

Trends in global land use investment: implications for legal empowerment

Lorenzo Cotula and Thierry Berger



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IIED Land, Investment and Rights series

First published by the International Institute for Environment and Development (UK) in 2017

ISBN: 978-1-78431-550-4

IIED order no.: 12606IIED

For copies of this publication, please contact IIED:
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A catalogue record for this report is available from the British Library.

Citation: Cotula L and Berger T (2017) Trends in global land use investment: implications for legal empowerment. IIED, London.

Cover: Aerial view of a Transition Forest area in Bokito, Cameroon.

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Typesetting: Judith Fisher, www.regent-typesetting.co.uk

Printed by Full Spectrum Print Media, an ISO14001 accredited printer in the UK, using vegetable based inks on a 100% recycled material

This report was produced with the generous support of UKaid from the Department for International Development (DFID), United Kingdom, and of the International Development Research Centre (IDRC), Canada. The views expressed herein do not necessarily represent those of the UK government, or those of IDRC or its Board of Governors.



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Acronyms and abbreviations

ASEAN	Association of Southeast Asian Nations
BAGC	Beira Agricultural Growth Corridor
BIT	Bilateral investment treaty
CCSI	Columbia Center on Sustainable Investment
ERM	Environmental Resources Management
FAO	Food and Agriculture Organization of the United Nations
FPP	Forest Peoples Programme
GDP	Growth domestic product
ICMM	International Council on Mining and Metals
ICSID	International Centre for Settlement of Investment Disputes
IEA	International Energy Agency
IIED	International Institute for Environment and Development
IMF	International Monetary Fund
ISPC	Independent Science and Partnership Council
LAPSSET	Lamu Port-South Sudan-Ethiopia-Transport
LRM	Land rights monitor
NEPAD	New Partnership for Africa's Development
NGO	Non-governmental organisation
OCMAL	Observatorio de Conflictos Mineros de América Latina
OECD	Organisation for Economic Co-operation and Development
PPP	Public-private partnership
RRI	Rights and Resources Initiative
RSPO	Roundtable on Sustainable Palm Oil
SAGCOT	Southern Agricultural Growth Corridor of Tanzania
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
USD	United States dollar
WEF	World Economic Forum

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Acknowledgements

This report was prepared for “Legal Tools for Citizen Empowerment”, a programme initiated in 2006 to strengthen the rights of rural people in the face of natural resource investments in low- and middle-income countries. An earlier version of this research was presented and released at the World Bank “Land and Poverty” conference (Washington DC, March 2017).

The authors would like to thank Isilda Nhantumbo and Emily Polack for their research at earlier stages of the project. Several people also provided input, comments and suggestions: Adrian Di Giovanni, James Mayers, Livia Peiser, Pauline Peters, Julian Quan, Brendan Schwartz and Paul Steele. The authors would like to express their heartfelt gratitude to these people. However, the responsibility for the views expressed and for any remaining errors is the authors’.

Executive summary

About the report

Over the past few years, a wave of land use investments has fostered hopes and fears for development trajectories in low- and middle-income countries. Agribusiness, mining and petroleum concessions often involve promises of jobs and public revenues. But they have also prompted concerns about land dispossession, exclusionary investment models and infringements of the rights of vulnerable groups. Questions have been raised about the types of investments that are most suitable to advancing local development agendas.

These trends have triggered diverse responses in policy and practice – from local-to-global advocacy questioning patterns of land use investments and promoting alternative visions, to the development of international normative instruments on how to navigate difficult issues. One of the major challenges is in empowering the people concerned to make informed choices, exercise their rights and have their voices heard when dealing with the government or the private sector.

Legal empowerment involves helping people harness the law to pursue what they value. In the context of land use investments, legal empowerment practitioners have supported rural people to secure their rights and influence decision making. Approaches range from providing legal information to supporting negotiations with companies, to using complaints procedures and court litigation. Often, engaging with the law forms part of wider mobilisation strategies.

A solid understanding of evolving trends in land use investments is essential for designing effective responses. While there is a vast literature on these trends, the interplay of multiple investments in different sectors remains underexplored; the global commodity outlook has recently evolved in ways that are yet to be systematically examined; and limited attention has been paid in this literature to evolutions in the policy infrastructure aimed at promoting investments. Developing forward-looking legal empowerment agendas requires an integrated approach that takes these dimensions into account.

This report takes stock of trends in land use investments and legal empowerment responses in low- and middle-income countries, with a view to informing next steps for legal empowerment agendas. Drawing on a review of the available literature and global datasets, it discusses evolving investment patterns, developments in investment frameworks, and implications for legal empowerment approaches. While recognising the important role of national actors in land use investments, the report focuses on foreign investment, particularly in agriculture, mining and petroleum. The analysis mainly considers developments between 2006 and 2016, and outlines current evolutions and possible ways forward.

A changing context

Changing commodity prices fostered and then slowed a wave of land use investments in low- and middle-income countries. From the mid-2000s, a spike in global commodity prices underpinned an investment boom affecting the agriculture, mining and petroleum sectors. Investments appear to have slowed across the review sectors as a result of the more recent commodity slump, though some commodity prices picked up in 2017 and structural factors are expected to increase demand for commodities in the longer term. Land use investments by national actors reflect longer-term processes and do not appear to have been substantially affected by changes in the global outlook.

On the ground, the resource squeeze continues to be felt. The wave of investments has been associated with significant land footprints, often concentrated in geographic hotspots, and with reports of resource conflict. Changing commodity prices are likely to affect future pressures on resources, but patterns on the ground also reflect operational realities, market expectations and public policies. For example, data suggests that, while fewer new agribusiness plantation deals are being signed, more deals are at the implementation stage, so the land footprint of past deal making is materialising more fully. Meanwhile, the policy contexts for negotiating resource disputes have often deteriorated: shrinking political space in many places has exposed activists to repression or intimidation.

Resource relations are affected by multi-sector, multi-faceted developments, particularly in geographic hotspots. Spatial development initiatives such as growth poles and corridors, possibly linking different sectors (e.g. agriculture and mining), highlight the importance of tracking not just individual investments, but also the cumulative effects of multiple investments within a given geographic area. In agriculture, trends in policy frameworks for public-private partnerships (PPPs) highlight the need to consider not only agribusiness plantation deals, but also wider processes of agricultural commercialisation that involve promoting investments in different segments of the value chain and integrating small-scale farmers into commercial ventures.

Transnational deals and disputes are bringing into closer contact land governance and international economic arrangements. The growing activation of international investment treaties in connection with land use investments compounds the case for bridging the worlds of land and resource governance on the one hand, and international investment frameworks on the other. Ongoing international debates about reforming those frameworks create new spaces for helping citizens to participate in investment treaty policy making, and where relevant to monitor and possibly engage with investor-state arbitration.

Implications for legal empowerment initiatives

Legal empowerment initiatives in the context of land use investments have helped people to secure their rights and have a greater say in public decision making. Reported results from 14 case studies include policy change, fairer compensation payments, halting of contested projects, a greater say for women in local governance, and more responsive companies. In some cases, the process itself helped communities develop a shared vision and boosted confidence. However, the ultimate outcomes are often difficult to assess, and they do not always involve clear-cut victories. Practitioners recognise that *“the law is not enough”* and that legal empowerment works best when conceived of as one element of wider strategies.

The evolving investment context has implications for legal empowerment initiatives. This would include, for example:

- **Spatially-oriented approaches to legal empowerment** that take a territorial, multi-sectoral approach to address the cumulative impacts of multiple investments in geographic hotspots. Such actions could support the implementation of any national laws on land use planning, and involve multi-actor processes that span different sectors and cover more than one community or investment. Improving legal awareness and capacity could help rural people shape land use planning and management;
- **Greater emphasis on issues concerning the operation, upgrading or expansion of existing investments**, such as labour rights, ongoing community relations or “legacy” land disputes that arise from events that took place before the investment was acquired; **and on supporting small-scale producers in the context of value chain development processes**, including with the firms that buy their produce and with input providers;
- **Stronger connections between legal empowerment “on the ground” and action to promote citizen oversight of national and international legal instruments.** This would include promoting public oversight of the contractual and legislative arrangements that underpin PPP frameworks. It would also include tracking developments in investor-state arbitration relevant to land use investments and interrogating the interface between multiple policy frameworks (e.g. investment treaties and sectoral PPP policies);
- **A long-term perspective to improve readiness for future upturns.** As demand for commodities is expected to rise in the longer term, now is the time to strengthen local and national governance systems, thereby investing in the systems needed to better handle future investments.

