

The logo for the Refugee Studies Centre, featuring the text 'REFUGEE STUDIES CENTRE' in white, uppercase letters on a dark blue rectangular background with a slightly irregular, torn-edge bottom.

WORKING PAPER SERIES NO. 101

# **Displacement and dispossession through land grabbing in Mozambique**

The limits of international and national legal  
instruments

Hannah Twomey  
University of Oxford  
hannahtwomey@gmail.com

July 2014

Refugee Studies Centre  
Oxford Department of International Development  
University of Oxford

# Working Paper Series

The Refugee Studies Centre (RSC) Working Paper Series is intended to aid the rapid distribution of work in progress, research findings and special lectures by researchers and associates of the RSC. Papers aim to stimulate discussion among the worldwide community of scholars, policymakers and practitioners. They are distributed free of charge in PDF format via the RSC website. Bound hard copies of the working papers may also be purchased from the Centre.

The opinions expressed in the papers are solely those of the author/s who retain the copyright. They should not be attributed to the project funders or the Refugee Studies Centre, the Oxford Department of International Development or the University of Oxford. Comments on individual Working Papers are welcomed, and should be directed to the author/s. Further details may be found at the RSC website ([www.rsc.ox.ac.uk](http://www.rsc.ox.ac.uk)).

# Contents

1	Introduction	3
2	The limits of legal norms: a theoretical framework	6
3	Institutionalising good governance norms as a proposed resolution	12
4	To implement or not to implement: Mozambique's Land Law	19
5	Conclusion	31
6	References	34

## List of abbreviations

FAO	Food and Agricultural Organization of the United Nations
FRELIMO	Mozambique Liberation Front
IR	International Relations
PRAI	Principles for Responsible Agricultural Investment
RENAMO	Mozambican National Resistance
UN	United Nations

# 1 Introduction

The scale and speed of coordinated land grabs over the past five years has created a new avenue through which people are being displaced and dispossessed of their lands. The changeover in land control is problematic given that in places such as the African continent, where 70% of land deals have occurred (Deininger et al 2011), 60% of the population depend upon land for their livelihoods and access to food (Friends of the Earth 2010; Hall 2011).

Smallholder farmers and pastoralists have been disproportionately affected; these groups are not only marginalised, but their pattern of land use differs from western conceptions of *terra nullius*<sup>1</sup>, leading governments to often classify their lands as “idle,” thereby enabling land transfers (Chatty and Colchester 2002). Although the exact number of people globally displaced and dispossessed through land grabs is unknown<sup>2</sup>, one deal in Uganda displaced 22,000 people from their lands after the land was sold to a British company for timber production (Al Jazeera 2011). Media reports also indicate that Qatari companies in Pakistan have acquired over 300,000 hectares (ha) of land that will potentially displace 25,000 villages (CHRGJ 2010). These are just two deals comprising a few hundred thousand ha of land. Yet with over 40 million ha of land transferred globally between March 2008 and April 2009 “twenty times higher than the average annual level of land transfers for the preceding forty years” – the number of people displaced and dispossessed from such deals is worrying (Wolford et al 2013:189-190).

With a rising potential for displacement and dispossession, the recent response by leading international organisations, such as the United Nations (UN), Food and Agricultural Organization (FAO), and the World Bank, has been to push for greater regulation by creating guidelines and principles. The basic approach of these guiding instruments is to put forth good governance norms whose adoption will supposedly minimise displacement and dispossession. Given that the main approach has been a regulatory one, this thesis will examine the limitations of international and national law to address displacement and dispossession from land grabs within the case study of Mozambique. The main question that I seek to answer is: What limits international and national law in addressing displacement and dispossession due to land grabs in Mozambique?

I will argue that the limits of law to address displacement and dispossession are not due to a lack of institutionalising international good governance norms into domestic-level legal frameworks. Nor can the limits be attributed to state incapacity. Rather, the limits of law lie within the norm implementation process, wherein norms are conditioned by the local Mozambican governance context to serve domestic interests.

Mozambique has been chosen for several reasons. Despite having “one of the most progressive land laws in Africa” that reflects many of the international guiding instruments’ norms (Nhantumbo and Salomão 2010:20), there are “significant concerns and criticism concerning the impacts on land access for more vulnerable groups” in Mozambique (Cotula et al 2008:35). Between 2004 and 2009 over 400 large land acquisitions were approved, which allocated between 2 and 2.67 million ha of land (Deininger et al 2011; Mousseau and Mittal

---

<sup>1</sup> Within international law, *terra nullius* refers to unused land that therefore belongs to no one.

<sup>2</sup> This is confirmed through personal correspondence with the international non-profit GRAIN <<http://www.grain.org/>>

2011; LANDac 2012). The gap between law and practice is disconcerting in a country where over 60% of the population lives in rural areas and relies upon land for their livelihoods, and where recent predictions point to Mozambique becoming one of Africa's most prolific biofuels producers – a driver of land grabs (Nhantumbo and Salomão 2010). The extent to which land rights will be protected as these deals occur depends upon the legal system, and thus an assessment of the law's limits is warranted. Additionally, Mozambique is important because its nationalised land system indicates that the government (at least in theory) largely controls how land is used and by whom (Knight 2010), making it an ideal case for testing the efficacy of international norms to alter state behaviour.

### **Defining land grabs**

Land grabbing as a space of study exemplifies the convergence of many fields and cuts across the disciplines of economic, politics, anthropology and sociology.

Accordingly, there are many approaches to defining land grabbing. At times the focus is placed upon the characteristics of the deal itself, particularly its size and what kinds of actors are involved. Much of the literature defines land grabs as possessing a distinctly foreign element: “large-scale, cross-border land deals or transactions that are carried out by transnational corporations or initiated by foreign governments” (Zoomers 2010:429). Other definitions incorporate potential social injustice outcomes of the land deals as a defining feature: “taking possession of and/or controlling a scale of land for commercial/industrial agricultural production which is disproportionate in size in comparison to the average land holding in the region” (FIAN 2010:8). Still others focus on the purposes or justifications of the land deals, in which a “dramatic revaluation of land ownership...can serve as sites for fuel and food production in the event of future price spikes” (Borras et al. 2011:209).

For the purposes of this thesis, I define land grabbing as the transfer of use rights or control over land, traditionally used by communities, to foreign investors for commercial purposes – frequently within the agricultural sector. They are often facilitated through partnerships with powerful domestic actors and justified by the investments they stimulate.

### **Locating the approach within the main debates**

#### **Main debates**

The main debates surrounding land grabbing are divided between those that oppose land grabbing and those that view it as beneficial and worth the cost of potential displacement (Cotula et al 2009; Hall 2011; Fairbairn 2013). The neo-colonial thesis attributes the drivers of land grabbing to the international economy. These drivers may include the 2008 crisis and subsequent rise in food and oil prices, the scramble for alternative energy sources (such as biofuels) as well as land speculation (Borras et al 2010; Zoomers 2010; Cotula 2012). Global (former colonial) powers are viewed as “grabbers,” as they exert their economic influence upon less developed states (Wittmeyer 2012).

The utilitarian view perceives land grabbing as potentially legitimate. This view does not contradict the above drivers of land grabs, yet it justifies them in several ways. Firstly, the global food supply must account for the world's population growth (Borras et al 2010). Secondly, the state of the world's energy supply requires a transition away from oil and toward biofuels (Borras et al 2010). Thirdly, lesser developed economies require foreign investment. As pointed out by development-induced displacement and resettlement expert, Oliver-Smith

(2009), displacement due to war is seen as universally problematic, while displacement due to large-scale development projects, such as agricultural investment, often embodies a grey area.

### **Approach**

However, the debate overlooks key areas. Both the proponents and opponents of land grabs attribute the causes to international forces, whether for an imperialist economic endeavour or for a utilitarian purpose. Simultaneously, explanations of displacement and dispossession are rooted in the state, namely its lack of capacity to protect its people (Fairbairn 2013). These popular explanations of land grabs and displacement fail to acknowledge two important components: 1) domestic processes and actors also “cause” land grabs, and 2) an overemphasis on lack of state capacity as an explanatory factor of displacement and dispossession obscures the *capabilities* of the state as contributors to displacement.

There is, however, a growing body of recent literature that places the state at the centre of analysis to paint a more complete picture of the motivations and processes that shape land grabbing practices (Hall 2011; Fairbairn 2013; Levien 2013; Wolford et al 2013). They highlight that exclusively discussing top-down, externally-imposed factors conceals how these influential factors interact with the motivations and capacities of domestic actors and contexts, which play a critical role in shaping deals (Wolford et al 2013). For a more complete picture, it is critical to “understand(ing) the dynamics of more localised agrarian political economies...For here is where processes of exclusion or inclusion occur” that contribute to displacement and dispossession (Borras, et al 2010:580).

Yet these state-centred analyses have not been used as lenses through which to understand the limits of law in addressing displacement and dispossession. Therefore, I will make the domestic sphere – including domestic practices, motivations and contexts – the focal point of my analysis in order to assess the limits of law. Doing so allows me to place displacement and dispossession within discussions of domestic political power and governance; this is critical given that law depends upon governance for its institutionalisation and enforcement.

This thesis employs an interdisciplinary approach emphasising institutional processes and domestic governance structures. International Relations (IR) theories provide a lens to identify the limits of norms as either rooted within domestic institutionalisation processes or domestic implementation processes. Distinguishing between these processes allows me to test where the limits of international norms lie within the case study of Mozambique. A political anthropology analysis allows me to focus on the historical, political, and economic experiences that have shaped a particular governance context, which in turn condition the norm implementation process within Mozambique.

### **Outline of thesis**

Because international law operates through norms, chapter two will outline the IR theoretical debate regarding which critical mechanisms condition a norm’s efficacy, and where their potential limits may lie.

The third chapter demonstrates that a collection of international good governance norms, put forth by leading international organisations to address displacement and dispossession, have been institutionalised within Mozambique’s Land Law. It raises the question: Why, then, do displacement and dispossession still occur?

Thus the purpose of chapter four is to explain the persistence of displacement and dispossession as rooted within the norm implementation process. I suggest that Mozambique's governance context has conditioned norm implementation. I find that the decentralised land governance structure has provided local actors with power to shape norm implementation, often applying norms to suit their own benefit. However, the co-optation of norms cannot be attributed to lack of state capacity as the material benefits the state accrues point to a state that is disinterested in seeing the norms implemented, and that uses decentralisation as a strategic governance strategy to accumulate these benefits.

## 2 The limits of legal norms: a theoretical framework

The limits of international law to uniformly influence state behaviour can be examined from a variety of angles. There are those that attribute the limits to the very nature of law. While this is mentioned, the focus of this chapter will be upon the limits that are rooted within the life path<sup>3</sup> of a legal norm itself. In doing so, I will explore the IR theoretical debates that seek to explain the cross-national variation of norms and I will locate the limits of law within this debate based on the critical variables presented. I propose that neither the institutionalisation stage, nor lack of state capacity or "cultural match" can be considered limiting factors within Mozambique to the extent that the domestic structural context is. This analysis will be applied to the case study in later chapters.

### **The limits of law rooted within the nature of operation**

It is worth briefly mentioning the scholarship that proposes international law is limited by its very nature of 1) relying upon states for its operation, and 2) its de-contextualised positivist approach.

"A discussion of law's limits implies that it has certain functions" (Danelski 1974:10). Law's purpose is to regulate behaviour; one way it fulfils this is through the norms it professes. International law, in particular, constructs norms – or "shared understandings of appropriate behaviour for actors with a given identity" – through treaties, principles or codes of conduct and policy in order to influence state (and non-state) behaviour (Betts and Orchard 2014 :1).

There is an interdependent relationship between law and governance. As a branch of governance, law tries to shape behaviour in a particular way. International law, as a branch of international governance, professes a particular ideal of global order by transforming behaviour through the diffusion of its norms. Because the behaviour that international law seeks to regulate is state behaviour, it seeks to regulate governance itself.

Yet simultaneously, governance shapes the use and interpretation of law. Present day international law derives its authority from the implicit or explicit consent of states, meaning that the adoption and enforcement of law is dependent upon state actions. Meckled-Garcia outlines the statist character of international law as "its *raison d'être*" in his work on assessing the law's capacity to administer social justice (Meckled-Garcia 2011:2085). He argues that reliance upon states poses an inherent limitation upon international law's ability to operate

---

<sup>3</sup> The term "norm life path" is distinguished from, and not to be confused with, Finnemore and Sikkink's (1998) "norm life cycle model" discussed below.

and enforce its goals. International law cannot “assign rights and duties across all agents” because the “authority of [international law] is limited to the obligations states develop voluntarily” (Meckled-Garcia 2011:2085). In other words, national government is the medium through which international law operates to institutionalise and translate international governance’s norms into action, leaving it dependent upon action taken by state bodies for its incorporation and enforcement.

