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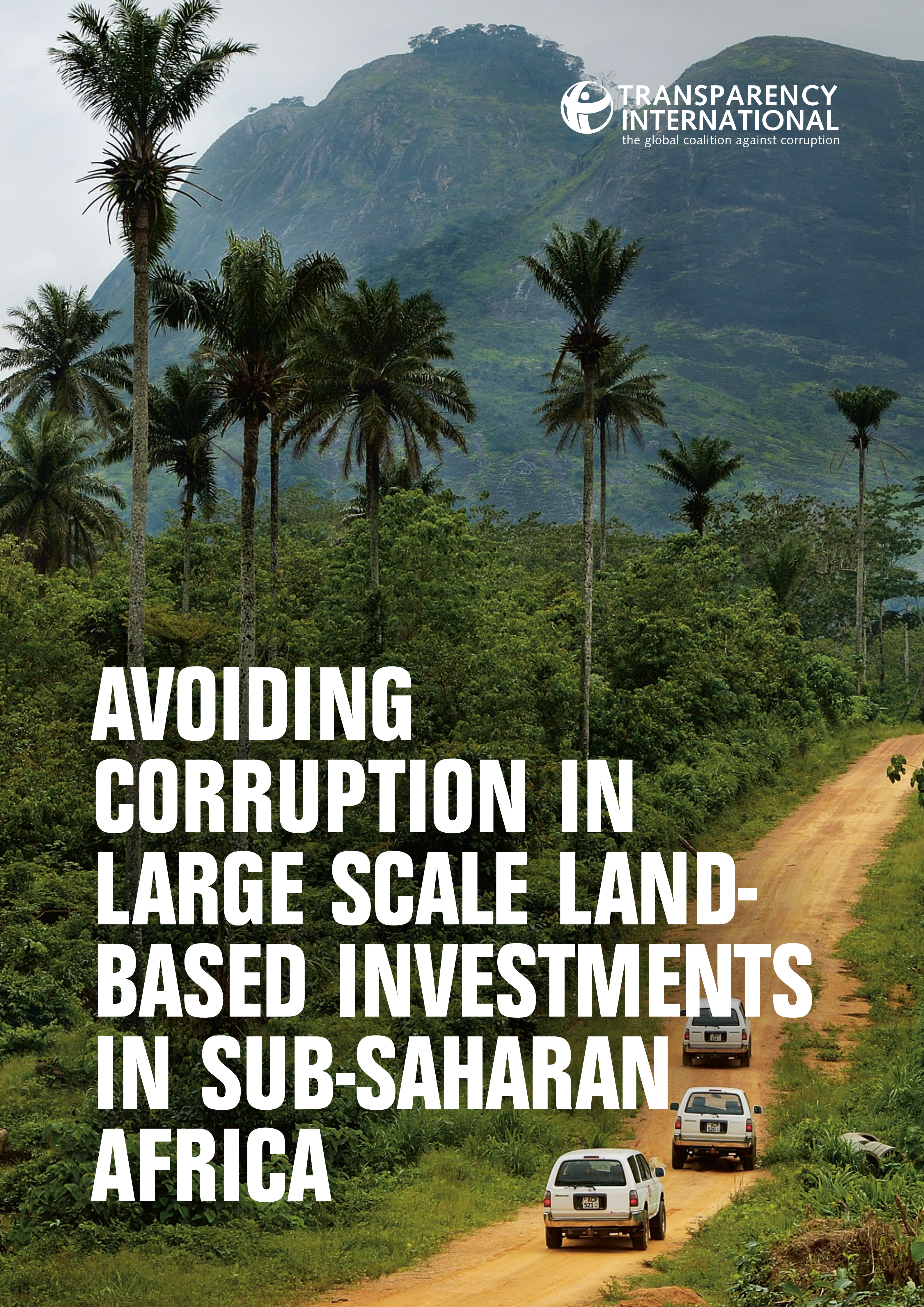

AVOIDING CORRUPTION IN LARGE SCALE LAND-BASED INVESTMENTS IN SUB-SAHARAN AFRICA

Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. With more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

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ACRONYMS	
ACE	Anti-Corruption Evidence Research Project
CSR	Corporate Social Responsibility
EITI	Extractive Industries Transparency Initiative
FAO	Food and Agricultural Organisation (United Nations)
FCPA	Foreign Corrupt Practices Act (United States)
GDP	Gross Domestic Product
HR	Human Resources
LEGEND	Land: Enhancing Governance for Economic Development
LSLBI	Large Scale Land-Based Investment
MDB	Multilateral Development Bank
MIGA	Multilateral Investment Guarantee Agency
NCP	National Contact Point (OECD)
NGO	Non-Governmental Organisation
ODI	Overseas Development Institute
OECD	Organisation for Economic Cooperation and Development
ILO	International Labour Organisation
IFC	International Finance Corporation
IFC PS	The IFC's Performance Standards on Environmental and Social Sustainability
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security
RAI	Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources
SFO	Serious Fraud Office (UK)
USAID	United States Agency for International Development

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EXECUTIVE SUMMARY

Last year, three Indonesian palm oil executives were arrested for allegedly bribing parliamentarians in order to avoid an investigation into their plantation permits.[1] The arrests reflect much more widespread and systemic corruption issues in large scale land-based investments (LSLBIs).[2]

Although corruption in LSLBIs is a global issue, Africa is estimated to host 42 per cent of all LSLBIs, consisting mostly of investments in agriculture.[3] At the same time,[4] Sub-Saharan Africa is the lowest scoring region on the 2018 Transparency International Corruption Perceptions Index[5], a global index of public sector corruption. Whether these two trends are linked remains unclear.[6] However, the significance of agriculture in most Sub-Saharan African economies makes understanding corruption – in an especially capital-intensive part of the sector – key to supporting positive developmental outcomes of agricultural LSLBIs.

Therefore, this report presents findings on corruption in LSLBIs in Sub-Saharan Africa, and although it draws on case studies from Sierra Leone and Zambia, its recommendations aim to be applicable across Sub-Saharan Africa.

Conventional, top-down and governance-focused anti-corruption efforts have had limited success in the fight against corruption in developing countries. Consequently, this report contributes to strategic anti-corruption research[7] that develops incentive-driven and high-impact anti-corruption initiatives in specific, development-related economic sectors.

LSLBIs not only represent significant investments in developing economies, but they take place in the agricultural sector, which is key to the livelihoods of citizens in Sierra Leone, Zambia and beyond. In 2017, the African Development Bank estimated that in Sierra Leone, 49 per cent of gross domestic product (GDP)[8] stemmed from agriculture, and the International Labour Organisation (ILO) estimated that 53 per cent of the Zambian population worked in agriculture.[9] Although labour statistics in particular tend to be inexact[10] and a large portion of these statistics refer to smallholder agriculture, it is clear that agriculture represents a significant part of these countries' economies.

Addressing corruption in LSLBIs is a feasible proposition because a large number of international LSLBIs not only need to comply with anti corruption legislation in host nations, but are also subject to international legislation, as well as conditions linked to loans and investment guarantees from multilateral development banks (MDBs). However, as this report will show, these regulations and laws do little to reduce corruption in LSLBIs, and are not attuned to countering corruption with negative developmental impacts. Instead, prosecutors tend to pursue grand corruption cases that promise lucrative fines or out-of-court settlements for prosecuting authorities in Organisation for Economic Cooperation and Development (OECD) member states.

This report therefore focuses on corruption risks in LSLBI investment chains that have a particularly significant potential impact on development outcomes of LSLBIs. It identifies existing incentives for firms to deal with these risks (encouraging non-corrupt practice as a means of maximising profits and avoiding punitive measures, such as prosecution) and formulates ways in which more incentives can be identified. Finally, it makes recommendations on how incentive structures – such as internationally binding anti-corruption legislation designed to shape companies' behaviour – can be strengthened.

The report is aimed primarily at investors, who are encouraged to read it alongside more general investment guides - such as USAID's *Operational Guidelines for Responsible Land-Based Investment*[11] – which provide a practical guide to help businesses align their operations with existing responsible land-based investment guidelines. These include the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security* (VGGT), *Guiding Principles on Large Scale Land Based Investments in Africa*, the International Finance Corporation's *Performance Standards on Environmental and Social Sustainability* (IFC PS),[12] and further instruments such as the *Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources* (RAI).[13]

This report can also help donors and civil society find ways to support businesses in curbing corruption, and to improve existing external incentive mechanisms that could help companies curb corruption. Donors and civil society are encouraged to read this alongside the International Institute for Environment and Development and Inclusive Development International's

Following the Money: An Advocate's Guide to Securing Accountability in Agricultural Investments.[14]

KEY FINDINGS

1. Companies subject to anti-corruption regulations are not necessarily less corrupt when it comes to the incidence of corruption, but their corrupt behaviour has less of a negative impact on surrounding communities. This is because of the general social accountability that comes with other regulations that they subscribe to. For example, companies have lost potential funding through civil society activism and social accountability actions, carried out in response to the outcomes of companies' corrupt operations.

2. Of the companies interviewed, those with direct links to the United States, the UK and Germany – all of which have internationally binding anti-corruption laws – self-reported as the least corrupt. In one case, this was also corroborated by delays in the company's operations because facilitation payments could not be made.

