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Increasing Local Voice and
Benefit in Natural Resource
Investment: a Legal
Empowerment Approach

Lorenzo Cotula



International Development Law Organization
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LEGAL EMPOWERMENT WORKING PAPERS

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Viale Vaticano, 106
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Tel: +39 06 4040 3200
Fax: +39 06 4040 3232
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This project involves the preparation of a series of qualitative and quantitative empirical articles culminating in an edited volume on approaches to integrating justice and development in ways that benefit the poor and other disadvantaged populations.

The volume will be part of the IDLO book series *Lessons Learned: Narrative Accounts of Legal Reform in Developing and Transition Countries*. Consistent with the thrust of the book series, the legal empowerment book and online papers seek to identify successes, challenges and lessons springing from the integration of law and development.

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INCREASING LOCAL VOICE AND BENEFIT IN NATURAL RESOURCE INVESTMENT: A LEGAL EMPOWERMENT APPROACH

Lorenzo Cotula¹

Executive summary

There have been sizeable increases in investment flows to several African countries in recent years, particularly in mining, petroleum and agriculture for food or fuel. While this may create livelihood opportunities, it also creates risks. Rural people may lose access to the resources they depend on, especially where their resource rights are weak, their capacity to enforce such rights is limited, and where major power asymmetries undermine their position in relation to governments and investors.

Legal Tools for Citizen Empowerment, an initiative involving the International Institute for Environment and Development in partnership with organizations in Ghana, Mali, Mozambique and Senegal, seeks to empower local people by increasing their influence on and benefits from natural resource investment projects. The program involves research, capacity-building, sharing of information and advocacy on policy. This paper draws on material and preliminary lessons from the Legal Tools for Citizen Empowerment program with a view to providing insights for international consideration of legal empowerment.

¹ Senior Researcher, Law and Sustainable Development, IIED, United Kingdom (lorenzo.cotula@iied.org). I would like to thank all the Legal Tools partners: I am enjoying the collaboration personally and professionally, and learning a great deal. Particular thanks go to Dominic Ayine, Moussa Djiré, Bara Guèye, Yahya Kane, Amadou Keita, Samanta Remane and Alda Salomao. Thanks also to IIED colleagues Linda Siegele, Sonja Vermeulen and Emma Wilson, to Stephen Golub for his useful comments on an earlier version of this paper, and to Paul Rivera for his research assistance.

Introduction

This paper discusses highlights and preliminary lessons from the Legal Tools for Citizen Empowerment program—Legal Tools for short—which aims to increase local influence over and benefits from natural resource investment in Africa. Legal Tools was launched in late 2006 and is currently in its pilot phase. It is coordinated by the International Institute for Environment and Development (IIED) and implemented in collaboration with the IIED-affiliated Foundation for International Environmental Law and Development (FIELD) and partners in Ghana, Mali, Mozambique and Senegal: the Centre for Public Interest Law (CEPIL), a public-interest law firm based in Ghana; the *Groupe d'Etude et de Recherche en Sociologie et Droit Appliqué* (GERSDA), which is attached to the Faculty of Law of the University of Bamako, Mali; *Centro Terra Viva* (CTV), a policy research and advocacy organization in Mozambique; and *Innovations Environnement et Développement Afrique* (IED), a Senegal-based non-governmental organization (NGO) engaged in action research, capacity-building and policy advocacy. Additional collaborations have been developed, for example with the Tanzania Natural Resources Forum (TNRF) and with organizations such as the Food and Agriculture Organization of the United Nations (FAO).

Legal Tools is principally funded by the United Kingdom Department for International Development (DFID) through its partnership agreement with IIED, that runs until 2011. Complementary funding has been provided by FAO and the Swedish International Development Agency (SIDA) through the Making Decentralization Work program.

Two and a half years into its pilot phase, Legal Tools is still too new to provide conclusive evidence regarding its impact on legal empowerment. But some of the ideas, approaches and lessons learned may provide useful insights for international consideration. Sections 2, 3 and 4 sketch the challenges to which Legal Tools responds, the role of legal empowerment as a strategy for change, and initial indicators that this strategy can be successful in dealing with natural resource issues. Sections 5 to 8 discuss highlights and lessons learned; section 9 outlines possible next steps.

1. Context: increasing investment flows to Africa

In many parts of Africa private investment in natural resource projects is being fostered by economic liberalization, the globalization of transport and communications, and worldwide demand for food, energy and commodities. These projects include extractive industries such as mining and petroleum, and agriculture for food and fuel.

Over the past decade, foreign direct investment (FDI) in Africa has significantly increased. In 2007, FDI to sub-Saharan Africa amounted to over US\$30 billion, a new record, compared with US\$22 billion in 2006 and US\$17 billion in 2005.² The distribution of FDI flows and stocks is uneven, but countries such as Ghana, Mali, Mozambique, Senegal and Tanzania, which received limited foreign investment until the early 1990s, now hold more sizeable stocks of foreign investment (see Figure 1).

