



# Improving accountability in agricultural investments: Reflections from legal empowerment initiatives in West Africa

Editors: Lorenzo Cotula and Thierry Berger



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- Land investments, accountability and the law: Lessons from Senegal. 2016. Fall, M. and Ngaido, M. Also available in French.

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## Acknowledgments

Our wholehearted thanks go to all those who participated in the project in Cameroon, Ghana and Senegal. Special thanks to Rose Armelle Olinga Andela for organising the writeshop and sharing her experience as a junior lawyer.

This report was prepared as part of the project “Pathways to accountability in the global land rush: Lessons from West Africa”, funded by the International Development Research Centre (IDRC), Ottawa, Canada. The views expressed herein do not necessarily represent those of IDRC or its Board of Governors.



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International Development Research Centre  
Centre de recherches pour le développement international

First published by the International Institute for Environment and Development (UK) in 2017  
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ISBN: 978-1-78431-484-2

IIED order no.: 12604IIED

For copies of this publication, please contact IIED:  
International Institute for Environment and Development  
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London WC1X 8NH  
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A catalogue record for this book is available from the British Library.

Citation: Cotula, L. and Berger, T. (eds) with Di Giovanni, A., Fall, M., Kakraba-Ampeh, M., Nguiffo, S., Nkuintchua, T., and Yeboah, E. (2017) Improving accountability in agricultural investments: Reflections from legal empowerment initiatives in West Africa. IIED, London.

Cover photo: Farmers and villagers in Bandevouri, South Region, Cameroon.

Photo credit: Thierry Berger

Typesetting: Judith Fisher, [www.regent-typesetting.co.uk](http://www.regent-typesetting.co.uk)

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## Acronyms and abbreviations

CDA	Community development agreement
CED	Centre for Environment and Development
CNRF	<i>Commission nationale de réforme foncière</i>
CRAFS	<i>Cadre de recherche et d'action sur le foncier au Sénégal</i>
IDRC	International Development Research Centre
IED Afrique	Innovation Environnement Développement en Afrique
IIED	International Institute for Environment and Development
JLI	Junior Lawyers Initiative
LMC	Land Management Committee
LRMC	Land Resources Management Centre
MP	Member of parliament
NGO	Non-governmental organisation
USD	US Dollars
XOF	CFA Franc

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## Abstract

A recent surge in agribusiness plantation deals has increased pressures on land in many low- and middle-income countries. Rural people have mobilised to protect their rights, seek better terms or oppose the deals altogether. Since 2014, a set of initiatives in Cameroon, Ghana and Senegal has worked to help people harness the law in order to have greater control over decisions that affect them – a process commonly referred to as legal empowerment.

In the three countries, the initiative developed diverse approaches, responding to different local contexts and theories of change. Each approach embodied a distinctive combination of grassroots action, public advocacy and private sector engagement – through supporting junior lawyers in Cameroon, grassroots committees in Ghana and locally negotiated “land charters” in Senegal.

In the final year of project implementation, the project teams met at a writeshop to distil lessons learned and write them up for wider dissemination. This report presents the results of that work. It summarises insights from first-hand experiences of helping rural people exercise their rights and, ultimately, claim their own future.



## 1. Introduction

### Lorenzo Cotula

A recent surge in agribusiness plantation deals has increased pressures on land in many low- and middle-income countries. Rural people have mobilised to protect their rights, seek better terms or oppose the deals altogether. Since 2014, an initiative in Cameroon, Ghana and Senegal has worked to help people harness the law in order to have greater control over decisions that affect them – a process commonly referred to as legal empowerment.

While attention has often focused on holding companies to account, the initiative described in this paper worked to improve the accountability of the public authorities responsible for managing land and approving investments. The initiative first developed a framework for understanding accountability, and assessed opportunities and constraints in each national legal framework.<sup>1</sup> It then implemented tailored interventions in each country. The approaches varied in response to the different country contexts.

In Senegal, legislation on decentralisation gives elected local governments considerable powers in land allocation. But many rural people have insecure land rights, and some local governments have approved land deals with little consultation. The project piloted locally negotiated land charters setting ground rules on how local governments should perform their responsibilities, promote public participation and report to their constituents. Community paralegals facilitated dialogue, and local governments are expected to endorse the final version of the charters.

In Ghana, customary authorities play a constitutionally sanctioned role in land governance and have signed many land leases. These authorities also represent their communities when the government acquires land. Although the chiefs hold land in trust for their communities, socio-cultural factors often constrain accountability. The project supported consultative committees representing diverse local groups, including traditionally marginalised actors, to promote more inclusive decision making. It also produced learning materials to help the committees perform their role.

In Cameroon, substantial control over land is vested with the central government. Vibrant grassroots organisations support rural people but have little legal expertise, and people have limited access to the law. Yet new law graduates are eager to gain experience and put their skills to fruitful use. The project carefully selected and

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1. Cotula *et al.* (2016); Fall and Ngaido (2016); Kenfack *et al.* (2016); Yeboah and Kakraba-Ampeh (2016).

intensively trained new law graduates (“junior lawyers”), seconded them to a local organisation and helped them assist rural people in legal matters.

