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THE BUSINESS CASE FOR TRANSPARENT LAND DEALS

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Abstract

The paper explores the ‘business case for transparent land deals’, starting with an analysis of the hypotheses underlying arguments in favor of such a business case. There may be a business case but not for all investors. There is a need to clearly distinguish between different types of investors more clearly. A typology for investors is proposed. There are major differences between these investors with respect to their attitude towards business risks and their business interest in transparent land deals. For many investors there is no obvious business case for being transparent: individuals and families investing their own money, many private equity funds and commodity traders/processors. A clear business case for transparency will be found in investors with vulnerable consumer brands, companies strongly regulated in their home country and funds that invest public money.

Self-regulation through voluntary standards will not be successful. Weakly governed countries attract companies with no interest in transparency and the companies that have an interest are not there. In such countries, there is no business case for transparency, but it can be created in public-private partnerships with civil society involvement. A Land Transparency Initiative create such partnerships and develop effective and legitimate procedures for transparent land deals, not on a voluntary basis but included in legislation and institutional structures. Only then will there be a business case for transparency.

Keywords:

Land acquisition, investment in agriculture, transparency, land rights, investment funds, business case for responsible investment.

About the Author

Dr. Reinier de Man (1948) was trained in chemistry and holds a PhD in social science. After working at several Dutch universities, he started his career as an international consultant for sustainable business development. His specializes in organizing sustainable commodity supply chains, mainly for agricultural commodities such as timber, palm oil, soy and cotton. For WWF, Unilever and partners, he set up the Roundtable on Sustainable Palm Oil (RSPO). Since 2010, he has been working on land related issues in agricultural commodity standards, mainly for SDC, Berne (Switzerland).

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Names of companies and organization have been mentioned in this paper to underline certain hypotheses. Most of these hypotheses are based on secondary sources only, mainly from civil society organizations campaigning against ‘land grabs’. Other information sources are hardly available. Therefore, this paper can only postulate hypotheses with a certain degree of plausibility. The author does not necessarily agree on the information and conclusions in reports quoted and is certainly not in a position to make any moral judgments on the acceptability of the companies’ land acquisition and investment activities.

Large Scale Land Acquisitions and the Call for Transparency

Accountability for Land Acquisitions and Transparency

There is no need to repeat the many publications that show a rising global interest in land for agriculture and mining and that report on the tensions between land acquisitions and the legitimate rights of people dependent on the land. The reader may be referred to previous World Bank Conferences and to publications by organizations such as the International Land Coalition (Fisseha, 2011; Odhiambo, 2011; Ratsialonana et al., 2011), Global Witness (Global Witness, 2012), The Oakland Institute (Bergdolt & Mittal, 2012;Oakland Institute, 2011a and 2011b) IIED (Vorley & Cotula, 2012) and Oxfam (Oxfam, 2008; Zagema, 2011; Sahan & Mikhai, 2012; Vorley et al., 2012). Virtually all reports on this issues is coming from the outsiders in multilateral and civil society organisations. Insiders in the investment world keep remarkably silent.[1]

To indicate that many lands have been acquired against the free consent of the affected population, human rights organizations often refer to 'land grabs' rather than 'land acquisition' or 'investment in land'. One of their main complaints is that the people affected are not being involved in the process by which the land is acquired (sold, leased) by outside investors, which often implies that they were neither timely informed about the deal nor asked for their consent. This is well expressed in the 2012 report by Global Witness, the Oakland Institute and ILC:

> "Decision-making around such allocations and investments is frequently done in secret and without the knowledge or consent of communities affected, who are consequently unable to hold governments or commercial investors to account. Such a lack of mechanisms or political will to ensure transparent, accountable, and equitable decision-making in the acquisition and allocation of land concessions undermines governance and the democratic process. It fosters an environment where high-level corruption between political and business leaders prevails, where elite capture of natural assets becomes the norm, where human rights are routinely abused with impunity, and where investment incentives are stacked against companies willing to adhere to ethical and legal principles." (Global Witness, 2012: 3)

[1] Using this information has serious limitations. Not only is this information, as may be expected, seriously biased towards 'land grabs' and related human rights issues. It is also hardly possible to check the sources used by NGOs. Reports from the Oakland Institute, for example, do not appear to be subject to any serious quality assurance. Nevertheless they can have huge impacts on company reputations, as the EmVest case, quoted in this paper shows. Ironically, many organizations that call for greater transparency on the part of the private sector do not appear to be very transparent themselves when it comes to disclosing their information sources.

Human Rights organizations fighting 'land grabs'[2] consistently demand more transparency in the entire process of allocating land to investors. Transparency is not the ultimate goal but rather a means to an end: to enhance accountability of all actors involved, accountability vis-à-vis those who hold legitimate (formal or informal) rights to access or to use the land.

Land Rights and Private Sector Responsibilities

The internationally accepted language for defining the role of the different actors – both public and private – and their accountability is contained in the so-called 'Ruggie framework', which can be summarized as follows:

- Securing human rights is the duty of the State, whereas private sector companies have the responsibility to respect such rights.
- In the context of his work for the Human Rights Council, John Ruggie (2008) distinguishes three core principles: "The State duty to protect against human right abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective remedies. The three principles form a complementary whole in that each supports the others in achieving sustainable progress." (Ruggie, 2008: p. 1)

It is the 'private sector's responsibility' to respect both land rights and food security when developing and operating projects for producing agricultural commodities. What can be meant by 'private sector' here? In principle, all corporate players who have a substantial impact on the development and the operation of the mentioned projects bear at least some degree of responsibility. Two groups of players can be distinguished[3]:

- Financial players who invest in the development of agriculture in various ways (investing in land, farms, etc.). These may be banks, pension funds, private equity funds, etc.
- Players in the commodity supply chain from commodity producers, through traders until food manufacturers and supermarket chain (or bio-fuel producers and energy companies).