Whilst governance and law mutually limit one another, the way in which governance shapes the use and interpretation of law is often overlooked due to the prevailing positivist approach. This approach deemphasises the role of context and attempts to remove law from the political realm in which it operates (Chimni 1998). “This tradition views international law as an abstract system of rules which can be identified, objectively interpreted, and enforced” (Chimni 1998:352), yet the “nature of law is that it requires interpretation, application, and jurisprudence” (Betts and Orchard 2014:18). The approach fails to examine its own assumptions, which are rooted in, and dependent upon, a particular political structure; it uses this de-politicisation as evidence for its universal applicability. This in turn limits its ability to recognise when its one-size-fits-all methods are not suitable.

### **Identifying the sources of law’s limits within the norm’s life path**

While the nature of law is not irrelevant, legal norms are more central to this analysis as they comprise the main institutional approach to addressing displacement and dispossession from land grabs (discussed below). Therefore, it is useful to assess the limits of law as it is currently formed and used. As this thesis is concerned with international soft law in particular, I will examine the limitations of law in relation to a norm’s ability to alter state behaviour in the way it intends.

There are different points at which the efficacy of a norm can “break down” and fail to alter state behaviour. The IR debates that seek to explain the cross-cultural variation of norms – or the way that the adoption and/or impact of a single norm varies across countries – present arguments for why some stages are more critical than others in influencing a norm’s “success”. By identifying the critical stages, without which the norm would cease to continue through its life cycle in its original intended form, we can determine where its limits lie.

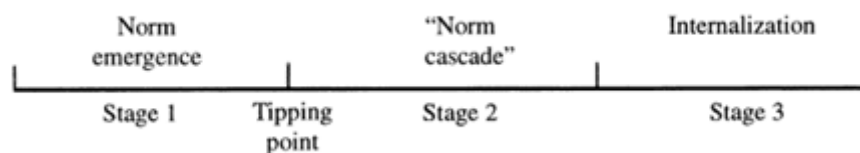
According to Betts and Orchard (2014), one set of IR scholarship focuses on institutionalisation, explaining variation by the different mechanisms that cause states to adopt a norm. It presents adoption as the critical stage and presumes norms to be static or unchanging thereafter as they move vertically down (Finnemore and Sikkink 1998; Checkel 1997). In contrast, the other set of scholarship stresses mechanisms that condition a norm after its adoption, considering the domestic context critical to how norms are understood and acted upon (Checkel 1999; Cortell and Davis 1996; Acharya 2004).

When presenting the following debates, it is useful to think of the norm life path as divided between two main stages or processes: institutionalisation and implementation. This terminology will help us to locate the mechanisms, or variables, discussed in the IR debates within one of these two categories. These processes are distinct (but “parallel to”) one another and operate independently (Betts and Orchard 2014). Institutionalisation is defined as an international process, characterised by the formalisation of an emerging norm. Often institutionalisation is signified when norms are adopted via a treaty or incorporated as principles into national law (Betts and Orchard 2014). Implementation, on the other hand, is



a process initiated by a state's commitment to the norm and is identified as a space for "normative political contestation at the domestic level" in which norms may be challenged, "with the result that the adopted norm is understood differently across states and other international actors" (Betts and Orchard 2014:7-8). Thus interpretation plays a large role in cross-national variation. Building upon the previous scholarship that focuses upon the mechanisms that influence a norm's domestic *operation* (its implementation), as opposed to its domestic *appearance* (its institutionalisation), Betts and Orchard have importantly highlighted that institutionalisation does not necessitate that implementation will follow (Betts and Orchard 2014).

Finnemore and Sikkink's (1998) analysis characterises this first wave of scholarship. In explaining how norms emerge, evolve, and become influential, their analysis is concerned with: 1) explaining how and why states adopt, or institutionalise, norms and 2) the role of norms in political change. They do not analyse the role that the domestic political context plays in changing or "filtering" norms after states have adopted them. Their norm life cycle model indicates that the critical points occur prior to and within the "norm cascade" stage: if there is a lack of persuasion from a "critical mass" of states, then a "tipping point" will not be reached and the norm will not be internalised. For reference, I have inserted the visual of the norm life cycle below (taken from Finnemore and Sikkink 1998:896).



**Figure 1:** Norm life cycle (Finnemore and Sikkink 1998:896)

Norm entrepreneurs and organisational platforms are highlighted as responsible for persuading and internationally socialising states to adopt norms during the early stages of the model. The main mechanisms are socialisation and persuasion, which are critical for a tipping point to be reached. After the tipping point, "countries begin to adopt new norms more rapidly even without domestic pressure for such change" and "domestic influences lessen significantly once a norm has become institutionalised within the international system" (Finnemore and Sikkink 1998:902, 893).

Accordingly, Finnemore and Sikkink present the process as if it takes on a life of its own after the tipping point and do not account for how and why a norm may not be implemented or reach the internalisation stage. "Internalization" is described as the last stage, where attitudes toward the norm become subconscious and taken for granted. It is facilitated by "iterated behavior and habit" (Finnemore and Sikkink 1998:905). Yet this iterative behaviour, such as people cooperating to build trust, assumes that the norm has been implemented in a way that reflects the norm's intended behaviour and has not changed meaning in the process.

Despite the observation that "norms continue to evolve after they emerge" (Krook and True 2010:1), Finnemore and Sikkink's (1998) analyses of change are not applied to how an emerging norm itself may change – for example, in meaning or application – as it moves through the norm life cycle. Rather, examinations of change or variation are predominately confined to the first two stages – to how "standards of 'appropriateness'" themselves change as

new norms arise and gain popularity (i.e. from anti women's suffrage to pro women's suffrage sentiments). Thus, while they do explain change, they examine change in only one direction, along an evolutionary path in which change is unique to the emergence of a new norm, but do not account for change further along the path (i.e. the domestic context distorting the norm's meaning as it is applied within a state).

At times, however Finnemore and Sikkink (1998) do provide hints that domestic contexts matter for norm interpretation. For example, they acknowledge that "International norms must always work their influence through the filter of domestic structures and domestic norms, which can produce important variations in compliance and interpretation of these norms" (Finnemore and Sikkink 1998:893).

They also emphasise the fact that "new norms never enter a normative vacuum but instead emerge in a highly contested normative space where they must compete," which is why norm entrepreneurs must carefully "frame," or reinterpret, issues within an existing normative context to appeal to "broader public understanding" (Finnemore and Sikkink 1998:897). However, these aspects are not further expanded upon. Examining domestic factors that alter a norm's meaning or application after its emergence could help account for the differentiation between norms that "make it" and those that do not, or those that reach norm cascade stage but fail to be internalised.

Therefore, because of Finnemore and Sikkink's emphasis on how states adopt norms and where within their norm life cycle model they place emphasis on change, it appears that they view the limits of norms as being primarily rooted within the first two stages, after which everything seems to flow seamlessly. In particular, without persuasion and socialisation mechanisms, the capacity of norm entrepreneurs and organisations to attract international support and reach a tipping point would be limited.

Similar to Finnemore and Sikkink, Checkel also emphasises "how norms reach the domestic arena" as opposed to their impact post-arrival (Checkel 1997:476). Yet, in focusing primarily on domestic features, his analysis of *which* mechanisms influence the adoption process differs to that of Finnemore and Sikkink's (1998). Checkel asserts norms enter the domestic sphere via two main mechanisms of norm diffusion<sup>4</sup>: societal pressure upon the state or elite learning (or a mix of the two). These empowering mechanisms in turn are conditioned by the domestic structure, which is defined along a continuum of state-society relations. How a state is classified – as liberal, corporatist, statist or state-above-society – shapes the mechanism through which international norms reach the domestic arena. Essentially, the domestic structures tell us who (elites or society, or a combination) are the "gatekeepers" of the domestic norm diffusion process and thus where the potential for break down lies (Checkel 1997:476; Checkel 1999).

While Checkel does briefly note that state-society relations cannot entirely explain diffusion (through his example of Russia's "deeply ingrained domestic identity norms" that act as another variable influencing the diffusion process), he attributes the limits of norms to the norm diffusion process (Checkel 1999:485).

---

<sup>4</sup> Checkel (1997) uses "norm diffusion" similarly to norm adoption, or what I discuss as institutionalisation.

Neither analysis thus far has explored mechanisms influencing norm implementation. In a later article however, Checkel supplements his strictly causal analysis of norm diffusion with a variable that also influences “the constitutive impact of norms” (Checkel 1999:84). Drawing from the variable that he noted within his earlier piece, Checkel explores the notion of “cultural match” as an additional factor influencing how norms operate domestically (Checkel 1999). He hypothesises that norm diffusion occur faster and with greater impact when it “resonates with historically constructed domestic norms” (Checkel 1999:87). This is comparable to what Finnemore and Sikkink mentioned briefly as “normative context” and what Acharya (2004) labels “localization,” or the way in which the international norm interacts with domestic practices and norms. In other words, “International norms are not simply ‘grafted’ on to national and local contexts but [rather] that they can come to mean radically different things when combined with the pre-existing cultural and historical context” (Weiner 2007, cited in Betts and Orchard 2014:20).

Cortell and Davis (1996) describe cultural match as “a factor that conditions the impact of an international norm once it enters the national arena” (Cortell and Davis 2000:73). In this way, normative context or cultural match act as critical variables conditioning how a norm is received and operates domestically.

Cortell and Davis also seek to explain “variation in the domestic impact of international rules across countries” (Cortell and Davis 1996:454). Similar to Checkel (1997), they place emphasis on state-society relations, but rather than situate its role within the norm diffusion process, they examine its role in shaping the impact of the norm to affect state policy. In other words, they are less concerned with explaining the mechanisms that enable a norm to appear domestically than with explaining the mechanisms that condition how influential a norm is once it has appeared. They argue that the domestic structural context – defined as both “the organization of decision-making authority and...the pattern of state-societal relations” (Cortell and Davis 1996:454) – conditions the norm’s impact. Below is a figure from their article that identifies states as one of four types based on their domestic structural context (Cortell and Davis 1996:455):

**Pattern of State-Societal Relations**

<b>Structure of decision-making authority</b>	Distant	Close
Centralized	Type I	Type II
Decentralized	Type III	Type IV

**Figure 2:** A typology of domestic structural contexts (Cortell and Davis 1996:455)

Yet another variable explains a norm's ability to alter state behaviour. Domestic salience, or the legitimacy of a norm as reflected through "domestic commitment" to the norm, is evidenced by how state actions treat the norm within political discourse and policy (Cortell and Davis 1996:456). In a later article, they state that "salience requires a durable set of attitudes toward the norm's legitimacy in the national arena" and "domestic discourse, then, provides the context within which the international norm takes on meaning and thereby conditions its operation" (Cortell and Davis 2000:73, 69).

In other words, Cortell and Davis identify the "gatekeepers" of a norm's implementation rather than its institutionalisation, and do so by weighing the relative authority attributed to the state versus society, combined with the nature of state authority itself as centralised or decentralised. As such, the state "is not conceived here as a rational, unitary actor; instead the state is seen to encompass a host of actors with distinct sets of institutional biases and predispositions" that may influence the filtering process (Cortell and Davis 1996:454). Thus variation is explained by the fact that "Even if an international rule is institutionalised in a domestic law, its activation is still contingent on the actions of government officials or societal interest groups" (Cortell and Davis 1996:454). The limits of a norm's ability to alter behaviour thus lie within its implementation.

Betts and Orchard also outline the limits as rooted within the implementation process, specifically within "critical implementation mechanisms" or "causal mechanisms" by which norms move downward (Betts and Orchard 2014:18). These causal mechanisms consist of three structural factors: ideational, material and institutional – each of which has the potential to change or channel the norm.

Broadly, ideational factors refer to the ways norms are conditioned by the political cultural context, including the environment, legal system and actors such as "domestic epistemic communities and designated 'experts,'" who are granted authority over implementation (Betts and Orchard 2014:22). Material factors refer to the way in which state capacity and domestic interests shape norms. Capacity accounts for lack of implementation even in cases where there is interest, while domestic interests explains that norms are inevitably interpreted "through the lenses of parochial sets of interests and through political processes in which conflicting interests are reconciled through power" (Betts and Orchard 2014:24). Finally, institutional factors include those structures that are responsible for policy-making and implementation, as shaped by national history, political structures, and the nation's constitution.