3. Corrupt practices that companies engaged in were internally and externally masked in a number of ways. Smaller bribes were paid by cheque, receipted as a service or paid out of petty cash, or public relations and corporate social responsibility budget lines. Bribes would therefore be masked from auditors as "normal" expenditures for which receipts were provided. Larger bribes or those regularly paid, for example, to customs and central government officials, were generally disbursed through third parties and consultants. These consultants were paid higher fees that included both the bribe and their service fee. Such practices can hide corrupt payments from auditors' view and, more importantly, exonerate the firm from accusations of directly paying bribes to public officials.

4. The companies that paid the most bribes were regional investors. The bribes had significant negative development impacts – for example, chiefs bribed no longer protected the interests of their constituents in negotiations over compensation for lost farmland.

5. LSLBIs were more positively perceived by affected populations in Sierra Leone than in Zambia, most likely due to lower productivity rates in smallholder agriculture in Sierra Leone.

6. The ambiguity, absence and non-enforcement of existing laws relating to labour, land rights, resettlement and compensation in Sierra Leone and Zambia cause more negative developmental impacts from LSLBIs than outright corrupt behaviour.

7. No LSLBI firms have to date been prosecuted through international anti-corruption legislation based on the OECD Anti-Bribery Convention. This includes the anti-bribery legislation of the United States, the UK and Germany.

RECOMMENDATIONS

1. If corruption is to be sustainably curbed, international anti-corruption efforts need to be measured more by their impact on development than by the size of the bribes and potential returns on prosecution in the form of fines and settlements.
2. Multilateral development banks that provide investment guarantees and loans to LSLBIs should develop simpler ways through which concerns relating to corruption can be reported by affected populations and civil society organisations. Reporting mechanisms such as the OECD National Contact Points should automatically pass on information relating to corruption allegations to prosecutors in countries that are signatories to the OECD Anti-Bribery Convention.
3. Civil society organisations, often the only checks and balances on investors, need more support from donors and larger NGOs to strengthen anti-corruption reporting.
4. The legality of facilitation payments under the United States' Foreign Corrupt Practices Act should be revised, as facilitation payments can lead to regulator capture of institutions which ought to protect the interests of affected populations, rather than of investors.
5. More cooperation is needed between host governments, donors and investors to combat corruption in an effective way, based on incentives.
6. More in-depth research on LSLBIs is needed, especially relating to their impacts on affected populations.
7. More research is needed on corruption and how it is dealt with within firms, to ascertain whether current audits are effective in ensuring compliance in developing countries.
8. Donors and NGOs should further support host states to create anti-corruption incentives for regional investors.
9. Donors and NGOs should further support the enforcement and development of land and labour laws relating to LSLBIs in host countries.

INTRODUCTION AND METHODOLOGY

This report is the result of an independent study that sought to answer several questions on LSLBIs and corruption, through political economy analysis. Firstly, it sought to assess what LSLBIs and their investment chains look like, how they work and some of their effects. Secondly, it aimed to identify corruption risks that exist in different investment chains, and mechanisms and examples of good practice to avoid corruption in land-based investments, as well as how efficient these are in counteracting corruption. Thirdly, it sought to identify incentives for investors to avoid corruption, and ways in which donors could support mechanisms that prevent land corruption.

The report draws on over 100 interviews with firms, affected populations, workers, government officials and civil society, covering not only land investment and how they perceive it has affected them, but what they think about corruption and see as effective countermeasures. By including businesses and speaking to investors and farmers, the report seeks to contribute to better understanding of how businesses think about corruption, to inform better ways of dealing with corruption in LSLBIs.

Following a detailed outline of the methods used in this study, the report opens with a short review of existing literature on corruption and Large Scale Land-Based Investments. It then outlines how it seeks to contribute to this body of work by exploring the theoretical background to anti-corruption research from a sector-specific angle. This section focuses on how anti-corruption campaigns need to overlap with existing incentives, and why regulations need to be made feasible for the private sector to implement.

Section 2 provides an overview of the different investment chains and key actors researched, and the implications for LSLBI operations concerning the types of crop grown, timelines and ownership structures. Section 2.2 looks at the perceived effects of the investments covered in this research, in order to understand some of LSLBIs' impacts.

This analysis is followed in section 3 by examination of key points in the investment chain that contain corruption risks with the potential to significantly enhance or damage the developmental impact of LSLBIs. The key risk areas the research focused on are concession allocation, the resettlement and compensation process, labour rights, revenue and general facilitation payments.

Section 4 explores existing anti-corruption laws that cover LSLBIs with connections to the United States, the UK and Germany, as well as regulations that govern loans and investment guarantees from the World Bank. The section also examines what companies do to get away with corruption, and what they are already doing to counter corruption in their operations.

Building on this, section 5 outlines incentive-driven anti-corruption interventions that represent feasible ways to tackle corruption while aiming to have the biggest developmental impact. The research looks at existing incentives and possible ways to find more incentives for collaborative action by LSLBIs. Finally, it explores how current regulatory frameworks can be enhanced to generate more incentives against corruption in LSLBIs.

Section 6 recaps the report and summarises its main findings.

METHODOLOGY

The research methods centred around a political economy analysis, based on data collected through qualitative interviews and reviews of other research literature on the subject and of media reports. This section outlines how the data was gathered and some of the associated challenges, including why Sierra Leone and Zambia were chosen as case studies for analysing corruption in relation to LSLBIs in Sub-Saharan Africa.

From a theoretical perspective, in order to understand connections between different actors, a political economy approach was used to uncover formal and informal power relations between them. The research design and the fieldwork were based around four key questions: who owns what, who does what, who gets what, and what do they do with it?[15] Asking these questions at different levels of analysis and in relation to different actors led to development of interview questions, and understanding of interests, power positions and underlying dynamics.

Once the background information gathering was completed and questionnaires were designed, most of the research findings were gained through interviews with 126 people across Sierra Leone and Zambia, covering the activities of 23 investments. All interviewees were guaranteed full anonymity due to the sensitivity of the information they were sharing. A coding system was developed (see Annex 1), with individuals assigned a number to maintain understanding of who was providing specific information, while preserving their anonymity.

The sampling of interviewees was based around the list of different investments that the research sought to cover. Generally, one company executive was spoken to for every investment covered. The information was then verified and triangulated through other sources, such as interviews with affected populations, news sources, civil society and NGOs.

Based on research prior to the fieldwork, a list was drawn up of investors to interview. Most investors targeted were interviewed, creating a snowball effect generating contacts for other investors on the list. In order to obtain the sensitive information required, full anonymity was guaranteed to all interviewees.

Interviewees among affected populations were identified by asking for landowners, squatters, strangers and workers, who would in turn identify other people willing to be interviewed. An effort was made to speak to affected people in as many of these categories as possible, and to interview an equal number of women and men from a balanced age range, as the effects of LSLBIs will differ significantly according to gender[16] and age.[17] However, this was not always possible, as the research sought to cover a variety of investments in a short period, often limiting interviewees to whoever was around at the time.

A. INTERVIEWS WITH AFFECTED POPULATIONS

During the research it became clear that some questions were more relevant for some groups than others. For example, in interviews with workers and affected populations, it was difficult to get information regarding corruption, for several reasons. Many interviewees were worried about giving inexact answers that reflected their opinions and suspicions. Many would say that they suspected corruption, but that they had no evidence for it, making them reluctant to answer more specific questions. It also became evident, in particular when speaking to domestic land investors, that corruption was difficult to differentiate from legal payments to officials. In many cases, corruption was such an everyday occurrence and so normalised by interviewees that it was at times difficult to get specific responses on perceptions in relation to corruption.

As a result of some of these dynamics, the interviews with affected populations and workers mainly focused on their perception of investments, key data relating to their circumstances of employment or compensation for land. Based on the information they provided, specific questions were posed on corruption limited to their interaction with the firm. Often specific corruption dynamics emerged through these interviews. For example, in two cases, the local chief received a car from the company.

B. INTERVIEWS WITH INVESTOR EXECUTIVES

Although interviews were guaranteed to be anonymous both on company and individual levels, the caution with which investors discussed the corruption issues they were facing varied significantly. This had to do with their own perception of corruption and their perception of their legal exposure. It became clear that many considered petty corruption to be acceptable, but grand corruption not. This varied depending on the type of investor interviewed, with those who relied more on funding from MDBs or equity investments disclosing less, whereas those reliant on other, often regional funding were more open about corruption. This may have significantly skewed the research results.

When speaking to investor executives, much of the discourse was based around the demand for bribes from host-nation government workers – in essence, the “pull” of corruption. However, a significant number of civil society representatives also claimed they had been offered money or jobs by companies in order to silence them.[18] This “push” of corruption requires further research on a longer-term basis that would allow relationships of trust to be established with interviewees – an approach especially necessary with current and former government workers, who were the group most reluctant to speak about corruption.

C. CASE STUDY RATIONALE

Sierra Leone and Zambia were chosen as case studies to generate recommendations relevant for wider Sub-Saharan Africa, for the following reasons:

1. Sierra Leone has relatively new agricultural investments (following the end of its civil war in 2002), whereas Zambia's agricultural investments and large-scale farms represent a mixture of old and new.
2. Both countries represent a variety of agriculture. In Sierra Leone, tropical crops such as oil palms are cultivated, whereas in Zambia the main crops consist of wheat, maize and other staple food crops.
3. Both countries have unclear land markets and lack legal frameworks for land ownership. This is largely due to their shared colonial past, which split the countries into traditional and western tenure systems.
4. Both countries share strong chieftaincies, due to their historical trajectories.
5. Sierra Leone mainly hosts international investments, with no large-scale regional or national investments encountered during the research.
6. Zambia not only hosts a variety of international investors, but also a significant number of national and regional investors.

