
LEGEND

*Land: Enhancing Governance
for Economic Development*



**Policy
brief**

May 2017

Legal empowerment in agribusiness investments: harnessing political economy analysis

Lorenzo Cotula with Thierry Berger

Key messages

- Increased private sector investment in tropical agriculture creates the challenge of empowering rural people to make informed choices, exercise their rights and have their voices heard when dealing with the government or the private sector. Legal empowerment practitioners – from lawyers to nongovernmental organisations and grassroots groups – have pioneered ways to help rural people advance their rights.
- Agribusiness investments present some distinctive issues. While legal empowerment interventions often act at the grassroots, the economic reality of agribusiness investments requires the tailoring of approaches to the national and, possibly, international dimensions involved. Also, legal empowerment practitioners often find themselves helping communities to confront politically sensitive problems and powerful vested interests.
- If legal empowerment is to be effective, interventions at national and international levels need to complement grassroots action, and the political dimensions need to be properly considered. This briefing note is aimed at legal empowerment practitioners and discusses how interventions can rise to the challenge.
- Political economy tools can help practitioners to make sense of the issues, identify the most appropriate levers of influence, manage the risks involved, and ultimately design and implement more effective legal empowerment interventions.
- Grounding interventions in political economy analysis could broaden the range of possible approaches to include politically savvy initiatives at the local, national and international levels.
- Approaches may range from establishing grassroots systems for people to hold local leaders to account; through to supporting public scrutiny of investor-state contracts; and helping communities to obtain redress via international or transnational channels, or citizens to scrutinise the negotiation of international treaties.
- These interventions may require new alliances to tailor and coordinate initiatives at different levels, bringing together actors with complementary expertise in different areas of law and practice, and with the ability to act at different levels and in different places.

The concept and practice of legal empowerment

Legal empowerment involves helping people to engage with the law so that they can achieve what they value. In relation to agribusiness investments, legal empowerment often entails delivering legal services to help people secure their land rights, negotiate with companies from a position of strength, or redress grievances. It can also include enabling people to participate in creating new laws – for example, on land or investment.

In providing legal support, interventions use diverse approaches (Table 1). Many legal empowerment programmes aim to raise people’s awareness – for example, about their land rights or a proposed law affecting them.

But greater awareness is rarely enough. Many interventions also work to strengthen rural people’s confidence and ability to navigate complex court or administrative procedures – for example, through supporting local organisations or training community paralegals.

If people resolve to use law-related processes, they are likely to need specialist expertise. Many legal empowerment interventions provide this support – for example, to map and register lands or help communities bring claims or negotiate partnerships with companies.

All these approaches aim to equip communities with the tools to fight for their rights – not to advocate on their behalf.

Agribusiness investments: economic and political dimensions

When applied to agribusiness investments, legal empowerment initiatives must often confront two challenges:

- By the time a business venture hits the ground, key decisions will have already been taken at higher levels. These decisions are often difficult to reopen through action at the local level. For example, the government may have approved an investor-state contract setting important parameters for community-investor relations, and concluded international treaties protecting approved investments.

- Action to empower communities may question vested interests and raise politically sensitive issues. The processes by which land is managed and investments are governed can involve distributive issues and entrenched power relations. Local, national and transnational elites may resist change to protect their interests.

The first challenge means that, while grassroots action can delay and possibly undermine project implementation, the most effective levers for influence do not necessarily lie at the local level. As such, legal empowerment efforts may also need to be applied at the national and international level – for instance, by helping citizens to understand and scrutinise investor-state contracts and investment protection treaties.

As for the second challenge, legal empowerment is fundamentally about renegotiating power relations. Empowering people to claim rights and make informed choices has inherent political implications because it can challenge the views and interests of those in power. Legal empowerment interventions can only be effective if practitioners understand the political context and vested interests standing in the way of change, factoring them into their approach.

How political economy analysis can help

Seasoned practitioners will have an intuitive understanding of the political and economic context in which they work. But various tools from political economy – the study of the interface between the economic and the political – could help them develop a more systematic approach.

The term political economy encompasses some very different approaches. Key concepts include agency (an actor’s ability to make change happen, whether individually or collectively), structure (the contextual factors that influence options for action, including political, economic, social, geographic, legal and other factors), power (which affects both agency and structure through influencing minds and relations) and ideas (all aspects of human thought, including how people perceive and articulate interests, problems and possible solutions).