In all of the above, gendered and socially differentiated patterns in resource relations call for **granular action-research approaches that calibrate interventions**

in light of differences within and between communities, including based on wealth, income, status, gender, age and ethnicity. In addition, shrinking political space requires any actions to carefully consider the most effective entries and the risks for those involved, and to develop effective arrangements for protecting advocates' rights.

Towards bottom-up decision making. The bottom-up perspective inherent in legal empowerment involves helping the people most directly concerned to make their own informed choices, exercise their rights and advance their aspirations. At its best, legal empowerment involves promoting systems that can enable bottom-up, democratic decision making in difficult and contested policy spaces.

1. Introduction

1.1 The global land rush and legal empowerment

Over the past few years, a wave of land use investments has fostered hopes and fears for development trajectories in low- and middle-income countries. Agribusiness, mining, forestry and petroleum concessions often involve promises of jobs and public revenues, and infrastructure projects are connecting previously remote areas. But many such ventures have also prompted concerns about land dispossession, exclusionary investment models and infringements of the rights of more vulnerable groups. Questions have been raised about the types of investments that are most suitable to advancing local development agendas.

These trends have triggered diverse responses in policy and practice – from local-to-global advocacy questioning patterns of land use investments and promoting alternative visions, to the development of international normative instruments on how to navigate difficult issues. One of the major challenges is in empowering the people concerned to make informed choices, exercise their rights and have their voices heard when dealing with the government or the private sector.

Legal empowerment involves helping people harness the law to pursue what they value. In the context of land use investments, legal empowerment practitioners have supported affected people to secure their rights and influence decision making. Approaches range from providing legal information to supporting negotiations with companies, to using complaints procedures and court litigation.

A solid understanding of evolving trends in land use investments is essential for designing effective responses. There is a vast literature on these trends. But besides the methodological challenges involved in studying complex and fast-evolving phenomena for which data is often not in the public domain, three gaps affect the evidence base.

First, most studies have taken a sectoral approach, with agribusiness plantation deals having featured particularly prominently. Yet it is often the interplay of developments in different sectors that shapes pressures on resources (Merlet *et al.* 2009; Zoomers 2010). Second, the global economic outlook has changed considerably since the land rush gained international attention from around 2006. While a boom in commodity prices fostered land use investments, a commodity slump from mid-2014 changed the context in ways that are yet to be systematically examined.

Third, much research has focused on investment processes and their impacts, either in aggregate terms or through case studies. But this literature has paid less attention to systemic changes in the policy infrastructure aimed at promoting investments – from PPP frameworks to international treaties governing investment

and trade. Developing forward-looking agendas for legal empowerment in the context of land use investments requires an integrated approach that considers these three dimensions.

1.2 About this report

This report takes stock of trends in land use investments and legal empowerment responses, with a view to informing next steps for legal empowerment agendas. Drawing on a review of the available literature and global datasets, it discusses evolving patterns in land use investments, developments in investment frameworks, and implications for legal empowerment initiatives.

While highlighting the need for holistic analysis, the report focuses on the agribusiness, mining and petroleum sectors. Not only do these sectors constitute important arenas of land use investment in many low- and middle-income countries, but unlike some other sectors, their analysis can draw on publicly available data on key investment parameters. It is recognised that developments in other sectors, including forestry and infrastructure, also affect pressures on land.

The topic has global relevance, including in high-income countries, but the report focuses on low- and middle-income countries. The emphasis is on foreign investment, complementing earlier research that focused on more localised processes (Knapman *et al.* 2017). The report mainly considers developments between 2006 (when the global land rush started attracting sustained public attention, and IIED started tracking these issues) and 2016 (the most recent coverage of several key datasets).

Chapter 2 explores trends in land use investments and their implications for changing pressures on resources. Chapter 3 discusses evolutions in the policy infrastructure to promote investments. Chapter 4 distils insights from selected legal empowerment experiences, a synopsis of which can be found in Annex 2. Where relevant, each chapter contains additional information about research methods and limitations, on which Annex 1 also provides further detail. The conclusion (Chapter 5) summarises key findings and identifies possible ways forward for legal empowerment initiatives.

2. Patterns in land use investments

This chapter discusses investment trends in the agribusiness, mining and petroleum sectors. It finds that a wave of investments has increased competition for higher-value lands. It also finds that, while the commodity slump has changed the global outlook, pressures on resources are expected to continue growing in the longer term, which highlights the continued relevance of legal empowerment responses.

2.1 The investment boom and the “resource squeeze”

Despite important sectoral specificities, commercial investments experienced a new momentum across the natural resource sectors reviewed over the period 2006–2016. Globally, investment in metals exploration is estimated to have increased ten-fold between 2002 and 2012, and investment in fossil fuels is estimated to have doubled over the same period (Le Billon and Sommerville 2017). Petroleum operations on new frontiers resulted in several low- and middle-income countries becoming producers, including Chad (Irish 2014), Ghana (BBC 2010) and Mozambique (Macauhub 2014).

While figures on agriculture are contested, partly due to methodological challenges (Oya 2013; Edelman 2013; Cotula 2013; Locher and Sulle 2014), evidence clearly points to an increased volume of agribusiness plantation deals in the period starting at least from 2006, and with renewed momentum following the food price hike of 2007–2008, for a diverse and evolving range of fuel, food, agro-industrial and “flex” crops (GRAIN 2008; Deininger *et al.* 2011; De Schutter 2011; Anseeuw *et al.* 2012a; Nolte *et al.* 2016; Borrás *et al.* 2016).

Enduring misperceptions permeated public discourses about land use investments – for example, exaggerating the role of Chinese firms in agribusiness plantation deals in Africa (e.g. Brautigam and Zhang 2013), and neglecting the role of Southeast Asian companies in driving the expansion of oil palm in West and Central Africa (e.g. Cotula 2013).

Also, while much public debate focused on foreign investments, data indicates that national actors account for a large share of land acquisition for agribusiness plantations (Deininger *et al.* 2011; Cotula *et al.* 2014). This trend reflects longer-term processes that preceded the commodity boom and it was documented over the years in case studies (e.g. Mathieu *et al.* 2003; Ouédraogo 2003; Ouédraogo 2006; Djiré 2007; Moyo 2011) and aggregate-level analyses (Jayne *et al.* 2014; Knapman *et al.* 2017).

Data on the land footprint of this surge in investments is of varying availability and quality, and it is difficult to assess the implications of aggregate figures of scale

for pressures on land – not least because purely quantitative measures obscure differences in the quality, value and use of the land transacted (Scoones *et al.* 2013). Overall, however, available figures point to a significant land footprint.

In agriculture, the latest stocktake of Land Matrix data documented agribusiness plantation deals for over 24 million hectares of land, which were concluded in low- and middle-income countries over the period 2000–2016 (Nolte *et al.* 2016). This figure of aggregate scale is significant, though considerably smaller than earlier figures based on past versions of the Land Matrix dataset (e.g. Anseeuw *et al.* 2012b).

Systematic national inventories based on official government records suggest that, at the country level, agribusiness plantation deals (including both foreign and domestic investment) may account for a small share of national land suitable for rain-fed agriculture – for example, between 1.1% and 1.9% in Ethiopia, Ghana and Tanzania; but that the deals are often concentrated in specific districts or regions, and as such exacerbate competition for land in high-value locations (Cotula *et al.* 2014).

Global data on the land footprint of mining and petroleum concessions is more dispersed, and available land area figures say little about trends over the period 2006–2016. Further, extractive industry concession areas tend to involve larger land footprints than actual operations, particularly but not only at exploration stage, and this creates challenges in assessing pressures on land.