1. LITERATURE AND SCOPE

The work on corruption in LSLBIs has to date been limited, with only four reports directly tackling the subject, two of which were written in cooperation[19] with or commissioned[20] by Transparency International. The third report was written by the LEGEND programme, which funds this project.[21] The fourth,[22] commissioned by Global Witness, looked at the corruption risks linked to LSLBIs but, like the LEGEND report, only looked at corruption risks surrounding the land aspect of LSLBIs, as opposed to those in the operation of LSLBIs – for example, in relation to labour. Several reports also linked international corruption perception indexes to unreliable global LSLBI statistics[23] claiming a link between how corrupt a country was perceived and the incidence of LSLBIs.[24]

Little has been written on corruption and the multifaceted aspects of LSLBIs and their operations specifically. Much of the academic and activist literature on the subject to date has focused on issues of smallholders' loss of land, followed by a lack of employment opportunities on the large-scale farms that took their place. A systematic review of 176 pieces of literature that made claims on the impact of LSLBIs, published between 2005 and 2013, found that 60 per cent of literature on the subject draws negative conclusions about the effects of LSLBIs. However, Oya points out that these conclusions are generally not based on in-depth research that takes into account the complexity of determining whether an impact is positive or negative as – among other issues – they lack adequate baseline data.[25] Instead he argues that socio-economic impacts "are unavoidably differentiated, namely there are 'winners and losers' and often when and how groups of people gain or lose out depends much on the type of deal and project: the investors, the speed of the process and other macro- and micro-structural conditions. It is a highly contextual issue."[26]

The aim of this report is to investigate, through case studies from Sierra Leone and Zambia, both the positive and negative socio-economic impacts of LSLBI, and whether and how these impacts have been shaped by corruption. This requires that the many forms of corruption and the different areas of corruption risks within LSLBI corruption chains be contextualised and clarified. Such clarification will also enable formulation of feasible recommendations based on the research.

Corruption is defined by Transparency International as "the abuse of entrusted power for private gain". It can be classified as grand, petty or political, depending on the amounts of money lost and the sector in which it occurs. Grand corruption consists of acts committed at a high level of government that distort policies or the central functioning of the state, enabling leaders to benefit at the expense of the public good.[27] Petty corruption refers to everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who are often trying to access basic goods or services in contexts such as hospitals, schools, police departments and other agencies. Political corruption is the manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision-makers, who abuse their position to sustain their power, status and wealth.[28]

All these forms of corruption can play a role in LSLBIs. However, the relative size of a bribe does not necessarily relate to its potential negative impacts on development.[29] For example, petty corruption in food standard enforcement can have significant negative impacts on health and development.[30] Similarly, not all forms of corruption within LSLBIs have the same effect on potential positive or negative developmental impacts of an investment. Developmental impacts in this report are therefore very narrowly defined as impacting the living conditions of people directly affected by an LSLBI. Positive developmental impacts of LSLBIs therefore refer to, but are not limited to, employment generation, increased income, better working conditions, increased access to health care, education, housing and transport, and – at state level – increased revenue.

By surveying businesses in developing countries, this research aims to understand the supply side of corruption on a national level, which has to date remained understudied and opaque. Anti-corruption literature and policy within developing countries have until now mainly focused on the "demand" side of corruption, in the form of bribes demanded by public officials, as opposed to the sources of these bribes – the "supply" side.[31] A key reason for this policy focus is that governments have more control over their own officials and authorities, and can theoretically impose sanctions against them more readily than against companies.[32]

In contrast, the "supply" side of corruption on an international level is better researched and addressed through different policy instruments, such as the OECD Anti-Bribery Convention, and internationally binding anti-corruption legislation in countries where investments originate. One of the core contributions of this study is to see how these policy instruments work on a national level in developing countries. The report also aims to make recommendations to companies about tackling corruption within their own operations, as this may have a significant effect on their potential developmental impact, as well as on their profits.

Finding out more about the supply side of corruption from companies in developing countries is key to developing incentives for business to stop engaging in corruption. However, it is not feasible nor desirable to confront all corruption in LSLBIs through this research project and its recommendations. Instead, as Mushtaq Khan from the Anti-Corruption Evidence (ACE) research project points out: "In contexts where levels of development and political arrangements do not yet allow the effective enforcement of formal rules,[33] anti-corruption strategies should sequentially attack corruption at critical points where anti-corruption is both feasible and has a high impact on development."[34] In the context of LSLBIs, and with the aim of incentivising companies to counter corruption, the feasibility of anti-corruption strategies for companies is a particularly key factor in convincing them to implement Transparency International's recommendations.

Countering corruption in companies operating in corrupt environments does not merely require goodwill and tenacity from businesses, but also resources dedicated to employee training, and the acceptance of possible delays to business activities.[35] It is therefore key that anti-corruption measures are feasible for companies to undertake. The research aims to give pragmatic, incentive-driven recommendations on how corruption can be curbed by donors and civil society working with companies. As Control Risks points out, a zero-tolerance policy to corruption and facilitation payments needs to be established in a gradual, context-specific manner, so as to make the policy workable.[36] As research has shown, companies "continue to prefer avoiding corruption to resisting it".[37] These pragmatic recommendations aim, ideally, to reduce corruption in areas where their developmental impact (see above) is the highest for the host population and nation, while in the long term maintaining the bottom line for businesses. At the very least, they aim to incentivise companies to counter corruption with an aim of doing no harm[38] to the populations in their areas of operation, and complying with internal and, where applicable, international anti-corruption standards.

2. LARGE SCALE LAND-BASED INVESTMENTS AND THEIR INVESTMENT CHAINS

This research looked at a wide variety of LSLBIs. It analysed how their investment chains are constituted and who the key actors are in order to better understand what corruption risks are prevalent in different investment chains.

To date, much of the research on LSLBIs has focused on international and western firms investing in developing countries, instead of regional and national investments that in some cases make up a larger portion of the investments.[39] The study addresses this by looking at regional and national investments as well as international ones. Specific attention was given to firms with investment chains linked to the UK, the United States and Germany, as these three countries are considered leaders in the prosecution of international bribery cases and a significant number of LSLBIs are linked to them through their investment chains.[40] The types of investments were further disaggregated by whether or not they received funding from international financial institutions such as the International Finance Cooperation (IFC) or investment protection agencies such as the Multilateral Investment Guarantee Agency (MIGA). In addition to the national anti-corruption laws of host nations, LSLBIs are subject to international anti-corruption legislation and anti-corruption rules from lenders and guarantors. The different types of investments investigated are outlined in table 1.

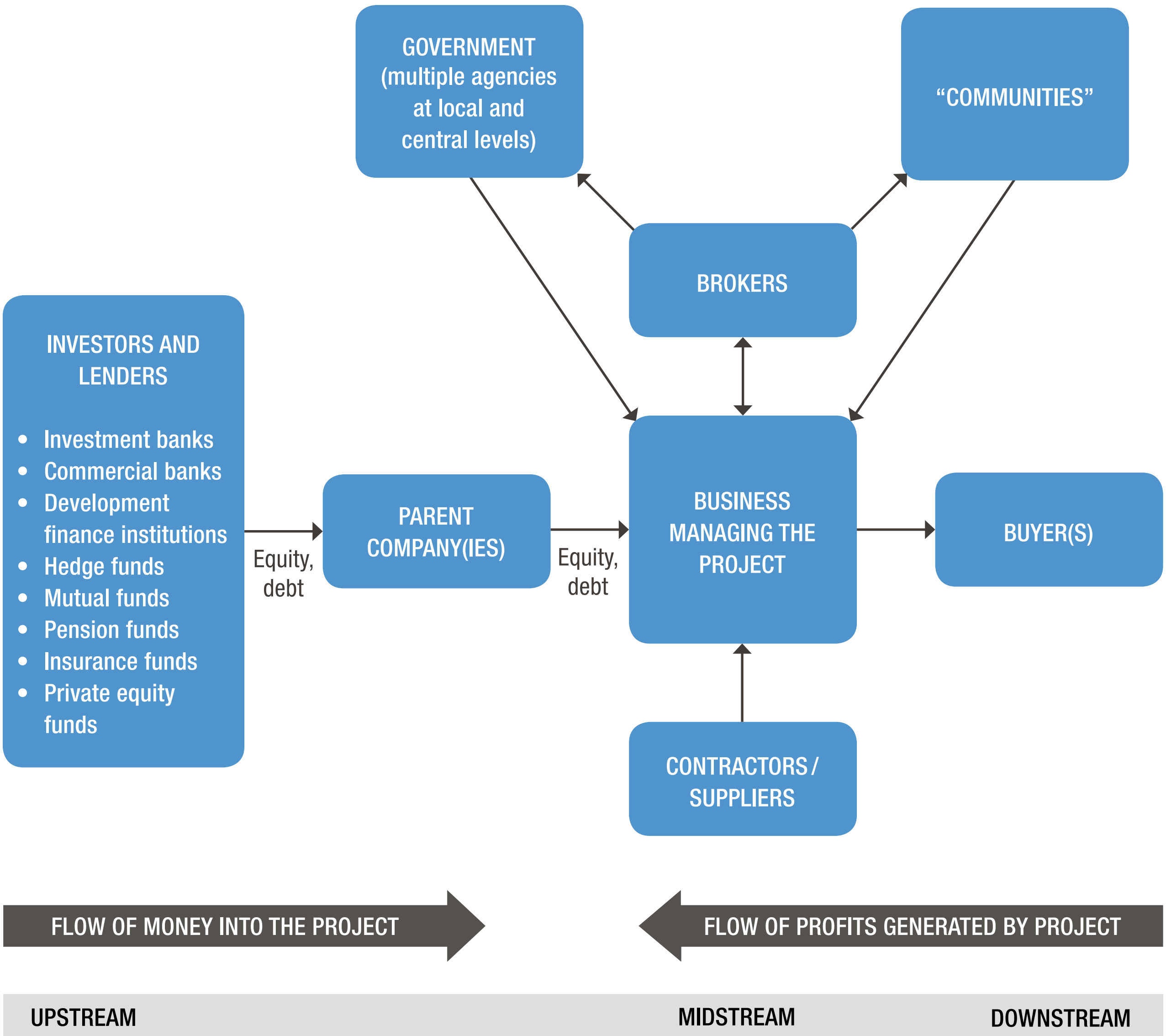
TABLE 1 – TYPES OF LSLBIs RESEARCHED

	Number Interviewed		
	TOTAL	SIERRA LEONE	ZAMBIA
International with development funding or investment protection	7	4	3
International	4	4	0
Regional with development funding	1	0	1
Regional	5	0	5
National with development funding	1	1	0
National	3	0	3
Failed Investments	2	2	0
Total	**23**	**11**	**12**