These concepts are directly relevant to legal empowerment. Greater capacity to exercise rights can

Table 1. Examples of legal empowerment interventions

Aim of intervention	Examples of approaches	Examples of issues/arenas
Raise legal awareness, provide information	Trainings, radio broadcasts, village theatre, legal education	Land rights, investment approval process, remedies, proposed laws
Strengthen community/individual capacity to act on legal awareness	Support to local organisations, charters and committees; hotlines; exchanges of experience; community paralegals	Land rights, community-investor negotiations, legal redress, proposed laws
Provide support in law-related processes	Legal advice, law clinics, technical support, community paralegals	Administrative procedures, litigation, grievance mechanisms, community-investor negotiations, participation in law-making

increase the agency of the legally empowered, but interventions must navigate power imbalances and structural constraints – for example, where political and economic systems are skewed against certain groups, or influential actors resist change and repress activists. Ideas are also relevant in legal empowerment because interventions often aim to raise awareness, facilitate access to information or change the way law is interpreted through precedent-setting litigation. The entrenchment of a new legal interpretation can alter the (legal) structure and open new spaces for agency.

The political economy of agribusiness investments

Political economy concepts can help understand the complex local, national and international relations that underpin agribusiness investments. Relations at the national level are important because the central government often has the authority to approve investments, issue permits or award land rights. Yet structural factors and power relations can affect opportunities for agency at the national level.

This is partly because agribusiness investments can involve significant vested interests. National elites such as entrepreneurs, politicians and high-level government officials may have acquired a great deal of land, act as intermediaries, facilitators or local partners to foreign investment projects, or benefit from opportunities for corruption and rent-seeking. These groups may resist change that threatens their interests and governance systems may be more responsive to these interests than those of marginalised people.

Agribusiness ventures also rely on relations they develop at the local level – for example to clear land, hire labour or promote support among local communities. Political economy factors influence these relations too. Communities often include different interests and uneven power relations based on diverse factors such as status, wealth, income, gender, age, ethnicity or socio-economic activity, and local leaders may not equally advance all local interests.

Also, national politicians often rely on local power-brokers such as customary chiefs to harness rural votes, and they distribute material benefits as post-election rewards to sustain these patronage networks. The payments, jobs and contracts associated with agribusiness investments can be perceived as the perfect currency for these kinds of transactional politics. So while public discourse often focuses on the need to address power imbalances between businesses and ‘communities’, a key challenge involves ensuring that local leaders are responsive to their constituents.

Finally, agribusiness investments can involve transnational relations. The investor may be based in a

different state, financing may come from firms located elsewhere, and the venture may target export markets in yet other countries. Complex relations between transnational businesses and public authorities can affect preferential conditions for the venture to access financing or export markets.

This international structure creates both opportunities and challenges for agency. Cross-border trade arrangements have provided openings for transnational advocacy; but activists have also raised concerns that international investment protection treaties might make it more difficult for citizens to get governments to act on their demands if doing so would undermine existing investments (Kamout Su et al., 2014).

From analysis to action

Translating the analysis into action would inform choices on whether legal empowerment can be part of the solution in any given context, and if so what approaches would be most appropriate. If political space is constrained, for example, legal empowerment could expose practitioners and communities to significant risk, and political economy analysis can inform the development of tailored interventions and effective risk management systems.

A fine-grained understanding of political economy can also help identify the most promising entry points that practitioners and communities can use to renegotiate power relations. This could broaden the range of possible legal empowerment interventions to include diverse types of initiatives at the local, national and international level. Innovative experience in legal empowerment provides insights on what this might involve.

Legal empowerment at local to international levels

Working at the grassroots

At the local level, political economy analysis highlights that the most difficult issues often relate to renegotiating relationships within communities to ensure local leaders are responsive to their constituents. To address these issues, legal empowerment innovators have helped citizens to establish mechanisms to hold local leaders to account.

This may involve developing locally negotiated charters and by-laws, setting up committees to advise leaders on the exercise of their authority, and training community paralegals to accompany the whole process from the bottom up. However, experience from Liberia shows that entrenched sociocultural attitudes are difficult to change, and that communities may have to fight for these arrangements to be upheld (Kaba and Keyser, 2014).

National-level interventions

Political economy analysis also indicates that, at the national level, large-scale investments may be associated with complex relations that link politicians, high-level government officials and business leaders. In these contexts, working only at the grassroots is unlikely to be enough, and interventions may need to address the politics at a national level.

Consequently, legal empowerment practitioners have developed approaches to work with government. In Mozambique, for example, one programme developed a ‘twin-track’ approach that combined training for community paralegals to act as local ‘agents of change’ with capacity support for government officials and judges to win their ‘hearts and minds’ (Tanner and Bicchieri, 2014). Supporting public oversight of government action is a complementary approach. This may involve helping citizens to scrutinise investor-state contracts that grant land to commercial operators – as is being done in Cameroon, for example (Cordes 2017).

The transnational dimension

The transnational dimension of foreign investment may provide additional opportunities for agency, particularly where structural factors (e.g. ineffective judiciary or authorities impervious to pressure) prevent legal empowerment approaches from making headway at the local or national level. Practitioners have helped rural people to pursue transnational litigation to hold parent companies or downstream buyers to account, or called for trading partners to review their trade preferences (Sokphea, 2016).

