthermore, Clapp observes that responsible investment 'is not just about altering the behaviour of firms engaged in agriculture, but also the behaviour of financial investors and financial institutions' (ibid.: 231). Large numbers of agricultural investments come from these financial actors and are rooted in complex financial derivatives that make it difficult to link investors with impacts on the ground. Since the PRAI, the VGGT and the CFS-RAI do not provide specific measures to ensure responsibility for financial investments in agricultural derivatives, they will not help to shift practice in this area – 'a major category of financial investment in the [agricultural] sector' (ibid.: 233). Based on these weaknesses, Clapp concludes that 'there is a strong likelihood that voluntary governance initiatives for responsible agricultural investment will shift discourse more than they will change practice' (ibid.).

Brüntrup et al. (2014) compare five types of legal instrument for the regulation of land-based investments, namely human rights, international investment treaties, global water governance regimes and bi-/multilateral river treaties, private standards, and voluntary guidelines, including the VGGT and the CFS-RAI. They argue that the VGGT and the CFS-RAI offer opportunities for better governance of both land and investments in land by providing schemes for states to develop their own policies, and that they constitute normative frameworks through which governments, civil society, the private sector and citizens may evaluate the proceedings of land-based investments. Moreover, they offer the necessary guidance on both politically sensitive and technically complicated issues such as the governance of tenure and constitute important advocacy tools. However, Brüntrup et al. also point to the non-binding nature of these instruments, their lack of formal enforcement mechanisms and the superficial treatment of water-related issues as the major drawbacks (ibid.). Ultimately, they conclude, of the five types of legal instrument, no single approach can mitigate the multitude of risks associated with large-scale land-based investments. As noted above, some international investment treaties may actually hamper the impact of voluntary guidelines. What remains to be seen is how voluntary guidelines trickle down to the local level, and particularly whether and how they become useful tools for empowering poor stakeholders (ibid.).

German (2014) reviews the formal features of the IFC Performance Standards, the VGGT, the PRAI and the African Land Policy Initiative (LPI), among other instruments such as private standards and responsible investment initiatives. She notes that the multilateral initiatives have a large potential reach in terms of sectoral coverage and in the range of actors they address in that the LPI targets all African Union member states, while the VGGT and the PRAI target all UN member states. Yet, neither the AU nor the UN can trump member-state sovereignty, meaning that the adoption of these instruments is entirely up to individual governments (ibid.). In the case of the LPI, AU member states have made an 'over-arching political commitment [...] to undertake and provide adequate financial support to land policy development and implementation processes' (ibid.: 236). With regard to the VGGT, German states that the implementation efforts made to date have focused on generating buy-in across the board from the different actors involved in their inclusive formulation process and through official endorsement in fora like the G20, Rio+20, the UN General Assembly and the Francophone Assembly of Parliamentarians. Host governments are tasked with identifying or creating multi-stakeholder platforms to implement the guidelines with the support of UN agencies and development partners (ibid.). From the references to the Land and Poverty conferences, we know that this process is underway in countries like Sierra Leone, Senegal and Mongolia, and that, according to the FAO, the application of the VGGT through the establishment of these multi-stakeholder platforms is helping to create a culture of good governance based on participation, transparency and accountability in the areas of land, fisheries and forestry (Villarreal, 2017).

Concerning the PRAI, German argues that, besides raising awareness among stakeholders during their formulation, the 'only implementation mechanism [...] is their promotion through meetings of the Committee on World Food Security' (German, 2014: 237). In fact, the inter-agency workgroup (IAWG) bringing together the FAO, IFAD, UNCTAD and the World Bank is carrying out a research programme on a number of new and existing large-scale land-based investments in order to generate empirical knowledge on the many possible social, environmental and economic outcomes of agricultural investments and the barriers to implementing the PRAI. The lessons learned here feed into an upcoming set of 'Knowledge Notes', which are intended to provide easy-to-use, practical guidance for governments, investors, communities and civil society on specific issues relevant to the operationalisation of responsible agricultural investment principles. The first six Knowledge Notes to be drafted are 'Designing Mutually Beneficial Outgrower Schemes', 'Screening Prospective Investors', 'Social and Environmental Impact Assessment and Management Plans', 'Economic Linkages' and 'Alternative Business Models Technology Transfer' (Brett et al., 2017).

The FAO has also produced learning materials such as technical guides on sub-themes related to VGGT implementation, e-learning modules and capacity development programmes for CSOs and indigenous peoples (Hilton, 2017). However, as German (2014) argues, 'it remains to be seen how these multilateral initiatives will perform in practice as an instrument of governance' (ibid.: 237).

Given the collective potential for impact, German concludes that the multilateral instruments are strong in scope, that is, relatively comprehensive and broad, their reach being extensive (but non-binding), while the mechanisms for implementation are weak in that they are completely voluntary and subject to the goodwill and buy-in of host states and investors. In line with Brüntrup et al. (2014), German argues that their comprehensive nature could make them a valuable tool for different actors in creating a greater understanding of how to develop democratic forms of land governance and more responsible investment in land, although their impact will ultimately depend on the efforts of governments, multilateral organisations and financial institutions, as well as civil-society advocates (German, 2014).