Different LSLBIs have investment chains that in turn shape their operations significantly, forming the kind of pressure points civil society can use in seeking to influence companies' behaviour.

As one recent paper[41] observed, the uptake of sustainability certification by oil palm producing companies was explained by their ownership structure and the capital that controlled them. However, both national and international investment chains are often backed by opaque financial structures (as shown in Figure 1). The opaque structures of agricultural investment chains can contain a multitude of corruption risks, such as conflicts of interest in ownership structures, as well as legal and illegal forms of tax avoidance.[42] The opacity of the transactions is such that they require further research. Therefore, this project focuses on corruption dynamics within a host country, and which are likely to be self-reported or alleged (see methods) and take place in areas of a company's operations that are the most damaging to their developmental impact (see Section 2).

FIGURE 1: EXAMPLE OF AN INTERNATIONAL INVESTMENT CHAIN SHOWING UPSTREAM, MIDSTREAM AND DOWNSTREAM ACTORS, AND THE RELATIONSHIPS BETWEEN THEM



Cotula, L., Blackmore, E. (2014) *Understanding agricultural investment chains: Lessons to improve governance,* Rome and London: FAO and IIED

Another important dynamic which impacts the operations of LSLBIs and the associated corruption risks is their project cycles and investment timeframes, and their underlying drivers. For this reason, the research covered a variety of LSLBIs: those that produce short-term crops such as maize and wheat, long-term ones such as tree crops, and speculative or failed investments.

LSLBIs that had the shortest investment timeframes tended to invest solely for the purposes of speculation. These investments were often only marginally farmed, if at all, and served more as a vehicle that enabled larger investors to buy land that had been converted into an agricultural concession prior to their investment.[43] This also served the function of avoiding the often messy and corrupt land acquisition process, and the responsibilities that come with it. These types of investments were often unstable and often failed.

Failed investments were researched for three reasons: to ascertain whether their failure was linked to corruption, to see what effect they had on the surrounding population, and, from a methodological perspective, in the hope of obtaining more candid answers from interviewees concerning corruption. Failed LSLBIs have until recently been unexamined by research, and this paper aims to contribute to emerging literature on the subject.[44]

Aside from purely speculative investments, there was no evidence of a direct link between short- or long-term investments and their declared or alleged corruption track record. An important exception to this was equity fund projects. As one investor pointed out: "In an equity fund, you have a seven- to ten-year window. You get money in, prove a concept and divest. People are not in it for that long."[45] This also meant that equity fund investments were especially sensitive to corruption allegations, as their investment had to be sold on at the end of the investment cycle. This may be in part responsible for low corruption self-declarations among companies concerned, as they seek to make profit during the operation, as well as generate rent through the overall increase in value of the operation.[46]

2.1 THE EFFECTS OF LSLBIs

"No one is against the operations of the company, but [against] the manner in which it operates."[47]

The effects of LSLBIs are hotly debated and in many cases under-researched.[48] Although the research focused mainly on corruption in relation to LSLBIs – making an in-depth assessment of the effects of LSLBIs beyond its scope – it sought to show the diversity of impacts LSLBIs can have by interviewing 63 people in the affected areas. The percentages discussed in this section are not statistically representative, due to the qualitative nature of the investigation. However, they show the high diversity of effects of investments and how these were perceived by affected populations. They also echo calls for further research on the effects of LSLBIs in Sub-Saharan Africa and beyond. Responses to the question, "Do you think your life is better or worse with the company here?" show a clear distinction between Sierra Leone and Zambia. In Sierra Leone, 88 per cent of

FIGURE 2 – PERCEPTIONS OF LSLBIs BY AFFECTED POPULATIONS IN SIERRA LEONE

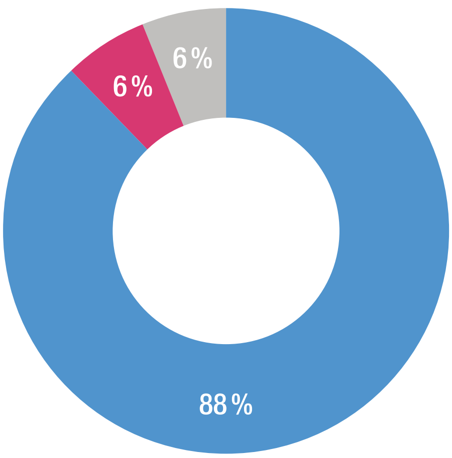
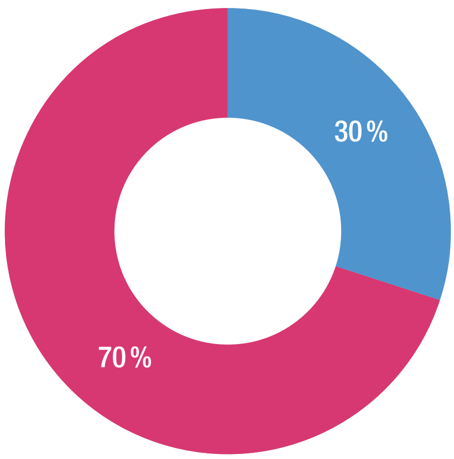


FIGURE 3 – PERCEPTIONS OF LSLBIs BY AFFECTED POPULATIONS IN ZAMBIA



respondents from the affected populations claimed that their life had improved due to the establishment of a farming operation in their vicinity (see Figure 2). In contrast, only 30 per cent of respondents from the affected populations in Zambia claimed their life had improved after the LSLBIs had been established, with 70 per cent claiming their quality of life had decreased after the establishment of LSLBIs (see Figure 3).

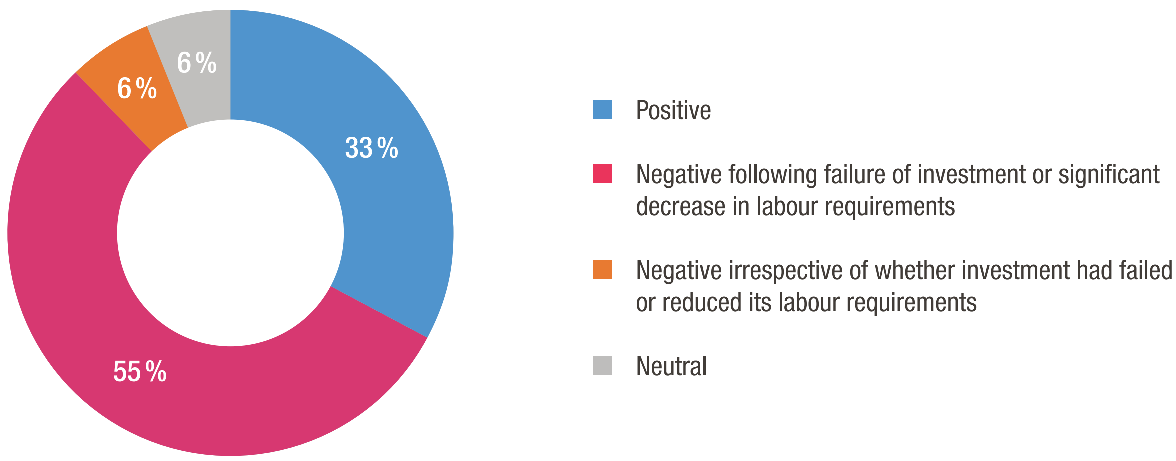
This demonstrates important differences in the perceived impact of LSLBIs between countries. Qualitative follow-up questions gave further insights as to why this is the case (see Figures 2, 3 and 4). In Sierra Leone, respondents who claimed their lives had improved said they make more money working on LSLBIs than they had previously through small-scale farming and palm oil production. In comparison, respondents in Zambia claimed that they made less money by working for LSLBIs compared to small-scale farming. Many factors contribute to this differentiation. Zambian small-scale farmers had achieved higher returns compared to their Sierra Leonean counterparts due to crop prices being more protected from international market fluctuations by fertiliser subsidies and export bans.[49] Compensation payments in Zambia also tended to consist of one-off payments, as opposed to yearly lease payments made by companies in Sierra Leone, causing further disparity in financial outcomes between the two countries.