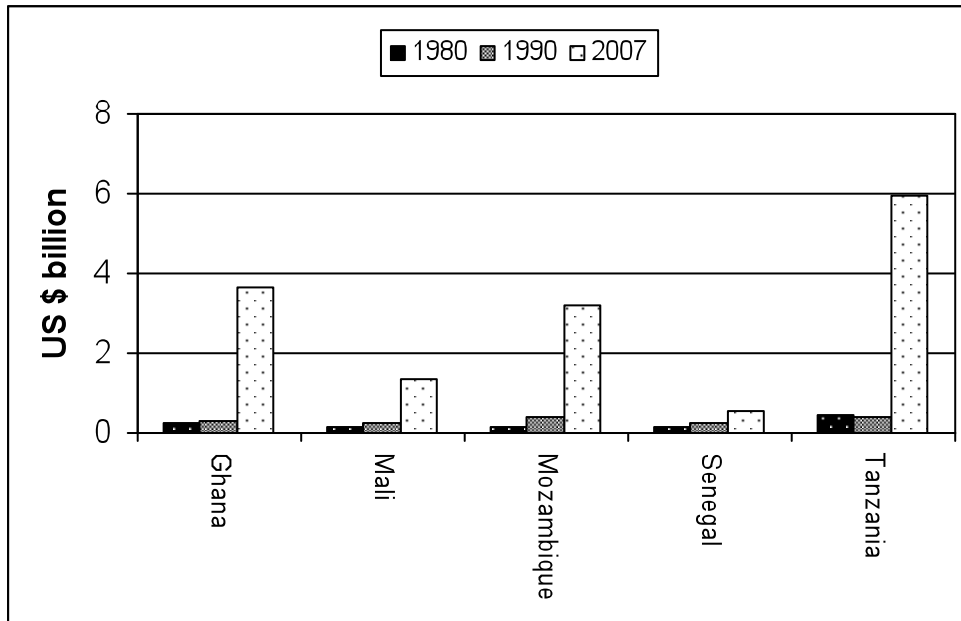
Natural resources are at the heart of these processes. Interest in Africa's petroleum and minerals, one of the main drivers of FDI to the continent,³ has grown as a result of fluctuations in global commodity prices and efforts by developed countries to diversify supplies. This is exemplified by recent large-scale enterprises such as the US\$3.7 billion project to extract oil in Southern Chad and export it through a 1,070 km pipeline to the

² UNCTAD, *World Investment Report 2008 – Transnational Corporations and the Infrastructure Challenge*, <<http://www.unctad.org/Templates/webflyer.asp?docid=10502&intItemID=4629&lang=1&mode=downloads>> at 2 June 2009.

³ *ibid.*

coast of Cameroon. Developed countries increasingly see fertile land in Africa as a means of securing their supplies of food or biofuels.

Figure 1. Foreign investment stock in selected countries. Data from United Nations Conference on Trade and Development (UNCTAD) website.



Increased investment can bring large-scale benefits such as economic growth, increased government revenues and improved living standards. However it also raises challenges. In much of rural Africa, people depend on natural resources for their livelihoods. As outside interest in previously marginal areas increases and as governments or markets make land and resources available to prospecting investors, disadvantaged groups are negatively affected:

- In the Massingir district of Mozambique a large-scale biofuel project has exacerbated land scarcity by taking land that the government had promised to communities that were being resettled to make room for a tourist nature reserve. These developments have had knock-on effects on neighboring communities.⁴
- On the coast of Senegal, booming tourism and related government projects such as a new international airport and a 150,000 ha “special economic zone” have swallowed up land previously allocated to the rural communities of Dias, Yenne and Sindia.⁵
- In Mali, villagers in the communes of Sanso and Gouaniaka have lost land to mining ventures and have documented their dissatisfaction with the land acquisition process and compensation standards.⁶

Local people are often offered vague promises of community projects and jobs as a trade-off. However, community projects do not always materialize, and loss of land is permanent, whereas job opportunities decrease as projects progress towards less labor-intensive

⁴ I Nhantumbo and A Salomao, *Biofuels, Land Access and New Business Models – The Mozambican Case* (forthcoming).

⁵ Yahya Kane, ‘Legal Literacy Training in the Thiès Region of Senegal’ in Lorenzo Cotula and Paul Mathieu (eds), *Legal Empowerment in Practice: Using Legal Tools to Secure Land Rights in Africa* (2008) 83–91.

⁶ A Keita et al, *Legal tools for citizen empowerment: Increasing local participation and benefit in Mali’s mining sector* (2008) see <<http://www.iied.org/pubs/display.php?o=12554IIED>>.

phases. Environmental degradation and, in the worst cases, human rights violations have also been associated with large-scale investment projects.