Legal empowerment practitioners have also helped people to initiate international human rights proceedings against governments; file complaints against companies with grievance mechanisms run by third-party certification bodies such as the Roundtable on Sustainable Palm Oil (Lomax, 2015); or promote public scrutiny of investment protection treaties – for example, in Myanmar (Kamout Su et al., 2014).

Key takeaways

This analysis has direct implications for legal empowerment in agribusiness investments:

- **Politics matters:** legal minds may be more comfortable dwelling on the technical aspects of the law, but legal empowerment works best when programmes factor in the political dimensions of their work.
- **Harness political economy tools:** using concepts such as power, structure and agency and scrutinising the relations that underpin agribusiness investments can help legal empowerment practitioners to make sense of the politics and the diverse sites for action.
- **Broaden the scope to activate the most effective levers:** addressing entrenched power relations may require activating levers at the local, national and international levels. Interventions may range from establishing grassroots systems for people to hold local leaders to account; through to supporting public scrutiny of government conduct and investor-state contracts; and helping communities to obtain redress via international or transnational channels, or citizens to scrutinise the negotiation of international treaties.
- **Communities must lead:** legal empowerment is about giving communities the tools to be their own advocates – not doing their campaigning for them. This is a consideration that should guide any interventions combining the legal and the political, and acting at national and international levels.
- **Consider the risks as well as the opportunities:** depending on the context, renegotiating power relations may expose practitioners and communities to the risk of backlashes. This requires carefully considering the appropriateness of (different types of) legal empowerment interventions, and developing effective risk management schemes for any interventions taken forward.
- **Take a holistic approach:** no single approach is likely to have all the answers. Legal empowerment in agribusiness investments will need to work alongside other approaches, such as harnessing technology or conducting public campaigns.
- **Develop new coalitions:** working at the national and international levels and integrating legal empowerment with other approaches may require new local-to-global coalitions between actors with complementary expertise in different areas of law and practice (from land rights to investment protection treaties), and with the ability to act at different levels and in different places.

References

- Cordes, K.Y. (2017) 'Supporting Communities by Making Land Deals More Transparent and Accountable'. LEGEND Land Policy Bulletin, Issue 6, p. 2.
- Kaba, A. and Keyser, C. (2014) *Holding Leaders Accountable and Ensuring Community Participation in Land Transactions*. Washington DC: Namati. Available: <http://namati.org/wp-content/uploads/2015/01/Lesson-from-Field-Liberia-Holding-Leaders-Accountable-and-Ensuring-Participation-in-Land-Transactions-LR.pdf>.
- Kamout Su et al. (2014) 'CSO Statement on Myanmar Investment Treaties'. Available: <https://www.tni.org/en/declaration/cso-statement-myanmar-investment-treaties>.
- Lomax, T. (2015) *Asserting Community Land Rights Using RSPO Complaint Procedures in Indonesia and Liberia*. London: IIED. Available: <http://pubs.iied.org/12584IIED/>.
- Sokphea, Y. (2016) 'Transnational Advocacy Networks in Global Supply Chains: A Study of Civil Society Organizations' Sugar Movement in Cambodia'. *Journal of Civil Society*, 13(1).
- Tanner, C. and Bicchieri, M. (2014) *When the Law is Not Enough: Paralegals and Natural Resources Governance in Mozambique*. Rome: Food and Agriculture Organization of the United Nations. Available: <http://www.fao.org/3/ai3694e.pdf>.

For a fuller discussion of the issues presented here, see the LEGEND analytical paper:

Cotula, L., with Berger, T. (2017) *Legal empowerment in agribusiness investments: harnessing political economy analysis*. London: LEGEND.

Available at: <https://landportal.info/library/resources/legal-empowerment-agribusiness-investments>

Land: Enhancing Governance for Economic Development (LEGEND) is a DFID programme that aims to improve land rights protection, knowledge and information, and the quality of private sector investment in DFID priority countries. It includes the development and start-up of new DFID country land programmes, alongside knowledge management activities, a challenge fund to support land governance innovations, and management of complementary DFID grants. The implementation of LEGEND is supported by the Core Land Support Team.

Readers are encouraged to reproduce material from LEGEND reports for their own publications, as long as they are not being sold commercially. As copyright holder, LEGEND requests due acknowledgement and a copy of the publication. For online use, we ask readers to link to the original resource on the LEGEND website. The views presented in this paper are those of the author(s) and do not necessarily represent the views of LEGEND.

© LEGEND 2017. This work is licensed under a Creative Commons Attribution-NonCommercial Licence (CC BY-NC 4.0).

All LEGEND Reports are available from:

www.landportal.info/partners/legend



This material has been funded by UK aid from the UK Government, however the views expressed do not necessarily reflect the UK Government's official policies.