In all three countries, a national organisation led the action: in Cameroon, the Centre for Environment and Development (CED); in Ghana, the Land Resources Management Centre (LRMC); and in Senegal, *Innovation Environnement Développement en Afrique* (IED Afrique). IED Afrique also ensured overall project coordination, while the International Institute for Environment and Development (IIED), based in the United Kingdom, provided technical support.

Field-level interventions were on a small scale, the issues tackled were very difficult, and realistic time horizons for any real change were not in line with the project’s short timeframe. Therefore, the project worked to test approaches and disseminate lessons, rather than provide definitive solutions at scale. In each country, it also fed insights into national law reforms.

While the country contexts differ, the underlying challenge of empowering rural people in the face of agribusiness investments resonated strongly across the three countries and beyond. Therefore, the initiative worked to share learning between the three country teams and with a wider international audience.

As part of this effort, the three country teams met periodically to review progress and insights. The last of these regional events was a writeshop in Kribi, Cameroon. Although field activities were still underway, the event enabled the teams to distil insights from implementation and write them up for wider dissemination. A field visit to one of the sites in Cameroon stimulated the collective reflection.

At the writeshop, some sessions involved working in country teams, for example to reflect on lessons learned, develop annotated outlines and draft texts. At each stage, country teams peer-reviewed each other’s work. Other sessions took place in plenary – including to share writing tips, develop common writing templates, discuss draft outlines and texts, and identify common threads.

This report presents the results of the writeshop. Many insights could not be included due to space constraints. The next three chapters distil lessons from each country, while the conclusion identifies some common threads. The emphasis is on first-hand experiences of helping rural people exercise their rights and, ultimately, claim their own future.

## 2. Junior lawyers for grassroots advocacy in Cameroon

**Téodyl Nkuintchua and Samuel Nguiffo**

### 2.1 Introduction

Over the past ten years, Cameroon has witnessed a surge in investments for agribusiness, mining, forestry and infrastructure. While these projects could improve Cameroonians' standards of living, large-scale land allocation has had adverse effects on rural people. Under relevant legislation, these people only have weak rights and mechanisms to protect the lands they live and depend on.

Courts are geographically, technically and culturally estranged from rural communities. Where people have brought investment-related cases to court, they have rarely, if ever, succeeded. Rural people also have little say in land allocation processes, which has fostered conflict around large-scale investments. Some conflicts have led to tensions, intimidation, repression and imprisonment.

People often lack: awareness of their existing rights, information about proposed investments, and the capacity to hold authorities to account. Non-governmental organisations (NGOs) support communities but face their own challenges. Local NGOs may have limited technical capacity, while national NGOs with specialist expertise are based in big cities (mainly in Yaoundé and Douala) and are hampered by the long distances and high costs involved in working with communities.

The Junior Lawyers Initiative (JLI) links national NGOs that have technical and advocacy capacity with local NGOs whose strong knowledge of the local context can support communities in their quest for social justice in investment processes. Spearheaded by CED, the initiative mobilises new law graduates to support people confronted with natural resource investments. While the first two generations of junior lawyers primarily addressed issues linked to the forestry sector, the third and current generation (October 2015 to December 2017) expanded to all natural resource management sub-sectors.

### 2.2 The approach

The JLI involves selecting, training, supporting and seconding new law graduates – the junior lawyers – to the field to assist local NGOs and rural communities in three areas: training and awareness raising; specialist support in connection with concrete cases; and advocacy at both local and national levels.

The JLI also aims to create a new generation of Cameroonian lawyers who are sensitive to community rights. Today's junior lawyers will be tomorrow's experts, and the lessons they learn will echo across their careers, whatever path they

follow. The JLI involves three main phases: selection and training, deployment, and ongoing monitoring and support.

The junior lawyers are selected through a highly competitive process. Candidates are chosen based on their legal knowledge and other criteria including field experience, eagerness to learn, motivation to support communities, and likely resilience in the face of difficult conditions away from home.

The final selection of the 10 junior lawyers was made from a shortlist of 25 candidates (who themselves were chosen among 250 initial applicants) that completed a two-month training. The training covered topics not included in university curricula yet central to rural people's lives: investments in natural resources, legal issues relevant to everyday life in rural areas, data collection and advocacy techniques, and access to justice strategies. The training is interactive and iterative: while the curriculum is defined in advance, it can be adapted during the training, upon specific requests by the trainees and NGOs.