[2] In this article, we prefer to use 'land acquisition' instead of 'land grab', as the latter automatically implies a lack of legality, even before doing a proper analysis of the case.
[3] For a more detailed discussion, see De Man, 2010; De Man 2012a; De Man 2012b.

The Alleged Business Case for Responsible Investment and Transparency

Expectations

The Ruggie framework is crystal clear about the 'corporate responsibility to respect human rights'. This responsibility can be directly translated into accountability in the sense of the Global Witness report quoted above and into the need for the private sector's active contribution to disclosing land transactions transparently. From a human rights perspective, such transparency may be urgently required, but why should private sector companies be motivated to disclose their land acquisition transactions at all? What could be their business interest? A lively discussion on 'the business case[4] for transparency on land deals' is currently taking place, in which apparently convincing arguments for transparency, even in the absence of strong legal requirements, are being put forward. "Transparency is in the private sector's own business interest", so the argument goes. To quote four recent reports dealing with the risks of irresponsible investments and the business case for responsible investment:

1. <u>The 2011 World Bank Report on 'Rising Global Interest in Farmland'</u> postulates a positive correlation between the investors' responsible behavior and the viability of their investments: "Responsible investors interested in the long-term viability of their investments realize that adherence to a set of basic principles is in their best interest; many have committed to doing so under a range of initiatives, including ones with a governance structure incorporating civil society and governments." (Deininger et al., xliv).
2. <u>Global Witness et al., in their report on 'Dealing with Disclosure'</u> (Global Witness, 2012) emphasize how operating transparently is just part of good planning and reducing business risks: "Operating transparently and undertaking early consultation enables comprehensive evaluation of the project benefits and costs, which can identify potential risks and local concerns. Gaining project consent from potentially affected communities reduces the risk of future expensive and less effective grievance and mitigation. It also increases the legitimacy of deals, fosters project continuity during changes of governing regime, and mitigates against local opposition (with its associated risks to local staff, supply chain, and reputation)."
3. <u>Similarly, the WRI Study 'Development without Conflict'</u> (not specifically on transparency but on consent of affected people) claims to show, on the basis of a number of case-studies, that FPIC – Free Prior and Informed Consent of the affected people – pays in hard dollars.

[4] For a discussion on the 'business case' concept, see: Steger, 2004; De Man, 2010.

Seriously investing in FPIC may avoid spending millions later on mitigation processes, project delays and production losses:

"… the business risks of community opposition can be much greater, in both magnitude and likelihood, than many of the other project risks that project sponsors and financiers routinely seek to shift, mitigate, or insure against." (Herz et al, 2007: 5).

4. The report on the Financial Risk of Insecure Land Tenure (Munden project, 2012) develops a set of scenarios, supported by a number of case studies, to show that the financial risks of both delayed operations and/or forced withdrawal can be enormous: "Depending on the case, the cost associated with each scenario ranged from 1.1 x to 29 x that of the base scenario."

Hypotheses underlying the Positive Business Case

If there is indeed such a strong business case for responsible investment, including transparency on land deals, why is there a problem then? Are investors really systematically acting against their own business interests? Are they insufficiently aware of the costs and risks? Before trying to answer that question, let us summarize the main hypotheses underlying the alleged business case and then confront these hypotheses with realities in the real world. From recent publications such as those quoted above, the following hypotheses can be derived:

1. Costs/Risks

   Investors are interested in the reduction of both risks and costs with respect to their investments in land and agriculture.
2. Consultation/Consent/Transparency

   Lack of proper consultation processes and consent of the affected population will often lead to significant delays and eventually withdrawal from investment projects. An important condition for proper consultation processes is transparency about land deals towards affected groups in the population. Not being transparent may lead to significant damage to reputation and brand value.
3. Costly Delays/Withdrawal

   Delays and/or withdrawal from investment project lead to significant additional project costs, often many times higher than if such events had not happened. These additional costs may, apart from costs of reduced income from the investment, include significant legal costs.
4. Damage to Reputation and Brands

   Conflicts over land use and access to land may damage the investor's reputation both in consumer countries and in the investment countries, which may result in less favorable investment opportunities in the future. Moreover, it can lead to damage to the company's consumer brands and, if the company invests money on behalf of its clients such as pension funds, result in clients withdrawing their money from the investment fund management by the company.

CASE 1: New Forests Company: Investing in Ugandan Plantations

In 2005, the Ugandan New Forests Company (operational from 2005), owned by UK based NFC Uganda UK Ltd, was granted a 50-year license to grow pine and eucalyptus forests in three Ugandan districts. Apart from the revenues from timber production, the company expected to earn considerable income from trading carbon credits under the UN Clean Development Mechanism (CDM).Investments into the New Forests Company were made by the HSBC, the European Investment Bank and the Agri-Vie Agribusiness Fund. In 2010, the IFC made an equity investment of 7 million USD$ into this fund. Under pressure from HSBC, the company applied for FSC certification at an early stage. The certificate was granted in 2009.

Problems for the New Forest Company began to develop when, in 2011, Oxfam published a report on 'land grabs' with a number of case studies including one on the New Forest Company's plantations. Oxfam pointed at the violation of legitimate land rights and could not understand that the FSC certificate was given at all. An official complaint was made and FSC took the issue very seriously and asked the certifier SGS to investigate the case. SGS did not see reasons to come to other conclusions. As a result the issue was brought to the next level: the accreditation body ASI was asked to perform a thorough evaluation of the case.

As IFC had invested money into the New Forest Company, it took Oxfam's allegations very seriously. Moreover, two Ugandan communities filed a complaint with the CAO, the World Bank's Advisor/Ombudsman. The CAO found the complaint eligible for further assessment. FSC decided to await the CAO's result before taking any further action.