2. Using the law: the need for legal empowerment

Effective use of legal levers can help people affected by development and investment projects to gain influence and increased benefits. Such legal levers include more secure land rights, tighter consultation and benefit-sharing requirements, decentralization, freedom of information legislation, and more structured investor/state contracts to maximize contributions to local livelihoods.

The ability of different people to make the most of these legal levers is determined by power asymmetries, which are in turn determined by differentiated access to assets, skills, expert advice and social relations. Legal levers that are appropriately designed and effectively used can, however, increase negotiating power as legal claims create bargaining endowments for use in negotiations “in the shadow of the law”.⁷ For example, negotiating power between a government and investors may be affected if a party knows it would lose its case should the matter be referred to arbitration.⁸ Similarly, negotiations between local landholders and investors might unfold in a very different manner if landholders could veto investors’ access to their land.

These considerations lie at the heart of the concept of legal empowerment. While the concept has been used by some with regard to specific policies (namely, the formalization of property rights, particularly through land titling and registration), the term “legal empowerment” is intended here as a means of helping disadvantaged groups to gain greater control over their lives.⁹ For the Legal Tools initiative, legal empowerment is primarily concerned with increasing the influence and livelihood opportunities of local people through the use of legal levers. It involves tackling power asymmetries, particularly between local people, governments and investors. Legal Tools is hence a context-specific and political process rather than a model technical solution, and it is likely to be resisted by vested interests.

The recent wave of law reform in several African countries has, in theory, increased opportunities for local participation in investment decisions and local benefits from investment programs. In many cases, however, such legislation is undermined by inadequate political will, and limited capacity in governments and courts restricts its implementation. Civil society can help to hold governments to account, but it often lacks resources and legal expertise. Communities tend to have little negotiating power: individuals are often not aware of their rights, do not know how to navigate legal procedures and lack the confidence, resources, information and social relations needed to exercise their legal rights. Co-optation of local elites by outside interests can further undermine the position of local stakeholders. In addition, age, gender, wealth, status and other factors shape differences in local interests, negotiating power and impacts.

As a result, opportunities are being missed. In Mozambique, for example, there is a vague legal requirement that investors “consult” local people before obtaining natural resource

⁷ R Mnookin and L Kornhauser, ‘Bargaining in the Shadow of the Law: The Case of Divorce’ (1979) 88 *Yale Law Journal* 950-997.

⁸ Thomas Wälde, ‘Renegotiating Acquired Rights in the Oil and Gas Industries: Industry and Political Cycles Meet the Rule of Law’ (2008) 1(1) *Journal of World Energy Law & Business* 55.

⁹ Following Stephen Golub, ‘Less Law and Reform, More Politics and Enforcement: A Civil Society Approach to Integrating Rights and Development’ in Alston, P. and Robinson, M. (eds) *Human Rights and Development: Towards Mutual Reinforcement* (2005) 297-324. For the author’s own work on this concept, see Lorenzo Cotula, *Legal Empowerment for Local Resource Control: Securing Local Resource Rights within Foreign Investment Projects in Africa* (2007)

<<http://www.iied.org/pubs/display.php?o=12542IIED&n=1&l=29&k=local%20resource%20control>> at 2 June 2009.

rights. Such consultation often consists of a brief meeting between investors and local elites at which community lands are exchanged for one-off compensation and vague and therefore unenforceable promises of jobs or facilities.¹⁰

3. Initial indications of the impact of legal empowerment on issues relating to African natural resources

It is too soon to assess the impact of Legal Tools on natural resource issues. Nevertheless, papers produced for a March 2008 workshop organized by IIED, FAO and the University of Ghana law faculty are a basis for optimism about the approach the programme is taking.¹¹ Although the progress described was not made by Legal Tools, nor did it specifically involve natural resources investment, the approaches of other organizations concerned with natural resources are examples of the kinds of activity and impact sought by Legal Tools.

One paper documented benefits for transhumant pastoralists through a paralegal initiative in a district of Mali launched by the Malian NGOs Sahel Eco and Eveil.¹² This increased the standing of pastoralists with local authorities, helped to defuse conflicts with farmers and improved the status and leadership roles of women paralegals.

Another paper discussed the use of law by indigenous communities in southern Cameroon to secure land rights.¹³ The customary land use rights of the communities were being ignored and access to natural resources was increasingly restricted, with negative effects on livelihoods as a result of the creation of national parks. In response, the Cameroonian NGO *Centre pour l'Environnement et le Développement* (CED) launched a programme that included:

- distributing materials on the law and legal rights;
- training community-based paralegals;
- providing global positioning systems (GPS) and training community members in their use to enable them to demarcate boundaries; and
- engaging new law graduates to work with the communities.