This data may be skewed, as most of the interviewed populations in Zambia were on the border with the Congo, which they said gave them a good market to sell their produce to,[50] as the Congo is a net food importer. In parts of Zambia further away from lucrative export markets, opinions about LSLBIs may be more favourable in relation to small-scale farming. However, this requires further research.

There are also important differences in the perception of LSLBIs in Sierra Leone. Out of the 88 per cent of people who claimed to have improved lives as a result of the LSLBI in their area, 55 per cent claimed that this was no longer the case at the time of the interview (see Figure 4). As with Zambia, the reasons for this varied. In some cases, the investment had failed and landowners who had leased their land to the company were no longer receiving their rental payments, nor were surrounding populations being hired for work. There were also differences resulting from the varied labour demands of different crops across their production cycle. For example, oil palm plantations needed a significant amount of labour to clear the land and plant the palms, but once these were being harvested, the demand for labour fell, as did the direct and multiplier income of surrounding populations. A woman who ran a cook-shop close to a palm oil plantation complained that there were no longer as many workers to feed as during the planting phase.[51]

In contrast, LSLBIs that needed more labour – albeit seasonal, such as sugar cane production – or companies that were at the initial, labour-intensive project stages were perceived in a more positive light.

FIGURE 4 – PERCEPTIONS OF LSLBIs BY AFFECTED POPULATIONS IN SIERRA LEONE ACCOUNTING FOR FAILURE OF INVESTMENT OR SIGNIFICANT DECREASE IN LABOUR REQUIREMENTS



3. CORRUPTION RISKS IN LARGE SCALE LAND-BASED INVESTMENTS

The following section looks at key areas of LSLBI investment chains that are both particularly corruption prone and harbour positive potential for developmental impact. It describes key research findings at each point in the investment chain: during the concession allocation process; the compensation and resettlement process, in relation to labour rights; revenue collection and – due to their prevalence – facilitation payments and the potential risks they harbour.

How these corruption risks are currently being tackled through international anti-corruption legislation and companies themselves will be discussed in the next section. This will be followed by recommendations on how companies can be aided by civil society organisations and donors in addressing the corruption that is most harmful to development.

3.1 CORRUPTION IN THE CONCESSION ALLOCATION PROCESS

A corruption case involving palm oil executives in Indonesia accused of bribing parliamentarians in relation to their plantation permits is exemplary of the most widely discussed type of corruption relating to LSLBIs.[52] The secretive deals struck between companies and politicians in the opening stages of the investment process are key to establishing many rules of the game that follow, such as compensation for land, revenue and potential employment conditions and rates. These initial negotiations shape LSLBIs and their impacts on corruption and development. Corruption at this stage in the investment chain is difficult to research and notoriously difficult to counter. This is in large part due to the relatively high-power positions of those involved. As the LEGEND programme points out: "Of particular concern is the risk of corruption associated with larger-scale investments … whereby investors including national and local elites can override the rights and interests of less powerful land users".[53]

Although the allocation of licences to operate is generally not competitive, the process nevertheless presents similar corruption risks as competitive bidding processes, as businesses are seeking access to a resource controlled by gatekeepers. For example, Control Risks found that in the competition for contracts, irrespective of sector, "30 per cent of respondents said they believe they have lost deals to corrupt competitors".[54] The incidence of reported direct involvement of politicians in the concession allocation process was especially high in Sierra Leone.[55] In one case, a large-scale investor was forced to establish its operation in an area where the ruling party had its support base, even though the soil quality was better in other parts of the country.[56]

The high interests at stake mean there are limited opportunities both to research these dynamics in depth and to develop feasible and high-impact policy responses. However, corruption in the concession allocation process also plays out at chieftaincy and district levels, which are easier to research and which provide more avenues for policy interventions.

The role of chiefs is important and their positions in society remain powerful. However, in many countries, the only leverage and power chiefs have left is the granting of access to land.[57] This came to the fore in Zambia, where a proposed land policy was blocked by the council of chiefs as they felt it threatened their authority. As an interviewee in Sierra Leone pointed out: "Chiefs remain the custodians of the land and unless you want fresh war, they need to still be part of the process. It is therefore all the more important that their role as custodians of the land is clearly defined in the land policy."[58]

Investors in Sierra Leone pointed out that they have to pay twice for land: once in the capital, Freetown, and once to the chief: "Paramount chiefs are the supreme leaders. You have to pay the chief – it's how the system works here. It's legal petty corruption, input distribution from the government."[59] Another key informant in Sierra Leone pointed out that not even the president will challenge chiefs in their authority.[60] It is this power position of chiefs that makes landowners and affected populations particularly disheartened. They expect national politicians to be corrupt, but most expect their chief to represent their interests in relation to investors and central government.[61]

In both Zambia[62] and Sierra Leone[63], companies were alleged to have provided chiefs with cars, resulting in conflicts of interest. Although most investments researched in Zambia were farm blocks[64] on chieftaincy land, allegations of corruption abounded. As one landowner pointed out: "The chief agreed because he was bribed and so it does not matter how big your field is, you will be given the same low compensation."[65]

It is worth noting that there were a few exceptions to this, and not all chiefs are seeking personal gain. One community interviewed in Sierra Leone had made a conscious decision to refuse access to an investor, based on a cost-benefit analysis of how much they made from the land compared to the land rental fee offered by the company.[66]

3.2 THE COMPENSATION AND RESETTLEMENT PROCESS

Once an investment agreement is reached, the compensation and resettlement process is key in mitigating any negative impacts that could result from LSLBIs and the expropriation of property from the surrounding populations.[67] This process is especially prone to corruption; one in two people in the world have paid a bribe for land services. In Sierra Leone, 75 per cent[68] of respondents reported having paid a bribe for land services. In many countries, including Zambia, compensation payments and resettlement processes are generally managed by national land administration bodies. A farmer in Zambia said : "In order to change the land title, [I had] to bribe someone to push for papers. Ministry of Land agents receive bribes and share them with their bosses."[69]

In Zambia, most of the issues that communities faced around compensation and resettlement stemmed from the fact that although the law states that individuals whose land is expropriated by the state are compensated,[70] there are no clear standardised policies and mechanisms in place to facilitate this.[71] In addition, compensation processes are not monitored, due to a lack of government resources and capacity.[72]

The differences in perception of LSLBIs between Sierra Leone and Zambia (see Section 2.1) may also vary due to the compensation landowners receive for the loss of land. In Sierra Leone this generally consists of yearly lease payments calculated per hectare. In contrast, due to the weaker legal framework for compensation in Zambia, landowners received a one-off payment.[73] This is also reflected in how land users are referred to: in Sierra Leone they are known as "landowners", whereas in Zambia they are labelled as "squatters".[74]

In Sierra Leone, due to the relatively low compensation payments landowners receive, it is key that corruption is limited in the disbursement of these payments. Investors faced community unrest, especially in Sierra Leone, due to corruption allegations in the disbursement process. In response, they had since taken measures to monitor the process more closely.[75] Subsequent investors have learnt from their predecessors in Sierra Leone about how to improve land compensation mechanisms by signing leases with individual landowners, as opposed to leasing land through the government.[76]

3.3 LABOUR RIGHTS

Corruption in relation to labour was the most common form of corruption, with 73 per cent of investments across the board self-reporting or alleged to have involved such issues.

Specifically, the most common form of corruption consisted of internal company corruption in the form of the sale of jobs by superiors and human resource (HR) departments. However, there were also allegations of the bribing of labour ministry representatives by managers to limit repercussions of labour rights abuses. For example, in Zambia, when the case of a manager beating one of his employees was taken to the labour office, the office ordered that compensation be paid, but the payment was never made. The workers suspected that the labour office had been corrupted by investors.[77]

The practice of human resource departments and contractors selling jobs was widespread and took a variety of forms. Beside the sale of jobs for cash, some workers in Sierra Leone were expected to work as "volunteers" by contractors for the first six months, in return for then being given a job.[78] Instead of receiving their full wages, these "volunteer workers" would receive a quarter of the wages due. In some cases, this caused significant tensions between affected communities and LSLBIs. One company had carried out labour recruitment through local chiefs, who started recruiting their friends from afar in return for a portion of their wages, instead of recruiting labour from the affected populations.[79] Female workers were often faced with sexual extortion in order to get jobs or be promoted. This was especially common on farms involving intense female labour, such as tobacco plantations.[80]

In view of the employment promises that many investors make and the poverty of the affected populations, it comes as no surprise that the over-exploitation of labour through contractors taking half of the workers' wages contributed to high rates of theft, which caused significant financial damages to investors.[81] However, given the high level of control that companies have over their own departments, such as HR, combating corruption in labour recruitment is one of the most feasible and high-impact anti-corruption strategies firms can adopt (see Section 5.2 below).

3.4 REVENUE

The research assessed potential corruption risks in revenue collection to ascertain whether the extension of the Extractive Industries Transparency Initiative (EITI) or similar frameworks[82] from the extractive industries or agriculture could contribute to transparency and anti-corruption in LSLBIs. Although revenue avoidance through, for example, transfer pricing[83] plays an important role in the extractive sector,[84] the research found little evidence of corruption in relation to tax avoidance by LSLBIs. In part this is because most companies are required to pay fewer taxes than mineral companies, especially on exports. As Ouma argues, it is precisely "the tax-allowances granted on farmland investment in many countries [that] have sparked a hype around farmland/agriculture as a new 'alternative asset class'".[85] For example, a Christian Aid report on Sierra Leone estimates that the total loss of revenue to the state from three LSLBIs amounted to US$188 million over their initial 10-year operating period, during which they received extra tax relief in addition to the already relatively low taxation rates that LSLBIs enjoy.[86]

The tax obligations that are avoided through corruption in the extractive sector[87] – which is more capital intense and also more heavily taxed – are therefore less present in agriculture because they have been negotiated away. The next section looks at how the facilitation payments currently being paid to customs officials – especially in Sierra Leone – could limit these already low tax revenues even more in the future.

