

Legal empowerment in agribusiness investments: Harnessing political economy analysis

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NB This is an extract from a draft Analytical Paper being prepared as part of the DFID-funded Land: Enhancing Governance for Economic Development (LEGEND) programme. LEGEND aims to improve land rights protection, knowledge and information, and the quality of private sector investment in DFID priority countries. The views reflected in the paper are those of the authors alone. A full set of references is provided in the underlying Analytical Paper.

Introduction

Increased private sector investment in tropical agriculture has raised both hopes and fears for rural livelihoods in low and middle-income countries. Depending on the context, rural people have negotiated their own inclusion as farm workers or outgrowers, sought better terms of consultation or compensation, or opposed the deals altogether. People's ability to make informed choices, exercise their rights and have their voices heard when dealing with the government or the private sector are considered key factors in ensuring fair outcomes.

Legal empowerment practitioners – from lawyers through non-governmental organisations to grassroots groups – have pioneered ways to help communities ensure that any investments proceed from the bottom up and deliver local benefits. Their interventions often assist people in harnessing the law to secure their land rights, negotiate with companies from a position of strength, redress grievances, and influence policy.

Legal empowerment in agribusiness investments raises some distinctive challenges. While interventions often act at the grassroots, agribusiness investments require tailoring approaches to the national and possibly international dimensions involved. Also, legal empowerment practitioners often find themselves helping communities to confront powerful vested interests when they negotiate with companies or government agencies. Land and investment are politically sensitive issues and space for advocacy is constrained or reducing in many contexts.

If legal empowerment is to be effective, important parameters need to be reconfigured – by complementing grassroots action with interventions at national and international levels, and by more fully considering the political dimensions. Targeting an audience of legal empowerment practitioners, this analytical paper explores how political economy analysis can help practitioners make sense of these issues, and it distils insights from practical experience on how legal empowerment initiatives can rise to the challenge.

The International Institute for Environment and Development (IIED) is an active player in this field, working with partners in low and middle-income countries to develop legal empowerment approaches for addressing the challenge of agribusiness investments at

local, national and international level. While this practical experience informed the framing of the analytical paper, the paper draws on a literature review. To ensure arm's length treatment of data the paper focuses on experience other than IIED's.

The concept and practice of legal empowerment

Legal empowerment involves helping people engage with the law so 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. Beyond helping people to make the best possible use of existing laws, legal empowerment can also include enabling them to participate in creating new ones, 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. This often involves trainings, radio broadcasts and village theatre.

But greater awareness is rarely enough, as people may lack the confidence or the ability to act on the newly acquired information. Many legal empowerment interventions work to strengthen this ability, for example through supporting the development of local organisations, by-laws or committees; training community paralegals;¹ setting up hotlines for easier communication; or promoting exchange of experience with communities who have success stories to share.

If people resolve to use law-related processes, they are likely to need specialist expertise. Legal empowerment interventions often provide this support, including legal advice and other technical input – to delimitate lands, for example. Community paralegals can support relations at the local level. Law-related processes may include administrative proceedings such as land registration and impact assessments, court litigation and grievance procedures, contract negotiations, and public participation in law making.

An integral feature of all these approaches is that they aim to place people in the driving seat of the changes that affect them, rather than casting them as mere "beneficiaries". The goal is to equip communities with the tools to fight for their rights – and not to advocate on their behalf. This is an important distinction between legal empowerment and other forms of advocacy such as public campaigning, but it can at times be a blurry line in real-life interventions.

¹ Despite their considerable diversity, community paralegals programmes typically train, support and supervise selected community members, who can advise their peers and link up with more qualified staff when needed.

Table 1. Legal empowerment interventions: some examples

Aim of intervention	Examples of approaches	Examples of issues/arenas
Raise awareness, provide information	Trainings, radio broadcasts, village theatre	Land rights, investment approval process, remedies, proposed laws or treaties
Strengthen ability to act on the awareness	Support to local organisations, by-laws and committees; hotlines, exchange of experience, community paralegals	Land rights, community-investor negotiations, investor-state contracts, legal redress, proposed laws or treaties
Provide direct support in law-related processes	Legal advice, law clinics, technical support, community paralegals	Administrative processes, litigation, grievance mechanisms, community-investor contract negotiations, participation in law making

Agribusiness investments: economic and political dimensions

When applied to agribusiness investments, legal empowerment initiatives – to help communities negotiate fair community development agreements, for example – must often confront two challenges. One is that, by the time the business venture hits the ground, key decisions will have already been taken. For example, the government may have approved an investor-state contract setting important parameters for community-investor relations, and concluded treaties protecting approved investments.