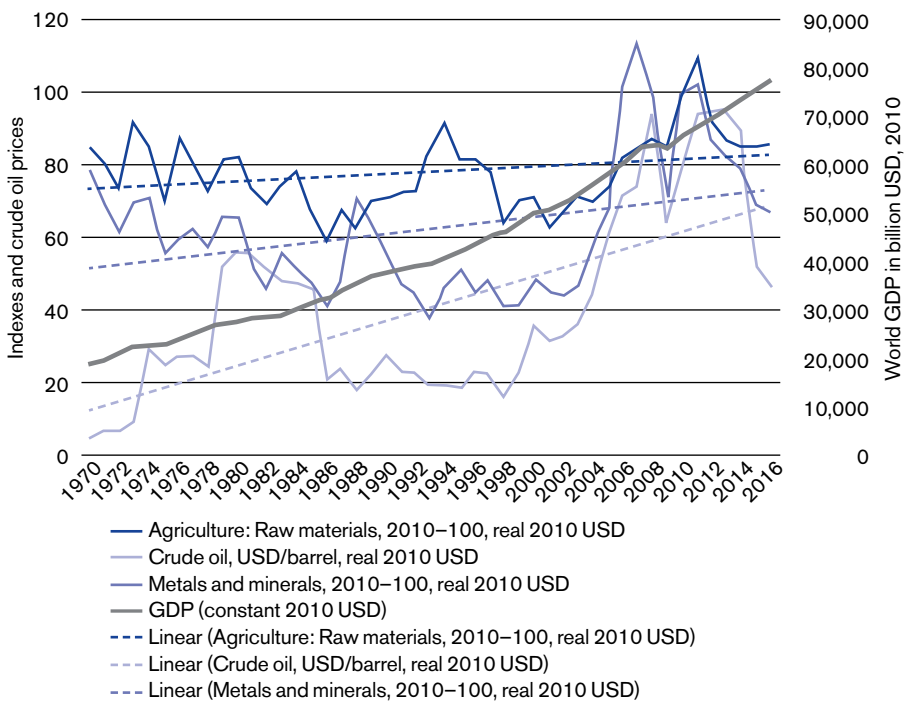
At country level, however, research points to the squeeze on resources associated with extractive industry operations, reflected for example in recurring reports of resource conflict (e.g. on mining: Kishi 2014; ICMM 2015; OCMAL 2015; Pichler and Brad 2016). Data also points to the cumulative pressures of agribusiness and extractive industry developments (e.g. Knapman *et al.* 2017), and to uncoordinated overlaps between agricultural land use and extractive industry concessions (e.g. on Peru: Cuba *et al.* 2014; on Cameroon: Schwartz *et al.* 2012 and Nguiffo and Sonkoué Watio 2015).

2.2 Investment drivers: the commodity cycle and longer-term factors

Commodity prices tend to fluctuate significantly, but have displayed an upward trend over the past 40 years – a pattern associated with the overall growth of the global economy (Figure 1) and the world's population. This link between gross domestic product (GDP) growth and the price and consumption of crude oil is well established (e.g. IEA 2015, 2016). The prices for other commodities such as agricultural products and metals and minerals have also exhibited an underlying upward trend, of varying intensity and despite significant fluctuations, over the past 45 years (Figure 1).

Changing commodity prices are widely deemed to have been a key driver of the recent wave of land use investments (Deininger *et al.* 2011; Le Billon and Sommerville 2017). Oil prices began to rise in the early 2000s (Figure 1), amidst “peak oil” narratives suggesting that the rate of crude oil extraction would begin to decline permanently (IEA 2009). Prices of minerals and metals also started to rise from 2003 (Le Billon and Sommerville 2017 and Figure 1), and agricultural commodity prices rose from the mid-2000s and spiked in 2011 amidst concerns about long-term mismatches between global food demand and supply (FAO 2016 and Figure 1).

Figure 1. Trends in global commodity prices and global GDP, 1970–2016, controlling for inflation



Source: based on World Bank data (see Annex 1 for detail)

These rising commodity prices improved return prospects and promoted investments in petroleum and mining (Le Billon and Sommerville 2017). In agriculture, higher and more volatile commodity prices shifted the distribution of risks and returns in global value chains and increased private sector interest in agricultural production: farming became a more attractive business proposition, and relying on open markets to source agricultural commodities involved greater supply risks (Selby 2009; Cotula 2013).

Besides the commodity cycle, the investment boom also responded to structural changes in the relevant industries. In the agriculture sector, for example, several

forces increased the commercial appeal of the agricultural production segment of the value chain, including technological innovation favouring larger-scale operations (Deininger and Byerlee 2012), and more stringent quality, safety and traceability requirements that create incentives for companies to control farming or source from fewer larger producers (Deloitte 2013).

Policy forces were also at play. Governments of diverse political orientations took measures to promote land use investments, in a trend that some described as the “*commodities consensus*” (Svampa 2013; Faundez 2017). Policy interventions included cross-sectoral reforms, such as revising investment codes, restructuring investment promotion agencies and liberalising trade; as well as sector-specific initiatives. For example, over 90 countries modified their mining legislation between the mid-1980s and the early 2000s in order to boost investment (Bridge 2004). Policy efforts have also been made to promote investment in agriculture, including policies to make “idle” land available to agribusiness on favourable terms (Alden Wily 2012).

2.3 The commodity slump

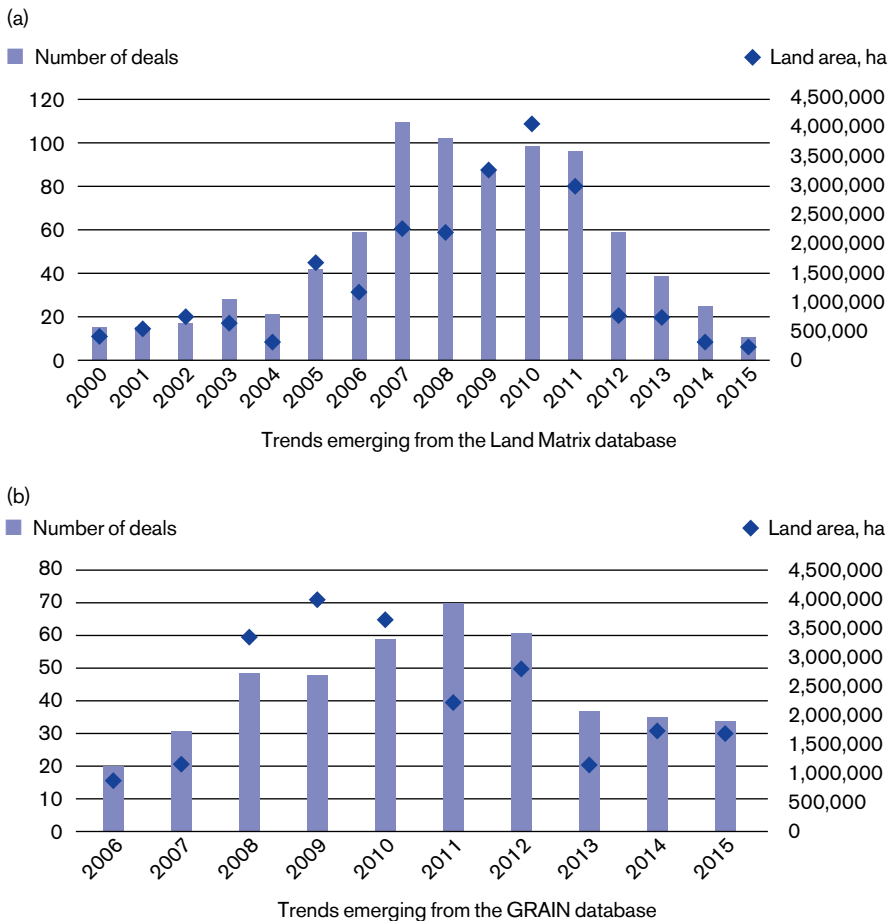
The global outlook has changed considerably in recent years. Oil prices dropped dramatically starting from 2014 (IEA 2015 and Figure 1), and while they recovered more recently, they are still far from the peaks experienced in 2008. Prices of minerals, metals and agricultural commodities declined after 2011 (Figure 1), but agricultural commodity prices remain above pre-2006 levels (FAO 2016 and Figure 1). There was debate about the causes of the commodity slump, with many commentators pointing to “structural” supply and demand factors (e.g. on oil prices: Baffes *et al.* 2015; Le Billon and Good 2016), and others to responses not immediately linked to supply and demand fundamentals (e.g. Tokic 2015).