In sum, the limits of norms to affect behaviour can be located within either the institutionalisation or implementation stages, and more specifically, within the variables or mechanisms that comprise these stages. The limits are identifiable as critical mechanisms, without which the norm's efficacy would be compromised. I have depicted the mechanisms and their corresponding stages within the following diagram:

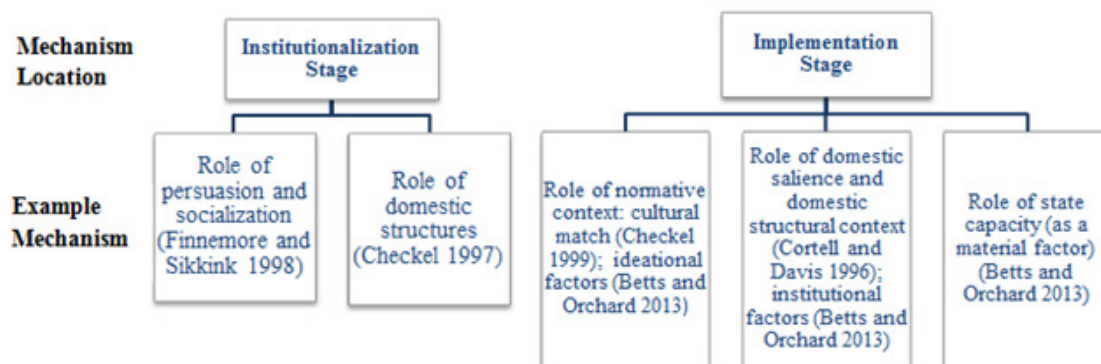


Figure 3: Potential limits of each stage

### Concluding remarks and value of the theories

One common feature within the above debate is the focus on explaining norm success as opposed to failure (Checkel 1999:86; Cortell and Davis 1996:472). The case that I will put forth is a failure case. These theories allow me to highlight that the institutionalisation of norms – outlined in chapter three – does not necessarily signify that the norms will be implemented in the intended way, the focus of chapter four.

In short, I argue that the efficacy of a norm is conditioned, and thus potentially limited, by the domestic context in which it is implemented (as opposed to its institutionalisation process). This provides greater agency to the domestic structures and the role of actors within norm creation and contestation.

However, as discussed and depicted in the diagram, many variables influence the implementation process. In the case of Mozambique, state capacity and cultural match play lesser roles than domestic structural context does, as defined by Cortell and Davis (1996). Their typologies explain not only the way norms are conditioned domestically, but how the co-optation of norms is made possible. Of the four typologies of domestic structural contexts that they outline, my analysis is most concerned with type III, which involves a decentralised structure of decision-making authority and a distant state-society relationship. In this scenario, state actors have much control over the norm's perceived legitimacy and impact and are able to use them to their benefit (Cortell and Davis 1996:456). This will be outlined in chapter four. However, first I must identify the specific norms that have been institutionalised within the Mozambican legislature.

## 3 Institutionalising good governance norms as a proposed resolution

Contrary to the school of thought that identifies institutionalisation as a step along the inevitable pathway to norm internalisation, in Mozambique some institutionalised norms have yet to be implemented and internalised. This chapter will begin by briefly outlining a framework through which to identify the existence of a norm as well as its institutionalisation. It will then introduce the institutionalised norms that have been promoted by international organisations as the prevailing solution to address displacement and dispossession from land grabbing. These are classified as good governance norms. This analysis sets up the following chapter to examine their implementation.

In particular, I will demonstrate that good governance norms have been adapted by these organisations to suit the context of land governance. I will analyse the following three guiding instruments: the United Nations Basic Principles and Guidelines on Development-Based Evictions and Displacement (the UN Guidelines); the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (Voluntary Guidelines); and the Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods, and Resources (the PRAI). They have been selected for their prominence, due to their creation by influential international organisations, as well as their relationship to land grabbing and displacement. Through the analysis, I pay particular attention to what is emphasised versus omitted, the content and structure of the instruments, and the presence of caveats.

Finally, I will demonstrate the extent to which these good governance norms have been institutionalised within Mozambique's Land Law, leading to the question of why displacement and dispossession still occur. This will be answered in the next chapter as evidence of the limits of norm implementation.

### **Identifying the presence of an institutionalised norm**

An emerging norm signifies a shifting “standard of appropriateness,” yet its emergence is not always easily identifiable (Finnemore and Sikkink 1998). As noted by Finnemore and Sikkink, “We can only have indirect evidence of norms...However, because norms by definition embody a quality of ‘oughtness’ and shared moral assessment, norms prompt justifications for action and leave an extensive trail of communication among actors” (Finnemore and Sikkink 1998:892).

One way in which an emerging norm can be identified is through the discourse and policies of organisation platforms like the UN, which often use their structure, influence and resources to internationally institutionalise norms and socialise states to do the same (Finnemore and Sikkink 1998).

Principle norms, as the product of soft law this thesis is concerned with, are often “clustered” (Betts and Orchard 2014:14) or posed as a “collection of norms” (Finnemore and Sikkink 1998:891). They are usually institutionalised – or formalised – at the international level in the form of non-binding principles, guidelines or resolutions (Betts and Orchard 2014:14) and act “as model code for the development of further national and international law” (Sheldon 2009:69).

### **Institutionalising good governance at the international level**

The recent creation and dissemination of several international guiding instruments designed to influence national legislature on the topics of displacement and dispossession, signify moves toward an institutionalised normative approach. This section will identify the norms and the ways in which they have been adapted by examining the background context of each instrument and the overlapping themes between the instruments.

### **Introducing good governance as a norm**

International organisations have sought to address displacement and dispossession by professing good governance norms. Good governance, as a norm of international law, articulates a specific image of governance and seeks to define the shape and character of that governance. It became influential toward the end of the Cold War (Abrahamsen 2000; Beekers

and Gool 2012), which is coherent with Finnemore and Sikkink's analysis of "world-time context," during which new norms arose (Finnemore and Sikkink 1998:909). With greater ideological space for putting forth neoliberal agendas like SAPs, concerns over aid effectiveness to developing countries led to the institutionalisation of good governance norms as a condition of aid and "an objective of development assistance itself" (Abrahamsen 2000; Beekers and Gool 2012:2).

As it is a relatively empty term "commonly used in a prescriptive sense, and embraced by different kinds of actors to serve different purposes," good governance has been defined in several ways by international organisations (Beekers and Gool 2012:3). Yet most definitions tend to incorporate principles of: "transparency, participation, responsiveness, accountability and the rule of law" (Parthasarathy 2005).

Recently, this norm has been applied to land governance. As indicated by Finnemore and Sikkink, norms that use adjacency claims as a persuasion tactic are most likely to be internationally influential (Finnemore and Sikkink 1998:908). As I will show below, international organisations have managed to frame the discussion of land rights around good governance practices and principles. First, I will outline relevant background information of each instrument regarding the context of their creation, target audience and purpose. This information, combined with an analysis of their content, demonstrates that good land governance is the prevailing international solution to displacement and dispossession.

#### **Background: UN Guidelines**

The UN Guidelines, formally acknowledged by the UN Human Rights Council in December 2007, build upon the 1997 UN Comprehensive Human Rights Guidelines on Development-Based Displacement (HIC 2011:16). Introduced by the UN Special Rapporteur on adequate housing, they stress the impact of development-based forced evictions on the right to adequate housing and related rights.

The target audience is primarily for states or non-state actors that devise policies and processes related to forced eviction, with an overall intent to "minimize displacement and call for sustainable alternatives" (HIC 2011:18). The UN Guidelines are designed to: "Monitor governance as well as practices of all involved parties," and "Influence law and policy reform: The UN Guidelines could be incorporated into national laws, policies, administrative decisions and court judgments..." (HIC 2011:18-19). As they are the product of a workshop intended to "[elaborate] guidelines aimed at assisting States and the international community in development policies and legislation to address forced evictions," they aspire to minimise displacement by altering state behaviour (HIC 2011:16).

#### **Background: Voluntary Guidelines**

The Voluntary Guidelines, building upon the Voluntary Guidelines on the Right to Adequate Food, were created by the FAO and partners, and endorsed by the Committee on World Food Security in May 2012. Accordingly they have been well-informed by the context of the recent land grabs. They are the product of six years of planning and participatory, inclusive processes (FAO 2012).

As the "first comprehensive, global instrument on tenure," the Voluntary Guidelines aim to inspire responsible governance through "principles and internationally accepted standards of

responsible practices for the use and control of land...for improving the policy, legal and organisational frameworks that regulate tenure rights” (FAO 2012:back cover).

Although relatively new, they are already influential. Yaya Olaniran, chairman of CFS, is quoted in *The Guardian* saying:

*Once approved, the guidelines will be voluntary, but because they have been drawn up in such a comprehensive and inclusive process...we all anticipate that they will set the bar for policymakers. In fact, we're already seeing governments moving to bring their policies and practices into alignment with the guidelines (Tran 2012).*

### **Background: The PRAI**

The PRAI represent a collaborative effort by the World Bank, the United Nations Conference on Food and Development (UNCTAD), FAO, and the International Fund for Agricultural Development (IFAD). They were promoted in 2010 after the need to standardise good agricultural practices (due to the rate and scale of large agricultural investments) was identified (World Bank 2010). Primarily concerned with agricultural investment, the principles are informed by specific research on the relationship between foreign direct investment and agriculture, the Equator Principles, which are designed to assess and mitigate environmental and social risk, as well as early versions of the Voluntary Guidelines (Equator Principles 2011; FAO Trade and Markets 2013).

Because the PRAI were written primarily with state and corporate entities in mind, they contain a business perspective in addition to the predominately policy focus of the other two instruments. Their purpose is to provide key actors with “a toolkit of best practices, guidelines, governance frameworks, and possibly codes of practice,” particularly to improve secure land tenure governance, impact assessments and contract negotiations (World Bank 2010; FAO Trade and Markets 2013).

### **Analysis of content**

Good governance is the primary institutionalised norm put forth by these international instruments to address displacement and dispossession from land grabs. This is most simply evidenced by the fact that the purpose of each of these instruments is to influence state legislature and policies in a way that will reduce displacement. The first assumption is that displacement from land grabs is caused by weak governance (Borras et al 2010:586; De Schutter 2011; Wolford et al 2013): “Many tenure problems arise because of weak governance, and attempts to address tenure problems are affected by the quality of governance” (FAO 2012:v). Furthermore, “Where rights are not well defined, governance is weak, or those affected lack voice, there is evidence that such investment can carry considerable risks of different types. Risks include displacement of local populations” (World Bank 2010:1).

With a high degree of consistency, the documents present ideal or “desirable” state behaviour. Based on common themes I have identified, “to follow principles of good governance” (World Bank 2010:8) in the context of land deals means ensuring the following: transparency, participatory consultative processes, the availability of relevant information, accountability/monitoring mechanisms, reduction of corruption, and (the most heavily stressed) recognition of customary law and secure land tenure based on land use over formal or written ownership (World Bank 2010; HIC 2011; FAO 2012). Secure tenure is the most



widely cited responsible governance strategy because it is believed that forced evictions are “often linked to the absence of legally secure tenure” (HIC 2011:22).

The second assumption is that by institutionalising the above good governance norms, the state will have both the capacity and interest to alter behaviour in a way that reduces displacement and dispossession (De Schutter 2011). Belief in the power of good governance to address social ills is outlined in the Voluntary Guidelines’ preface: “Responsible governance of tenure conversely promotes sustainable social and economic development that can help eradicate poverty and food insecurity, and encourages responsible investment” (FAO 2012:v).