At the end of the training, the 10 junior lawyers selected (six women and four men) were assigned to work with six local NGOs, and with CED (to assist in coordinating the others). As a result, the project currently operates in six sites reflecting diverse ecological and socio-economic features. Deployment is based on four principles:

- **Working with local NGOs.** The NGOs are the junior lawyers' main point of contact for two reasons. Firstly, these organisations are already working with the communities and have a good understanding of the local context. They can therefore help the junior lawyers fit in. Secondly, when the junior lawyer leaves, the local NGOs remain on the ground, ensuring continuity of the intervention. The NGOs apply to participate in the scheme (six out of 15 NGO applications were selected in the latest round) and must commit to providing the logistical and technical support the junior lawyer will need.
- **Rotation.** Each junior lawyer's secondment with one NGO typically lasts from six to nine months. After this, the junior lawyers move to another NGO, for a total duration not exceeding two years. The aim is to expose the junior lawyers to diverse realities, and to enable local NGOs to benefit from different skills and areas of expertise.
- **Diversity of topics and assignments.** The work of the junior lawyers responds to local demand, and is jointly supervised by CED and the host NGO. The junior lawyers provide support to their host organisation. Collaborating closely with the host organisation and CED, the junior lawyers also work with rural people to identify problems and possible solutions, and to implement the solutions identified. This may involve informing the community about the law and the options available; facilitating dialogue within the community; writing letters to administrative authorities; helping the community map its land and resources; and facilitating access to justice, including by defending cases in courts.

- **Effective communication** between the junior lawyer, the host organisation and CED, on issues ranging from the junior lawyer's overall schedule and the priority themes for work in the field, to advocacy activities and communication with authorities.

Monitoring is based on regular communication between the junior lawyer, the host NGO and CED; monthly timesheets are completed by junior lawyers and reviewed by CED; and periodic meetings bringing together the junior lawyers to facilitate dialogue, lesson sharing and collective reflection.

### 2.3 Outcomes and lessons learned

The latest cohort of junior lawyers has achieved important results and encountered a few challenges. Positive outcomes include:

- **Helping communities speak out.** The junior lawyers have helped amplify community voices. In the North West region, for example, the junior lawyers organised meetings between communities and authorities, who then made firm commitments to address some of the communities' issues. In Niété, Figuil and Bipindi, the junior lawyers facilitated multi-stakeholder dialogue platforms that gave communities a seat at the table and enabled them to raise issues that matter to them. In the case of one large agribusiness project, the junior lawyers helped draw international attention to community concerns by collecting data; communicating (via CED) with international NGOs; and facilitating communication between international advocates and community leaders on the ground.
- **Facilitating access to justice.** Junior lawyers have worked with local and national NGOs, lawyers and experts to defend communities in court cases. In Yokadouma, the junior lawyers appeared in court and obtained the release of an indigenous person from prolonged custody. Though this case was not directly related to agribusiness investment issues, the junior lawyer's intervention supported the host organisation's work in support of indigenous people. In Kumba, the junior lawyer prevented the imprisonment of an environmental rights defender, by facilitating collaboration with the defender's lawyer and international NGOs.
- **Strengthening local organisations.** In response to requests by communities and local NGOs, all the junior lawyers have developed training materials, in collaboration with CED. These materials can be used for future training in communities. One host organisation in the East region also received support with their administrative procedures.

The junior lawyers have also faced challenges. The first relates to the sensitivity and complexity of the issues tackled. The involvement of local elites in agribusiness investments creates particular challenges, because these people can mobilise the machinery of government to protect their interests. In one case, a government

official asked the junior lawyer to leave the administrative jurisdiction within 24 hours, after the lawyer attempted to collect data on a sensitive issue. In these more difficult situations, CED and the host organisation step in to front the action, with the junior lawyer playing a less visible role. Security procedures have also been put in place to regularly assess and address risks affecting the junior lawyers' work.

The second challenge is practical and relates to logistics and communication. The junior lawyers operate in remote areas, and often have difficulties communicating with CED, travelling between villages and meeting with public officials. As discussed, a firm commitment on the part of the host organisation to provide the logistical support needed is a key element of the scheme.

Much depends on the opportunities and constraints that the applicable law creates in protecting community rights. But operationally, the JLI approach does present advantages: it is cheaper than involving professional lawyers, who may also resist spending extensive periods of time with communities; at the same time, the approach provides more sophisticated expertise than would be possible under conventional paralegal programmes. The institutional arrangement with local NGOs can help sustain interventions beyond project duration, while the national NGO, CED, is able to provide specialist expertise to support the junior lawyers and operational capability to escalate advocacy to the national and international levels.

The relationship between CED and the host NGO can also pave the way for more collaboration between these organisations and their partners. In the longer term, the emergence of a new generation of lawyers more sensitive to the rights and aspirations of rural communities can help shift prevailing patterns in the law and how it is applied, particularly as these lawyers will go on to take up positions as government officials, NGO or private sector practitioners, experts or researchers.

## 2.4 Reflections

The junior lawyers approach presents strong potential for upscaling. While this will inevitably require tailoring the approach to different local contexts, key principles include:

- **Effective supervision and coordination.** The junior lawyers have limited experience, and they need support. This support can be modulated over time, with the initial phase typically requiring closer handholding. We estimate that one full time senior person is needed to supervise eight junior lawyers. Effective supervision is necessary to ensure quality in the intervention, while coordination is essential in ensuring relevance, efficiency and good communication between the junior lawyer, the national organisation and the host NGO.
- **Effective diagnostics of issues and appropriate responses.** Identifying the issues requires analysis by the junior lawyers but also joint strategising by the national organisation and the host NGO. Developing response strategies requires assessing complexity in light of the lawyers' capabilities. Some issues

are technically challenging, but the junior lawyer may have skills they can bring to bear. Defining who is best placed to play what role helps ensure quality and manage risks.