The program has produced favorable outcomes on at least two levels. First, the communities used legal assistance (i) to persuade neighboring groups to recognize their land rights and (ii) to obtain written ratification from local authorities — the first official recognition of the land rights of indigenous peoples in the Congo Basin. Such agreements could be a model for replication elsewhere.

Second, the program used its GPS mapping and advocacy by CED lawyers to persuade the World Bank to use its influence when national park managers resisted community claims for access to natural resources in protected areas. The World Bank used approval of a loan for the Chad–Cameroon pipeline as leverage, with the result that communities were allowed to pursue their livelihoods up to 5 km inside protected areas.

4. The Legal Tools programme – overview and approach

In the context outlined above, Legal Tools seeks to maximize local influence and benefits in natural resource investment.

¹⁰ Nhantumbo & Salomao (n 4).

¹¹ Most of the funding for the workshop was provided by FAO; Legal Tools provided complementary funding and supported the dissemination of results.

¹² Boubacar Ba, 'Paralegals As Agents of Legal Empowerment in the Bankass Area of Mali' in *Legal Empowerment In Practice: Using Legal Tools To Secure Land Rights In Africa* (2008).

¹³ Samuel Nguiffo and Robinson Djeukam, 'Using the Law As a Tool to Secure the Land Rights of Indigenous Communities in Southern Cameroon' in *Legal Empowerment In Practice: Using Legal Tools To Secure Land Rights In Africa* (2008).

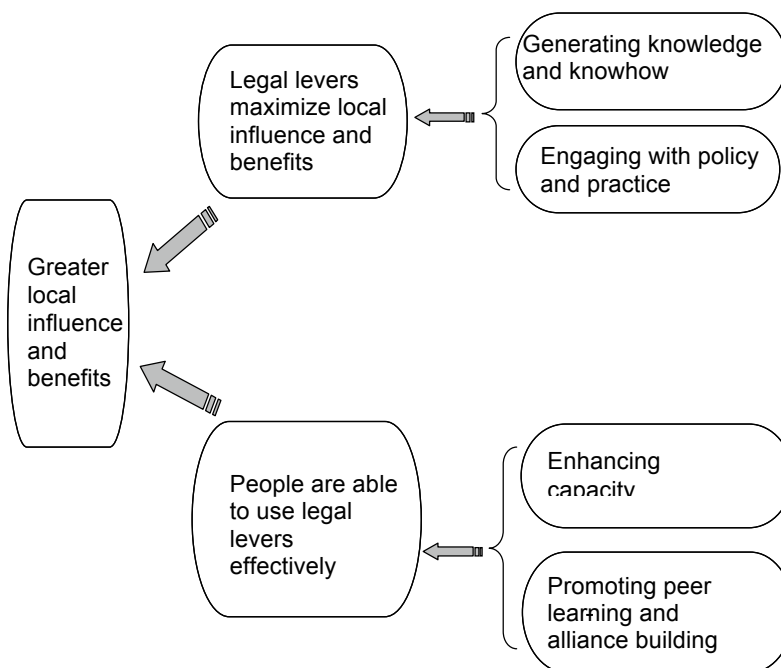
Its approach involves:

- “pushing the boundaries” of existing law and promoting reform of strategic levers;
- working at all levels to increase local influence and benefits;
- integrating law, politics, power relationships and capacity-building;
- finding ways to influence policy-making;
- using legal levers as the entry point and promoting cross-fertilization across sectors; and
- emphasizing innovation and learning rather than large-scale implementation.

The pilot phase of Legal Tools involves four activities:

- generating knowledge about trends and drivers in natural resource investment in Africa, and using legal levers to maximize local influence and benefits;
- enhancing capacity in the use of legal levers;
- sharing lessons from innovation; and
- engaging with policy and practice (see Figure 2).

Figure 2. Legal tools for citizen empowerment – change model



5. Generating knowledge and know-how

The research component of Legal Tools aims to provide a platform for more action-oriented work.

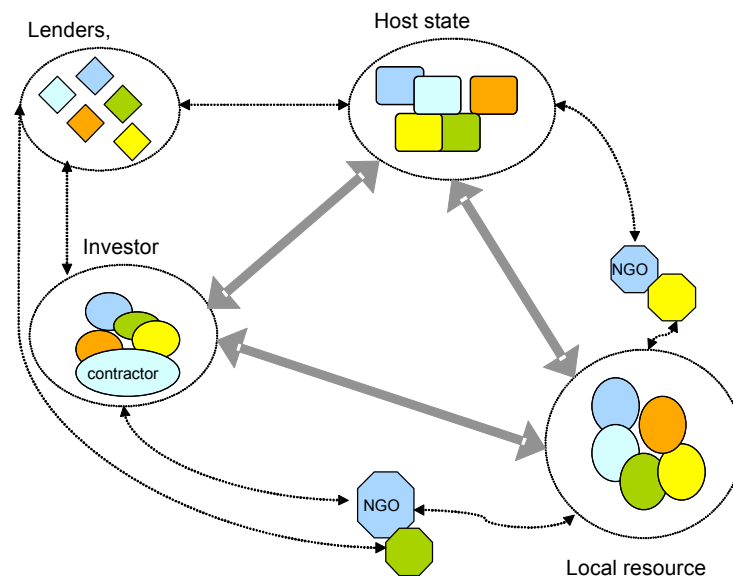
In terms of knowledge generation, research has focused on large-scale land acquisitions for agricultural investment for food or fuel in collaboration with FAO and the International Fund for Agricultural Development (IFAD). In 2008, FAO and IIED published a report