Importantly, these instruments are not anomalies. They represent the wider approach followed by international organisations, NGOs and donor agencies alike, which calls for improving consultations, transparency and respecting land rights to mitigate potential violations (Vermeulen and Cotula 2010; Cotula 2011). This is reinforced by Wolford et al:

*The analyses suggest that improved governance is the key to addressing the most problematic aspects of land transfers, such as forced dispossession, speculative behaviour, corruption and a general lack of transparency...Multilateral organisations have thus focused on improving the legal and bureaucratic mechanisms with which land deals are conducted and overseen: establishing better contracts, free, prior and informed consent and clear land rights (Wolford et al 2013:191).*

When assessing the instruments’ bias toward alleviating risks of potentially harmful land deals over prevention, there is a clear reason why “disciplining” land deals (De Schutter 2011:259) through improved governance strategies is presented as the preferred venue through which to effect positive change. The focus on alleviating risk through “risk management systems” (FAO 2012:4) and “strategies to reduce potential instability” (World Bank 2010:6) is evident in all three instruments’ frequent references to adequate compensation, resettlement and rehabilitation plans (HIC 2011:26; FAO 2012:10). Where prevention is explored, it is generally with regard to requiring that consultations and relevant information be disseminated to those potentially affected in a timely fashion; calling for impact assessments to be conducted; and stating that displacement should *only occur* in “exceptional circumstances,” and “for public purposes” or “general welfare” (HIC 2011:24; FAO 2012:6). Yet not only do the instruments leave these terms vague, but structurally, prevention is discussed toward the beginning of the instruments, which begin by outlining the *gross* human rights violations associated with displacement, and then transform into “a checklist of how to destroy the global peasantry responsibly” (De Schutter 2011:275). That any evictions should be “carried out in accordance with the present guidelines,” indicates that the UN Guidelines’ secondary purpose is to provide a mitigating response once displacement or dispossession is initiated (HIC 2011:24).

The tension inherent between upholding human rights versus “public interest” is left unresolved and instead good governance norms are put forth as a resolution. None of the instruments question the necessity of land acquisitions to occur or outline criteria or assessments that should be used to determine if they ought to happen at all, but instead list the stipulations to follow once the “need” for land grabs has been demonstrated. The effect is to presume that land deals are unavoidable and that any negative impacts can be mitigated by following a desired set of practices, namely the good governance principles. In other words, the belief in the inevitability of these land deals reiterates why disciplining the behaviour of states through good governance norms is so critical.

Below I have devised a list of good land governance practices whose incorporation into state legislature would likely qualify as “successful” given the above international guidelines:

- Security of land tenure and use rights, including recognition of customary land laws
- Displacement or expropriation used as a last resort and in the name of “public interest”
- Requirement to compensate in the event that land rights are violated for “public interest”
- Requirement to conduct impact assessments
- Requirement to disseminate relevant information to affected communities
- Requirement to host consultations, conducted in a participatory manner, prior to transferring land use rights
- Transparent, incorrupt processes
- Presence of accountability mechanisms, such as a decentralised decision-making process
- Presence of accessible legal structures for dispute resolution and redress
- Women’s access to land

To what extent are these good governance norms reflected within Mozambique’s Land Law?

### **Institutionalising good governance at the national level**

As indicated by Cortell and Davis (1996), the institutionalisation of norms is evidenced through their incorporation into domestic law. It is possible for this to occur prior to institutionalisation at the international level (Betts and Orchard 2014; Finnemore and Sikkink 1998).

### **Mozambique’s Land Law**

The 1997 Land Law, along with its implementation instruments – the Land Law Regulations and Technical Annex – is noted for being progressive and for containing innovative elements (Nhantumbo and Salomão 2010). Not only is its treatment of women’s land rights empowering, but its emphasis on secure tenure through customary land law provides rights to land on the basis of land use and can even be upheld orally. The law’s aim was to protect the land rights of Mozambicans whilst attracting agricultural investment (Tanner 2002; Knight 2010:105). In addition to this balance, the law had to consider “non-negotiables” of preserving the nationalised land system, whilst incorporating customary land systems into “formal” law (Knight 2010:101). In other words, the law had to be “flexible enough to encompass and protect the customary practices and land claims of a wide range of peoples and cultures, maintain state ownership of land and offer secure tenure and legal safeguards to private investors” (Knight 2010:101).

It is clear that many of the good governance norms professed by the international guiding instruments have been institutionalised through the Land Law. According to Knight (2010), the main features of the innovative, brief and flexible Land Law include:

- Placing customarily-recognised land rights at equal value with that of statutory land rights, realised through the right of land use;
- Establishing the right of land use in three ways: through customary law, through occupancy in “good faith for at least ten years,” or through a formal application

procedure to the state; delegating land management (including its allocation, dispute resolution, and demarcation) to that of the community level, governed through customary principles;

- Ensuring that women have equal rights to access and inherit land, overriding any customary law that rules otherwise;
- Empowering oral recognition of rights: customary rights can be proved through oral testimony by neighbours and this is equal legally to that of a formal title (this is particularly important in a country where 55% of adults are illiterate (USAID 2011));
- Protecting customary rights of way access;
- requiring consultations with, and information dissemination to, communities by investors prior to transfer of land use rights;
- Enabling communities to “negotiate for mutual benefits” during consultations;
- Requiring fair compensation in the event that land is expropriated by the state for “public interest” (which is qualified in the constitution);
- Allowing access to dispute resolution bodies up to the highest court (Frey 2004; Knight 2010:102).

Additionally, the Land Law produced a number of changes within institutions, including devolving power to district level administrators and provincial governors to oversee key features of the land allocation process (Tanner 2002; Frey 2004) institutional changes which are signifiers of a strongly institutionalised norm (Cortell and Davis 2000).

Prevention of displacement is primarily protected through use, rather than formal ownership. Furthermore, the requirement for informed consultations, on which much emphasis is placed, and the participatory manner in which demarcation of land must take place also offer protections. By analysing the Land Law (Frey 2004), I have compiled a list of the articles that fulfil each one of the good land governance practices listed above:

<b>Practice</b>	<b>Article of Recognition</b>
Security of land tenure and use rights, including recognition of customary land laws	Article 10, 12, 13, 14, 15, 17, 24/1997; Article 9, 13, 17, 21/1998; Article 4, 16/TA <sup>5</sup>
Displacement or expropriation used as a last resort and in the name of “public interest”	Article 18/1997; Article 19/1998 and Article 82 of the revised 2004 Constitution
Requirement to compensate in the event that land rights are violated for “public interest”	Article 82 of the 2004 Constitution; Article 18/1997; Article 17, 19/1998
Requirement to conduct impact assessments <sup>6</sup>	Article 1, 26/1998; Article 6, 24/1998
Requirement to disseminate relevant information to affected communities	Article 5, 6, 8, 12/TA
Requirement to host consultations, conducted in a participatory manner, prior to transferring land use rights	Article 24/1997; Article 15, 24, 25, 27/1998; Article 3, 5, 6, 7, 10, 11/TA
Transparent, incorrupt processes	Not explicitly mentioned
Presence of accountability mechanisms, such as a decentralised decision-making processes	(This is limited as accountability mechanisms are not explicitly mentioned) Article 22, 23, 33/1997; Article 3, 20, 27, 35, 38/1998; Article 6, 12/TA
Presence of accessible legal structures for dispute resolution and redress	Article 32, 38/1997
Women’s access to land	Article 10, 16/1997; Article 12/1998

**Table 1:** The institutionalisation of good governance practices in Mozambique’s Land Law

### **Concluding remarks**

This chapter has argued that good governance norms are the prevailing internationally institutionalised solution to displacement and dispossession from land grabs. Despite the coherence of Mozambique’s legal framework with the spirit of the international guidelines, the extent of displacement and dispossession occurring is concerning (Cotula et al 2008). Chapter four will explore what accounts for these norms becoming “lost in translation” during their implementation, following their institutionalisation. This will help us to identify the factors that limit the efficacy of these norms in practice, and how space is created for potential displacement.

## **4 To implement or not to implement: Mozambique’s Land Law**

The previous chapter concluded that there is more to norms than their institutionalisation in national laws. The purpose of this chapter is to identify the limits of law by examining the sources of the gap between norm institutionalisation and implementation in Mozambique. In

<sup>5</sup> TA refers to the Technical Annexe of Mozambique’s Land Law.

<sup>6</sup> Impact assessments are referred to as “exploitation plans.”

other words, what mechanisms condition the norm implementation process that account for why displacement still occurs?

Similar to Cortell and Davis' (1996) theory of domestic structural contexts shaping norm impact, I suggest that Mozambique's particular governance context accounts for the persistence of displacement and dispossession, despite the institutionalisation of good governance norms. The core feature of this governance context is its decentralised operation, which I argue conditions norm implementation in two ways. Firstly, the decentralised manner through which land governance operates provides agency to local actors over the norm interpretation process, allowing them to "translate" and use norms to their benefit. The resulting haphazard implementation of norms is facilitated by state attitudes (indicating a low domestic salience). Secondly, decentralising implementation has provided the state with material benefits and thus it has little incentive to re-centralise the implementation process.

Because of its focus on governance, this chapter employs a historical and political anthropological lens to understand the nature, operation and reproduction of power and governance. The chapter begins with an explanation of historical institutional structures that have shaped land governance today, and analyses how a particular political culture and corresponding governing strategy have evolved in relation to one another. Thus I will examine intra-state relations and sources of legitimacy through the colonial era to that of when the 1997 Land Law was created. A shift in governing tactics around the time of the Land Law's creation is critical for understanding the way in which ideational and material factors have conditioned the norm implementation process. I will demonstrate the political context in which the Land Law (as an embodiment of these norms) was created to highlight its underlying political agenda to shift toward decentralised governance. Highlighting the politicisation of the Land Law calls into question whether or not it was ever intended to be implemented, or at least under which circumstances it was intended to be implemented. Next I will show that the implementation process is shaped by the governance tactic of decentralisation, which has enabled local actors – reinforced by state attitudes – to shape norm interpretation. This accounts for *spaces for exploitation and co-optation* within the implementation process. Finally, to flesh out the material factors at the state level, I will examine the ways in which the implementation process has been used by the state for state-making and economy-building purposes. By demonstrating that the gap between institutionalisation and implementation is not the result of a lack of capacity or sporadic opportunistic actors, but rather is rooted in a complex and calculated governance strategy, motivated by historical, political and economic factors at both domestic and international levels, I explain the systematic co-optation of norms as what Levien (2013) calls a "regime of dispossession". In such cases, socially and historically-embedded state structures and economic rationales combine with "ideological justifications [to] generate a consistent pattern of dispossession" (Levien 2013:383).

### **The need for legitimacy and a nation within a bifurcated, post-conflict state: a historical perspective**

A relationship exists between the nature and operation of colonial rule and the form that the state and state-building assume post-independence (Sumich and Honwana 2007). To understand Mozambique's state-societal relations and why a new ruling tactic developed to maintain legitimacy after the civil war, I will examine the historical context of governance – as it was and continues to be shaped by spatial relations – and how these governance approaches were received by the population.

Portuguese colonial rule in Mozambique constructed what Mamdani calls a “bifurcated state,” in which differential legal treatment of groups was spatially determined through the type of colonial rule for the ends of addressing “the native question” (Mamdani 1996:16). The Portuguese exhibited both indirect and direct rule. Together these forms of rule:

*Evolved into complementary ways of native control. Direct rule was the form of urban civil power. It was about exclusion of natives from civil freedoms guaranteed to citizens in civil society. Indirect rule, however, signified a rural tribal authority. It was about incorporating natives into a state-enforced customary order (Mamdani 1996:18).*

Each operated through their own legal order. The result was an inclusively-excluded rural population, in which the terms of inclusion were legally inscribed by the colonial order (Mamdani 1996).

While colonial governance was characterised by exclusion, what is more significant to the disarticulating legacies that still linger today is “how the subject population was incorporated into – and not excluded from – the arena of colonial power” (Mamdani 1996:15). On the one hand, a tiny select group of urban African elites, known as the *assimilados* or *civilados*, were legally incorporated under direct rule as citizens (Sumich and Honwana 2007; Mamdani 1996). The *assimilados* were “granted full legal equality with the Portuguese” and “preferential employment” (Sumich and Honwana 2007:6). However, colonial rule stifled their aspirations and many would go on to form the basis of the Mozambique Liberation Front party, FRELIMO, in 1962, and eventually dispose of Portuguese rule (Sumich and Honwana 2007).

On the other hand, the majority of the African population were subjects living under indirect rule in rural areas. Their selective incorporation and recognition allowed for the recruitment of forced labour, high labour taxes and integration into the wage labour economy, all of which facilitated the functioning of a highly centralised urban state (Sumich and Honwana 2007). Lubkemann cites this institutionalised urban bias as forming the “precipitating conditions” for the “fragmented wars” that later characterised Mozambique’s civil war, due to the way that it “created a pervasive culture of local “disengagement” from central political authority” (Lubkemann 2005:502). In rural Machaze, where Lubkemann conducted his research, historical “strategies of central governance relied primarily on periodic intrusive action based on shows of force and less on more systematic and more comprehensive bureaucratic means” (Lubkemann 2005:503). The resulting resistance not only produced disengagement from, and mistrust of, government, but also “strengthened the legitimacy of many local social institutions” (Lubkemann 2005:503).