- **Attitude is essential.** Technical expertise matters but is not enough. The junior lawyers need a strong enough personality to avoid falling into the role of *intern* that does not play a significant part within the host organisation. They must also be eager to learn, listen and reconsider their theoretical knowledge in light of the experiences they encounter. A humble attitude is key when interacting with communities.
- **Focus on institutional set-ups.** The junior lawyers are the main protagonists of the action. But it is the tripartite collaboration between each junior lawyer, the national organisation and the host NGO that ultimately determines potential for impact, scaling and sustainability. Trust, clarity of roles and good communication are needed throughout for this tripartite collaboration to work.
- **Take an iterative process.** Maximising effectiveness requires ensuring at each step that the intervention adds value to ongoing initiatives, and tailoring activities to evolving, context-specific factors such as diverse interlocutors (e.g. local administration, traditional authorities, central government) and changing political space.
- **Assessing and managing risks.** Where political space is constrained or shrinking, strategies to assess and manage risks are particularly important to ensure both effectiveness of interventions and safety of the junior lawyers, the communities, the host NGO and all actors involved.
- **Facilitate sharing among junior lawyers.** At times, being a junior lawyer can be an isolating experience, particularly where the lawyers operate in remote areas with few other legal minds to exchange with. Yet the junior lawyers often confront similar challenges, and have much to learn from one another. Ongoing lesson-sharing through periodic meetings among junior lawyers can make a difference to both confidence and expertise.

## 3. Grassroots committees to open up local governance in Ghana

Eric Yeboah and Mark Kakraba-Ampeh

### 3.1 Introduction

The global land rush has seen multinationals and local actors acquiring large tracts of land in the global South. Central governments often play an important role in allocating land. In Ghana, however, customary entities such as stools, skins, families and clans own an estimated 80 per cent of the land, with the remainder falling under state ownership. The prevalence of customary landholding means that most land deals are brokered between customary authorities and private investors. Even where private investors acquire land from the state, traditional leaders play an important role in representing the concerns and aspirations of their community.

Customary tenure typically involves collective ownership, with a traditional leader such as a chief or a family head designated as the trustee. The position of trustee imposes a responsibility on traditional leaders to manage land for the collective benefit of all members of the land owning group. Transparency, inclusivity and accountability should define customary land management, especially in the face of increasing demand for land by investors.

In practice, however, traditional leaders have often allocated land without consulting people, and many leases have hardly benefited the wider community. These trends are in contrast with legal and institutional arrangements requiring transparency and accountability. This situation creates the need for approaches to increase inclusivity, transparency and accountability in local land governance.

### 3.2 The intervention

In Ghana, LMRC worked in three sites hosting large-scale agricultural investments. The sites are located in three broad ecological and socio-economic zones: the North (Yapei), the South (Daboase) and the middle zone (Kadelso, Kawampe and Gulumpe). In each site, the project team worked with the communities to identify challenges and possible solutions. This typically involved a series of meetings with each of the three communities, working with traditional authorities, land owning families and clans, youth groups, women's groups, farmers' groups, religious bodies, elected local representatives and the public authorities.



At the meetings, the communities discussed the difficulties associated with handling the challenge of agribusiness ventures. The discussions initially translated into local demand for training and awareness raising, which the project provided. But it soon became clear that a more sustainable approach to empowering communities required establishing local institutions to champion the course of accountable land governance.

This resulted in the establishment of a Land Management Committee (LMC) in each community. The LMCs provide a space for discussing land and investment issues within the community. Traditional authorities agreed to consult the LMCs on land allocation decisions. The LMCs also channel community voices *vis-à-vis* agribusiness ventures that already operate in the area, for example in the context of benefit-sharing arrangements between the community and the company.

An LMC consists of some 15 people chosen by the community on the basis of a participatory mapping of key stakeholders. Depending on the site, relevant stakeholder groups included traditional authorities, farmer organisations, men and women groups, migrant farmers, land holders and the youth. Each stakeholder group designated representative(s) to the committee. Through this process, groups such as youth, women and migrants – who are usually not involved in land related decisions – obtained an avenue to make their voices heard.

The participatory selection process was important to create a sense of ownership of the committees by the entire community. A public inauguration ceremony further strengthened the perceived legitimacy of the committees. LMC procedures aim to ensure that, at all times, the committees remain accountable to the community. For example, committee members are expected to consult with the group they represent before attending any LMC meeting, and to report back to their constituents after every meeting.

In addition to supporting the establishment of the LMCs, the project developed tools and materials to support the committees in performing their functions. This included a guide on decision making and benefit sharing in relation to agricultural investments, and a checklist for any contracting processes involving leasing of land for investment purposes. These tools were developed through iterative processes with the communities, while also ensuring alignment with applicable laws.

The guide provides information on the different stages of land-related investments, and how communities can handle each stage. The checklist contains more specific information about land leases, including options for key terms and conditions. The tools provided the basis for trainings with the LMCs. The trainings covered issues such as investment processes, assessing the community's land needs before any allocation decisions, benefit-sharing options and their implications, gender considerations, and how the community can effectively monitor investments.