3.5 FACILITATION PAYMENTS

Facilitation payments are made to representatives of the state along the entire investment chain in connection with the corruption points outlined above. Transparency International defines facilitation payments as: "A small bribe, also called a 'facilitating', 'speed' or 'grease' payment, made to secure or expedite the performance of a routine or necessary action to which the payer has legal or other entitlement".[88] As an investor in Sierra Leone pointed out, these bribes are very common: "If you stop paying, your business will delay. So, you do what they like. It's not too much cost. If you enter any door, you have [with you] cola, you have cigarettes.[89] They don't demand it all the time, but sometimes you give to make it go faster, they will be happy. All companies do the same thing, because here is Sierra Leone."[90]

Corruption can be viewed on a sliding scale (see Figure 5), with high levels on one side that negatively shape developmental outcomes and cause harm, and no corruption on the other. When seen as part of a continuum, facilitation payments that do not necessarily cause harm, but harbour the potential to do so, are found in the middle. It is difficult to monitor or ascertain to what extent an otherwise legal process is being facilitated, and whether it is being facilitated to circumvent a specific regulation.

In their most benign form, facilitation payments are necessary for otherwise underfunded state bodies to fulfil their duties – for example, the funding of police interventions is often a necessity for investors in order to ensure the rule of law.[91] Although facilitation payments generally pose relatively little risk to positive developmental outcomes, they have the potential to lead to "regulatory capture" which "occurs when public officials start to identify with companies' objectives instead of their government's goals".[92] This risk is especially high when the reliance on facilitation payments is perpetuated, entrenching the dependence of a supposedly independent government body on a private company. For example, in one area in Zambia, facilitation payments were paid by many different investors to the Zambian Water Board for access to water created a situation where bribes caused a long-lasting water shortage that has led several investments to become unviable.[93]

3.6 SUMMARY – WHAT ARE THE EFFECTS AND RISKS OF CORRUPT LSLBIs?

Of 18 different LSLBIs researched, only three self-reported as entirely free from corrupt practices and had no allegations of corruption against them, although they had faced internal corruption and conflict of interest cases in their operations in the past. The remainder of businesses admitted to having paid or were alleged to have paid bribes in some form.

As observed in the literature review, many investor executives interviewed shared the opinion that it was the size of the bribe that mattered. Although there is no necessary correlation between size of bribe and negative developmental impact, companies alleged to have paid large-scale bribes – for example, by providing local chiefs with cars or bribing politicians – were also the companies that had a more contentious relationship with surrounding communities. Corrupt companies tended to face more damage to their investment through theft, arson, rioting and labour unrest.[94]

FIGURE 5 – THE CORRUPTION CONTINUUM AND WAYS OF COUNTERING CORRUPTION IN LSLBIs

HIGHLY CORRUPT ⟷ NON-CORRUPT

FORMS OF CORRUPTION					
Hiring of people in positions of power to maintain a consistent conflict of interest.	Harmful grand corruption, such as the purchase of vehicles for people in power.	Making facilitation payments to ensure advantage for own operations/ tax avoidance.	Making facilitation payments to stay within schedule or to receive basic state services.	Tolerance of corrupt activities within operations, such as in Human Resources.	Corruption-free operations.
RISKS FROM CORRUPTION					
Consistent social unrest, possibly causing lost investments, high rates of theft and material damage to the investment.	Invalidation of investment protection.	Loss of loans	Financial damage, as facilitation payments and expectations can vary.	Negative perception from affected population, labour unrest.	Reduction of risk, full access to international loans, a more harmonious business environment, bigger and more sustainable profits.
WAYS OF COUNTERING CORRUPTION					
Shore up local support throughout, e. g. grower schemes that don't include power holders. Maintain power holders' positions of influence through places on committees, but not with absolute power.	Find alternative ways in which to donate, such as through corporate social responsibility projects that are well researched and informed. E. g. building a school.	Improvement of accounting standards that do not accommodate bribes through receipts or third parties.	Coordinated refusal to pay facilitation payments for services.	Active internal and external corruption policies. Internal anti-corruption training and setting binding rules.	Actively participating in and contributing to national anti-corruption campaigns through information sharing and setting example as best-case scenario.

4. EXISTING MECHANISMS AGAINST CORRUPTION

This section focuses on legally binding international anti-corruption mechanisms, as well as on anti-corruption regulations imposed by MDBs. The research found evidence of only one company reprimanded by an MDB and losing a loan due to its overall social performance. A review of international anti-corruption legislation revealed no evidence of any LSLBIs having been prosecuted under international anti-corruption laws. The size of bribes and the type of business involved were found to be stronger influences on whether companies are prosecuted than their potential negative developmental impact.

This section also looks at how companies perpetuate corrupt practices and what they do to avoid corruption. It seeks to understand what keeps corruption in check beyond the few companies that are less corrupt, arguing that civil society action around the worst infringements of land and human rights curbs the worst excesses that result from corruption of LSLBIs, but does not hinder corruption itself.

4.1 WHAT EFFECTS DO INTERNATIONAL GUIDELINES AND LAWS HAVE ON INVESTORS?

Among the aims of this research project was to see whether and how binding international anti-corruption regulations, in the form of conditions imposed by MDBs and international anti-corruption laws, shaped corruption in LSLBIs. In terms of testing for adherence to international anti-corruption regulations, specific focus was placed on investments with links to the United States, the UK and Germany, as these countries have prosecuted the most international anti-corruption cases and have some of the most comprehensive anti-corruption legislation (see Table 2 for an outline of these laws). In addition, the United States and the UK are the second and third largest investors in farmland worldwide.[95]

This section will show, through both interviews with investor executives and a review of international anti-corruption law prosecution databases, that, based on the available information, to date no investor has been prosecuted. It will also show that the threat of investors being prosecuted for corruption is relatively low, due to the way in which international anti-corruption law prosecutions work.

Reflecting the higher number of prosecutions in Germany and the United States, companies with links to these countries were generally more prudent than those with links to the UK. Companies that drew their funding from UK stock markets and did not receive any funding from MDBs tended to be the most openly corrupt of the group linked to international anti-corruption legislation. Overall, a large proportion of executives, bar two who received funding from private equity funds, still described incidents of corruption that occurred as part of their operations. These were not limited to internal corruption incidents, such as the sale of jobs, but also included external incidents, especially in the form of facilitation payments made to state bodies such as the police and customs. This may be related to the fact that although only some firms had direct connections to the United States, facilitation payments (discussed in section 3.5) are exempt from prosecution under the country’s Foreign Corrupt Practices Act, putting investors more at ease.

This relatively high incidence of corruption stands in stark contrast to the number of LSLBI-related corruption cases recorded in the TRACE Compendium database[96] of international anti-bribery enforcement actions under international bribery laws: none. Globally, there are only 15 such cases related to agriculture, as opposed to 140 related to the extractive sector. Although little information could be found as to why this is the case, the funding of international anti-corruption investigations is limited. For example, until earlier this year, the UK’s Serious Fraud Office (SFO), which investigates international bribery cases, relied on so-called “blockbuster funding” to investigate cases beyond its limited budgetary means. Up until a recent change of funding, this meant the SFO had to apply for special funding from Parliament on a case-by-case basis.[97] Although all cases that required additional funding were approved, these consisted of large-scale cases that would result in huge fines imposed on

TABLE 2 – OVERVIEW OF INTERNATIONAL ANTI-CORRUPTION LAWS

ISSUE	UK BRIBERY ACT (2010)	US FOREIGN CORRUPT PRACTICES ACT (FCPA, 1977)	GERMAN ANTI-BRIBERY LAWS (1998, 2002)
Is bribery of foreign public officials illegal?	Yes, but unlike the US FCPA, excludes political parties, party officials and candidates for office from definition of "foreign public official".		Yes, under the Act on Combating International Bribery ("IntBestG"). However, the IntBestG covers only active bribery in international business transactions, while the EUBestG only applies to EU member states.
Are commercial bribery and bribery of domestic officials illegal?	Yes	No	Yes
Can receipt of a bribe be prosecuted?	Yes	No	Yes
What is the requisite intent for liability to attach?	Bribing another person (Section 1) and offences relating to being bribed (Section 2) require basic knowledge and the intent to "bring about improper performance". Bribery of a foreign public official (Section 6) requires the intent to influence the official so as to obtain/ retain a business or a business advantage. The "Corporate Offence" of failing to prevent bribery (Section 7) is a strict liability offence not requiring any mens rea. The only statutory defence is to prove the existence of "adequate systems and controls". The burden of proof for the defence is the "balance of probabilities".	The FCPA requires the accused to have acted "wilfully", "knowingly", and "corruptly". Knowledge is defined as including "conscious disregard" or "wilful blindness".	*Official Bribery:* German criminal law requires that the bribe was offered or accepted in connection with the official's discharge of an official duty or the past or future performance of an official act that violates his official duties. *Commercial Bribery:* To be guilty of active commercial bribery, the defendant must have acted "for competitive purposes" to obtain "an unfair preference in the purchase of goods or commercial services". Passive commercial bribery requires the recipient to accept (or allow to be promised) a bribe "as consideration for according an unfair preference to another in the competitive purchase of goods or commercial services". Finally, active commercial bribery of foreign officials requires the defendant to act "in order to obtain or retain … business or an unfair advantage in international business transactions".
Are facilitation or grease payments illegal?	Yes	No	Yes Are facilitation or grease payments illegal?