documenting trends and drivers in land acquisitions for biofuels¹⁴ that was widely covered in the media and prompted follow-up research in Mozambique¹⁵ and Tanzania¹⁶. FAO, IFAD and IIED (through Legal Tools) have conducted research on large-scale land acquisitions in Africa and analyzed trends, drivers, contractual and land-tenure arrangements, and impacts on local people in terms of access to land.

Legal Tools has also identified legal levers that can be used to increase local influence and benefits. It has, in particular, documented ways to “push the boundaries” of these levers through innovative implementation and by developing options for law reform that are published in reports, briefing notes and peer-reviewed publications. Examples include studies of innovative local arrangements in the core Legal Tools countries and thematic cross-country studies on optimum ways to use international human rights law to secure local resource rights.

Although the initial focus was on land rights, research revealed the importance of considering multiple levers and of engaging at the “upstream” levels where major decisions are taken. This work has generated insights into three key relationships between investors, governments and communities (see Figure 3).

Figure 3. Using legal levers to shape relationships



5.1 Relationships between governments and communities

Safeguards to protect local land rights from compulsory take-over can provide a legal defense or ‘lever’ against arbitrary dispossession. In Mali, Mozambique and Senegal most if not all land is held by the state. Inaccessible registration procedures make it difficult for rural people to acquire land ownership, even where such ownership is at least, in theory, allowed.¹⁷ Further, most people possess only use rights, not ownership rights. The entitlements and negotiating positions of local rights-holders are undermined by:

¹⁴ L Cotula et al, *Fuelling Exclusion? The Biofuels Boom and Poor People's Access to Land* (2008) see <<http://www.iied.org/pubs/display.php?o=12551IIED&n=8&l=252&c=land>> at 2 June 2009.

¹⁵ Nhantumbo & Salomao (n 4).

¹⁶ Emmanuel Sulle, ‘Biofuels, Land Access and Tenure, and Rural Livelihoods in Tanzania’, unpublished report (2009).

¹⁷ On Mali, see Moussa Djiré, *Land Registration in Mali – No Land Ownership for Farmers?* (2007) Issue Paper No. 144.

i) inadequate legal protection of land rights; ii) vaguely defined use requirements; iii) legislative gaps; iv) legal provisions based on the assumption that private investment is for public purposes; and v) compensation limited to loss of improvements such as crops and trees, but excluding loss of land.¹⁸

But there are legal approaches or 'hooks' that are not used to their full potential. The internationally recognized human right to food requires that land expropriations be offset by alternative assets to ensure that levels of food security are maintained.¹⁹ Freedom of information legislation can increase local influence in decision-making.²⁰ Legislation in Mali, Mozambique and Tanzania protects customary land rights and requires compensation and due process in cases of expropriation. In Senegal, where land management is devolved to local governments, the central Government can still allocate land to investors; clearly, more effective use could be made of local government powers. In these contexts the devil is in the detail, in that statements of principle must be backed by norms and processes, and in the implementation, without which the law exists only on paper.

5.2 Relationships between investors and communities

Effective partnerships between communities and investors may increase local influence and benefits, including financial transfers such as land lease schemes, community projects, and joint ventures involving collaboration in economic activities. Ghana's Social Responsibility Agreements (SRAs) in forestry, for example, regulate the transfer of up to 5 percent of royalties to community development projects. Ghanaian law makes SRAs a condition for granting timber rights, which provides useful leverage in negotiations between communities and investors. But SRAs involve a relatively small share of project revenues and do not offer local participation or capacity-building in forest-based business. Benefit capture by local elites, vague provisions and lack of monitoring capacity constrain implementation of SRAs.²¹ In Mozambique, a legal requirement that investors consult local people before obtaining resource rights usually makes little difference; but support from legal service organizations is leading to joint ventures in tourism whereby communities provide land and investors provide capital, skills and marketing.²²

The attitude of governments and investors is fundamental to developing effective partnerships; clear legal requirements are also needed. In Mali, some mining companies support community development projects near their sites, but the lack of legal requirements has undermined local negotiating power and created a breeding ground for mismanagement and benefit capture by community elites.²³

On the other hand, overly detailed regulation can reduce community benefits from FDI. In Ghana detailed rules cap benefits at 5 percent of royalties, whereas in Mozambique vague requirements for community consultation allow greater benefits for local people, for example by creating space for joint ventures with investors.