On January 12, 2012, the New Forest Company announced the suspension of new plantings and blamed the Oxfam campaign, not only for a loss of investments, but also for a loss of jobs. In their press statement of January 9, 2012, the company explained that the suspension of planting was a direct result of investors withdrawing their investments from the company. "This resulted from the negative publicity caused by an Oxfam report released September which attacked the eviction of illegal squatters by the Ugandan government from NFC's plantations."

In the meantime, the CAO has come to his conclusions. Information about the further decision making process could not yet be included in this paper. Contrary to earlier press statements, NFC appears to have re-started its operations in Uganda.

Source: De Man, 2012; Grainger et al., 2011.

Evidently, all these hypotheses do make sense, at least for certain investors. However, they are not necessarily equally valid for all investors. To show that, we need to distinguish between different types of investors first.

Private Sector Players: a First Typology

Investors and Investing

Although the literature on the downsides of land acquisition ('land grabbing') by (foreign) investors is growing on a daily basis, there is, apart from collections of case-studies, hardly any reliable information on who these 'land grabbers' actually are. The Land Matrix (landportal.info), the database now being developed by ILC and partners, does not contain hard data on the investors apart from company names. Even authoritative reports such as the 2011 World Bank study (Deininger et al. 2011) hardly define what actually is an 'investor'. They do not make any detailed distinctions between types of investors either. The World Bank Study contends to separate public from private investors and domestic from foreign investors. Other sources distinguish different public and private players. For example, a recent Oakland Institute report (Bergdolt & Mittal, 2012) mentions: very large private equity funds, large investment banks, institutional investors, government agencies, multinational corporations and agribusinesses. A somewhat more detailed approach was recently published by Anseeuw & Boche (2002). Although the authors do not focus primarily on different investor types but rather on investment models, this publication could contain a good starting point for defining different investor types.

Not only the term 'investor' often lacks clear definition, there is also a discussion on what actually should be understood by 'investing'. There are arguments to clearly distinguish investment in productive capacities from land speculation (differentiating between return on investment and capturing differential rent). The 2011 ILC/IIED/CIRAD report argues that speculators should not be confused with investors: "The commonly used term 'investors' itself is not always very appropriate, as some actors may neither be paying for the rights they acquire, nor investing funds in any productive enterprise" (Anseeuw et al., 2011: 32).

The Zoology of 'Investors'

There is not such an animal as 'the' investor in land or agriculture. There are many different public and private players who, in some way invest in agriculture (including land), directly or indirectly, in many different forms. A simple classification cannot grasp the complexity of the many investor types. Among investors, we will find, among many others: pure land speculators, Sovereign Wealth Funds, State Development Finance institutions, pension funds, private equity funds, hedge funds, commodity processors and traders and food manufacturing companies. To describe the 'zoology of investors', a number of different dimensions appear to be relevant. They can be defined as questions. The answers to these questions (left-hand column in table 1) define the likelihood that the investor will be more or less sensitive to the financial and reputational costs and risks from badly managed land deals and badly managed land-related conflicts (right-hand column).

[Table 1 about here]

Main Investor Types

As Table 1 shows, many variations are possible. For some investors, most answers may suggest that they are vulnerable to the consequences of irresponsible investment in agriculture (including land acquisition that violates informal or formal land rights). For other investors, the answers rather suggest that they will probably be hit much less than others. On this basis, typical investors can be listed, with decreasing likelihood that irresponsible investment issues will impact them negatively:

1. <u>Development finance institutions</u> (IFC, national investment banks such as DEG, CDC, FMO, etc.). They are subject to intensive public scrutiny. Investments have to comply with strict national and international rules, such as IFC's Performance Standards (especially IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement, see De Man, 2010; Kiene, 2010).
2. <u>Agri-Food companies with high visibility and strong brands</u>
   These are companies such as Nestlé, Unilever, Kraft, Coca-Cola, McDonalds and Kellogg. Although these companies are much less integrated than they used to be (Unilever has sold its palm oil plantation and does not own more than a few tea plantations, for example) and therefore do not invest too much in agricultural assets, they are strongly involved in cooperative arrangements with farmers in many parts of the world to secure their high quality supplies of dairy, meat, cocoa, tea, palm oil, sugar, etc. Public issues on land rights and ecology can have direct impacts on their strong brands, as, for example Greenpeace's threat to attack Unilever's brand 'Dove' painfully made clear.
3. <u>Pension funds and other funds with high public visibility</u>
   Pension funds, as a rule, do not directly invest in land or agriculture, but may choose to in-

clude some agricultural funds (see investor type 6) into their portfolio. In principle, land-use conflicts related to funds they invest in, may lead to public pressure to withdraw from such funds. Recently the large Dutch pension funds ABP was publicly criticized by an alliance of NGOs that they, through their investment in the Scandinavian Global Solidarity Forest Fund (GSFF), supported a serious case of land grab in Mozambique (FIAN International, 2012). It became a major news item and led to discussion in the Dutch parliament. The pension fund did not withdraw its participation in the fund, but apparently took measures to improve the situation. Recently, in a comparable case, the Vanderbilt University was said to withdraw US$ 26 million from the EMVest fund (although this was never confirmed by either Vanderbilt or EMVest) after EMVest was strongly criticized by the Oakland institute (See Case 3).

4. Bio-fuel companies delivering to regulated markets

   Bio-fuel producers and traders are somewhat less vulnerable to direct pressure from consumer markets but are subject to (increasing) regulatory pressures, especially sustainability requirements. in the context of the European policy for bio-fuels and its implementation in national law.

5. Large international commodity traders with production and processing capacities

   These huge international companies such the 'ABCD' companies ADM, Bunge, Cargill and Louis Dreyfus, which control a significant portion of global commodity trade and processing (75-90% if global grain trade, according to The Guardian, 2011). The companies are not known for their transparency. Cargill and Dreyfus are still privately owned and other companies have found ways to minimize their reporting obligations. In contrast to agri-food companies with strong consumer brands at the end of the supply chain, these large international processors appear to be much less vulnerable to criticism related to land-use conflicts and other sustainability issues. In contrast to pure investors who buy and sell private equity, these companies invest in land and agriculture as part of their production assets. Therefore, they should have an interest in long term stability.