Depending on the sector and the country, policy shifts also occurred. In the extractive industries, several states enacted measures aimed at capturing a greater share of the commodity windfall (e.g. Wälde 2008; Ward 2009; Acheampong *et al.* 2016). And in response to concerns about the social and environmental impacts of investments, several governments reportedly introduced ceilings on the land areas that investors can lease (e.g. in Tanzania: Kiishweko 2012), as well as temporary or longer-term moratoria on the issuance of new mining and agribusiness plantation concessions (e.g. in Laos: ABC 2012) or on specified land use activities (e.g. bio-fuel plantations in Tanzania: Veit 2010).

The changed outlook appears to have affected investment trends. The oil price drop from mid-2014 led to delayed projects (World Bank 2016; Le Billon and Good 2016) and diverted investments (Deloitte 2015), and the number of active rigs in Africa and Latin America was reported to have dropped sharply (World Bank 2016). In the mining sector, exploration budgets dropped by 19% between 2014 and 2015 alone, and were reduced by half between 2012 and the end of 2015 (SNL Metals & Mining 2016).

Figures derived from global datasets suggest that the pace of deal making for agribusiness plantations has also slowed (Figure 2 and Annex 1; IMF 2016 provides a consistent picture). Qualitative evidence corroborates this finding, including industry reports of companies advising on how to exit agricultural production (e.g. Agrimoney 2016). That said, there are continuing media reports of new agribusiness plantation deals, for example by Turkish firms in Mali (Diawara 2016) and Sudan (Doğan 2016) and by Saudi investors in Ethiopia (Tekle 2016) and Niger (Barma 2017).

Figure 2. Trends in agribusiness plantation deals from the Land Matrix (a) and GRAIN (b) databases



Source: derived from Land Matrix and GRAIN (2016a) data (see Annex 1 for detail)

The investment slowdown could ease pressures on land and resources – but much depends on long-term expectations, rather than short-term prices (Butler 2015). Evidence suggests that, at the local level, the pressures continue to be

felt. In agriculture, this is partly because more deals appear to have reached the implementation stage (Nolte *et al.* 2016). In addition, the changed commodity context can itself exacerbate disputes, for example because lower commodity prices were reported to have imposed budgetary cuts in businesses' social responsibility programmes (Kazemi 2016).

Further, the political space for negotiating resource disputes is increasingly constrained in many contexts (Global Witness 2016; Oxfam 2016; RRI 2017). Global Witness (2016) documented 185 killings of land and environmental defenders in 2015 alone – a 59% increase on 2014 and the highest annual toll on record until then. That report identified collusion between state and business interests in the mining, agribusiness and forestry sectors as a key driver of violence. Criminalisation of protests (e.g. Sekaggya 2011) and legal harassment of activists (Global Witness 2016) have also been documented.

2.4 Outlook for legal empowerment

Commodity prices are expected to continue being a key factor affecting future trends in land use investments. Uncertainty in different commodity sectors makes it difficult to develop reliable projections. While the commodity “supercycle” appears to have done its course, several commodity prices experienced gains in 2017 (World Bank 2017). A long-term perspective does point to an upward trend in both global GDP and commodity prices (Figure 1). Global population growth, rising incomes and changing consumption patterns are ultimately expected to fuel demand for commodities in the medium to longer term (OECD and FAO 2016; IEA 2016).

In agriculture, for example, global demand for agricultural commodities is projected to continue increasing, albeit at a slower rate than in the previous decade, and with commodity prices varying but remaining above pre-2008 levels (OECD and FAO 2016). Continuing long-term structural changes in specific sectors, the capital appreciation and “safe haven” value of land as an asset class, and deliberate policy interventions could also affect the commercial appeal of the natural resource sectors. Research documented continuing land acquisition by national actors and the ongoing emergence of medium and large-scale domestically owned farms (Jayne *et al.* 2014; Jayne and Traub 2016).

These findings point to the continued relevance of legal empowerment initiatives aimed at supporting rural people in the context of land use investments. The slowing pace of new investments and the fact that more deals appear to be at the implementation stage would call for paying greater attention to issues concerning the operation, upgrading or expansion of existing investments. This may involve, for example, addressing labour relations (Li 2011; Cordes *et al.* 2016a), tackling the “legacy” issues that arise when ventures change hands (Cotula and Berger 2016), managing ongoing community relations, and addressing gender and social differentiation throughout. In addition, expectations that pressures on resources are likely to rise in the longer term highlight the need to strengthen local governance ahead of possible future shifts in commodity cycles.

3. Developments in the investment frameworks

This chapter discusses selected policy instruments that have the stated aim of promoting investment. If effective, these instruments can influence land use investment patterns and possibly the terms for negotiating pressures on resources. While wide-ranging instruments are relevant, wordcount constraints prevent a comprehensive review. The chapter briefly discusses two policy arenas that have experienced particularly extensive developments in the 2006–2016 review period: i) PPP frameworks, considered here in relation to agriculture; and ii) international treaties to promote foreign investment. The findings suggest that policy developments are creating new challenges for legal empowerment initiatives.

3.1 PPP frameworks: the case of commercial agriculture

Despite their considerable diversity, policy frameworks for PPPs in agriculture typically aim to catalyse private sector investment through concerted action at national, regional and/or global levels. PPP frameworks often involve interlinked, multi-level initiatives originating from public or private sector sources. Several global and regional initiatives are centred on institutional frameworks for multi-stakeholder dialogue, commitment and standard setting, which in turn are expected to unlock “responsible” private sector investment.

These features are illustrated by the collaboration between the New Alliance for Food Security and Nutrition, which the G8/G7 launched in 2012 to boost agricultural development in Africa; and Grow Africa, which was jointly launched in 2011 by the World Economic Forum (WEF), the New Partnership for Africa’s Development (NEPAD) and the African Union (New Alliance for Food Security and Nutrition and Grow Africa 2015). In Southeast Asia, the WEF launched Grow Asia in collaboration with the Association of Southeast Asian Nations (ASEAN) (Grow Asia 2016).

Such global or regional frameworks can cascade down to the national level. For example, the New Alliance for Food Security and Nutrition involves country cooperation frameworks that embody specific commitments from different stakeholders: governments commit to policy reform and/or implementation, donors to development aid, and private sector companies to new investments.¹

At the subnational, national or regional level, PPP frameworks may be associated with spatial development initiatives – that is, coordinated efforts to develop priority geographic areas and economic sectors deemed capable of catalysing wider

1 The country cooperation frameworks are available at http://tiny.cc/new_alliance.

spillover effects. Configurations vary considerably, depending on geographic scale, economic priorities and institutional set-ups. Examples include:

- Agricultural development corridors such as the Southern Agricultural Growth Corridor of Tanzania (SAGCOT) in Tanzania and the Beira Agricultural Growth Corridor (BAGC) in Mozambique;
- Agricultural growth poles such as the Bagré Growth Pole in Burkina Faso; and
- Agro-processing zones such as the Bukanga Lonzo Agricultural Business Park in the Democratic Republic of Congo.

Growth corridors tend to involve particularly ambitious geographic scope and infrastructure development plans (Gálvez Nogales 2014; Gálvez Nogales and Webber 2017). Overall, however, spatial development initiatives tend to entail varying combinations of transport and other infrastructure development; regulatory reform and/or special legal regimes; sectoral development and/or land use planning; and/or catalytic functions to promote private sector activity.

Depending on the commodities and the context, some such schemes are associated with targets to expand cultivated land – for example, 350,000 hectares in SAGCOT and 270,000 hectares in the Beira Corridor (Gálvez Nogales 2014). Such agricultural expansion plans may partly rest on investments in medium to large-scale commercial farms (e.g. Gálvez Nogales 2014). However, the emphasis is often on value chain development; on investments in aggregation, processing and distribution; and on linking small-scale farming to markets (e.g. SAGCOT 2011; Gálvez Nogales 2014; Levard 2014; Grow Asia 2016).

Supply chain relations may involve direct arrangements between agribusinesses and farmers, for instance under contract farming or supply agreements, or possibly joint ventures. However, research has also documented investor-state commercialisation contracts whereby the state grants an agribusiness firm the (possibly exclusive) right to supply inputs to farmers and purchase produce from them, develop processing infrastructure and/or commercialise the crop in a given geographic area (Cotula and Berger 2014).