Adapted from: Funk, M. (2014) *Germany's Foreign Anti-Corruption Efforts: Second-Tier No More*, Zeitschrift für Deutsches und Amerikanisches Recht, Deutsch-Amerikanischen Juristen-Vereinigung e. V.

companies, benefiting the UK Treasury. In other words, the cases were likely to pay for themselves.

Based on this, a possible explanation for the lack of cases relating to LSLBIs is that in much of the corruption described above, although in many cases harmful to developmental impact, investigation would not provide the necessary returns in relation to cost. This is compounded by the relatively low total operating budgets of agricultural companies (see Section 3.4 on Revenue) compared to companies in the extractive sector, so that even if a company were prosecuted for grand corruption, the damages paid under legislation such as the UK Proceeds of Crime law would be minimal.

4.2 CORRUPTION AS A RISK TO POLITICAL RISK INSURANCE AND LOANS FROM INTERNATIONAL FINANCIAL INSTITUTIONS

Another risk for LSLBIs is the potential loss of loans from MDBs and political risk insurance due to corrupt practices in their operations.[98] However, in practice – as with the implications of anti-corruption legislation discussed above – the repercussions of corruption for firms with MDB loans and guarantees were mixed, even though some firms were mired in corruption allegations. In some cases,[99] investments lost their guarantee from the Multilateral Investment Guarantee Agency (MIGA), whereas in more recent high-profile corruption cases, businesses facing corruption allegations were granted MIGA protection, as well as IFC loans.[100] There is no evidence specifically in relation to LSLBIs that companies have lost investment guarantees. However, one LSLBI surveyed was refused future loans by the IFC due to allegations of corruption and infringements of human and land rights.[101] Overall, this research could not determine any significant differences in incidences of corruption (both self-reported and alleged) from LSLBIs subject to MDB funding and investment protection, and other investments, besides a lack of self-declared grand corruption. However, due to the significant importance of both investment guarantees and loans to LSLBIs, further research into the potential MDBs have for countering corruption is necessary. Another future avenue for research would be to look into the links between international anti-corruption laws and the World Bank Group's activities in relation to corruption. For example, if the IFC and MIGA invest in corrupt businesses, would this make the World Bank Group liable under the US Foreign Corrupt practices Act?

4.3 WHAT ARE COMPANIES DOING TO PERPETUATE CORRUPT PRACTICES?

The low enforcement rates outlined above limit the incentives for companies to comply with anti-corruption legislation and regulations. However, companies also actively disguise their corrupt activities in a number of ways to avoid detection through internal auditors. The most common method is to pay bribes through third parties, who are then able to provide a receipt for the bribes paid. As one Zambian investor pointed out: "Most investors are corrupt. They get around it by using a third party. Put the money in a taxi and you get away with it."[102] In Sierra Leone, clearing agents were used not only to get imported goods out of the port, but also to pay and invoice for the bribes paid to customs as a documentation fee. Another investor in Zambia argued: "You won't survive if you don't do it. You pay a consultant to do it and he will bribe people to do their job."[103] Another pointed out that public relations budget lines were used to pay for facilitation payments. This, he said, was made easier by the overall poverty of Sierra Leone, which makes paying bribes cheaper and easier to accommodate as petty cash expenditures.

One of the most damaging forms of corruption – also easily hidden – is the hiring of individuals in power positions, or their families or nominees. For example, it was common for companies to hire chiefs as contractors and labour brokers, consistently creating a conflict of interest in favour of the company. Finding out who on the pay role was related to a regional power-holder would be an impossible task for external auditors, meaning this form of corruption easily goes undetected.

4.4 WHAT ARE COMPANIES DOING TO AVOID CORRUPTION?

Although the above sections paint a gloomy picture, not all companies are equally corrupt. Many use innovative ways to avoid internal and external corruption and conflicts of interests in relation to their own operations and to local and national power holders.

To avoid external corruption issues, a key strategy used by a variety of companies that self-reported as the least corrupt is to embed their operations in the surrounding area by establishing out-grower schemes[104]. Although this does risk generating conflicts of interests for local power-holders, in general it integrates local populations into investment operations and aligns interests. Investors argued this reduced overall tensions that rent-seeking elites could use as a pretext to extort money from them. By integrating larger portions of the surrounding population into their value chain,[105] companies needed to pay fewer bribes.[106] Another mechanism companies use to avoid paying bribes to politicians and power-holders – for example, demanding contributions for a particular national festivity or political party – is thoughtful allocation of their Corporate Social Responsibility (CSR) funding. In contrast to using the CSR budget line to pay a bribe as outlined above, this means timing CSR projects so they can respond to demands made by elites. However, this requires careful management. If, for example, a school is built in a specific constituency and not in another, it might favour some elites over others. Therefore, even if in response to elite demands, CSR projects should be carefully planned in coordination with potential beneficiaries.

In cases where chiefs and local power-holders sought to gain advantage by recruiting contract labour from elsewhere in return for a percentage of workers' salaries, companies amended the way in which labour was recruited. However, what was key was the maintenance of the chiefs in positions of power. In order to do this, companies implemented employment committees with checks and balances, so as to limit the control chiefs had over who was hired and on what terms.

Internally, most companies have had issues relating to corruption both in HR and procurement departments. This also shows that most companies were not prepared for these situations, despite investments mostly being run by experienced farm managers. The reaction to these corruption issues was to intensify the supervision of the departments through increased management surveillance. However, this generally overstretched farm managers. In other companies, procurement was decentralised to different departments, so that department managers had a smaller procurement team to manage and were more accountable in terms of purchasing and hiring of labour.

4.5 CURRENT MECHANISMS AND THE WAY FORWARD

The prevalence of corruption in many aspects of LSLBIs shows that the anti-corruption mechanisms outlined are only working to a certain extent. International anti-corruption legislation may work to limit the extent of grand corruption, as may the mechanisms and terms of MDBs. However, in the case of the investor who lost potential IMF funding due to a bad human and land rights track record involving corruption allegations, the IMF did not find out about malpractice through its own investigations, but through research and activism by civil society organisations. Although more research is required, there is little overall evidence that corruption is investigated proactively and independently by MDBs in the absence of calls to action by civil society over specific cases. Instead, the excesses or the infringements of human, labour and land rights that result from corrupt activities have been controlled through civil society, labour activism and social unrest.

This means that in LSLBIs, the most negative impacts of corruption are controlled to a certain extent, but corruption itself is not. This is partly because the incentives to control corruption are not present in the host nations themselves.[107] The key to developing anti-corruption strategies for LSLBIs is to identify potential incentives for companies to avoid corruption in specific cases that enhance their developmental impacts. The next section outlines some of these anti-corruption incentives, identified through this research.

5. INCENTIVE-DRIVEN ANTI-CORRUPTION STRATEGIES FOR LSLBIs

Although the negative developmental outcomes of corruption are somewhat controlled, they still occur and civil society often intervenes after the fact. The strategies outlined below therefore place an emphasis on preventing future corruption in sustainable ways. Each uses one of three key approaches through which corruption can be addressed based on incentives. Firstly, anti-corruption interventions are designed to align with existing company incentives, for example, to limit internal corruption that negatively affects the firm's public image and profit rates. Secondly, information could be exchanged between investors through national workshops organised by civil society, to identify common corruption risks that could be tackled collectively. Thirdly, existing incentives and regulatory structures could be enhanced and new anti-corruption structures supported.

5.1 EXTERNAL CORRUPTION INTERVENTIONS

Overall, addressing external corruption issues will take significant commitment from firms. It would mean that they engage outside actors over corruption, as opposed to dealing with internal corruption over which they have more control. As the Control Risks research showed, companies prefer to avoid corruption, rather than resisting it.[108] This was also echoed by some investors who paid bribes when demanded: "We would make more money without [corruption]. It's [bribes] not big amounts, but it adds friction, which means it's a net loss. Nothing happens when you don't look after them [government officials]."[109] This shows that resisting external corruption risks, as opposed to avoiding them, has the potential to add friction to companies' operations, which in turn would cause further delays.

5.1.1 INTERVENTIONS ON A NATIONAL LEVEL

Ways in which LSLBIs can feasibly address corruption outside their operations are best based on common ground and incentives for companies to stand together to counter and resist corruption demands. Information sharing between companies could help build critical mass and alliances around certain corruption hotspots.

A possible intervention would consist of confidential seminars on corruption between executives where shared problems could be identified and used to build a concerted effort against specific forms of corruption. Moderated by civil society, the aim would be to steer the discussion away from anti-taxation debate or finger-pointing exercises, towards a constructive feedback environment where issues and potential solutions could be discussed openly. Companies' recommendations and concerns could then be presented to specific government entities and donors. Ideally this would eventually encourage coordinated bribery boycotts. For example, in Sierra Leone, bribes paid to customs officials at the port when importing inputs affected all LSLBIs[110], making this an area of convergence in anti-corruption incentives and potential collective action.

5.1.2 INTERVENTIONS ON REGIONAL AND LOCAL LEVELS

As pointed out above, LSLBIs have dealt with corruption on regional and local levels in a variety of ways. Some companies are significantly ahead of others in trying to integrate chiefs and local power-holders into decision-making bodies, while not compromising their necessary independence. Other firms lag far behind and therefore often face more contentious relations with affected populations. Most firms faced issues concerning local power-holders in their operations, and there are clear incentives to deal with these issues.