After a decade-long war with the Portuguese, FRELIMO inherited in 1975 a bifurcated state deeply distrustful of central government. FRELIMO’s governance strategy ironically reflected more continuity than change: it was rooted in “a strong belief in centralisation and state intervention” and incorporated select educated groups of society into privileged positions to fill administrative voids left by the rapid exit of the Portuguese (similar to the *assimilados*) (Sumich and Honwana 2007; Mamdani 1996). In this way, “FRELIMO’s governance capacity [was]...dependent upon those locals it co-opted into its own program” (Lubkemann 2005:503).

FRELIMO also continued to estrange the rural population by nationalising all land in the name of socialism, implementing large social engineering programmes designed for collective

agriculture production and forcibly removing peasants that refused relocation (Sumich and Honwana 2007; Mamdani 1996). Alienation of the rural sector was further reinforced when FRELIMO abolished customary structures and traditional authorities (due to their association with indirect rule) and replaced them with party cadres (Mamdani 1996; Knight 2010). The party's policies "reinforced an already established culture of disengagement from central authority, but also significantly amplified local forms of social antagonism by challenging the established local sociopolitical order and contributing to economic crisis" (Lubkemann 2005:503). This threatened the party's legitimacy.

Reproducing many of their colonial rulers' tactics produced many of the same grievances and soon an internationally-backed insurgency, the Mozambican National Resistance (RENAMO) formed. The subsequent brutal civil war decimated the economy and its effects were felt nation-wide. Coherent with the above analysis, RENAMO's domestic popularity stemmed more from the fact that they represented a challenge to the existing centralised order than stood for an alternative order: "The fact that RENAMO also did not articulate an alternative vision that included any significant presence of central authority in local lives resonated resoundingly with the local terms of 'legitimacy'" (Lubkemann 2005:503).

Thus the critical piece of historical information threading through the colonial and post-independent era is the existence of a spatially-divided political body with a deep distrust of centralised order.

### **New governance tactics and the Land Law's underlying political agenda: mending a bifurcated state?**

#### **A shift in strategy**

The end of the civil war in 1992 brought the need for a new governing strategy. A destabilised economy in a post-Cold war, rising neoliberal era, and a regionally divided state with an urban bias produced during colonisation and replicated through civil war tactics, Mozambique required both political and economic stability as well as some semblance of nation-building.

The drafting of the National Land Policy in 1995 came just one year after Mozambique's first multi-party state elections, which saw FRELIMO elected to power. The shaping of internal politics by larger geopolitics, combined with internal pressures, put the state into a precarious position that had to be navigated carefully when constructing the Land Law. Firstly, the loss of the Soviet Union as a funding source meant that an alternative source was needed. Secondly, there was pressure from international organisations<sup>7</sup> to attract investors through neoliberal norms (Lunstrom 2008). Thirdly, after 25 years of war, there was the need to defuse further conflict potential. Thus it became essential to answer the "land question." Five million people displaced during the war were now returning home to resettle their land (Tanner 2002).

Fourthly, and crucially, FRELIMO needed to maintain and reassert internal legitimacy, especially in rural areas. Given FRELIMO's loss of support following attempts to outlaw customary structures, it became critical to recognise their power and legitimacy (Tanner 2002, 2005). These structures not only survived but "accounted for over 90% of land tenure rights" (Knight 2010) and they asserted their authority over land management by addressing the land situation of returnees more effectively than the state. Thus the state could no longer politically

---

<sup>7</sup> This is what Finnemore and Sikkink (1998) refer to as "organizational platforms."

afford to ignore the social legitimacy that traditional authorities possessed (Lunstrom 2008; Tanner 2002, 2005; Knight 2010).

In sum, the overarching governance question was how to retain legitimacy within a bifurcated, postcolonial, post conflict, post-Cold War state, amidst an international sphere of neoliberal pressures, competing internal sources of power, a decimated economy with no Soviet lifeline and a pressing land question. The Land Law would have to consider all of these pressures.

### **A political agenda**

While FRELIMO refused to budge on denationalising the land despite World Bank pressures, one way to appease the various groups was by decentralising power over land use rights to local structures, guaranteeing secure tenure by “turn[ing] *de facto* customary rights into *de jure* tenure” (Knight 2010), and institutionalising good governance norms as described in chapter three. Tanner argues that FRELIMO recognised that customary structures “were carrying out an important ‘public’ service at very low cost to the State” and so “decided that rather than mandate an entirely new mechanism for natural resource management, it made sense to give [customary] systems full legitimacy under the law of Mozambique” (Tanner 2002:21). This pleased the international community, which wanted to see a smaller state and greater respect for property rights to secure investment (Lunstrom 2008). It also pleased the domestic population as the prevailing view of legitimacy was one rooted within customary authority structures, and whose (small) civil society had lobbied for recognition of land rights based on occupancy, delimited at the community level (Lunstrom 2008). Therefore, by empowering customary structures, one could argue the institutionalised norm of recognising secure tenure through customary law presented a “cultural match” for the majority of Mozambicans.

While decentralisation was not FRELIMO’s first choice, and though it did generate debate within the party (Tanner 2002), devolving power to customary land authorities served to balance both domestic and international pressures. Furthermore, decentralising land governance aligned with a 1994 national policy shift that established local governance structures in order to link urban and rural areas. According to Orre and Braathen, “From the perspective of the bifurcated and centralised state, this was a revolutionary break with the past” (Orre and Braathen 2001:212-213). When examining the political uses of customary law, we see that its recognition provided FRELIMO with an alternative source of legitimacy, a means to maintain peace and attract investors, and a way to keep local authorities under a close watch. In this way, the institutionalisation of good governance norms through the Land Law must be understood as a political tool used by FRELIMO to re-legitimize their party, stabilise the nation and rebuild the economy.

### **Rationalising the governance strategy**

Thus we gain a glimpse into the logic of governance, in which the power of the party is strengthened not through direct consolidation or force, but rather through diffusion, extension and penetration into society, characterised by a blurring of state and society:

*In the sub-Saharan African context, the term “decentralisation” may be deceptive because it implies the transfer of control and authority from the state level to lower levels within a politico-administrative and territorial hierarchy...In reality, the state is rarely in control at the outset. By*



*establishing decentralised institutions, sub-Saharan African states may actually increase their control over land (Pedersen 2012:271).*

This is supported by Orre and Braathen's account of the 1994 law that institutionalised decentralisation: "A close reading of the report on the debate leads to the conclusion that the main concern of the decision-makers was to *strengthen national unity through decentralization*" (Orre and Braathen 2001:212-213).

This begs the question: How has FRELIMO's "polycentric, not hierarchical" (Pedersen 2012:271) governance tactic conditioned the implementation of good governance norms?

### **Spaces for exploitation and co-optation: decentralising the Land Law's implementation**

In assessing the role of decentralisation in implementing Tanzania's land law, Pedersen (2012) notes that decentralisation is a recent Sub-Saharan African trend. He argues that while decentralisation theory predicts greater accountability and service delivery, the non-traditional nature of governance as "polycentric, not hierarchical" has shaped the "discrepancy between reform promises and reform outcomes" (Pedersen 2012).

Similarly, I argue that the implementation of the Land Law and its good governance norms has been shaped by the governance context: decentralisation has made it possible for local actors, reinforced by state attitudes, to shape the process in a way that not only discredits good governance norms, but creates *spaces for exploitation and co-optation* of these norms. As noted by Cortell and Davis, "government officials and societal actors can invoke an international rule to further their own particularistic interests" (Cortell and Davis 1996:453). State attitudes – reflective of their own interests – have been critical to encouraging co-optation and signify low domestic salience of the norms (Cortell and Davis 2000). Thus I will show that norm interpretation leading to co-optation is undertaken by empowered local actors, reinforced by materialist state attitudes and made possible by institutionalising decentralised governance.

### **In what ways are norms transformed and by whom? The role of "designated experts"**

The Land Law is filled with *spaces for exploitation and co-optation* – spaces which help explain why a country with one of the most progressive land laws "can also be raising some of the biggest concerns about peasant dispossession during the current land grab" (Fairbairn 2013:343).

As Krook and True note, norms "tend to be vague, enabling their content to be filled in many ways and thereby to be appropriated for a variety of different purposes" (Krook and True 2010:2). Ultimately, it is local actors that fill this content as "local actors are highly significant for defining *how* it is that a norm manifests in practice" (Betts and Orchard 2014:10). Accordingly, it is useful to trace the sets of actors that possess agency over the implementation of good governance norms.

Domestic elites, including traditional customary authorities and local level administrators, possess much authority over allocating land. Fairbairn (2013) demonstrates that foreign access to land in Mozambique is shaped by these actors whose influence often counts more than official property rights. Because all foreign investments require internal partnerships (due to the lack of a formal land market), elite Mozambicans are able to use their "social

power” to shape the process of land acquisition by domestically acquiring rights that are then transferred to foreigners (Hall 2011; Fairbairn 2013). Fairbairn assesses five sources of domestic power (including “traditional authority, bureaucratic influence, historical accumulation, locally-based business knowledge and networks, and control over the development agenda”) to explain how “access control” is determined by domestic inequality between actors (Fairbairn 2013:338). In particular, local and district-level authorities have been empowered by the Land Law and play a vital role in allocating land. This often results in benefits for “the administrators themselves...and political elites whose connections give them sufficient clout to influence the actions of those administrators” (Fairbairn 2013:346).

Because of the emphasis placed on community consultations as a “central tenet” (Knight 2010:126) in protecting community rights, traditional authorities also play a crucial role in land access. In the aftermath of a changed policy in 2000, their role has become more authoritative and more closely linked to the party: “the access control they exercise stems from both their customary community leadership and their reinstated relationship with FRELIMO” (Fairbairn 2013:344). Through Decree 15/2000, community representation has been redefined in a way that reduces checks and balances and extends state authority into the local. It does so by assigning these leaders a double role of traditional authority and state agent while institutionalising their cooperation with the state (Kyed and Buur 2005).

Such positions of power transform elites into what Betts and Orchard (2014) refer to as “designated experts” legally endowed with power over interpreting the Land Law (Knight 2010). They often interpret the law in a way that undermines community involvement in negotiations and decision-making whilst furthering their own interests (Fairbairn 2013). Driven predominately by material interests, the consequent dilution of customary land rights protection has caused the co-optation of several good governance norms, such as ensuring that consultations are fair and participatory, information is disseminated in a timely manner, impact assessments are conducted in advance, and dispute structures are accessible. The result is that these norms operate more as checklists than meaningful protection mechanisms.

### **Interpreting and co-opting norms**

As indicated above, the main mechanism of protection in the Land Law is the requirement of a consultation between communities and investors prior to applying for a transfer in land use rights (Knight 2010; Tanner 2002, 2007; USAID 2011; Cotula et al 2008). However, multiple reports indicate that consultations are carried out haphazardly, often through only one meeting lasting a few hours in which communities only learn about the request on the day of the meeting (Norfolk and Tanner 2007; Cotula et al 2008; FIAN 2010; Knight 2010; Fairbairn 2013). Beyond the issues of *who* represents the community at these consultations, there are numerous reports of vague, contradictory or missing meeting minutes outlining investor obligations (Knight 2010; Fairbairn 2013). Instead, consultations are viewed more as impediments or “one of various administrative hurdles necessary” (Knight 2010:139) than protection mechanisms (Nhantumbo and Salomão 2010). This is supported by an interview that Fairbairn conducted with a senior party member, who preferred to conduct community consultations in advance so that once an investor expressed interest in land, “they would not have to go through the arduous process of explaining their actual project to communities and negotiating” (Fairbairn 2013:350). Although a recent legislative change now requires at least two consultations take place, there is little to indicate that the “checklist” nature of the consultations, in which investors “effortlessly fulfil[ing] deeply complex principles like ‘consultation and participation’ and ‘social sustainability’” will change (Fairbairn 2013:337).