   Apart from these large international traders, there are many other integrated commodity producers. A company like Glencore, for example, is active in a wide range of commodities including mining, agriculture and energy.

6. Sovereign wealth funds

   Sovereign wealth funds have been created by many governments with the main goal to channel surpluses. The degree to which the funds are being controlled by governments and democratic institutions varies from country to country. Funds in New Zealand and Norway tend to be more transparent to the public than other funds in the Middle East and Asia. In contrast to development finance funds, their objective is to reach financial targets and not primarily to contribute to development. Their sensitivity to sustainability and human rights issues accordingly varies: it does not appear to be high generally, but this may different for funds in selected countries. Sovereign wealth funds may invest through other funds, such as private equity funds.

7. <u>Private equity funds investing in agriculture, including land / Listed Land Aggregators</u>
   There is a variety of funds that invest in private equity (farms, including land, processing, etc.) of non-publicly traded companies, using different models of investment. Here, we cannot go into the technicalities of the financial models such as leveraged buy-outs, etc. In a number of NGO reports, private equity funds are being held responsible for considerable 'land grabs' and for a systematic lack of transparency. Indeed, investments by private equity funds are often not very transparent, for three reasons:
   i. the private equity company is a private non-listed company and does not have many obligations to make its operations public;
   ii. the companies in which the fund invests are not publicly listed,
   iii. parties for which the fund invests are private and do not wish to disclose too much about their investments and investment strategy.

   For Listed Land Aggregators, listed companies that virtually do the same as private equity funds, but whose shares are traded on the stock exchange, the situation can be a bit different. Because of their listed character, they may be somewhat more interested in transparency.
8. <u>Private individuals investing in agriculture and land / family offices</u>
   This category includes individuals or families who mainly invest in land and agriculture for financial reasons. They operate rather anonymously and they do not have a legal obligation to disclose much of their financial transactions. The individuals or families may invest directly or invest through an existing fund, for example a private equity fund. As these individuals and families invest their own money and do not have strong obligations or a business interest to be transparent, we cannot expect them to be very sensitive to public pressure as long as this pressure does not result in negative impacts on the profitability of their investments. They do not have brands or clients to lose.

CASE 2: Profiting from Chaos: South Sudan

A 'land grab' case that was covered by many media is the acquisition of huge areas of land in South Sudan by Heilberg, a former Wall Street trader. An article in *Roling Stones* describes Heilberg as follows:

> "I used to be one of the highest-paid guys on Wall Street," he boasts – Heilberg is now betting heavily that he can profit from Africa's chaos. He has befriended Darfuri rebels in London, oil-bunkering militants in Nigeria and ethnic separatists in Somalia and Ethiopia, looking to cash in on any commodity – petroleum, uranium, whatever – that might come his way in the wake of independence. If a country is too combustible for most investors to touch, he's interested. … … Now, looking out the window of the plane, Heilberg is en route to the biggest deal of his life. Last year, he snapped up a lease on 1 million acres of farmland in the war-ravaged savanna of southern Sudan – a tract nearly the size of Delaware – making him one of the largest private landholders in Africa (Funk, 2010).

Heilberg is actively cooperating with local warlords to secure his interests, including general Paulino Matip and his son:

> During the 1990s, according to Human Rights Watch and other witnesses, Matip's private militias brutally cleared civilians from their homes – torching villages, raping women, executing men – to make way for oil drilling. The violence was part of one of the longest-running wars in Africa, a civil conflict between Sudan's Muslim north and the mostly Christian and animist south that formally ended in 2005. Now, to secure his land deal, Heilberg is banking on Matip to come out on top in the semiautonomous south's struggle for full independence. Matip is the one who approved Heilberg's lease on the farmland, and the general's son serves as an official partner in the venture. Heilberg makes no apologies for such arrangements. "This is Africa," he says. "The whole place is like one big mafia. I'm like a mafia head. That's the way it works." (ibidem: 60)

An article in *Foreign Policy in* Focus (Fake, 2011) describes the specific deal as follows:

> "Another deal … involves New York-based Jarch Management, which is developing an even larger tract of land in an area of northern South Sudan with potential oil reserves. There are fears that the "development" will entail displacing residents. The Norwegian People's Aid director for Sudan commented, "It is all done secretly. The people don't know what's going on. …
>
> … …
>
> The head of Jarch is Philippe Heilberg, former Wall Street banker "backed by former CIA and state department officials" who apparently tired of commodity trading to become "one of Africa's biggest private landowners," namely in Sudan. The land lease was granted by a notorious, atrocity-happy, local Nuer warlord -- who had allied with Khartoum and the SPLM by turns in the North-South civil war -- to Jarch and its partner firm, managed by the son of the warlord. An aid worker commented on the deal, "The community knew nothing, it was done secretly between Philippe Heilberg and [the warlord]'s family.""

9. Ruthless Speculators

   Although these ‘investors’ formally belong to the last mentioned group, they may be seen as a category on its own. These individuals use their own money to acquire land and property in high-risk areas with weak governance. In some cases, they will only speculate and not invest at all, but sometimes they are interested in starting up farms and processing facilities as well. The archetype of such an ‘investor’ was described in a recent article called ‘Capitalists of Chaos’ (Funk, 2010), which shows a business man who tries (and somehow succeeds) to profit from institutional chaos in South Sudan. See Case 2.

Risk and Transparency

This list of ‘investor types’ starts with players with a reasonably high interest in responsible agriculture, responsible land acquisition, including a general interest in good governance and transparency and ends with players with virtually no interest at all. Within the different categories, there are still huge differences: there may be Sovereign Wealth Funds with an interest in transparent deals and there may be pension funds who do not care whatsoever, for example. But the list indicates a plausible trend.