PPP frameworks for commercial agriculture have attracted interest from both supporters and detractors (e.g. Gálvez Nogales 2014; Oxfam 2014; ActionAid 2015; ISPC 2016; De Schutter 2015; GRAIN 2016b). If effective, these initiatives could increase private sector investment in different segments of agricultural value chains – even though the specific commitments companies make might not necessarily materialise. In this respect, the initiatives hold the promise to create new livelihood opportunities for rural people. At the same time, concerns have been raised about the extent to which the initiatives respond to farmers' aspirations; about the balance of power among the different actors involved; and about the nature and implications of governance arrangements. Increased commercial activity including through the integration of small-scale farmers can also compound

pressures on resources, in ways that are gendered and socially differentiated (e.g. ERM 2013).

Data on implementation remains patchy, but evidence points to a slow take-off. The latest available assessment of the implementation status of 56% of the 292 letters of intent submitted by companies participating in Grow Africa (for an estimated total value of some USD 10 billion) indicated that, as of 2014, 80% of the commitments were either on plan or facing minor implementation problems. Through these investments, participating companies reportedly reached over 8.2 million small-scale farmers in 2014, two and a half times the comparable figure for 2013. However, amounts invested by 2014 appeared to account for less than 10% of commitments made (New Alliance for Food Security and Nutrition and Grow Africa 2015).

Besides agriculture, PPP frameworks can involve linkages to other sectors as well. Research highlighted the connections between some agricultural growth corridors and the mining sector – partly because extractive industry projects may be associated with the development of transport and other infrastructure, which in turn can unlock agricultural potential in otherwise remote areas (Weng *et al.* 2013). For instance, mining and infrastructure projects constituted an important catalysing force for the Beira Corridor in Mozambique (BAGC 2010). Spatial development initiatives have also coalesced around the petroleum sector. One example is the Lamu Port-South Sudan-Ethiopia-Transport (LAPSSET) Corridor, which involves the development of transport infrastructure, oil facilities and services operations in East Africa (LAPSSET 2015).

3.2 International investment treaties

Investment treaties are international, legally binding agreements aimed at promoting cross-border investment. Traditionally involving bilateral investment treaties (BITs) between two states, these agreements increasingly take the form of investment chapters embedded in wider trade and investment treaties, and/or of regional treaties among multiple states. Although usually not specific to the natural resource sectors, investment treaties would typically cover land use investments.

Under many investment treaties, states provide each other's investors with specified standards of treatment in the expectation that this will encourage investment – though empirical evidence of whether investment treaties do promote foreign investment is mixed.² Treaty formulations vary considerably but often present commonalities. In many treaties, the standards of treatment primarily relate to investment protection against adverse state conduct, but a growing minority of treaties also cover investment liberalisation. Commonly found investment protection standards include:

² There is a vast literature on this issue. See e.g. Hallward-Driemeier (2003); Salacuse and Sullivan (2005); Yackee (2011); Berger *et al.* (2011); Colen *et al.* (2014); Cotula *et al.* (2016).

- Non-discrimination provisions;
- Safeguards applicable to expropriation, which is typically defined to include regulatory measures that have far-reaching adverse impacts;
- “Fair and equitable treatment”, often interpreted as protecting, among other things, the “legitimate expectations” the investor had when making the investment;
- “Full protection and security”, usually interpreted as requiring states to protect the physical integrity of foreign investment;
- “Transfers” clauses that allow investors to make financial transfers in connection with their investments (for example, to repatriate returns); and
- “Umbrella” clauses that require states to honour commitments they may have entered into with investors from the other states, for example through an investor-state contract.

Most investment treaties allow investors to bring disputes to international investor-state arbitration if they consider the state has breached its treaty obligations. Arbitral tribunals issue awards, which are documents similar to judgments. Where tribunals found the state to have breached the treaty, they typically ordered payment of compensation. Widely ratified multilateral treaties make it easier to enforce these pecuniary awards, by harnessing the cooperation of courts in a large number of countries worldwide.

The fact that investment treaties enable investors to bring international lawsuits against states, and several features of investor-state arbitration (e.g. varying but often limited transparency, absence of appeal mechanisms, large compensation amounts), have fuelled public debates over the balance of public and private interests, and whether the treaties can make it more difficult for states to take public-interest action if doing so would adversely affect businesses.

The 2006–2016 review period witnessed significant evolutions in the development and activation of investment treaties. The cumulative number of treaties worldwide increased from over 2,800 in 2006 (UNCTAD 2007) to over 3,300 in 2016 (UNCTAD 2017). In quantitative terms, the pace of treaty making slowed compared to the 1990s and early 2000s (UNCTAD 2017). Qualitatively, however, many recent treaties involve particularly ambitious deals in terms of content and number of states involved (UNCTAD 2016).

On the other hand, some states recently terminated or recalibrated their investment treaties, and there is growing international policy debate about reforming the investment treaty regime (UNCTAD 2017). Overall, evidence points to considerable treaty coverage of land use investments in low- and middle-income countries, including at least 64% of all documented agribusiness plantation deals concluded since 2000 (Cotula and Berger 2015).

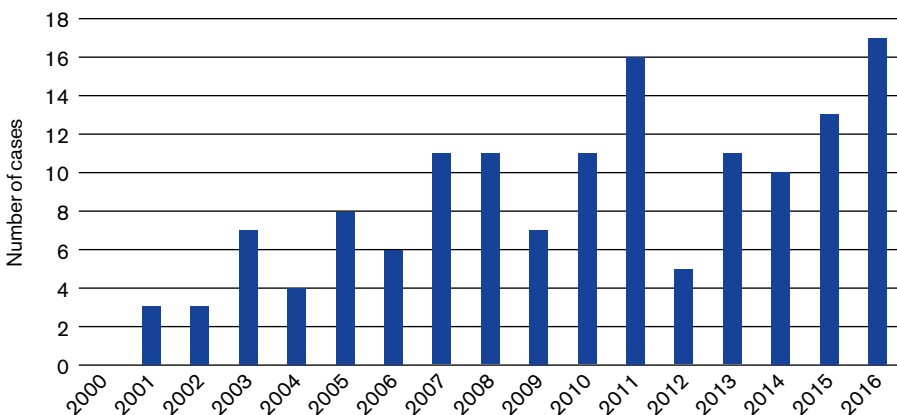
The cumulative number of known treaty-based investor-state arbitrations jumped from 259 in 2006 (UNCTAD 2007) to 767 as of 1 January 2017 (UNCTAD 2017). The natural resource sectors account for about 30% of the caseload of the International Centre for Settlement of Investment Disputes (ICSID), a prominent global forum for investment treaty arbitration (ICSID 2017).

Figure 3 points to growing activation of treaty-based investor-state arbitration in connection with land use investments, particularly in the extractive industries. Arbitration proceedings have been referred to or actually initiated in connection with recent agribusiness plantation deals, particularly in a case concerning Tanzania (Williams 2017; Coleman and Cordes 2017; Bernasconi-Osterwalder and Smaller 2017; Fikade 2017).

The growing recourse to investor-state arbitration in relation to land use investments increases the relevance of investment treaties to land and resource governance. Concerns have been raised that public action to strengthen local resource rights could lead to expensive arbitration claims if it adversely affects ongoing investments; and that the prospect of costly arbitrations and compensation bills could discourage governments from acting in the first place (e.g. Cotula 2015; Thrasher and Wise 2015; Cordes *et al.* 2016b).

Investor-state arbitrations are structured as bilateral disputes between an investor and a state. However, the facts underlying several arbitrations also involved disputes between investors and local groups that claimed resource rights in the project area and/or opposed or raised concerns about the investment – a circumstance that is reflected, for example, in a growing number of civil society submissions to investor-state arbitral tribunals (Phillips Williams 2016; Cotula and Schröder 2017).

Figure 3. Trends in treaty-based investor-state arbitration concerning land use investments



Source: based on UNCTAD data (see Annex 1 for detail)

3.3 Outlook for legal empowerment

The review period has witnessed significant developments in the policy infrastructure to promote investments, including in the natural resource sectors. Depending on the effectiveness of the diverse policy instruments deployed, this trend could affect land use investment patterns in the medium to longer term, and it raises new challenges for legal empowerment approaches.

Spatial development initiatives linking different sectors (e.g. agriculture and mining) compound the case for tackling cumulative, multi-sector developments in geographic “hotspots”, moving away from “case study” approaches that focus responses on individual investments. In agriculture, PPP frameworks highlight the need to consider not only agribusiness plantation deals, but also wider processes of agricultural commercialisation that involve promoting investments in different segments of the value chain and integrating small-scale farmers into commercial ventures.