The following quote within an FAO report captures the essence of the “checklist” nature that the norm of community consultation has become:

*By failing to create the space for a community to be genuinely consulted and assertively negotiate compensation and a share of the benefits gained from use of its land, local officials have transformed these exercises into obligatory performances of consultation, wherein the community does not have a real right to deny the land grant, does not have the support necessary to be able to negotiate with the investor as an equal at the bargaining table, may never see the promised benefits materialize, and, in the instance of a breach, has no way to enforce the agreement (Knight 2010:143).*

The implementation of impact assessments has also diverted from its original purpose in a problematic way. At times, assessments are not even undertaken (USAID 2011; Norfolk and Hanlon 2012). When they are conducted, environmental impacts are often glossed over and not discussed with communities, while social impacts are spun in a way that presents resettlement as a positive opportunity (Nhantumbo and Salomão 2010). Furthermore, while there are accountability mechanisms to ensure an investment plan is implemented within a certain timeframe, there is no equivalent to ensure promised community benefits are delivered (Knight 2010).

Equally problematic is the way in which dispute legal structures have been used. Despite all of the complaints regarding consultation procedures, not one case has been brought to court (Fairbairn 2013; Knight 2010). This is because when “conflicts over land allocations arise they are resolved on an ad hoc basis, often by the same district or provincial administrators who assigned the land to an investor in the first place” (Fairbairn 2013:341). Thus by decentralising authority, the Land Law has granted local actors with a large degree of independence over interpreting and applying the law and often they do so in a way that diverts from the original intended purpose of the international good governance norms.

#### **What supports norm co-optation? The role of state attitudes**

According to Cortell and Davis (2000), norms that are less domestically salient are less likely to resonate and more likely to be appropriated; this is particularly likely in states with decentralised governance structures and distant state-societal relations, as is the case in Mozambique. Domestic saliency is exhibited through how the norm is treated in political discourse as well as state policy – the combination of which I refer to as state attitudes. In Mozambique, the co-optation of norms during the implementation process has been reinforced by state attitudes that fail to stand up for community rights. The lack of support is exemplified through the state’s actions and policies that undermine the norm’s implementation:

- Its wider development agenda and lack of funds designated to its cause;
- Alterations and interpretations of the law that diminish community rights;
- The state’s use of “public interest” claims;
- State conflicts of interest.

In fact, “the current government appears intent on dismantling much of what is innovative about its legal framework” (Hall 2011:206).

Fairbairn noted that control over the development agenda is crucial to shaping the interpretation of land rights: “National-level politicians shape the discourse surrounding development, and the policies they craft set a precedent for how agricultural investment and land rights are interpreted” (Fairbairn 2013:349).

The state has communicated its attitude by constructing a wider development agenda that is structurally incoherent with that of community land rights. This preference has been exhibited through investment incentives such as low taxes and the passing of recent initiatives, including the 2009 Policy and Strategy for Biofuels and PEDSA, the Strategic Plan for Agricultural Development. These initiatives essentially aim to increase biofuel production; reduce the country’s dependency on oil imports (Nhantumbo and Salomão 2010); grow the agricultural sector by 7% annually by “dealing with issues that affect investor confidence”; and move away from subsistence toward commercial agriculture (Republic of Mozambique 2010). These policies follow a longer trend of “prioritising investors’ applications for rights of land use at the expense of community land rights” (Knight 2010:138). Some members of government have noted that the Land Law does not align with this wider agenda and have called for its overhaul (Knight 2010:136). In this way, a complex alliance between Mozambican state development policy and the international demand for biofuels has displaced the protection of community rights and created an environment of wilful blindness for norms to be implemented haphazardly.

The attitude is further reinforced by the abysmal lack of public funds allocated to community rights. As of 2005, spending on agriculture comprised only 4% of the total budget, and of this 4%, the Land Law’s implementation only received a fraction (Tanner 2005). Instead of investing in educating communities about their rights or how to delimit their land (of which only 12% have been delimited as of 2012), public funds have instead been allocated toward investment (USAID 2011; Fairbairn 2013):

*Government officials have appeared to be firmly on the side of the investors, focused more on securing the land for the intended investment than protecting community interests, promoting partnership ventures, or ensuring that communities are appropriately compensated (Tanner 2005:10).*

The lack of funding for the sector combined with the requirement of investors to submit an application fee for land use “doubles under-financed administrative officials’ incentives to prioritize private investors’ land applications” and reiterates why local actors may only haphazardly implement norms (Knight 2010:135). Thus gaps in implementation are not as much about a lack of resources as they are about a lack of political will.

Another indication of the state’s lack of commitment to implementing the Land Law is demonstrated by the reinterpretation and revision of the Land Law and 1990 Constitution over time, “dilute[ing] the potency of community land rights” to suit its political and economic agendas (Fairbairn 2013). Key alterations include an amendment to the 2004 Constitution, Decree 15/2000 discussed above, and an amendment to Article 35 in 2007, which have all disempowered community land rights (Kyed and Buur 2005; Norfolk and Tanner 2007; Knight 2010).

Perhaps the most obvious manifestation of the state’s attitude toward community rights is the expropriation of land through the ideological justification of “public interest,” which, with the

recent change in the Constitution has made it easier to terminate existing land rights for this reason. Lunstrom (2008) documents one particular case, the Massingir Velho village within Limpopo National Park, in which the state reclassified occupied land as “tourist” or “wilderness” areas in order to attract investment. This reclassification enabled the park administration to interpret the Land Law in a way that does not automatically recognise use rights and is now trying to relocate 5,000 to 6,000 people (Lunstrom 2008). These people “were not adequately consulted before the park was created but, rather, were simply informed that they were living inside a national park” – hardly a model example of community rights protection (Lunstrom 2008:349). Finally, there are cases in which the state is a stakeholder in an investment project, such as the Massingir Agro-Industrial consortium, presenting a conflict of interest. The political penetration of local capital begs the question of how to distinguish between public interest, state and party interests.

Thus we see that the governance tactic of decentralisation has impacted the norm implementation process by delegating power over the process to local actors. Far from being punished, these actors’ actions have been reinforced by state attitudes to undermine community land rights, communicated through various policies and discourses. In fact, the institutional structure of decentralisation has allowed the state to discreetly undermine community land rights through its manifested attitudes, whilst investors are seen as the grabbers.

### **The logic of non-implementation: a “lack” of governance?**

#### **A law to be implemented?**

The political birth of the Land Law combined with the lack of commitment to its implementation raises three questions: Were the good governance norms reflected within the Land Law ever intended to be implemented or is it just a case of reform being used to benefit the state, whilst providing the appearance of reform? What does the state stand to gain through institutionalisation without implementation – through appearing one way whilst acting another? Moreover, what can the nature of decentralised governance tell us about the way in which the implementation process has been used by the state?

According to Orchard (2014), the context of institutionalisation is critical to shaping the norm implementation process. With reputations on the line and external pressures to adopt international norms, a state may create a policy, but may “lack(s) the incentives to then follow-through with implementation” (Orchard 2014:172). The context of the Land Law’s birth outlined above and the way in which the FRELIMO party operates through overlapping structures at various spatial and sectoral levels of society, indicates that there are distinct economy-building and state-making incentives that explain the low domestic salience of these norms. I will show that the material outcomes have been facilitated by the state decentralising the implementation process.

#### **Non-implementation as economy-building**

On the economic front, Mozambique has strong incentives to prioritise biofuels as a path to energy independence and to turn land into capital. Not only considered a “double peripheral” state –peripheral to peripheral economies (Hanlon 1991:2) – Mozambique has some of the world’s lowest scores on the Human Development Index (UNDP 2013), highest chronic malnutrition rates (FAO 2010) and a history of economic and oil dependence that has shaped its sovereignty over its political agenda (Hanlon 1991). Institutionalising the Land Law without effectively implementing it has brought domestic interests of attracting investors and

decreasing dependency on volatile oil imports in line with the global demand for biofuels<sup>8</sup> (Hall 2011:197). Institutionalising the law was necessary to attract investors: “the architects of the law recognized that investors are more likely to make investments if no ambiguity over land rights existed and if they can negotiate directly with the title-holding individual or community” (Lunstrom 2008:342).

Not only does non-implementation boost national growth, but it also facilitates personal benefits for party leaders:

*Political elites create investment conditions of low taxes and little government oversight in order to “clinch investment deals while also permitting government leaders to ingratiate themselves with investors, thereby laying the groundwork for such leaders, in their entrepreneurial capacity, to then seal lucrative private partnerships” (Saul 2011:97, cited in Fairbairn 2013:349).*

In this way, business becomes politics and politics becomes business.

### **Non-implementation as state-making**

On the political front, decentralising the process of implementation has worked to deflect state responsibility toward its citizens, opening spaces for state-making processes of legitimisation, extraction, and party unification.

The deflection of major responsibility toward citizens opens spaces for exploitation of the implementation process in two ways. Firstly, by devolving the power to allocate land to the community level, in which investors and local authorities must consult with communities, the state rarely has to actually carry out the land grabbing itself. Instead “the decision is in the hands of the administration rather than the state, which in practice, means that it is firmly entrenched with the FRELIMO party” (Fairbairn 2013:343). Yet the perception is such that the state acts as a “mere land broker” (Levien 2013:384), assuming a more commercial, depoliticised role.

The second way in which the state deflects responsibility is by rooting any expropriation and/or state interference within a “public interest” claim. Thus by putting on its regulatory hat, the state still possesses the authority to extract and control resource management through intervention as it suits its political or economic interests.

That the dual roles of “mediator and regulator” (Tanner 2002:3) are able to operate side-by-side is made possible by decentralising implementation; this helps to explain the contradictions in state behaviour and explains how it can be a legitimate extractor. According to Lunstrom, “debates over land reform in Mozambique have been to a large degree debates over the legitimate reach of state power, for example, into the economy” (Lunstrom 2008:351). Yet we see through these dual roles that legitimacy is obtained by exploiting the authority of others (such as traditional authority and investor authority) to do the state’s “dirty work,” while the state is able to present itself as an independent regulator. It is the aura of fairness, equity and de-politicisation from being perceived as a mediator which in turn provides the state with the internal and external legitimacy to act as it pleases. In other words, the intertwined processes of legitimacy and extraction are carried out through the ways in

---

<sup>8</sup> The global demand for biofuels is exhibited through the EU mandate that aims for 10% of its fuel derived from renewable sources by 2020 (Borras et al 2010).

which the state has cleverly positioned itself as both mediator and regulator, simultaneously encompassing a “depoliticised” role and a legally interfering role, and implementing the law only to the extent that it suits party interests. Importantly, by assuming the role of depoliticised land broker, it can make “state/party interest” appear as “public interest” and interfere in “just” cases that serve wider state-building and economy-making processes.

Finally, this decentralised method of governance has also served to unify the party. As domestic elites use their social power and party ties for their own interests, they buy into a patronage system (Fairbairn 2013), in which “loyalty is secured through the way participation in the regime bolsters leaders’ personal wealth and local power” (Gledhill 2000:95). The result is that FRELIMO has been able to maintain a unified party by including and pleasing potential opposition (Sumich and Honwana 2007; Fairbairn 2013:339).

This reiterates an above point that decentralisation and depoliticisation become sources of strength and power, ironically serving to consolidate state political power through diffusion. Similar to the structures of indirect rule, governance operates not only hierarchically, but horizontally and in diffuse manners. In addition, through its penetration of the local, the state is able to deflect its own responsibility to its citizens, even as it reinforces the attitudes and structures that allow for others to continue overlooking rights with no punitive consequences.

### **Concluding remarks on a governance “pattern of dispossession”<sup>9</sup>**

Because norms operate through, and rely upon, a national legal and political structure, the outcomes of their implementation are conditioned by the domestic context and actors. Good governance norms have failed to resonate and make a meaningful impact. This is because their implementation is subject to, and limited by, the governance structure of decentralisation. This organisational feature of decision-making empowers local actors to shape implementation processes and alter its meanings to suit personal agendas. Yet these actors cannot be considered the sole “gatekeepers” of implementation, as state attitudes work to influence the structure within which these actors’ agency operates. The fact that these opportunists are backed by state attitudes driven by material agendas reinforces the non-implementation of norms, and provides it with a more systematic, structural, regime-like character – as opposed to sporadic opportunism. With such a logic of governance, the non-implementation of norms cannot be simply attributed to lack of state capacity.

What emerges is a picture in which state power is not only diffuse, but also extends beyond itself: its attitude toward rights and investment are reflected at local levels and used by elites with political and economic power as justifications to access land and determine land deals. In this way, the “regime of dispossession” exists simultaneously outside of and inside of the state body (Levien 2013).

Cortell and Davis’ (1996) typology model displayed in chapter two does not account for decentralised governance structure whose authority and interests operate both inside and outside of the state. Therefore, further research should investigate whether the organisational structure of decision-making in such contexts is a more critical determining factor of norm implementation than the closeness of state-societal relations, given the state’s ability to penetrate society. Another question to examine would be whether a decentralised state with distant state-societal relations (type III) has equal, if not more, sway than a centralised state

---

<sup>9</sup> (Levien 2013:383).

with distant state-societal relations (type I) with regard to decision-making conditioning a norm's impact.