In Figure 1, the nine typical ‘investors’ have been represented in two dimensions: their willingness to take risks and their business interest in being transparent or in being non-transparent[5]. The graph is a first proposal and is not based on thorough research yet. It is based on plausible assumptions as discussed above. Category 9, the “Ruthless Speculator” is supposed to be willing to take huge risks, in return to the chance of earning huge profits. He is gambling with his own money in a virtually unregulated environment. Pension funds and similar investors are supposed to be least willing to take risks. As to transparency, from a business perspective, there appears to be little interest in transparency in investors that are not directly subject to brand vulnerability or government interference. Large traders, private equity funds, individuals and speculators do not generally applaud transparency, whereas, only in a few countries, sovereign wealth funds would be in favor. We do not expect private equity funds, by themselves, to have a strong interest in transparency unless forced by those who invest in them (See Case 3).

[Figure 1 about here]

[5] Meant is transparency to affected stakeholders and the public. Of course, funds may have an interest to be highly transparent to their clients, but that is another issue.

A Business Case for Transparency and a Business Case for Opacity

The Hypotheses Revisited

We started this article by summarizing the alleged business case for responsible (and transparent) land deals, a business case for 'the' investor. We concluded that this business case is based on five hypotheses. As 'the' investor does not exist, we have to test this hypotheses, not for 'the' investor, but for the different investor types.

1. <u>Investors are interested in the reduction of both costs and risks</u>

   This may be the case for some or even the majority of investors, but there are certainly 'investors' ('speculators') who feel at home in politically and commercially risky environments. Because of their specific local knowledge (or access to that knowledge) they not only survive but even thrive in environments where others would only make losses. They may profit from relations with politicians, local interest groups and even criminal organizations. Countries with weak governance structures indeed attract this type of 'investor' whereas scaring off more responsible investors.

2. <u>Lack of proper consultation/consent leads to project delays or withdrawal</u>

   Many recent reports show that, for whatever reasons, many investments were planned but never executed, for a variety of reasons.

   > "… in many cases the announced deals have never been implemented. Risks are often large. Plans are scaled back due to a variety of reasons including unrealistic objectives, price changes, and inadequate infrastructure, technology, and institutions. For example, we found that actual farming has so far only started on 21 percent of the announced deals." (Deininger et al., 2001: xiv)

   Many recent case-studies (for example: Munden Project, 2012; Herz et al., 2007) convincingly show that lack of proper consultation/consent is an important cause of delays and eventually a reason for withdrawal. At closer inspection, however, one will discover that this is mainly the case if affected groups can effectively mobilize resistance against planned developments. This is often only possible if, apart from local or national political support, important company reputations and brands are at stake or if international development money is involved.

3. <u>Delays and withdrawal lead to significant costs</u>

   Calculations made by The Munden Project (Munden Project, 2012) suggest that delays and withdrawal may indeed lead to significant costs. But do they always? There are hardly any hard data on this issue, but the information available suggests that companies negotiating for large tracts of land usually do not immediately pay the entire sum, but have built in their contracts provisions to pay in installments and to make changes to the acreage agreed on in principle. In other words, investors are often smart enough to avoid that sort of costs on beforehand. However, there is ample evidence that delays in the execution of projects, leading to delays in starting production after investments made, often lead to considerable costs.

4. Conflicts over land use/access to land damage reputation and brands
   Unfortunately, this is only true for a minority of investors: investors who own strong brands or invest on behalf of companies with strong brands (large food companies, certain banks). And these are usually not investors in land.

None of the five hypotheses can be confirmed for all investor types. As a result, there will be investors for whom there is a business case for responsible investment (including transparency on land deals) and, sadly, there are investors for whom there is no such business case. There may even be a business case for opacity.

The Business Case for Transparency

Certain investors have a clear business interest not to be associated with irresponsible land acquisitions or irresponsible investments. They have an interest to invest in sustainable operations rather than short-term land speculation. They are subject to public scrutiny, either through political channels or through the vulnerability of their brands on consumer markets. These are the first four investor types from our list:

1. Development finance institutions;
2. Agri-food companies with high visibility and strong brands;
3. Pension funds and other funds with high public visibility;
4. Bio-fuel companies delivering to regulated markets.

These investors may have an interest in promoting transparency. However this does not mean that there is ‘automatically’ a business case for being transparent. This will be discussed at the end of this article.

CASE 3: Emergent – Vanderbilt University is said to have terminated its investment in EMVest

EMVest, formerly Emergent Asset Management, is an agricultural corporation with farms in sub-Saharan African countries including Mozambique, South Africa, Swaziland, Zambia, and Zimbabwe. In several reports and press statements, Emergent/EMVest was severely criticized by the Oakland Institute (Oakland Insitute, 2011a and 2011b) and this criticism was then published in The Guardian. It is said that, as a result of this criticism, US Universities decided, under the pressure of student activist, to withdraw their investments. The Oakland Institute, in a recent press message, describes the case as follows:

> "Due to pressure from student groups mobilizing based on the Oakland Institute's research, Vanderbilt University has terminated its investment contract and withdrawn its $26 million investment in EMVest, …. The Oakland Institute's June 2011 report, publicized in the Guardian (UK), exposed EMVest's land grabbing tactics of taking over agricultural land used by local communities through exploitative practices and using it for large-scale commercial export farming. This historic move marks the first full divestment made by Vanderbilt in response to student pressure, a first in the $3.4 billion endowment's history after its refusal to fully divest itself of funds operating in Apartheid-era South Africa. This move follows the reports of Harvard University's divestment from EMVest following exposure in OI reports."

It is important to note here that Vanderbilt's withdrawal from EMVest has not been confirmed by either Vanderbilt or EMVest. At this point of time, it is not possible to distinguish rumours from reality. But the harm to the investment fund's reputation has been done.