In these contexts, the proposed development of farmer-company relations (e.g. supply contracts, contract farming arrangements, joint ventures) could provide new sites for legal empowerment initiatives to help farmers and their organisations make informed choices, exercise their rights and advance their aspirations. In addition, the law reforms, the special legal regimes and the investor-state contracts that may be associated with agriculture-related PPP frameworks create new needs and opportunities for helping citizens to engage with policy making.

The growing activation of international investment treaties in connection with land use investments, including in disputes where local resource claims are at stake, and ongoing debates about reforming the international investment regime outline new spaces for legal empowerment initiatives aimed at raising awareness and helping citizens to participate in public policy choices, and where relevant to monitor and possibly engage with investor-state arbitration.

The relationship between investment treaties and PPP frameworks raises largely unexplored questions of policy coherence and interface – for instance, as to whether any government commitments to reform policy in the context of PPP frameworks could be deemed to create “legitimate expectations” protected under investment treaties, and thus expose states to potential arbitration claims if authorities do not implement the relevant policies; and how to tie any investment treaty protections to investors upholding standards of “responsible investment” – a key concept in agriculture-related PPP frameworks.

Addressing such issues can involve policy choices calling for informed public debate. Depending on the context, this may require action to raise public awareness and facilitate citizen engagement.

4. Lessons from legal empowerment experience

This chapter discusses legal empowerment initiatives implemented in the context of land use investments. It briefly examines 14 case studies, focusing on cross-cutting trends rather than the specifics of individual cases.³ The findings provide insights on whether, how and under what conditions legal empowerment approaches can help to address the challenges associated with land use investments. They also point to areas for further work in light of changing investment contexts.

4.1 Mapping the terrain

Trends in land use investments and in investment frameworks have triggered diverse responses in policy and practice. Over the 2006–2016 review period, recourse to law featured prominently in these responses, typically in conjunction with collective action and other forms of mobilisation (e.g. Polack *et al.* 2013; Booker *et al.* 2015; Hall *et al.* 2015; Alonso-Fradejas 2015; Grajales 2015; Sampat 2015; Conteh 2015).

The case studies present considerable diversity of actors, aims, strategies and entry points. Some were advanced by indigenous peoples and organisations supporting them (e.g. Colombia-1, Colombia-2, Indonesia-1), others by rural dwellers (e.g. Indonesia-2), while yet others focused on strengthening the rights of women (e.g. Tanzania-2). Some initiatives were led by “professionalised” development agencies (e.g. Mozambique-1), others involved more overtly political actors and agendas (e.g. Myanmar-2), and yet others bridged these two worlds (e.g. Indonesia-1, combining constitutional litigation with political mobilisation).

Some initiatives responded to specific investments or developments, while others aimed to improve readiness before any actual investments materialised. The “asks” also varied – from enabling rural people to have greater control over investment processes, to outright opposition to investments or the policy instruments underpinning them.

The case studies embodied diverse “theories of change”. Some interventions emphasised constructive dialogue, for example supporting local government bodies (e.g. Tanzania-1 and Tanzania-2) or customary authorities (e.g. Ghana-2) through the development of local by-laws or committees. Others emphasised campaigning at local, national or international levels (e.g. Mozambique-2 and Myanmar-1), or use of courts (e.g. Colombia-1, Colombia-2 and Indonesia-1) and grievance mechanisms (Indonesia-2).

3 Annex 1 provides detail on case study selection. In line with the emphasis on cross-cutting lessons, the text refers to the case studies through an anonymised country identifier (e.g. Cameroon-1, Cameroon-2). Key information and sources for each case study are provided in Annex 2.

Several experiences involved providing people with legal information, for example through grassroots-level awareness raising sometimes coupled with pro bono advice (e.g. Colombia-1, Mozambique-1, Mozambique-2, Myanmar-1 and Tanzania-1). Formats varied from formal trainings such as workshops to more informal, targeted conversations with small groups of men and women (Tanzania-1).

Supporting community paralegals was a recurring approach (e.g. Mozambique-1 and Mozambique-2), and community resource mapping featured in several actions (e.g. Indonesia-1). Each “approach” presented considerable diversity within and between cases. For example, practitioners trained community paralegals both as brokers and capacity providers (Mozambique-1) and as grassroots advocates (Mozambique-2), with the two emphases involving somewhat distinctive roles.

Although several interventions involved providing legal services at the grassroots, the inherently transnational nature of large-scale resource projects means the approach can also be applied at the national and international level. For example, practitioners have helped citizens scrutinise investor-state contracts (Cameroon-1) or international investment treaties (Myanmar-2) and seek international legal redress (e.g. Indonesia-2).

Most initiatives involved long-term action. Some built on longstanding struggles or earlier collaborations that facilitated trust-building among key players (e.g. Mozambique-2). In Tanzania-1, practitioners built on 20 years of experience with human rights monitors, adapting the approach to tackling land rights issues. Other interventions reoriented pre-existing programmes towards a stronger focus on land use investments (e.g. Ghana-1), and some initiatives rested on multiple, successive projects (e.g. Ghana-1 and Mozambique-1).

4.2 Results and lessons learned

Several initiatives appear to have achieved significant results, including: getting unhelpful legal provisions struck down as unconstitutional and winning formal recognition of customary forestlands (Indonesia-1); securing payment of fairer compensation and halting contested projects (Tanzania-1); helping women have a greater say in local governance (Tanzania-2); building a critical mass of trained paralegals and government officials (Mozambique-1); increasing grassroots agency (Mozambique-1, Cameroon-2); and making grievances more visible and getting companies to listen (Indonesia-2).

The legal empowerment process can itself serve to promote unity in a community and help it develop a coherent vision, as well as boost the confidence of individual participants. For example, community resource mapping was reported to have empowered communities by giving them a more explicit awareness of local resources and their role in local livelihoods (e.g. Indonesia-1).

Despite these steps forward, the ultimate outcomes can be difficult to assess, and they do not always involve clear-cut victories. While it is too early to determine the

outcomes of the newer initiatives, the completion of some older interventions left behind challenges despite the advances made (as cautioned by the practitioners involved in Mozambique-1). In some cases, it is as yet unclear whether increased citizen engagement will lead to policy shifts (e.g. Myanmar-2). The costs have also been documented: in some cases, activists paid a high price in terms of harassment and family break-up (Tanzania-1), or government hostility (Mozambique-2).

Virtually all the initiatives had to grapple with vested interests and power relations shaped by complex local-to-national political economies. Power imbalances affected relations within communities as well, shaped by social differentiation along wealth, income, status, gender, age, ethnicity or other lines. Other recurring challenges included difficulties in upscaling pilot projects and promoting long-term change despite the often short duration of project cycles.

Strengthening local organisations emerged as a key element to address power imbalances and sustainability challenges. Depending on the context, this may involve supporting the elaboration of a clear local development vision (Ghana-1); devising local by-laws to clarify ground rules and institutional arrangements (Ghana-2 and Tanzania-2); and addressing gender relations in local governance (e.g. Mozambique-1, Tanzania-1 and Tanzania-2). Sustainability and scalability challenges were also tackled by injecting new blood, with one organisation taking over from where another left off (e.g. Mozambique-1 and Mozambique-2).

Practitioners developed institutional arrangements aimed at leveraging the expertise of few, geographically removed lawyers to help large numbers of rural people. Community paralegals approaches provide one avenue for embedding basic legal expertise in the community (e.g. Mozambique-2 and Tanzania-1). However, challenges can affect provision of ongoing support and regular two-way communication between paralegals working on the ground and legal experts based elsewhere (Mozambique-1 and Tanzania-1). Seconding intensively trained and closely supervised new law graduates (“junior lawyers”) to local organisations represented an alternative approach for connecting legal expertise to rural realities (Cameroon-2).

Involving lawyers, including junior ones, requires establishing appropriate lines of accountability to ensure that the community – and not the organisation covering the lawyers’ costs – is the “client”. In Cameroon-2, this was done through multi-actor institutional relations, while Mozambique-2 supported the establishment of district and provincial paralegal associations.

Ultimately, practitioners recognise that *“the law is not enough”* (Tanner and Bicchieri 2014, writing about Mozambique-1) and that legal empowerment is only one element of wider strategies. In most cases, law-based approaches were nested into multi-faceted processes involving use of diverse methods to leverage political clout, market power or advances in technology. For example, the Myanmar-1 initiative began by focusing on providing “open data” to increase transparency on land conflict, then evolved to incorporate legal empowerment elements in response to local demand.