## 5 Conclusion

Using Betts and Orchard's (2014) conceptualisation of implementation as a separate process from that of institutionalisation, I have argued that the limits of law to address displacement and dispossession from land grabbing in Mozambique are rooted within how international norms – professed to resolve such issues – are implemented within a domestic context. Although Mozambique has – through its Land Law – institutionalised good governance norms that adhere to the spirit of the international guiding instruments, displacement and dispossession from land grabs continue to occur.

The institutionalised norms fail to affect state behaviour in the intended way. This is because “While good governance and land rights are worthy goals, they are not implemented in a vacuum” (Wolford et al 2013:191). As pointed out by Checkel (1997), and Cortell and Davis (1996; 2000), the domestic context has a decisive influence over whether, and to what degree, international norms will resonate domestically. The domestic context holds the potential to transform a norm's meaning and use. One of the domestically influential factors cited by Cortell and Davis (1996) is the domestic structural context in which norms operate, defined as the organisational structure of decision-making (or extent of state centralisation) combined with the nature of state-societal relations.

Mozambique's historical, political and economic experiences have shaped a society which distrusts centralised authority and consequently, governance today operates diffusely and in a decentralised manner. This decentralised governance has conditioned the norm implementation process by empowering local actors to use their social power and party ties to control how and to what ends good governance norms are implemented. The result not only transforms the meanings and uses of norms, but transforms them in a way that creates space for norm co-optation to further personal agendas. Thus good governance norms, such as the requirement to conduct participatory consultations with communities prior to a transfer in land use rights, are transformed into checklists and carried out haphazardly.

However, decentralising implementation and the resulting co-optation cannot be understood as a case of opportunistic actors whose actions the state lacks capacity to discipline. Rather, disregard for community land rights is supported by state attitudes, as demonstrated by the lack of funding placed on community land rights, its incoherence with the wider development agenda, and even recent transformations in the law that dilute the potency of community land rights. A deeper analysis shows that these state attitudes reflect a conscious decision to look the other way when these norms fail to be implemented, due to the material economy-building and state-making benefits it brings the state.

Therefore rather than being a sign of incapacity, the material benefits that the state accrues are possible *because* implementation has been decentralised and executed haphazardly. Decentralising authority over implementation has helped to unify the party – which Fairbairn (2013) notes is also effectively the state – and legitimates the state as mediator and regulator, which allows it to assert authority over extraction as needed. It becomes evident that



displacement and dispossession from land grabs is not only possible, but may be rooted in a logical governance response to how political and economic relationships are configured. This is supported by “Cousins’ (2009) critique that legal empowerment through legislative reform, while effective in certain important regards, is intrinsically limited by the quality of laws and institutions, and more fundamentally by the milieu of the political economy” (Cousins 2009, cited in Vermeulen and Cotula 2010:913). In such contexts, it is unlikely that additional codes of conduct will have any more positive an impact.

According to Hall, it is the failure of international law to devise a strategy that addresses the deeper driving political and economic forces of displacement and dispossession that renders these norms ineffective:

*Responses from international financial and development institutions, which have tended to prioritise procedural safeguards to curb the excesses of “grabbing” in the forms of a “code of conduct” or “principles to guide responsible agro-investment”...rather than questioning the paradigm of development that promotes such deals (Hall 2011:207).*

Rather than undermining the underlying incentives as a way to transform governance, good governance norms have been integrated into the pre-existing governance structure, rendering them ineffective.

### **Future research**

Yet to what extent are good governance norms, or international law itself, equipped to undermine the structural political and economic drivers that incentivise displacement and dispossession? According to Beekers and Gool, good governance norms

*Fail to take into account, let alone represent, the political reality in many non-Western countries because they are rooted in the “classic Weberian separation between modern systems of rule based on legal-rational bureaucracy” distinct from “traditional systems of rule based on patrimonialism, where political office is appropriated for private ends” (Beekers and Gool 2012:3-4).*

They argue that in many contexts where good governance norms influence policy, “political practices expose their own, indigenous, understandings of what ‘governing well’ entails,” in which political accountability is often based on personal relationships (Beekers and Gool 2012:4). Attempting to alter governance structures without considering the particularities and diverse ways and rationales of governance operations in non-Weberian<sup>10</sup> contexts, and moreover applying legal solutions for political problems, will likely continue to result in ineffective good governance norms.

This ignites a second critical question concerning the limits of law. Although not the focus of this thesis, it is worth investigating whether it is the statist nature of international law itself that makes its application ineffective in cases like Mozambique.

The assumption of international law is that states possess ultimate control over the implementation of law, and therefore, by incorporating these norms into the legal framework, state behaviour will be altered in a desired way. Thus the implementation of good governance

---

<sup>10</sup> By non-Weberian, I am simply referring to those post-colonial states that did not organically develop out of the Westphalian state system.

norms depends upon a certain operation of governance, in which a centralised, capable state has an interest in upholding rights. Yet the strategic decentralisation of land governance in Mozambique challenges the premise of international law that relies upon a centralised state order for implementation. It is questionable whether a decentralised operation of governance is within the conceptual framework of international law, and moreover, whether international law in its current statist and depoliticised form can transform the deeply-rooted domestic political practices that operate in diffuse ways external to customary understandings of state governance.

## 6 References

- ABRAHAMSEN, R.** (2000) *Disciplining Democracy: development Discourse and good governance in Africa*, London, Zed Books.
- ACHARYA, A.** (2004) 'How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism' (online) *International Organization* 58(2): 239-275 Available from: <<http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=222762>> (accessed May 23, 2013).
- AL JAZEERA** (2011) 'Oxfam sounds Uganda land-grab warning', September 22, 2011. Available from: <<http://www.aljazeera.com/video/africa/2011/09/2011922111515150690.html>> (accessed May 23, 2013).
- BEEKERS, D. and GOOL, B.** (2012) *From patronage to neopatrimonialism Postcolonial governance in Sub-Sahara Africa and beyond*, ASC Working Paper 101/2012. Leiden, The Netherlands, African Studies Center. Available from: <<https://openaccess.leidenuniv.nl/bitstream/handle/1887/19547/WP101jan2013.pdf?sequence=4>> (accessed May 23, 2013).
- BETTS, A. and ORCHARD, P.** (2014) 'Introduction: The Normative Institutionalization-Implementation Gap', 1-43 in Betts, A. and Orchard P., (ed.) *Implementation and World Politics: How International Norms Change Practice* (under review, Oxford University Press).
- BORRAS, S., McMICHAEL, P., and SCOONES, I.** (2010) 'The politics of biofuels, land and agrarian change: editors' introduction', (online) *The Journal of Peasant Studies* 37(4): 575-592. Available from: <<http://dx.doi.org/10.1080/03066150.2010.512448>> (accessed May 23, 2013).
- BORRAS, S., SATURINO, M., HALL, R., SCOONES, I. WHITE, B., and WOLFORD, W.** (2011) 'Towards a better understanding of global land grabbing: an editorial introduction' (online) *Journal of Peasant Studies* 38(2): 209-216. Available from: <<http://www.tandfonline.com/doi/pdf/10.1080/03066150.2011.559005>> (accessed May 23, 2013).
- CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE (CHRGJ)** (2010) *Foreign Land Deals and Human Rights: Case Studies on Agricultural and Biofuel Investment*, New York, NYU School of Law. Available from: <[http://law.nyu.edu/ecm\\_dlv1/groups/public/@nyu\\_law\\_website\\_\\_alumni/documents/documents/ecm\\_pro\\_067266.pdf](http://law.nyu.edu/ecm_dlv1/groups/public/@nyu_law_website__alumni/documents/documents/ecm_pro_067266.pdf)> (accessed May 23, 2013).
- CHATTY, D. and COLCHESTER, M.** (2002) 'Introduction: Conservation and Mobile Indigenous Peoples', 1-20 in Chatty, D. and Colchester, M., (ed.) *Conservation and Mobile Indigenous Peoples: Displacement, Forced Settlement, and Sustainable Development*, Oxford, Berghahn Books.

- CHECKEL, J.** (1997) 'International Norms and Domestic Politics: Bridging the Rationalist Constructivist Divide' (online) *European Journal of International Relations* 3(4): 473-495. Available from: <<http://ejt.sagepub.com/content/3/4/473.full.pdf+html>> (accessed May 23, 2013)
- CHECKEL, J.** (1999) 'Norms, Institutions, and National Identity in Contemporary Europe' (online) *International Studies Quarterly* 43(1): 83-114 Available from: <<http://www.jstor.org/stable/2600966>> (accessed May 23, 2013).
- CHIMNI, B.S.** (1998) 'The Geopolitics of Refugee Studies: A View from the South', *Journal of Refugee Studies* 11(4): 350-374.
- CORTELL, A., and DAVIS, J.** (1996) 'How Do International Institutions Matter? The Domestic Impact of International Rules and Norms' (online) *International Studies Quarterly* 40(4): 451-478 Available from: <[http://disciplinas.stoa.usp.br/pluginfile.php/15098/mod\\_resource/content/1/Cortell, %20Andrew%3B%20Davis,%20James%20-%20How%20Do%20Internrtional%20Matter\\_The%20Domestic%20Impact%20of%20I nternational%20Rules%20and%20Norms.pdf](http://disciplinas.stoa.usp.br/pluginfile.php/15098/mod_resource/content/1/Cortell,%20Andrew%3B%20Davis,%20James%20-%20How%20Do%20Internrtional%20Matter_The%20Domestic%20Impact%20of%20I%20nternational%20Rules%20and%20Norms.pdf)> (accessed May 23, 2013).
- CORTELL, A. and DAVIS, J.** (2000) 'Understanding the Domestic Impact of International Norms: A Research Agenda' (online) *International Studies Review* 2(1): 65-87. Available from: < <http://onlinelibrary.wiley.com/doi/10.1111/1521-9488.00184/pdf>> (accessed May 23, 2013).
- COTULA, L., DYER, N., and VERMEULEN, S.** (2008) *Fuelling Exclusion? The Biofuels boom and Poor People's Access to Land*, London, IIED. Available from: <[http://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/5811/12551IIED.pdf?sequenc e=1](http://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/5811/12551IIED.pdf?sequence=1)> (accessed May 23, 2013).
- COTULA, L., VERMEULEN, S., LEONARD, R. and KEELEY, J.** (2009) *Land Grab or Development Opportunity? Agricultural Investment and International Land Deals in Africa*, London/Rome, IIED/FAO/IFAD. Available from: <[http://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/6178/land%20grab%20or%20 dev%20opportunity.pdf?sequence=1](http://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/6178/land%20grab%20or%20dev%20opportunity.pdf?sequence=1)> (accessed May 23, 2013).
- COTULA, L.** (2011) *Land Deals in Africa: What is in the Contracts?* London, IIED. Available from: <<http://pubs.iied.org/12568IIED.html>> (accessed May 23, 2013).
- COTULA, L.** (2012) 'The international political economy of the global land rush: A critical appraisal of trends, scale, geography and drivers' (online) *The Journal of Peasant Studies* 39(3-4): 649-680. Available from: <<http://www.tandfonline.com/doi/pdf/10.1080/03066150.2012.674940>> (accessed May 23, 2013).
- DANELSKI, D.** (1974) 'The Limits of Law', in Pennock, J., and Chapman, J. (ed.) *The Limits of Law*, Lieber-Atherton.