Interestingly, the 2011 report by the Oakland Institute classifies Emergent as a "speculative fund":

> "Emergent is ... a prime example of the troublesome rise in speculative funds that are investing in African agricultural land."

For an outsider, it is not possible to check the data gathered and the conclusions made by the Oakland Institute, but it seems certainly questionable whether Emergent really deserves such classification, putting them into the same box as, for example, criminals who 'invest' in South Sudan (Case 2). From informal information sources one gets the impression that many investors in Africa are indeed a lot worse and that serious investors, with a tradition of thorough due diligence, still do invest in funds like EMVest as they are seen as the more responsible funds in the market. Whatever the real story looks like, the fact is that by its mere size and by investing money of very critical clients (Universities), they are the first to be targeted, much earlier than those investors that can operate in the dark.

No Clear Business case for Transparency

It is not obvious that there is always a business case for the following types of investors.

5. Large international raw material traders / processors
6. Sovereign wealth funds
7. Private equity funds and Listed Land Aggregators

Generally these investors prefer to work at a high level of secrecy and will not spontaneously support more transparency unless they are forced to do so, either by legislators or by their clients.

A Business Case for Opacity

8. Individuals investing their own money
9. Ruthless speculators

For these last two types of investors a business case for transparency is not likely. There may be rather a business case for opacity. They generally do not have any business interest to disclose their transactions to any third party.

Making Land Deals Transparent: the Private Sector's Role

Creating a Business Case for Responsible Investors

Countries with weak governance tend to attract irresponsible investors. A recent Oxfam report expresses this clearly, also referring to the World Bank's studies:

> "The poorer the protection of land rights, the more likely it is that investors will try to acquire land. The IMF says that it found 33 per cent more investment projects involving large-scale land acquisitions in countries ranked at the bottom of the World Governance Indicators (such as Angola) than in middle-ranked countries, such as Brazil. The World Bank has found that the main link between countries with the most large-scale land deals is poor protection of rural land rights." (Geary, 2012)

These countries are the playing field for ruthless speculators and investors who do not show any respect for human rights. As an extreme example we discussed the investments in South Sudan, but there are less extreme examples involving private equity companies working in great secrecy and profiting from a lack of good governance. The weaker the country is governed, the more speculators and investors at the bottom of our list one will find.

Postulating that there is a business case for transparency in such countries is absurd: for the companies that dominate in such environments, there is a business case for secrecy, for opacity rather than transparency. Investors with a stronger motivation to respect human rights and who would support a higher degree of transparency in land deals will often not venture in such environments at all because of the risks involved: they rather invest in countries with moderate or low risk such as Ukraine or New Zealand.

Creating the Business Case for Responsible Investment: Public-Private Partnerships

In weakly governed countries, the business case for responsible investment and the associated business case for transparency is not there yet. It is still to be <u>created</u>. In practice, this means that life for the more irresponsible investors (mainly at the bottom of the list) should be made much more difficult and that more responsible investors (mainly at the top of the list) feel more at home. Conditions for that cannot be created by the private sector itself. It depends on public policies, legislation and enforcement in both home and host countries, by which the playing field is changed at the expense of the 'bad guys', in favor of the 'good guys'.

Creating the right playing field for responsible investment in a certain country is a government responsibility in cooperation, not with the entire private sector, but only with those investors that are actively motivated to contribute to better governance, more responsible investment behavior and increased transparency.

Without creating such a playing field first, voluntary private sector initiatives will never produce much more than general principles that everybody can adhere to, but which do not really guide investor behavior. There is a need for pressure on enforcement, including pressure from effective bottom-up recourse mechanisms for securing compliance. Voluntary principles that were developed in the financial sector (Equator Principles, Santiago Principles, etc.) appear to systematically suffering from a lack of performance monitoring, as was discussed in detail during the 2010 World Bank Conference (Kiene, 2010; De Man, 2010).

Towards a Land Transparency Initiative

There is a growing international consensus on the need for more transparency in large scale investments in agriculture and land acquisitions, at least in multilateral organizations, governments and NGOs. The issue is slowly penetrating the private sector agenda as well. A number of, partly conflicting, ideas about a 'Land Transparency Initiative' are currently circulating. Some see EITI, the Extractive Industry Transparency initiative (EITI, 2009; Ravat, 2010; Global Witness, 2011), as an example. Others stress the differences between EITI's central issue (industry-government payments) and the land transparency agenda (a much more complex issue). One central discussion issue is the role of the private sector in such an initiative.

Although there are still some who expect that a voluntary private sector initiative can be a starting point, others stress the lack of results from earlier voluntary initiatives such as UN Global Compact, the Equator Principles, Principles for Responsible Investment (PRI) and the UNEP Finance Initiative. The 'Voluntary Principles….' (CFS, 2012) and the RAI-Principles are broadly recognized as important steps towards setting principles for responsible agriculture, but many ask themselves whether the central issue is not implementation and compliance rather than principles.

It is increasingly being recognized that a Land Transparency Initiative will need to include both public and private actors. This is much in line with the argument developed in this paper: the public sector has to define the playing field in which there is a business case for responsible investment (including transparency about land deals).

Building on the arguments in this paper, a Land Transparency Initiative could be based on a number of public-private partnerships (including civil society participation) in host countries, in which rules for disclosing information during the entire process of the development of large agricultural investments (including the acquisition of land) will be defined and included in the country's regulatory system.

[Figure 2 about here]

The main objective of such an Initiative at the national level will be to make 'land deals' transparent, i.e. to disclose relevant information so that affected communities can effectively use their legitimate rights. As deals usually involve both private sector and government, a Transparency Initiative will have to include obligations on both governments and private sector players. The main partners in such an initiative are therefore the (national, regional) government, the private sector (investors, operators) and the affected communities (partly represented by civil society), see Figure 2. Only private sector companies with a business interest in responsible investment, most likely from the upper part of our list, should be invited to take part in such an initiative. Only by implementing such a Transparency Initiative, will the business case for transparent land deal be created. But before such institutional changes have been implemented, a lot of talk about 'the business case for transparent land deals' remains based on wishful thinking only.