### 3.3 Outcomes and lessons learned

As a result of the intervention, the communities have become more aware of their rights and the issues involved in land-based investments. The LMCs are now recognised as a key player in land-related decisions, which were previously concentrated in the hands of a few traditional authorities. This has opened up land governance to people who had limited opportunities to influence land-related decisions – including youth, migrants, women and more generally local farmers.

There have also been positive developments in relations between the communities and agribusiness companies. The project team was not involved in negotiating community-investor agreements, but the LMCs it supported did play an important role. The specifics varied across the three communities. In Daboase, an agribusiness venture has been farming land that the central government allocated to it. The existence of an active project created a space for the community to engage with. On the other hand, the LMC in Kadelso has been less active because the agribusiness venture has now stalled. So the LMC has had limited opportunities to engage with the company.

In Daboase, the LMC negotiated a new community development agreement (CDA) with the investor operating in the area. For this process, the LMC appointed a sub-group including the traditional authorities. According to the LMC, the agreement commits the investor to providing 25,000 US Dollars (USD) annually to the community over the duration of the investment, which is approximately fifty years. The agreement also provides for periodic review of this amount. This amount is significant in the context of the local economy.

According to the LMC, USD 5,000 have been earmarked from this total amount to financing ten scholarships for talented students from the community to access secondary education. The LMC has elected a five-member committee to administer the scholarship scheme. It has also developed allocation rules to ensure that the scheme benefits all relevant groups.

The remaining USD 20,000 are for the construction of social infrastructure, starting with a secondary school. When the bridge that links one of the villages to Daboase, the district capital, was damaged by a storm, the LMC engaged with the investor which had it repaired. This helped to restore mobility for the close to 500 inhabitants of the village.

In addition, the LMC's liaison with the investor resulted in the latter allowing the community to hunt, fetch firewood, pick snails and collect medicinal herbs from undeveloped land within the concession area. These activities are very important to local livelihoods.

In Yapei, the community had already granted 16,000 acres of land to an agribusiness investor. The community did not conduct a land audit to assess its present and future land needs. The training highlighted the need for the community to conduct such an assessment before allocating land to prospective investors. After the training, the local LMC looked into this issue. It concluded that the community may not have enough land for the future expansion of the Yapei settlement, because the land leased to the investor was very close to the settlement. The community re-negotiated this issue, and the investor returned to the community some 3,000 acres of land located within a kilometre of the settlement.

Reopening the conversation with the investor had other positive outcomes as well. Ghana has a national health insurance scheme which requires subscribers to pay premiums on an annual basis. In 2016, the investor agreed to pay for 500 elderly and vulnerable community members to be registered onto the scheme. The premiums paid by the investor covered one year, but there are indications that the investor will continue this support in future.

### 3.4 Reflections

The intervention did face some challenges. At the start, both the communities and investors were not sure about the motives of the project, and the team invested heavily in building trust. Ultimately, the communities saw the value of the trainings, the greater awareness and the prospects of increased benefits from the land, while the investor in one site appreciated the project's constructive engagement and took part in some project activities.

In one of the sites, the local member of parliament (MP) opposed the LMC and attempted to dissolve it because, in his own words, "the committee was becoming influential and undermining his position and threatening his political chances". Committee members included people aligned with an opposing political party. The dispute created some tension and delays.

In response, the community held a meeting where it confirmed its overwhelming support for the LMC and its members, whom it selected on the basis of the participatory stakeholder exercise rather than party-political considerations. Sensing that the committee could not be easily dissolved, the MP came on board and offered to nominate his own representative to serve on the LMC. This experience highlights the importance of the community owning the process. It also shows that determined action can help communities take forward their agenda even in the face of powerful opposition.

While much of the action occurred at the grassroots, promoting sustainability and scaling of the approach required engaging with key institutions that work on land governance on a broader scale. This included public agencies such as the Office

of the Administrator of Stool Lands, national platforms for civil society sharing and alliance building, and the Customary Land Secretariats that have been established to support the management of customarily held lands. Such institutions can play a key role in ensuring that the approaches are upscaled and sustained after project duration.

## 4. Ground rules for accountable land governance in Senegal

### Mamadou Fall

#### 4.1 Introduction

Large-scale land deals for agribusiness investments are on the rise in Senegal as part of the government's plan to modernise agriculture by attracting private-sector investors. Legislation on land and decentralisation does not explicitly deal with this issue, as the relevant laws largely date back to the 1960s and 1970s.

In Senegal, the state holds the vast majority of land. Land governance was gradually devolved to local government bodies. But local governments may only grant use rights. They cannot lease land, let alone sell it. Decentralisation enables elected local governments to play an important role in land governance. But with commercial interest rising, local governments have struggled to handle their responsibilities, allocating land to agribusiness investors without prior meaningful consultation. This has resulted in tensions between the communities and local government bodies.