Power imbalances have a profound impact on negotiations. Legal service organizations can help communities to address such imbalances, for example by supporting collective action,

¹⁸ See Cotula (n 9) and Keita et al (n 6).

¹⁹ See Lorenzo Cotula (ed), *The Right to Food and Access to Natural Resources – Using Human Rights Arguments and Mechanisms to Improve Resource Access for the Rural Poor* (2008) <http://www.fao.org/righttofood/publi09/natural_resources_en.pdf> at 2 June 2009.

²⁰ Linda Siegele, 'Procedural Rights: Inclusion in Decision-Making Processes Relating to Land and Natural Resources' in Cotula, L. and Mathieu, P. (eds), *Legal Empowerment in Practice: Using Legal Tools to Secure Land Rights in Africa* (2008) 123–132.

²¹ Dominic M. Ayine, *Social Responsibility Agreements in Ghana's Forestry Sector* (2008) <<http://www.iied.org/pubs/display.php?o=12549IIED&n=1&l=5&k=ayine>> at 2 June 2009.

²² Simon Norfolk and Christopher Tanner, 'Improving Security for the Rural Poor: Mozambique Country Case Study' (2006) FAO LEP Working Paper No. 5.

²³ As highlighted by a recent embezzlement trial: *Ministère Public c. Samba Mariko, Chô Mariko et Sirakorontji Mariko*, Justice de Paix ACE de Bougouni, 26 June 2008.

facilitating access to information, and enhancing negotiating skills. Support is also needed to ensure that local leaders represent and are accountable to their communities; development agencies providing this support need business acumen and an understanding of private-sector concerns. Secure local land rights can also provide leverage in negotiations when there is a threat of uncompensated expropriation.

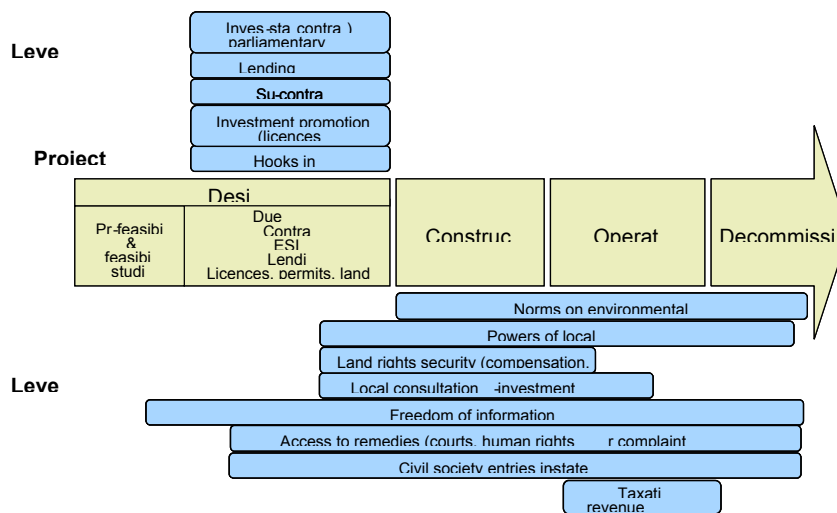
5.3 Contracts between governments and investors

These are usually negotiated behind closed doors. As a result, local input is limited and agreements may be made that are not in the public interest. Freedom of information legislation, as in Mali, and parliamentary approval of contracts, as in Ghana, are means of facilitating greater transparency, but impact to date has been limited. A fundamental rethinking of negotiation processes is needed.²⁴

A basic requirement is to ensure that the content of contracts between governments and investors is appropriate, because such contracts define social and environmental standards, determine the benefits for livelihoods and provide mechanisms for settling disputes; they may also regulate land acquisitions. Under so-called "stabilization clauses", governments can contractually commit themselves to compensating investors for losses caused by regulatory change; these commitments are motivated by concerns that arbitrary government action could undermine the investment. But if they are not properly designed, they may also constrain action to raise social and environmental standards. This is a major concern in view of the long duration of most investment projects and the poor social and environmental standards at their inception. It is better practice to limit the scope of stabilization clauses to arbitrary state action and exclude public-interest regulation.²⁵ And civil society involvement in arbitration between states and investors can increase public scrutiny and consideration of non-commercial interests.²⁶

Figure 4 shows the legal levers that can be used to increase local influence and benefits in relation to a hypothetical oil pipeline.

Figure 4. Legal levers to increase local influence and benefits (hypothetical oil pipeline)



²⁴ See D Ayine et al, 'Lifting the Lid on Foreign Investment Contracts: The Real Deal for Sustainable Development' (2006) Sustainable Markets Group Briefing Paper, <<http://www.iied.org/pubs/display.php?o=16007IIED&n=1&l=2&k=Lifting%20the%20Lid>> at 2 June 2009.