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Tables

Table 1: Seven Questions

Question	Sensitivity to Costs and Risks Motivation for responsible land deals / transparency
1. What is the investor's main objective? We can distinguish between a wide range of different objectives going from pure speculation/rent seeking to investments to create profits from agricultural operations and investment with a more cooperative goal: the development of shared value.	Speculators will be least sensitive. Those who aim for shared value will be most motivated to reduce those risks.
2. What is the investor's time perspective? The investor's aim may be to invest in private equity (land and/or companies) and to sell it for a better price after a few years, or he may rather plan a longer term involvement.	A longer time perspective may create a higher motivation for responsible land deals.
3. Does the investor acquire land or agricultural operations as part of its own operations? The distinction here is between companies such as large integrated commodity processors or food companies, who acquire land or facilities as part of their own operations and companies who just acquire these assets as an investment object.	The more the acquisition is important for long term operations in the own company the more the company will be motivated to create stable deals and minimize conflict. However, such companies may not very sensitive to public reputation and brand issues if they are private, non-listed companies, see also question 6.
4. Is the investor public or private? If public: question 5 If private: question 6	
5. What type of public investor is it? Is it strongly scrutinized by the government, democratic institutions and the general public? Is it a Development Finance Institution (such as IFC and the national development banks)? What special (e.g. legal, politically defined) criteria have to be complied with?	Public investors strongly controlled by law, politics and public opinion, such as Development Finance Institutions will generally more care about responsibility/transparency issues than, for example, (most) sovereign wealth funds,

Question	Sensitivity to Costs and Risks Motivation for responsible land deals / transparency
6. What type of private investor is it? Following questions should be asked: a. Is it a publicly listed company? If yes, what are the legal requirements for transparent reporting, etc.? If not, are there still legal requirements by which this type of company is being regulate? b. Is the company potentially subject to reputation risks or damage to brands? Obviously companies with strong consumer brands are more likely to be subject to such risks than companies with weaker consumer brands or operating in a business to business environment only. c. Is the company potentially subject to such risks in the context of multi-stakeholder sustainable commodity initiatives and certification such as FSC and RSPO?	Publicly listed companies are generally subject to stronger legal obligations to disclose information about their operations than non-listed private companies. Although legal obligations may be minimal, certain family owned companies, with strong corporate responsibility traditions, are even more interested in sustainability and human rights issues than many companies listed on the stock market, as they may be less driven by pleasing their shareholders with short term profits. Other privately owned companies prefer to keep their visibility minimal and may be less interested in responsible and transparent land deals. Strong consumer brands (such as major food and beverage brands, textile and fashion brands) are generally more motivated to look critically at the social responsibility of their investments or their suppliers' investments in agriculture than weaker brands or non-brands. Producing or sourcing raw materials certified by multi-stakeholder commodity initiatives such as FSC or RSPO tends to increase their motivation to care about responsible investments in land and agriculture. Good examples related to the investments of production companies are problems the New Forest Company in Uganda met when developing FSC certified plantations on contested land, similar difficulties when the IOI company developed palm oil plantations in Indonesia and Malaysia (De Man, 2012). Another example, related to an investment company, is the Herakles Capital company (quoted in a recent Oakland Institue report: Bergdolt and Mittal, 2012: 49). Their RSPO membership made them vulnerable to complaints filed by NGOs (including Greenpeace) and local communities.
7. Is the investor investing his own money or investing on behalf of others? If the investor is investing his own money, he is free to make his own calculus and to choose the investment strategy he likes within the limits of the law and reporting obligations only depends on the character of the investor (private person, private company, publicly listed company).	If the investor is investing the money of a third party, his motivation to take land rights issues into consideration not only depends on the mission, objectives and the legal structure of the own company, but is strongly influenced by the criteria set by the client. If for example IFC invests money into a development project through a private investment fund, the private company is obliged to take IFC's criteria seriously. Practical experience, however, appears to show that private interests may become more dominant than without working through an intermediary (Oxfam, 2012)