Voget-Kleschin and Stephan (2013) review voluntary instruments for responsible agricultural investments, including the PRAI and the OECD MNE, against six criteria for social and environmental sustainability rooted in the human rights framework. They conclude that, while the voluntary instruments address the most important issues which could be said to form the minimum requirements for responsible large-scale investments in land, with a tendency to stress the social over the environmental aspects, the criteria for both aspects should be broadened. Like Brüntrup et al. (2014) and German (2014), Voget-Kleschin and Stephan (2013) underline the fact that guidelines are only effective to the extent that the prevailing institutional set-up allows them to be used. As mentioned above in the section on implementation, they join those scholars who question whether the emphasis in voluntary guidelines on procedural safeguards will translate into practice in countries that are characterised by weak institutional conditions. Simply put, voluntary guidelines may not be implemented 'as they are theoretically intended and their criteria may be ineffective due to political and power constellations' (Voget-Kleschin and Stephan, 2013: 1172). Interestingly, the authors see the VGGT, with their broad scope for improving resource tenure, as a potential bridge to the institutional and procedural development necessary for guidelines for responsible investments in land to work (ibid.).

#### *Reviewing the regulatory approach*

The second tendency in the literature on impact encompasses a range of criticisms levelled at the notion that governance is the solution to the problems associated with large-scale investments in land. Though, as noted earlier, the instruments under review may be interpreted differently by various actors, they all subscribe to the idea that proper governance can mitigate the risks and unlock the benefits of investments in land. The 'flurry' of global regulation-making in the wake of the emergence of land-grabbing on to the global agenda (Margulis et al., 2013: 4) and the fact that voluntary instruments are created and promoted by some of the most prominent global institutional actors means that investment regulation has become the chief policy answer to land-grabbing. However, critical scholars and parts of global civil society question this approach.

As discussed in the section on negotiation above, Olivier De Schutter, who served as UN Special Rapporteur on the right to food from 2008 to 2014, has argued that

weak governance is not the main problem connected with land grabbing, but rather the notion that development is best achieved through large-scale transfers of land rights, which should be examined critically (De Schutter, 2011). He therefore criticises attempts to regulate land-grabbing as if it were inevitable and instead seeks to promote an alternative programme for agricultural investment that strengthens the food security of small-scale farmers. As such, De Schutter agrees that investment in agriculture is needed, but he connects the deals taking place with export-led farming, which, he contends, will not help strengthen local and domestic food security. Moreover, the governance instruments targeting investments in land stress the recognition and registration of land rights, mirroring the emerging consensus that security of tenure must be strengthened. However, De Schutter emphasises the difference between security of tenure and the creation of a market for property rights in land, which tends to align with the World Bank's approach to the regulation of land-grabbing. For De Schutter, the strengthening of tenure security should be separated from the commodification of land, as the creation of land markets is likely to usher in a concentration of land in the hands of the powerful at the expense of the poorest farmers (ibid.). Ultimately, De Schutter calls for a different vision of development from that underpinning the attempts to manage large-scale land investments that prescribe measures of good governance while accepting – and perhaps even promoting – the commodification of land.

As described earlier, Akram-Lodhi (2012) makes a similar case against the World Bank's approach and indeed, against the notion of investment governance as solution. Coming from the perspective of agrarian political economy, Akram-Lodhi frames the problem in terms of the capitalist reconfiguring of farming systems associated with the increase in global farmland investment, which replaces traditional smallholder production with large-scale corporate agriculture. He, like other critical scholars, likens this process to what Marx termed 'primitive accumulation' and what David Harvey describes as 'accumulation by dispossession,' meaning the incorporation of land and other resources into the process of capital accumulation by enclosing and dispossessing the former users (Akram-Lodhi, 2012, citing Marx, 1976, and Harvey, 2010). The dispossessed rural populations then have no choice but to become waged labourers at a time when 'the capacity of waged labor to provide an adequate, secure and stable livelihood in many developing capitalist countries may be open to question' (ibid.: 130).