In 2012, the government set up a National Land Reform Commission (*Commission nationale de réforme foncière*, CNRF) to develop a new land policy that can address the new challenges, including those linked to agribusiness developments, in the context of growing citizen demand for accountability in land governance. The reform process is moving slowly, but it presents opportunities for citizens to influence policy.

#### 4.2 The intervention

Working in two sites (Dodel and Merina Nakhar), the project team developed grassroots approaches to improve accountability in land governance and feed lessons into national law making. The local negotiation of land charters is at the heart of the intervention.

A land charter is a set of ground rules that communities define on how local government bodies are to perform their legal responsibilities in relation to land investments. The main purpose is to improve local land governance and clarify the land allocation process. The charters determine how local government bodies are to handle proposed investments, who should be consulted, what criteria should be used when making decisions on whether or not to allocate land, and periodic report-backs from local authorities to the communities.

The land charters also determine how investors should negotiate a social agreement (*cahier des charges*) with the communities, under the supervision of local governments. The agreement would set out the investor's obligations *vis-à-vis* the communities. The charters include provisions on monitoring and evaluation of investments, including for example the establishment of a committee to monitor the implementation of social agreements by investors.

More generally, the charters provide for an annual public hearing where local authorities discuss issues with the community concerning compliance with the rules agreed. In effect, the land charters constitute a mechanism for communities to participate in local land governance. They aim to promote responsible governance of land that is owned by the communities, rather than imposed upon them. The approach builds on longstanding experience with developing local conventions for the shared management of common property resources in Senegal and elsewhere in the Sahel.

The distinctive feature of the land charter approach is that the communities negotiate and adopt the rules contained in the charter, thereby giving them solid social legitimacy. At the same time, the rules are designed to comply with applicable laws, and in effect they fill gaps in the national legal framework. The process to develop the land charters has entailed four main steps.

The first step was a local land governance diagnostic. This involved organising a local platform for dialogue bringing together representatives from traditional authorities, farmers, pastoralists, women, the youth, fishers, the government administration and elected local government officials. Diagnostics helped identify problems and possible solutions. In both sites, developing locally agreed rules on how to handle the most pressing challenges emerged as a way forward. As part of this process, each community appointed 15 community paralegals (*animateurs fonciers*) to support the development of the charter.

The second step involved local consultation and negotiations. In each site, the community paralegals organised stakeholder meetings to gather inputs and negotiate solutions. Meetings took place in each village within the site, and several meetings were organised to build support for the process and get to the bottom of the more difficult issues. Local governments were closely involved throughout the process, while the dialogue platforms provided a space for ongoing discussion of key issues.

The third step consisted of elaborating the charters and getting the drafts validated at the community level. The community paralegals discussed with the communities the outcome of the consultations and the ensuing recommendations. The draft charters built on these recommendations. Initial outlines were prepared by the communities, with support from the community paralegals and the project team, who then expanded the outlines into more detailed documents. The drafts formed the object of multiple revisions and iterations, including further discussion with the communities, input from legal experts, and review by the government

administration to ensure that the provisions complied with applicable laws and could be implemented in practice. Again, local governments closely supported implementation.

The fourth step – still underway – involves the finalisation and formal approval of the charters. Local government authorities are reviewing the final drafts and commenting on them. The ultimate aim is for these authorities to approve the charter, and submit it to the *préfet* – who represents the state in the department – for final approval. The Community paralegals are developing a strategy to inform the communities that the charter had been officially validated and to raise awareness about its provisions.

The project team supported the community paralegals with training and ongoing handholding throughout the process. In turn, the paralegals supported the local platforms for multi-stakeholder dialogue, which drove the process from the bottom up. The intervention involved deliberate efforts to ensure inclusivity in terms of gender, age and other sources of local differentiation.

This involved ensuring that all relevant stakeholders could take part in the discussion. Among the community paralegals, five are women and three from youth groups. The paralegals regularly consulted relevant groups, including local women's organisations. Some of the local meetings were structured around distinct areas within the project sites, so as to engage separately settlements of pastoralists and villages inhabited by farmers or fishers. The land charters include mechanisms to support economic initiatives from women and the youth.

### 4.3 Outcomes and lessons learned

The land charters will provide a written and consensual framework for local land governance. They also create a local platform for communities to discuss land issues. The communities are now better equipped to participate in, and claim ownership of, the land governance process and to protect their rights when investors express interest in their lands.

The lessons learned through the process of developing the charters were shared with the CNRF through a national civil society platform, the Framework for Research and Action on Land in Senegal (*Cadre de recherche et d'action sur le foncier au Sénégal*, CRAFS). Indeed, the project team fed into a CRAFS report distilling civil society proposals on the land law reform, which also featured contributions from other NGOs. The CNRF took on board some of the recommendations, for example calling for the recognition of local land governance initiatives such as land charters and for greater accountability in land allocation processes.

One challenge that the intervention has had to navigate is that local land governance is caught between customary practices that have no legal recognition and land legislation that is not properly implemented on the ground. In this context,

the land charters offer a vehicle for bridging local practice and legal rules, providing a locally adapted framework to regulate land governance.

At the same time, the decentralisation policy was crucial for the intervention to move forward. It created a space for communities to engage with more locally accessible government institutions, and for the charters to provide a recognised contribution through filling legal gaps and advancing the implementation of the decentralisation policy.