- DEININGER, K., BYERLEE, D., LINDSAY, J; NORTON, A., SELOD, H., and STICKLER, M.** (2011) *Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits?* Washington DC, World Bank. Available from: <<https://openknowledge.worldbank.org/handle/10986/2263>> (accessed May 23, 2013).
- DE SCHUTTER, O.** (2011) 'How not to think of land-grabbing: three critiques of large-scale investments in farmland' (online) *Journal of Peasant Studies* 38(2): 249-279 Available from: <<http://www.tandfonline.com/doi/pdf/10.1080/03066150.2011.559008>> (accessed May 23, 2013).
- EQUATOR PRINCIPLES** (2011) *The Equator Principles Association*. Available from: <<http://www.equator-principles.com>> (Last updated May 20, 2013, accessed May 23, 2013).
- FAIRBAIRN, M.** (2013) 'Indirect Dispossession: Domestic Power Imbalances and Foreign Access to Land in Mozambique', (online) *Development and Change* 44(2): 335-356. Available from: <<http://onlinelibrary.wiley.com/doi/10.1111/dech.12013/pdf>> (accessed May 23, 2013).
- FAO** (2010) *Nutrition Country Profiles: Mozambique*. Available from: <[http://www.fao.org/ag/agn/nutrition/moz\\_en.stm](http://www.fao.org/ag/agn/nutrition/moz_en.stm)> (Last updated 2010, accessed May 23, 2013).
- FAO** (2012) *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, Rome, Italy. Available from: <<http://www.fao.org/docrep/016/i2801e/i2801e.pdf>> (accessed on May 23, 2013).
- FAO TRADE AND MARKETS** (2013) *Principles for Responsible Agricultural Investment that Respect Rights, Livelihoods and Resources (PRAI)*. (online) Available from <<http://www.fao.org/economic/est/issues/investments/prai/en/>> (Last updated 2013, accessed May 23, 2013).
- FIAN** (2010) *Land grabbing in Kenya and Mozambique: A report on two research missions and a human rights analysis of land grabbing*, Heidelberg, FIAN International Secretariat. Available from: <<http://www.fian.at/assets/StudieLandgrabbinginKeniaMozambiqueFIAN2010.pdf>> (accessed May 23, 2013).
- FINNEMORE, M. and SIKKINK, K.** (1998) 'International Norm Dynamics and Political Change' (online) *International Organization*, 52(4): 887-917. Available from: <[http://home.gwu.edu/~finnemor/articles/1998\\_norms\\_io.pdf](http://home.gwu.edu/~finnemor/articles/1998_norms_io.pdf)> (accessed May 23, 2013).
- FREY, A.** (2004) *Land Law Legislation*. MozLegal Lda (ed). Available from: <<http://www.doingbusiness.org/~media/FPDKM/Doing%20Business/Documents/Law-Library/Mozambique-Land-Law-Legislation.pdf>> (accessed May 23, 2013).

- FRIENDS OF THE EARTH EUROPE (FOEE).** (2010) *Africa Up for Grabs: The Scale and Impact of Land Grabbing for Agrofuels*, Friends of the Earth Europe. Available from: <<http://www.foei.org/en/resources/publications/pdfs/2010/africa-up-for-grabs/view>> (accessed May 23, 2013).
- GLEDHILL, J.** (2000) *Power and its Disguises: Anthropological Perspectives on Politics*, 2<sup>nd</sup> edition, London, Pluto Press.
- HALL, R.** (2011) 'Land grabbing in Southern Africa: the many faces of the investor rush' (online) *Review of African Political Economy* 38(128): 193-214. Available from: <<http://dx.doi.org/10.1080/03056244.2011.582753>> (accessed May 23, 2013).
- HABITAT INTERNATIONAL COALITION (HIC)** (2011) *Handbook on the United Nations Basic Principles and Guidelines on Development-Based Evictions*, Available from: <[http://www.hic-sarp.org/documents/Handbook%20on%20UN%20Guidelines\\_2011.pdf](http://www.hic-sarp.org/documents/Handbook%20on%20UN%20Guidelines_2011.pdf)> (accessed May 23, 2013).
- HANLON, J.** (1991) *Mozambique Who calls the Shots?*, Indiana University Press.
- KNIGHT, R.** (2010) 'Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation', *FAO Legislative Study 105*. Rome, FAO. Available from: <<http://www.fao.org/docrep/013/i1945e/i1945e01.pdf>> (accessed May 23, 2013).
- KROOK, M. and TRUE, J.** (2010) 'Rethinking the life cycles of international norms: The United Nations and the global promotion of gender equality' (online) *European Journal of International Relations* 18(1): 103-27. Available from: <<http://ejt.sagepub.com/content/early/2010/11/04/1354066110380963.full.pdf>> (accessed May 23, 2013).
- KYED, H. and BUUR, L.** (2005) *State Recognition of Traditional Authority in Mozambique: The Nexus of Community Representation and State Assistance*, Nordic Africa Institute Discussion Paper 28. Available from: <<http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=96053>> (accessed May 23, 2013).
- LANDac,** (2012), *Mozambique Food Security and Land Governance Factsheet*. Amsterdam, Royal Tropical Institute (KIT). Available from: <<http://www.landgovernance.org/system/files/Mozambique%20Factsheet%20-%202012.pdf>> (accessed May 23, 2013).
- LEVIEN, M.** (2013) 'Regimes of Dispossession: From Steel Towns to Special Economic Zones', (online) *Development and Change* 44(2): 381-407. Available from: <<http://onlinelibrary.wiley.com/doi/10.1111/dech.12012/pdf>> (accessed May 23, 2013).

- LUBKEMANN, S.** (2005) 'Migratory Coping in Wartime Mozambique: An Anthropology of Violence and Displacement in 'Fragmented Wars', (online) *Journal of Peace Research* 42(4): 493-508. Available from: <<http://www.jstor.org/stable/30042338>> (accessed May 23, 2013).
- LUNSTROM, E.** (2008). 'Mozambique, Neoliberal Land Reform, and the Limpopo National Park', *The Geographical Review* 98(3): 339-355. Available from: <<http://onlinelibrary.wiley.com/doi/10.1111/j.1931-0846.2008.tb00305.x/pdf>> (accessed May 23, 2013).
- MAMDANI, M.** (1996) *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Princeton, NJ, Princeton University Press.
- MOUSSEAU, F. and MITTAL, A.** (2011) *Understanding Land Investment Deals in Africa Country Report: Mozambique*, Oakland, CA, The Oakland Institute. Available from: <[http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI\\_country\\_report\\_mozambique\\_0.pdf](http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_country_report_mozambique_0.pdf)> (accessed May 23, 2013).
- MECKLED-GARCIA, S.** (2011) 'International Law and the Limits of Global Justice' (online) *Review of International Studies* 37(5): 2073-2088. Available from: <[http://journals.cambridge.org/abstract\\_S0260210511000325](http://journals.cambridge.org/abstract_S0260210511000325)> (accessed May 23, 2013).
- NHANTUMBO, I. and SALOMÃO, A.** (2010) *Biofuels, Land Access, and Rural Livelihoods in Mozambique*, London, IIED. Available from: <<http://dev.natureandpoverty.net/uploads/media/12563iied.pdf>> (accessed May 23, 2013).
- NORFOLK, S. and HANLON, J.** (2012) 'Confrontation Between Peasant Producers and Investors in Northern Zambezia, Mozambique in the Context of Profit Pressures on European Investors.' Paper prepared for the conference *Annual World Bank Conference on Land and Poverty*, The World Bank, Washington DC, April 23-26, 2012.
- NORFOLK, S., and TANNER, C.** (2007) 'Improving tenure security for the rural poor Mozambique country case study', *FAO Legal Empowerment of the Poor Working Paper* 5. Available from: <<ftp://ftp.fao.org/sd/sda/sdar/sard/Mozambiquecase.pdf>> (accessed May 23, 2013).
- OLIVER-SMITH, A.** (2009) 'Introduction: Development-Forced Displacement and Resettlement', in Oliver-Smith, A. (ed.) *Development and Dispossession: The Crisis of Forced Displacement and Resettlement*, SAR Press.
- ORCHARD, P.** (2014) 'Implementing a Global Internally Displaced Persons Protection Regime' 170-196 in Betts, A. and Orchard P., (ed.) *Implementation and World Politics: How International Norms Change Practice* (under review, Oxford University Press).

- ORRE, A. and BRAATHEN, E.** (2001) 'Can a Patrimonial Democracy Survive? The Case of Mozambique', *Forum for Development Studies* 28(2): 199-239. Available from: <<http://www.tandfonline.com/doi/pdf/10.1080/08039410.2001.9666169#.UZ41arXqIKY>> (accessed May 23, 2013).
- PARTHASARATHY, D.** (2005) 'Taking responsibilities and participation seriously: A Critique of 'Good Governance''. Available from: <<http://www.dhdi.free.fr/recherches/gouvernance/articles/partasarathyparticipation.htm>> (accessed May 23, 2013).
- PEDERSEN, R.** (2012) 'Decoupled Implementation of New-Wave Land Reforms: Decentralisation and Local Governance of Land in Tanzania', (online) *The Journal of Development Studies* 48(2): 268-281. Available from: <<http://www.tandfonline.com/doi/pdf/10.1080/00220388.2011.635202#.UZ4T87XqIKY>> (accessed May 23, 2013).
- REPUBLIC OF MOZAMBIQUE MINISTRY OF AGRICULTURE** (2010) *Strategic Plan for Agricultural Development PEDSA 2010-2019 Draft*, MozLegal Lda. Available from: <[http://fsg.afre.msu.edu/mozambique/caadp/PEDSA\\_FINAL-English\\_22\\_Nov.pdf](http://fsg.afre.msu.edu/mozambique/caadp/PEDSA_FINAL-English_22_Nov.pdf)> (accessed May 23, 2013).
- SUMICH, J. and HONWANA J.** (2007) *Strong Party, Weak State? Frelimo and State Survival Through the Mozambican Civil War: An Analytical Narrative on State-Making*, Crisis States Research Centre, Working Paper No. 23. LSE Development Studies Institute. Available from: <<http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=57431>> (accessed May 23, 2013).
- TANNER, C.** (2002) 'Law making in an African context: the 1997 Mozambican Land Law', *FAO Legal Papers Online No. 26*. Rome, FAO. Available from: <[http://www.fao.org/fileadmin/user\\_upload/legal/docs/lpo26.pdf](http://www.fao.org/fileadmin/user_upload/legal/docs/lpo26.pdf)> (accessed May 23, 2013).
- TANNER, C.** (2005) 'Land rights and enclosures: implementing the Mozambican Land Law in practice.' Paper delivered at the conference *The Changing Politics of Land in Africa: domestic policies, crisis management, and regional norms*, University of Pretoria, 28-29<sup>th</sup> November 2005.
- TRAN, M.** (2012) 'Negotiators Reach Consensus on Global Land Governance Guidelines', *The Guardian* March 14, 2012. Available from: <<http://www.guardian.co.uk/global-development/2012/mar/14/negotiators-consensus-global-land-governance-guidelines>> (accessed May 23, 2013).
- UNDP** (2013) *International Human Development Indicators Country Profile: Mozambique*. Available from: <<http://hdrstats.undp.org/en/countries/profiles/MOZ.html>> (Last updated May 2013, accessed May 23, 2013).



- USAID** (2011) *USAID Country Profile: Property Rights and Resource Governance Mozambique*, Available from: <[http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID\\_Land\\_Tenure\\_Mozambique\\_Profile.pdf](http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Mozambique_Profile.pdf)> (accessed May 23, 2013).
- VERMEULEN, S. and COTULA, L.** (2010): 'Over the heads of local people: consultation, consent, and recompense in large-scale land deals for biofuels projects in Africa', *The Journal of Peasant Studies* 37(4): 899-916. Available from: <<http://www.tandfonline.com/doi/pdf/10.1080/03066150.2010.512463>> (accessed May 23, 2013).
- WITTMAYER, H.** (2012) 'Mozambique's "Land Grab": Exploring Approaches to Elite Policymaking and Neoliberal Reform', Thesis for MA in Political Science and Peace Studies, College of St. Benedict-St. John's University, *Political Science Student Work*. Paper 3. Available from: <[http://digitalcommons.csbsju.edu/polsci\\_students/3](http://digitalcommons.csbsju.edu/polsci_students/3)> (accessed May 23, 2013).
- WOLFORD, W., BORRAS, S., HALL, R., SCOONES, I., and WHITE, B.** (2013) 'Governing Global Land Deals: The Role of the State in the Rush for Land', (online) *Development and Change* 44(2): 189-210. Available from: <<http://onlinelibrary.wiley.com/doi/10.1111/dech.12017/pdf>> (accessed May 23, 2013).
- WORLD BANK** (2010) *Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods, and Resources*, Washington DC, World Bank. Available from: <[http://siteresources.worldbank.org/INTARD/214574-1111138388661/22453321/Principles\\_Extended.pdf](http://siteresources.worldbank.org/INTARD/214574-1111138388661/22453321/Principles_Extended.pdf)> (accessed on May 23, 2013).
- ZOOMERS, A.** (2010) 'Globalisation and the foreignisation of space: seven processes driving the current global land grab' (online) *Journal of Peasant Studies* 37:2, 429-447. Available from: <<http://www.tandfonline.com/doi/pdf/10.1080/03066151003595325#.UZ4ME7XqlKY>> (accessed May 23, 2013).