Workshops that encourage information sharing between companies on how these corruption risks are countered could be helpful not only in improving current company strategies and policies, but in helping investors who are establishing new operations. Investors are already sharing information and learning from each other's mistakes to a large extent, but a specific focus on corruption-related issues would be beneficial. Based on how well such workshops go, country-specific resources such as investment and operational guides could be created to aid future investors during the investment process.

5.2 INTERNAL CORRUPTION INTERVENTIONS

Firms will generally have the most direct incentives to carry out internal anti-corruption interventions, as their interest lies in protecting their profits and image. These incentives intersect with their control over their own operations, making internal anti-corruption interventions the most feasible for both reducing corruption and, if directed in specific ways, improving the developmental impact of LSLBIs.

Such interventions centre mainly on how to deal with corruption in human resource and procurement departments to address companies' consistent lack of preparedness for preventing internal corruption. The fact that internal corruption issues arose even firms whose CEOs had long-term experience in countries where corruption is prevalent shows that training on preventing internal corruption is needed. This would be especially useful to companies in the early stages of investment.

The improvement of working conditions through reduced corruption would make a significant contribution to the positive developmental impact of LSLBIs. As this research has shown, the perception of LSLBIs was mainly affected by a reduction of labour opportunities especially in Sierra Leone. Labour-related corruption was particularly rife in the recruitment of large amounts of casual labour. Improving this dynamic could at once strengthen a company's image, while ensuring that workers are paid what they are promised for their work and keeping productivity constant.

As such measures would be essentially supporting private businesses, the internal anti-corruption activities should be entirely or partially funded by the investor.

5.3 ENHANCING EXISTING INCENTIVE STRUCTURES

Increased transparency around concession allocation negotiations is key to improving the overall developmental impact of LSLBIs (see Section 2.1). As access to farmland is not as restricted as access to limited natural resources in the extractive industry, there are fewer competitive pressures. This reduces the need for the secrecy around negotiations which investors claim to be necessary. As Section 1.2 demonstrates, people were generally not against companies' operations, but against the way in which they operate. This suggests that opening up future contracts for discussion would not endanger prospective investments, but would instead contribute to making them more attuned to the expectations of host populations.

The push for more involvement in the negotiation phase through the EITI and other transparency initiatives is not new. As Henley and Locke observed in 2013, "pressure to increase the scope of transparency initiatives (such as the EITI) reflects a real appetite for moving beyond receiving information on decisions that have already been taken; civil society stakeholders in some EITI countries are pushing for access to information when contracts are negotiated so that they can influence decisions further back in the value chain that they feel will have a more transformative impact."[111]

The integration of LSLBIs into the EITI was generally seen as desirable and feasible by civil society representatives[112] in Zambia and Sierra Leone. Although currently suspended from the EITI,[113] Liberia had put this to the test where LSLBIs contract disclosure and revenue reconciliations form part of the EITI remit.[114] The integration of the land sector – which does not face as much competition at the point of concession negotiations – may be the ideal way for civil society to give more input into the process through a framework like the EITI.

Relatively little is known about internal and investor-driven corruption compliance mechanisms.[115] However, based on interviews with investors, these internal regulations are often circumvented through receipts for bribes and the payment of bribes through third parties or public relations budget lines.[116] More research is therefore required, to look beyond the listing of different auditing mechanisms and into practical and operational aspects of internal audits, as these have an important bearing on their efficacy. In some cases, international auditors will have a limited understanding of what specific corruption risks LSLBIs in African contexts face. More training for international accountants, and exchange exercises and cooperation with local accountants, may enhance future internal and external compliance.

The research made clear that civil society actors are the main source of corruption reporting in relation to LSLBIs. As mentioned, these reports often focus on the negative outcomes of corruption, such as work and land rights infringements, as opposed to corrupt practices themselves. The reasons for this are clear, in that corrupt practices can often only be identified after the fact, by their outcomes. However, in order to encourage more proactive and pre-emptive reporting, training is recommended on corruption investigations in relation to LSLBIs, as well as information dissemination on relevant international laws and regulations for civil society actors. Training in how to report corruption – for example, to the OECD's National Contact Points or the Compliance Advisor Ombudsman of the International Finance Corporation and MIGA – would enhance civil society organisations' capacities.[117] At the same time, the OECD and the World Bank Group reporting mechanisms should become more attuned to corruption-related issues, as opposed to overly focusing on societal and environmental issues.

A push for special developmental anti-corruption funding for public prosecutors in supply-side countries pursuing cross-border cases would support existing approaches, such as the SFO's blockbuster funding (see Section 3.1). An increase in the scope of prosecutors to move beyond cases that promise high returns in the forms of fines or settlements would incentivise firms to be more compliant with international anti-corruption legislation.[118]

6. CONCLUSION

As this report has shown, there are many corruption risks related to and within operations of LSLBIs in Sub-Saharan Africa. Not all these risks negatively affect the developmental impacts of LSLBIs. Some have no impact, whereas others are significant. The report looked specifically at corruption risks in the concession negotiation and allocation process, the compensation and resettlement process, labour rights, revenue collection and facilitation payments. Addressing corruption in all these areas is key in future investments. However, for current investments, the point in the investment chain at which feasibility, existing incentives and highest developmental impact intersected was in relation to corruption risks surrounding labour and labour rights.

By far the most significant identifiable factor contributing to development was the creation of jobs. The reason for this is that the amount of compensation for land is extremely low in relation to wages, be it on a lease basis as in Sierra Leone or on a one-off payment basis as in Zambia. Compensation payments often benefit only a very small number of people, in comparison to how many people work on the plantations – a fact reflected in the wage bills of firms in comparison to their lease payments. Corruption was rife in hiring processes both for permanent and casual labour, with 73 per cent of investments affected. Reducing corruption in the hiring of labour would also fall in line with LSLBI incentives. Ensuring that workers received full wages would contribute to higher productivity, enhancing the bottom line as well as limiting knock-on effects such as theft.

Some LSLBIs with MDB funding and connections to the United States, the UK and Germany created fewer negative developmental impacts for affected populations. This was due to the fact that the negative impacts were monitored by civil society organisations, whose critical reports had previously blocked loans from MDBs. MDBs therefore respond to negative developmental impacts and human and land rights infringements in which corruption plays a role, as opposed to direct reports on corruption. Out of a total of 23 investors, only three claimed to be corruption-free, but even these had had prior internal corruption issues, especially in respect to labour recruitment. The remainder, especially investors who did not have connections to the United States and were not financed through equity funds,[119] were relatively open to making various facilitation payments, some of which had also negatively impacted on their own business. The most corrupt were regional LSLBIs, which had no qualms about disclosing large-scale payments made to local power-holders in order to gain access to land. These practices were also verified by affected populations. Companies that paid larger bribes also faced more labour and social unrest in relation to their investments.

It is unlikely that the most corrupt companies in this study would be open to participating in interventions such as training and workshops to avoid corruption in their own operations. Their lack of regulatory incentives in relation both to corruption and other accountability mechanisms makes identifying other incentives more complex. More research is therefore needed on regional investors and what measures would create more incentives for decreasing corruption in their operations.

Although the research has shown that international anti-corruption legislation and other guidelines have an impact on investors from OECD countries, this is not enough. The fact that adherence to rules is not self-sustaining, and instead relies on the consistent need for corrective measures from civil society organisations in the form of complaints, shows that the threat of prosecution or other repercussions is too low. If corruption is to be sustainably curbed, international anti-corruption efforts need to be measured more by their developmental impact than by the size of bribes and their potential returns on prosecution. To tackle corruption in LSLBIs and enhance their developmental impact, this report recommends the following key measures:

1. Multilateral development banks that provide investment guarantees and loans to LSLBIs should develop simpler ways through which concerns relating to corruption can be reported by affected populations and civil society organisations. Reporting mechanisms such as the OECD National Contact Points should automatically pass on information relating to corruption allegations to prosecutors in countries that are signatories to the OECD Anti-Bribery Convention.

2. Civil society organisations, often the only checks and balances on investors, need more support from donors and larger NGOs to strengthen anti-corruption reporting.
3. The legality of facilitation payments under the United States' Foreign Corrupt Practices Act should be revised, as facilitation payments can lead to regulator capture of institutions which ought to protect the interests of affected populations, rather than of investors.
4. More cooperation is needed between host governments, donors and investors to combat corruption in an effective way, based on incentives.
5. More in-depth research on LSLBIs is needed, especially relating to their impacts on affected populations.
6. More research is needed on corruption and how it is dealt with within firms, to ascertain whether current audits are effective in ensuring compliance in developing countries.
7. Donors and NGOs should further support host states to create anti-corruption incentives for regional investors.
8. Donors and NGOs should further support the enforcement and development of land and labour laws relating to LSLBIs in host countries.

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ANNEX 1: INTERVIEW ABBREVIATIONS

AW	Administrative Worker
C	Chief
DO	Donor
F	Farmer
GOS	Government of Sierra Leone
GOZ	Government of Zambia
IE	Investor Executive
KI	Key Informant
L	Landowner
LC	Landowner and Labour Contractor Head
LW	Landowner and Worker
NG	NGO
U	Workers Union
V	Various
W	Worker

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76 Research interviews (references IE4,6)

77 Research interview with key informant, anonymity protected (research reference: KI6)

78 Research interview with worker, anonymity protected (research reference: W3,4)

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