Figures

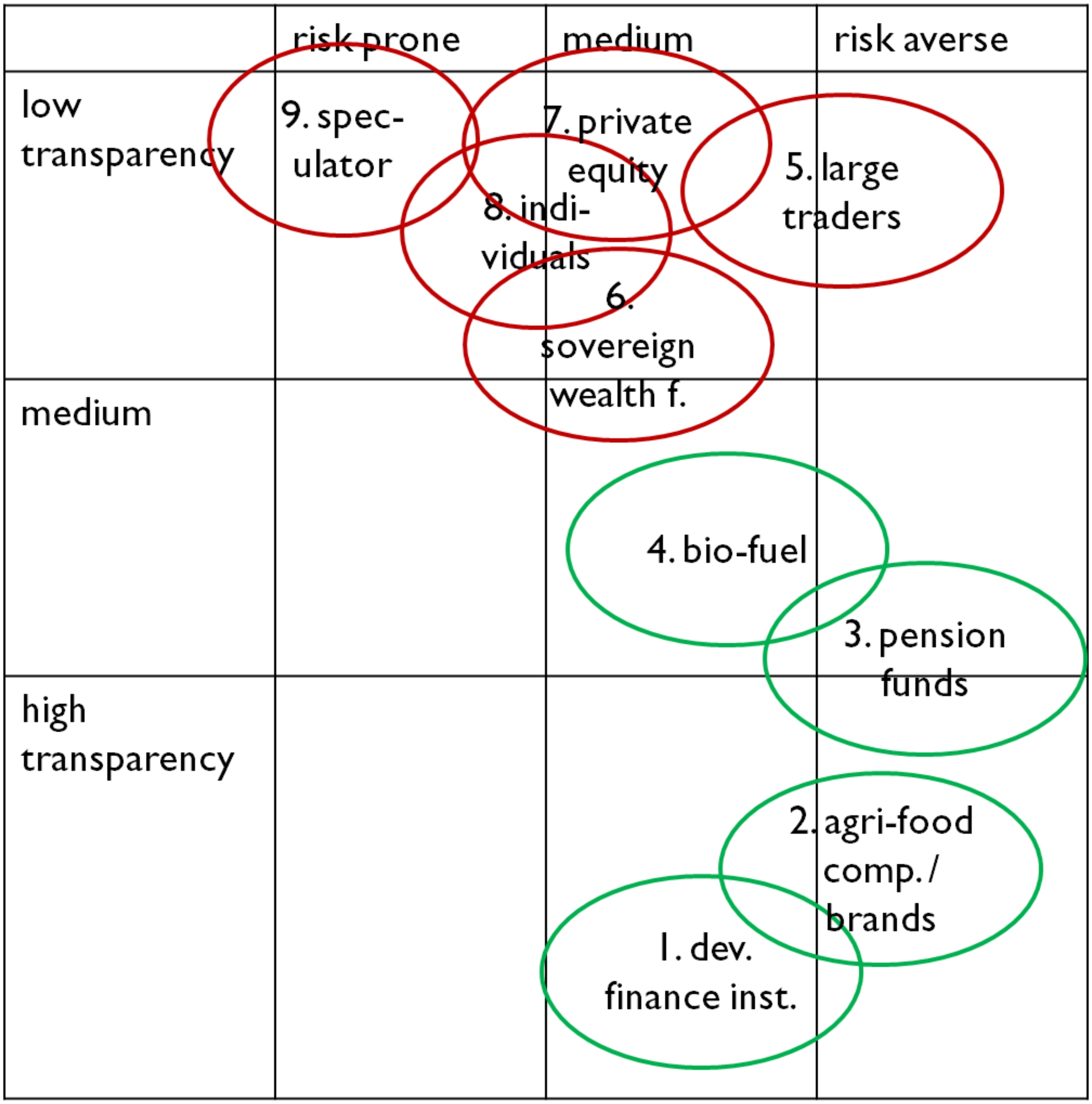

Figure 1: A Typology of Investors

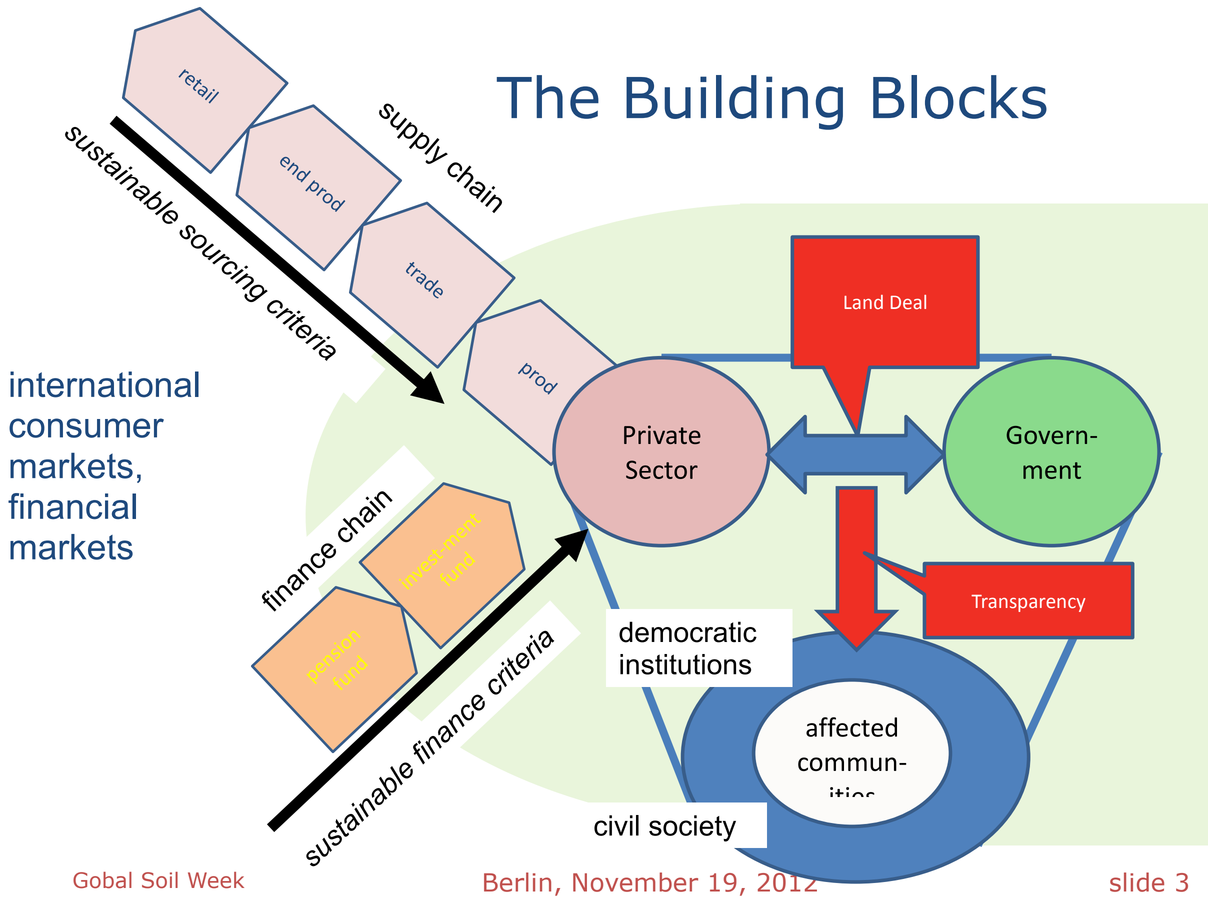

Figure 2: Elements of a Land Transparency Initiative