²⁵ For more developed reasoning on this, see Lorenzo Cotula, 'Reconciling Regulatory Stability and Evolution of Environmental Standards in Investment Contracts: Towards a Rethink of Stabilization Clauses' (2008) 1(2) *Journal of World Energy Law & Business*, 158-179.

The knowledge and skills component is where Legal Tools has made most progress: it has generated a body of knowledge, and some publications have attracted interest in the media and among practitioners and researchers. The work of Legal Tools on legal levers has shown the inadequacy of approaches to empowerment that rely on a single type of intervention. The conclusion is that legal empowerment in transnational contexts, like those characterizing investment projects, requires concerted action at different levels, from improving the security of local land rights to influencing the negotiation of international investment contracts.

6. Strengthening capacity

The other activities of the Legal Tools programme are less advanced than the knowledge and knowhow component, partly because they were initiated at a later stage with a view to benefiting from the results of Legal Tools research.

Lack of capacity at the local and national levels means that legal levers are not used to their full potential. To address this challenge, Legal Tools is developing replicable capacity-building tools to help communities, civil society and governments to make better use of legal levers to increase local influence and benefits in large-scale investment projects.

Capacity-building has centered on legal literacy training for communities affected by investment projects in Ghana (one session to date), Mali (four) and Senegal (two). Training ranges from legal literacy camps in Mali to short sessions on specific subjects for forest communities in Ghana. Topics include land rights, decentralization, benefit-sharing opportunities and other country-specific levers, and practical skills such as negotiating tactics. Although the programme is in its infancy, anecdotal evidence suggests that trained community members have acquired the skills and confidence to make their voices heard. A training participant from Mali said: "We now know that we are also sons of this country, and that we have rights to claim." Legal literacy training materials have been produced in Senegal, almost entirely in the form of comic-style books,²⁷ and are being finalized in Ghana²⁸ and tested in Mali.

Developing capacity-building tools and methodology is time-consuming. A particular challenge has been to repackage complex legal information in a format that can be understood in communities with high illiteracy rates. The use of visuals, comic-style books, photographs and participatory tools has proved effective, as has promoting debate among participants about fundamental questions such as "what is law?"

Effective monitoring and evaluation (M&E) is needed to document effects on: i) local capacity and legal awareness; ii) actual use of rights; and iii) impacts on local livelihoods, for example through better deals with investors. M&E makes it possible to reorient program activities when necessary and generates lessons for wider dissemination. A rigorous M&E system developed in collaboration with the London School of Economics will be implemented as Legal Tools is scaled up.

Investment in legal literacy training can be linked to short-term outcomes such as greater legal awareness, but a longer-term approach is required for the complex process of measuring impacts on people's lives. Change will require a critical mass of trained people and follow-up support, for example in negotiations with governments or investors. In Mozambique, for instance, Legal Tools has supported the emergence of representative

²⁶ Howard Mann, *The Final Decision in Methanex v. United States: Some New Wine in Some New Bottles* (2005) <www.iisd.org/pdf/2005/commentary_methanex.pdf> at 2 June 2009.

²⁷ IED Afrique, *Instruments Juridiques pour la Sécurisation des Droits Fonciers des Populations à la Base. Un Guide pour les Elus et les Populations Locales* (2008) <<http://www.iied.org/pubs/display.php?o=10559FIIED>> at 2 June 2009.

²⁸ CEPIL, *Handbook for Human Rights Paralegals in Forest Communities in Ghana* (forthcoming).

community-based organizations in Zavala district and is producing a guide on ways in which external supporters can assist local people in the implementation of community consultation processes.²⁹

Because social differentiation shapes relationships in communities and between communities and outside players, handling differences regarding issues such as who participates and how is a major challenge in terms of training, broader support and M&E.

Beyond building capacity, other conditions are needed to increase local influence and benefits in large-scale investment projects: governments must be able to negotiate contracts with investors that maximize local benefit, and parliaments, civil society and the media must be able to scrutinize them.

To enhance capacity at these levels, Legal Tools has developed a training program on investment contracts, treaties and arbitration.³⁰ In Ghana, CEPIL and IIED organized training on oil and gas contracts for the Government, parliamentarians, the media and civil society. Participants valued the knowledge acquired and appreciated the opportunity to come together, often for the first time, in a multi-stakeholder forum.

Generating impact requires work with the commercial lawyers advising governments and investors. Legal Tools is feeding insights from its work on investment contracts into specialist publications³¹ and into academic law courses such as that at the Dundee University Centre for Energy, Petroleum and Mining Law and Policy.