The willingness of local governments to work with the project was a key enabling factor. The endogenous process followed to develop the land charters also shows that, when provided with the necessary support, communities are able to effectively address local land governance issues.

That said, the intervention also encountered significant challenges. It was difficult to reach consensus on key provisions of the land charter. One example is whether the charter should specify the maximum size and duration of any leases granted to investors. Some people proposed short periods so their children would not be committed in the future, while others favoured leaving space for negotiated solutions. In this specific case, the balance of opinion ultimately favoured the latter position, and a decision was made to not include this provision in the charter.

There are also questions about the legal value of the land charters, and the extent to which they can create enforceable obligations. At present it is unclear whether national law allows local actors to develop local governance rules. Arguably, what matters the most in practice is the perceived social legitimacy of the charters, which flows from the fact that they have been developed by local communities and validated by public authorities. Politically, it may prove difficult for elected government officials to openly repudiate the charters. But communities need to remain vigilant and may have to stand up for what they have created.

Ultimately, a land charter is just a means to an end, and much depends on how it will be monitored and implemented. As the project comes to an end, the community paralegals will continue to operate. Paralegals in both sites continue to support local platforms for dialogue, exchange knowledge and experiences among themselves, and are connected to national NGOs working on land. The project team plans to carry on operating in these sites and working with the paralegals through other programmes.

## 4.4 Reflections

Local ownership of the process is paramount. The project team made it clear from the start that the communities had to lead the process themselves, and that the project could only provide technical support for example on participatory approaches, legal drafting, training and national-level advocacy. While advancing the intervention required significant technical input on the part of the project, it is essential to ensure that communities are in the driving seat throughout the process.



Deliberate efforts are needed to understand and tackle social differentiation within communities. This may involve tailored engagement strategies for different groups such as men and women, or farmers and pastoralists – for example, holding separate meetings at times and in places convenient for these groups, and being sensitive to how different groups frame problems and potential solutions. It is also important to recognise that a community can host different and even opposing interests and views, so patience, careful mediation and ultimately willingness to compromise are essential in developing shared rules for local governance.

## 5. Conclusion

**Lorenzo Cotula, Thierry Berger and Adrian Di Giovanni**

### 5.1 An institutional approach to legal empowerment

This chapter identifies common threads from experience in the three countries. It draws on writeshop discussions, including aspects not covered in the country chapters above. In the three countries, the project teams have developed diverse approaches, responding to different local contexts and to diverse institutional philosophies and theories of change. Each approach embodied a distinctive combination of grassroots action, public advocacy and private sector engagement. It also embodied a specific take along the spectrum between enabling bottom-up deliberation when all options are still open, and improving the reality on the ground after key decisions had already been made.

In Cameroon, some of the junior lawyers helped link local issues to national and international advocacy, underscoring the role of public pressure in driving change. In Ghana, on the other hand, constructive private sector engagement was a distinctive feature of the intervention, and one local land management committee negotiated a CDA with a company already operating in the area. And in Senegal, the emphasis was on developing local charters to guide the conduct of local government bodies as they handle land and investment issues in future.

Despite this diversity of approaches, activities in the three countries presented important recurring themes. In all three cases, the emphasis was on strengthening accountability between authorities and their constituencies. All the interventions sought to equip communities to identify problems and pursue their own solutions. And in all three cases, this involved not just technical tools, but more encompassing approaches to embed the action in local institutions – namely, grassroots committees in Ghana; local governments in Senegal; and the triangular relationship between the national lead organisation, the local host institution and each junior lawyer in Cameroon.

This emphasis on institutions emerged through the iterative approach that guided project activities. In Ghana, the action initially focused on providing trainings and tools in response to narrowly framed community requests. Further work with the communities shifted the emphasis to supporting grassroots committees as the institutional home for the tools to be used during and after project implementation. This institutional entry also meant that legal empowerment was only a part of the story. In Cameroon, seconding the junior lawyers to local NGOs in effect mainstreamed legal empowerment into the wider work of those organisations.

## 5.2 Addressing social differentiation and power relations

Pursuing an institutional approach may involve renegotiating established socio-political relations. This was clear in Ghana, where the local committees, if sustained, could help create more open spaces for local land governance. Similarly, the land charters in Senegal – if formally approved and duly implemented – ultimately involve renegotiating the relationship of accountability that exists between citizens and their elected representatives. The charters establish elements of more direct, deliberative democracy that could enable citizens to have a say beyond periodic electoral contests.

Given this potential for questioning established patterns of authority, all the country teams grappled with issues of vested interests, power relations and resistance to change. Intra-community issues were often the most difficult to tackle. This included gender relations, as women are often marginalised in decision making and internalise entrenched beliefs about appropriate divisions of labour (with land often being considered “a men’s issue”). But differentiation based on status, wealth, income, age or ethnicity also matters, and intersects with the gender dimension. In the Ghana sites, some women are very influential, and in one site a woman acts as the customary chief; but even here, other women struggle to have their voice heard in land matters.