Thus, for both De Schutter and Akram-Lodhi, the pragmatism symbolised by instruments such as the PRAI, which ultimately do not question whether large-scale investments in land should even take place, but seek to find ways for it to continue responsibly, carries the huge risk of turning vulnerable populations into losers, thus failing the principle of inclusive rural development. Akin to this, Mulleta et al. (2014) also criticise the regulatory approach to land-grabbing, citing objections that blueprint standards and guidelines fix only the superficial problems of land deals, while allowing the underlying issue of the commodification of land to continue at the expense of the rural poor. They cite Borras and Franco, who describe this as 'a dangerous diversion of attention from "substance" (the central issue of power asymmetry in social relations, as well as

structural problems on the nature of investments) to “form’ (superficial issues of investment governance like: lease of how many years?; compensation of what amount?; what form of commercial presence?; which modality of land transfer and others)’ (Borras and Franco, 2012, cited in Mulleta et al., 2014: 418). This is consistent with Li’s conception of the regulatory or governance approach, taking ‘a complex political economy problem driven by unequal power’ and parsing ‘it into components that can be addressed by technical means’ (Li, 2011, also cited in Mulleta et al., 2014). Thus, Mulleta et al. interpret both the PRAI and the VGGT as attempts to condition land deals through rule-making and legislative innovation, thus assuming that more or better state regulation may fix the issues associated with land deals. However, rules act differently in practice than on paper, and are always subject to negotiation. Thus, what really matters in the context of securing the land rights of rural populations, especially those of weaker groups, is strengthening their ability to advocate for themselves (Mulleta et al., 2014).

Viewed from this perspective, if the problem is not how to manage investments, but the fact that a different development model is needed in order to achieve poverty eradication and food security, the array of governance instruments promoting responsible investment in land is an answer to the wrong question. For these scholars, the issue is not how to make investments in land more responsible, but to envisage a different model of rural development based on democratic access to resources. Actually, this tension may be inherent in governance instruments like the VGGT. As Borras et al. have noted, the VGGT are of interest here because on the one hand they could help fix superficial problems around land deals and promote the commodification of land, while on the other hand they could be used to implement transformative agrarian reform that is based on more democratic access to resources. In this vein, Akram-Lodhi calls the FAO ‘institutionally schizophrenic’ in supporting both the PRAI and the VGGT. Yet, the ambiguity is very much evident in the VGGT themselves, as they straddle two separate visions.

## **CONCLUSIONS**

Particularly in light of the fact that the literature we identified on the emerging governance framework in the context of foreign land-based agricultural investments still builds on a relatively limited empirical basis, the literature review has shown that it is still too early to assess, let alone draw conclusions about, the actual impact of the emerging rights-based governance framework when it comes to regulating land-based agricultural investments.

Nevertheless, a significant part of the literature agrees that these frameworks, particularly the VGGT, represent a new regulatory approach. First, these voluntary frameworks seem to have been effective in influencing public debates over large-scale land-based agricultural investments and their social impacts and obligations. In particular, peasant and land rights-focused civil-society

organisations have used the VGGT as a vehicle to bring their concerns into a broader and often international arena.

Margulis and Porter (2013) argue that transnational arrangements such as the VGGT provide significant opportunities for the poorest farmers to enhance the protection of their land rights. The efforts of global civil society and peasant organisations to support the Voluntary Guidelines and subsume the PRAI serve as an example of this. Focusing on the 're-emergence' of land at the centre of development policy and practice, partly due to the increasing political influence of (trans)national agrarian, environmental and food justice movements, Franco et al. (2015) describe how the VGGT has 'shone a light on the human rights and land angle' and argue that international institutions, including conventions or treaties, can be critical political resources for the people experiencing marginalisation in making claims to land in settings where national land laws are not that pro-poor. In such settings, international conventions can become a mobilisation repertoire aimed at remedying this situation through political engagement. At the more concrete level, McKeon (2013) describes how Senegalese peasant organisations and their civil-society allies drew on the VGGT to oppose land-grabbing and to call candidates in the 2012 presidential election to account over land access issues. Barely ten days after the adoption of the Guidelines, the same national peasant coalition in Mali, whose president had expressed doubts about the Voluntary Guidelines' efficacy eighteen months earlier, was calling on the government to respect their provisions in the national land-tenure law being drafted at the time.

Second, although considered a weakness by many, the literature bears witness to a growing recognition that this very feature of being voluntary may turn out to be a strength of the emerging governance frameworks by addressing land-based agricultural investments. By influencing public debates over large-scale land-based agricultural investments and thus affecting normative standards, it seems that frameworks such as the VGGT and private initiatives such as the Roundtable of Sustainable Biofuels are gradually being incorporated into harder law and regulatory frameworks. Cases in point include the EU Renewable Energy Directive (RED), which, as described above, turns voluntary standards into mandatory requirements, and current initiatives in, for example, France to turn due diligence over human rights, part of the voluntary UN Guiding Principles on Business and Human Rights, into a legal requirement. In the context of the VGGT, McKeon (2013) describes how China decided to join the process of negotiating the VGGT in recognition that, despite their voluntary nature, China could see itself also having to adapt to the guidelines 'once the ink was dry'. Also referring to the VGGT as a flexible tool in achieving policy objectives, Paoloni and Onorati (2014) propose that states and other actors may undertake voluntarily to do what they would be less willing to do if they faced a legal obligation. In this way, soft law may have an impact on policy development and practice precisely because of its lack of immediate legal effect, as well as by exercising an informally 'soft' but nonetheless strong normative influence.

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