In Indonesia-1, constitutional litigation achieved an important milestone in striking down parts of forest legislation as unconstitutional; but the action also involved political mobilisation to push for new legislation, leading to a breakthrough in the form of government decrees designating customary lands. The leveraging of market power was apparent in redress strategies centred on bringing complaints to international certification bodies: the effectiveness of these recourse mechanisms ultimately hinged on the fact that the loss of certified status could affect market access (Indonesia-2).

4.3 Legal empowerment in evolving investment contexts

Experiences with harnessing the law in the context of land use investments highlight the diversity of actors, aims, entries and approaches. The shifting contours of land use investments, and developments in national and international investment frameworks, create new challenges and opportunities for legal empowerment. These new emphases would include:

- Spatially-oriented approaches to legal empowerment that take a territorial, multi-sectoral approach to address the cumulative impacts of multiple investments in geographic hotspots. Such actions could support the implementation of any national laws on land use planning, and involve multi-actor processes that span different sectors and cover more than one community or investment. Improving legal awareness and capacity could help rural people shape land use planning and management;
- Greater emphasis on issues concerning the operation, upgrading or expansion of existing investments, such as labour rights, ongoing community relations or “legacy” land disputes that arise from events that took place before the investment was acquired; and on supporting small-scale producers in the context of value chain development processes, including with the firms that buy their produce and with input providers;
- Stronger connections between legal empowerment “on the ground” and action to promote citizen oversight of national and international legal instruments. This would include promoting public oversight of the contractual and legislative arrangements that underpin PPP frameworks. It would also include tracking developments in investor-state arbitration relevant to land use investments and interrogating the interface between multiple policy frameworks (e.g. investment treaties and sectoral PPP policies);
- A long-term perspective to improve readiness for future upturns. As demand for commodities is expected to rise in the longer term, now is the time to strengthen local and national governance systems, thereby investing in the systems needed to better handle future investments.

Some of the above would involve deepening or expanding existing approaches – for example, to support small-scale rural producers in the negotiation of supply and contract farming agreements with agribusiness investors, or to help citizens scrutinise international investment treaty making (e.g. Myanmar-2).

In all of the above, gendered and socially differentiated patterns in resource relations call for granular action-research approaches that calibrate interventions in light of differences within and between communities, including based on wealth, income, status, gender, age and ethnicity. In addition, shrinking political space requires any actions to carefully consider the most effective entries and the risks for those involved, and to develop effective arrangements for protecting advocates' rights.

5. Conclusion and ways forward

From the mid-2000s, a spike in global commodity prices underpinned an investment boom affecting the agriculture, mining and petroleum sectors in low- and middle-income countries. This trend appears to have slowed as a result of the more recent commodity slump, though structural factors are expected to increase demand for commodities in the longer term. Land use investments by national actors reflect longer-term processes and do not appear to have been substantially affected by changes in the global outlook.

On the ground, the resource squeeze continues to be felt. The wave of investments has been associated with significant land footprints, often concentrated in geographic hotspots, and with reports of resource conflict. Changing commodity prices are likely to affect future pressures on resources, but patterns on the ground also reflect operational realities, market expectations and public policies. For example, data suggests that, while fewer new agribusiness plantation deals are being signed, more deals are at the implementation stage, so the land footprint of past deal making is materialising more fully. Meanwhile, the policy contexts for negotiating resource disputes have often deteriorated: shrinking political space in many places has exposed activists to repression or intimidation.

Resource relations are affected by multi-sector, multi-faceted developments, particularly in geographic hotspots. Spatial development initiatives such as growth poles and corridors, possibly linking different sectors (e.g. agriculture and mining), highlight the importance of tracking not just individual investments but also the cumulative effects of multiple investments in a given geographic area. In agriculture, trends in PPP frameworks highlight the importance of considering not only agribusiness plantation deals, but also wider processes of agricultural commercialisation that involve investments in different segments of the value chain to integrate small-scale farmers into commercial ventures.

The growing activation of international investment treaties in connection with land use investments compounds the case for bridging the worlds of land and resource governance on the one hand, and international investment frameworks on the other. Ongoing international debates about reforming those frameworks create new spaces for helping citizens to participate in investment treaty policy making, and where relevant to monitor and possibly engage with investor-state arbitration.

Legal empowerment initiatives in the context of land use investments have helped people to secure their rights and get a greater say in public decision making. Reported results from 14 case studies include policy change, fairer compensation payments, halting of contested projects, a greater say for women in local governance, and more responsive companies. In some cases, the process itself helped communities develop a shared vision and boosted confidence. However,

the ultimate outcomes are often difficult to assess, and they do not always involve clear-cut victories. Practitioners recognise that “*the law is not enough*” and that legal empowerment works best when conceived of as one element of wider strategies.

The evolving investment context has implications for legal empowerment initiatives. This could include, for example, taking a territorial, multi-sectoral approach that addresses the cumulative impacts of multiple investments in geographic hotspots – for example, through supporting the implementation of any national laws on land use planning, or via multi-actor processes covering multiple investments. In agriculture, it can involve placing greater emphasis on supporting small-scale farmers as they determine their agendas and advance their rights in the context of value chain development processes, including where relevant in relations with buyers and input providers. And with regard to international investment treaties, it can involve developing stronger connections between field-level initiatives and action to promote citizen oversight of international legal processes.

Rather than supporting or opposing given development approaches, the bottom-up perspective inherent in legal empowerment involves helping the people most directly concerned to make their own informed choices, exercise their rights and advance their aspirations. At its best, legal empowerment involves promoting systems that can enable bottom-up, democratic decision making in difficult and contested policy spaces.

Annex 1. Additional remarks on research methods and limitations

Remarks on Figure 1

This chart is based on data from the World Bank Global Economic Monitor.⁴ It uses real price indices for raw agricultural products, metals and minerals, and crude oil – that is, controlling for inflation. GDP figures are represented in 2010 USD, again avoiding direct inflation effects.

Linear trend lines were added to the commodity price index series to help visualise long-term upward trends. The trend lines use basic regression analysis methodology to minimise the squared sum of distances from the actual points to the identified line. The use of a linear representation is for visual aid only; the trendline for crude oil represents around 98% of the variation for this variable as compared to less than 20% for raw agricultural products, which exhibit high variation around a moderately sloping long-term trendline.

It is important to recognise that there are multiple measures of commodity prices and the methods vary by trade weighting and adjustments related to currency exchange. There is also a vast body of literature discussing drivers of changes in commodity prices.

Remarks on Figure 2

This chart draws on two datasets: the Land Matrix database, and the GRAIN (2016a) dataset. Both involve acknowledged limitations due to the inherent difficulties of developing and maintaining global databases of agribusiness plantation deals. The two datasets also use different parameters and methods.

The Land Matrix⁵ collects data on large-scale (>200 hectares) agribusiness plantation deals concluded since 1 January 2000. Its findings were presented in two synthesis reports published in 2012 (Anseeuw *et al.* 2012a) and 2016 (Nolte *et al.* 2016). These reports use somewhat different parameters, so their data is not easily comparable. Data was extracted from the Land Matrix database as of January 2017 by filtering as follows:

- We only included transnational investments (investor country \neq target country), and excluded deals for which the investor country was not known;
- We only included “concluded” deals with information on the year;

⁴ Available at http://tiny.cc/wb_gem

⁵ <http://landmatrix.org>

- We only included agricultural plantation deals, i.e. deals containing one of the following agriculture-related “intentions”, either solely or in combination: “foodcrops”, “livestock”, “agriunspecified”, “biofuels”, “non-food agricultural commodities”.

This produced a list of 826 deals covering 22.5 million hectares. Our results are broadly comparable to those in Nolte *et al.* (2016), who discuss 833 deals covering 23.8 million hectares. But while Nolte *et al.* (2016) presented the information in cumulative form (figure 7 in Nolte *et al.* 2016), we opted for a non-cumulative chart for a clearer representation of change year on year.