Action at the grassroots is still important. But the most effective levers for influence may not be located in the project site. So legal empowerment can be applied at national and international level – by helping citizens to understand and scrutinise investor-state contracts and investment protection treaties, for example (Box 1). In other words, the economic reality of agribusiness investments has important implications for legal empowerment strategies. It may also require combining different areas of legal expertise and the ability to act at different levels and in different places.

The second challenge affecting legal empowerment in agribusiness investments is that interventions may question powerful vested interests and raise politically sensitive issues. This is because the processes by which land is managed and investments are made are often inherently political, and represent important avenues for exercising power.

By virtue of their training, many lawyers would instinctively tend to focus on the technical aspects of legal work, and consider this as being separate from its political ramifications. But legal empowerment interventions can only be effective if practitioners understand the political context and the vested interests standing in the way of change, and factor them into their approach.

Political economy: from analysis to action

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 interaction between political and economic processes – could help them develop a more systematic approach to addressing the two challenges discussed above.

Broadly defined, political economy examines the interface between the economic and the political. But the term encompasses some very different approaches, and the jargon and “labelling” are sometimes confusing. By using political economy tools, practitioners can the most appropriate levers for influence at local, national and international level, consider the risks involved, and ultimately design and implement more effective legal empowerment interventions.

Political economy analysis can help shed light on the complex relations that underpin agribusiness investments. These ventures often involve many actors and sites of decision making, resourcing and operation, particularly where foreign investment is involved. Further, political economy analysis can provide insights on features of structure and opportunities for agency at local, national and international level; on the most suitably located legal levers for influence; and ultimately on the design and implementation of legal empowerment interventions.

The paper illustrates these issues through a more detailed discussion of the political economy of agribusiness investments in their local, national and international dimensions; and its implications for the design and implementation of legal empowerment interventions.

Legal empowerment at local to international levels

Translating the analysis into action would inform choices on whether legal empowerment can be part of the solution in any given context, and in what form. Where political space is constrained, some approaches may be ineffective and expose practitioners and communities to significant risk; while others can facilitate dialogue and help identify possible ways forward.

Acting on the findings of political economy analysis would also broaden the range of possible legal empowerment interventions to include diverse types of initiatives at the local, national and international level. This broader notion will significantly expand the range of entry points that practitioners and communities can use to renegotiate power relations. Innovative experience in legal empowerment provides insights on what this might involve.

At the local level, careful 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 practitioners have helped citizens to establish mechanisms to hold local leaders to account.

This may involve developing locally negotiated charters, 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. Entrenched socio-cultural attitudes are difficult to change, and communities may have to fight for these arrangements to be upheld.

Political economy analysis also indicates that, at the national level, large-scale investments may be associated with complex relations linking politicians, high-level government officials and business leaders. In these contexts, working at the grassroots

is unlikely to be enough, and interventions may need to address the politics at the national level.

So legal empowerment practitioners have developed approaches to work with government, for example by providing capacity support for “frontline” government officials to win their “hearts and minds”. Supporting public oversight of government action is a complementary approach, for example by making investor-state contracts public and developing tools to help citizens scrutinise these contracts.

Foreign investment has a transnational dimension. Political economy analysis can help identify relations that cross national boundaries, and inform choices on the diverse legal instruments that interventions could engage. In this context, legal empowerment can be applied in relation to international instruments – by helping communities to understand and scrutinise the negotiation of investment protection treaties, for example.

There is also a wide range of possible avenues for acting in multinationals’ host countries, or via supranational or third-party dispute settlement fora. Ensuring that communities are in the driving seat despite the geographic distance requires sustained efforts to reach out to different community groups throughout the intervention.

Shrinking political space has important implications for legal empowerment, because interventions could expose practitioners and communities to significant risk. In many contexts, advocates have faced intimidation and repression, including in the form of court actions. Careful political economy analysis can provide the foundations of robust risk management schemes.

Ways forward

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

- **Politics matters:** Legal minds may be more comfortable dwelling on the law’s technical aspects, 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 make sense of the politics and the diverse possible sites for action.
- **Broaden the scope to activate the most effective levers:** Though legal empowerment has tended to operate at the grassroots, addressing entrenched power relations in the context of agribusiness investments may also require identifying and activating levers at the national and international levels.
- **Communities must lead:** Legal empowerment is about giving communities tools to be their own advocates, not doing their campaigning for them – 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:** Ultimately, no single approach is likely to have all the answers, so legal empowerment in agribusiness investments will often need to act together with other approaches – such as harnessing technology or conducting public campaigns.

- **Identify new allies:** 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, and with ability to act at different levels and in different places.