The capacity-building component has broken new ground, for example by working at multiple levels from local legal literacy to national and international specialist training. Teaching law through participatory approaches is also promising. But much remains to be done, and major challenges need to be tackled. For example, all Legal Tools partners are based in capital cities which makes it difficult to follow up training with regular support, especially where long distances and poor roads are constraints. Alliances with community-based organizations, local government bodies or agencies with local offices can help to address this issue, but they cannot provide continued engagement at the field level.

As a result, the enthusiasm generated in training has not yet translated into an organized critical mass of people who are able to use their rights in practice. Placing greater emphasis on community-level paralegals is emerging as a response to this challenge: there is significant convergence on this in the Legal Tools core countries despite the diversity of contexts and partners. But it must be borne in mind that even well trained paralegals need regular support and supervision.³²

This highlights the long timeframes and sustained levels of investment that are needed to develop sound training, tools and materials, build a critical mass of rights-bearers and hence improve livelihoods and governance. The capacity-building by Legal Tools must therefore be regarded as a first step in terms of timeframes and available resources.

7. Promoting learning and alliances; engaging with policy and practice

Legal Tools is not alone in developing ways to help disadvantaged groups to make better use of their legal rights. In many parts of Africa, legal service organizations — predominantly NGOs — are working innovatively with community-based paralegal

²⁹ Samanta Remane, *Guião do Processo de Consultas Comunitárias – Un Instrumento de Apoio aos Intervenientes no Processo de Consulta Comunitária* (forthcoming).

³⁰ Lorenzo Cotula, *Strengthening Citizens' Oversight of Foreign Investment: Investment Law and Sustainable Development* (2007).

³¹ See Cotula (n 22).

³² Vivek Maru, 'Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide' (2006) 31 *Yale Journal of International Law* 428–476.

programs, providing legal assistance in negotiations with governments or the private sector, and promoting strategic use of public-interest litigation.

Legal Tools facilitates exchanges of experience among these innovators. In March 2008, IIED, FAO and the University of Ghana law faculty conducted a workshop in Accra on securing local land rights that brought together 25 practitioners from 13 African countries. IIED, the Ford Foundation and CTV held a sub-regional meeting on environmental justice in Maputo with practitioners from southern and eastern Africa that covered issues such as securing land rights and establishing community/investor partnerships.

These events facilitated information sharing and bonding among the participants, many of whom felt energized by the exchanges and learned new ideas and methods. A participant in the Accra workshop observed: "...the experiences we shared gave me a new vision of working." Follow-up to these events has had mixed results, however.

The Accra workshop resulted in the publication of capacity-building tools and methods,³³ but maintaining momentum after the meetings has proved more difficult. A community of practice among workshop participants based on e-mail has not yet become operational: people are busy and it has been difficult to start exchanges. A step currently being explored involves extending the list of participants to junior staff: at the meetings, organizations were usually represented by their directors, who have little time to devote to project work and electronic fora. Workshop participants suggested more targeted exchange visits between legal services and community-based organizations from different countries as follow-up. Legal Tools will in future pay greater attention to communication channels such as these.

The fourth area of activity concerns promoting change in legal levers at the national and international levels. In 2008, IIED presented findings from work on investment contracts at international events such as the Organization of Economic Co-operation and Development (OECD) Investment Forum and a multi-stakeholder consultation on stabilization clauses and human rights convened by the International Finance Corporation (IFC) and the Special Representative of the United Nations Secretary-General on Business and Human Rights. Policy advocacy is also under way in the core countries: examples include a national workshop on community/investor partnerships and follow-up engagement in Ghana and a multi-stakeholder event on mining in Mali. Some of this capacity-building work also aims to change policy and practice, for example with regard to international training and specialist publications on investment contracts.

Of the four components of Legal Tools work, policy engagement is at the earliest stage, partly because effective advocacy requires the development of knowledge, capacity and partnerships to draw on. Early experience indicates that it is crucial to work at different levels from the local to the international; that alliances and concerted action create opportunities and increase leverage; and that commercial operators are prepared to listen if approached with balanced, evidence-based and commercially sound proposals for change.

8. Next steps

The issues addressed by Legal Tools are complex, and its goals are ambitious. In moving beyond the pilot stage, Legal Tools will continue to focus on legal levers such as land rights, community/investor partnerships and investor/state contracts, but it expects to shift emphasis progressively to enhancement of capacity, partnership building and engagement with policy. It must always be borne in mind that these issues cannot be tackled by isolated

³³ Lorenzo Cotula and Paul Mathieu (eds), *Legal Empowerment in Practice: Using Legal Tools to Secure Land Rights in Africa* (2008)
<<http://www.iied.org/pubs/display.php?o=12552IIED&n=1&l=4&k=legal%20empowerment%20in%20practice>>.

initiatives, and that alliances and dialogue are paramount. Work to develop such partnerships must be intensified if Legal Tools is to achieve its goals.