Making sense of these complex patterns of social differentiation in a project context raised conceptual and practical challenges. The project teams and communities themselves grappled with diverse and always perfectible ways to identify “stakeholder” groups and possible institutional arrangements for linking those groups to representation in decision making. In Ghana and Senegal, categories such as farmers, pastoralists, women, youths and/or migrants were deployed to structure local deliberation – even though these categories are not unproblematic due to the diverse premises they are based on, their overlapping nature *vis-à-vis* multifaceted and evolving social identities, and the significant differentiation within each category that tends to exist in real-life social settings.

Project activities in the three countries encountered resistance from community leaders and national elites. Large-scale investments may enlist elites – such as politicians, high-level government officials, businessmen and traditional leaders – to promote support for the project. These people mobilise their social relations, including in government, to help the project move forward. This can create difficult situations for legal empowerment practitioners, and in the worst instances it can raise concerns about the security of practitioners or communities.

Any legal empowerment initiative in constrained political spaces would need effective risk management to address security concerns – for example, by ensuring that the national lead organisation, rather than the junior lawyer, fronts the action where circumstances so require. Dilemmas may arise in prioritising interventions between flashpoint sites where work is most needed but change is unlikely and poses security concerns, and safer sites where progress seems to be within reach.

How to address situations involving extreme capture and significant security risks remains an open question.

Partnering up with a grassroots organisation, as in the junior lawyers' initiative, can help practitioners to get a good grasp of the local politics. Creating strong local constituencies for change is another strategy to tackle powerful vested interests. In Ghana, strong support for the committees on the part of local stakeholder groups was key for traditional authorities to come on board – even though the committees might ultimately diffuse the power that chiefs exercise in local governance. In one site, a local MP sought to disband the committee, deeming it a potential threat in the run up to the elections; but the MP ultimately embraced the committee after the community resolutely stood by it.

Experience from the three countries also highlights the importance of engaging with “the powerful” so they can support, rather than undermine, what the intervention is seeking to achieve. This involved working with traditional authorities in Ghana, parliamentarians and “national champions” in Senegal and high-level government officials in Cameroon.

### **5.3. Bottom-up agendas, long-term horizons and (inter)national reach**

Inevitably, renegotiating social relations takes time. Yet interventions must respond to project cycle imperatives. In all three countries, the project duration proved short, and at the time of writing – close to the end of project completion – teams were still finalising their activities. This raises questions about the prevailing timeframes of donor programming, and how best to enable interventions and track impacts over longer durations.

But even within current parameters, there are ways for a long-term perspective to inform the design of the approach. Besides channelling technical support to the local level, the junior lawyers' scheme in Cameroon facilitates the emergence of a new generation of jurists who understand the challenges of rural people and have practical insight into the workings of law in rural areas. The Cameroon team expects the jurists to go on and apply these insights when working in government, legal practice, NGOs or the private sector.

Above all, the experiences highlight the compelling case for interventions to be solidly grounded in their local contexts and led from the bottom up. Legal empowerment is about enabling people to make their own choices and drive the change. Community ownership – and the determination of grassroots groups to stand up for the approach – is essential for the intervention to withstand pushbacks. Process is also key if decision makers are to mainstream the approach across their sphere of influence, and ultimately for the upscaling and long-term sustainability of the intervention.

Linking local action to national policy is an important part of promoting upscaling and sustainability. While existing national laws present varying opportunities for community empowerment, they also involve significant limitations. The field experiences exemplify approaches that both fit with existing laws and aim to inspire better laws. In the three countries, the project teams worked to feed insights from the field into ongoing land law reforms.

At the international level, there is a need for methodological tools and lesson sharing to build a more solid body of evidence and insight about diverse types of legal empowerment interventions. In this context, there is significant scope for harnessing social research methodologies to generate systematic evidence about the relevance and effectiveness of approaches in different socio-political settings. But practitioners with first-hand experience of the challenges can contribute invaluable insights. By enabling practitioners to come together, share experience and co-generate findings, the writeshop approach has a role to play in advancing this agenda.

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# Improving accountability in agricultural investments: Reflections from legal empowerment initiatives in West Africa

A recent surge in agribusiness plantation deals has increased pressures on land in many low- and middle-income countries. Rural people have mobilised to protect their rights, seek better terms or oppose the deals altogether. Since 2014, an initiative in Cameroon, Ghana and Senegal has worked to help people harness the law in order to have greater control over decisions that affect them – a process commonly referred to as legal empowerment.

In the three countries, the initiative developed diverse approaches, responding to different local contexts and theories of change. Each approach embodied a distinctive combination of grassroots action, public advocacy and private sector engagement – through supporting junior lawyers in Cameroon, grassroots committees in Ghana and locally negotiated land charters in Senegal.

In the final year of project implementation, the project teams met at a writeshop to distil lessons learned and write them up for wider dissemination. This report presents the results of that work. It summarises insights from first-hand experiences with helping rural people exercise their rights and, ultimately, claim their own future.



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## Research Report

June 2017

**Law, Land acquisitions  
and rights**

*Keywords:*  
Land investments, accountability,  
land rights