The second dataset we used is the latest version of a global database released by the advocacy group GRAIN (2016a). Earlier versions of the database were released in 2008 and 2012 (GRAIN 2008 and 2012). The database provides a snapshot of large-scale (>500 hectares) transnational agribusiness plantation deals as of June 2016, primarily based on the media, advocacy and research reports included in the <http://farmlandgrab.org> repository. Like the Land Matrix, this repository has become a useful tool for tracking developments in agribusiness plantation deals.

In extracting data from the GRAIN dataset, we did not check its accuracy but made the following adjustments:

- We integrated two separate GRAIN spreadsheets on ongoing and discontinued deals, because all deals are relevant to understanding trends over time, even if later discontinued;
- We restricted the search to agricultural plantation deals initiated after 1 January 2006. As a best approximation of when known deal activity first occurred, we used the date when the deal was first documented, even if still at a negotiation stage. For deals with no reported date but referred to in either the 2008 or 2012 GRAIN databases, we used the date when the deal was first mentioned, i.e. 2008 or 2012;
- We removed deals for which, based on data internal to the GRAIN database itself, there was no information to suggest a deal had in fact been concluded, or where information available in the database did not identify a specific deal. Where individual entries on the GRAIN database referred to multiple transactions, we split them into separate entries. We also excluded from the analysis data concerning a 2009 corporate acquisition in Australia reportedly affecting 5 million hectares.

Remarks on Figure 3

This chart is based on data from the UNCTAD Investor-State Dispute Settlement Navigator.⁶ Using the advanced search function, we selected 2000 to 2016 for date of initiation, selected “primary” economic sector and unticked “fishing and aquaculture” and “forestry and logging”. This search delivered a total of 143 arbitrations based on international investment treaties. More arbitrations may exist that are not publicly known, and the diagram does not consider arbitrations based on legal instruments other than treaties (contracts, laws).

Remarks on Chapter 4

The discussion of legal empowerment focuses on selected initiatives relating to seven focus countries: Cameroon, Colombia, Ghana, Indonesia, Mozambique, Myanmar and Tanzania. These countries were selected based on the following broad criteria: low- and middle-income countries; geographic spread including regional, linguistic, cultural, socio-economic, political and ecological diversity; significant land use investments since 2006; diversity of commodities and production systems. Despite this diversity, we recognise these countries are not necessarily representative of wider trends.

For each country, the analysis focused on two case studies of legal empowerment interventions. The experiences cover diverse legal empowerment approaches in the agribusiness, mining and petroleum sectors. For practical reasons, we prioritised cases for which documentation was publicly available. However, the nature and extent of the documentation varied widely, and some case studies only rely on very limited sources connected to the individuals or the organisations that led the action.

The analysis of the case studies takes a qualitative approach, distilling insights from both primary documentation (e.g. by-laws developed as part of the initiative) and reflective analyses generating lessons from the initiatives, as available. The exercise does not aim to provide a systematic assessment of the effectiveness of legal empowerment approaches in the context of land use investments, and the issues arising from the case studies are not necessarily representative of wider trends. On the whole, however, we deemed the diversity of the case studies and of their respective contexts to be conducive for generating helpful insights. Annex 2 provides a synopsis of the case studies and their underlying sources.

6 <http://investmentpolicyhub.unctad.org/ISDS>

Annex 2. Synopsis of legal empowerment case studies

Country, case study identifier	Case study	Lead actors	Intervention	Timeframe	Sources
Cameroon-1	Small grants scheme for contract scrutiny	International research centre, national NGO	Online global database of publicly available land, agriculture and forestry investor-state contracts, coupled with annotations and commentary and with a small grants scheme supporting capacity to use the database in Cameroon	Since 2015	CCSI (2015); Berger (2016b); Cordes (2017)
Cameroon-2	Junior lawyers	National NGO, grassroots-level hosting organisations, law graduates ("junior lawyers")	Recruiting, training and embedding junior lawyers in grassroots organisations to provide technical assistance to rural people	Since 2005	Nguiffo and Djeukam (2008); Nguiffo (2012); Nkuintchua and Nguiffo (2017)
Colombia-1	Litigation to support indigenous people affected by mining	Local and national NGOs	Support in court proceedings for indigenous communities displaced during the conflict, including in relation to land restitution claims overlapping with mining titles	2013–2014	Colombia Caravana (2014); Choco.org (2014); ABColombia (2015a); ABColombia (2015b)

Country, case study identifier	Case study	Lead actors	Intervention	Timeframe	Sources
Colombia-2	Indigenous communities' mobilisation against mining	Indigenous peoples, national and international NGOs	Following awareness raising on free, prior and informed consent (FPIC), indigenous communities sought respect for FPIC, including through action before the Constitutional Court	Since 2009	Weitzner (2015); FPP (2017)
Ghana-1	Supporting community vis-à-vis mining project	National NGO	Strengthened local capacity to address issues raised by a gold mining project, including by helping the community to assess likely well-being impacts, mobilise and conduct advocacy	2003–2015	Guri <i>et al.</i> (2015)
Ghana-2	Local natural resource charter	National NGO, international NGO	Supported development of a locally negotiated charter to increase accountability and transparency in land and resource management by traditional authorities	2012	Brong Ahafo Regional House of Chiefs (2012); Global Witness (n.d.)
Indonesia-1	Helping indigenous peoples obtain recognition of their land rights	Communities, coalition of national NGOs	Constitutional litigation to challenge forest legislation undermining community rights; political mobilisation for new legislation that recognises the rights of indigenous peoples; community mapping	Since 2012	Berger (2014); ANGOC (2015); Rogers (2016); Kurniawan (2016); Mongabay (2017)

Country, case study identifier	Case study	Lead actors	Intervention	Timeframe	Sources
Indonesia-2	Asserting land rights through a commodity-based certification body	Local communities and grassroots groups, with support from an international NGO	Supporting communities affected by oil palm projects to seek redress via the Roundtable on Sustainable Palm Oil (RSPO) complaint procedure	Not specified	Lomax (2015)
Mozambique-1	“Twin-track approach” combining community legal empowerment with capacity support for government	International development agency, government training centre	Support to both community paralegals and “frontline” government officials in areas relevant to land and natural resource laws	2005–2014	Tanner and Bicchieri (2014)
Mozambique-2	Community-based advocacy	National NGO, provincial and district-level associations of community paralegals	Building on Mozambique-1, training of community paralegals around a natural gas project, leading to advocacy at local and national levels	Since 2012	Salomão (2015)
Myanmar-1	Open data and legal empowerment to tackle land conflict	National NGO, pro bono lawyers	A web-based database providing information on land disputes from across the country, complemented by legal literacy training and legal advice and representation	Since 2015	Berger (2016b); Knapman and Wai Wai (2016)

Country, case study identifier	Case study	Lead actors	Intervention	Timeframe	Sources
Myanmar-2	Advocacy on investment treaties	National and international NGOs linking with grassroots activists	Awareness raising to promote public advocacy and scrutiny of proposed investment treaties	Since 2014	Kamout Su <i>et al.</i> (2014); Paung Ku (2014); Khu Khu <i>et al.</i> (2016); FIDH and ALTSEAN Burma (2016); Aguirre (2016); Vervest (2016); TNI (2016)
Tanzania-1	Land rights monitors (LRMs)	National research institute, local communities and local government bodies	A network of LRMs helped people and local governments ensure respect for land rights, particularly in relation to agribusiness investments, including through formal and informal trainings and pro bono advice and representation	2008–2012	Massay (2016)
Tanzania-2	Mainstreaming gender in Tanzania's local land governance	Local government bodies, one national NGO and an international policy research institute	Facilitated bottom-up development of model by-laws to improve women's participation in local land/resource governance	2014–2016	Berger (2016a); Kisambu (2016); Salcedo-La Viña and Morarji (2016)

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Research Report

December 2017

Law, Land acquisition and rights

Keywords:

Investments, investment treaties, public-private partnerships, legal empowerment

From the mid-2000s, a commodity boom underpinned a wave of land use investments in low- and middle-income countries. While agribusiness, mining and petroleum concessions often involve promises of jobs and public revenues, they have also prompted concerns about land dispossession, exclusionary investment models and infringements of the rights of vulnerable groups.

One of the major challenges is in empowering rural people to make informed choices, exercise their rights and have their voices heard. A solid understanding of evolving investment trends is essential for designing effective initiatives. This report discusses evolving patterns in land use investments, developments in investment frameworks, and implications for legal empowerment approaches.

ISBN: 978-1-78431-550-4

IIED order no.: 12606IIED