

Sustaining legal empowerment in initiatives to support local land rights

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Summary

Legal empowerment initiatives that strengthen land rights – and develop capacities and opportunities for the disadvantaged to exercise and enforce their rights – can help realign power asymmetries and contribute to the alleviation of poverty. The achievement of such positive outcomes depends, however, on the sustainability of the empowerment process, which in part depends on the sustainability of legal empowerment initiatives. The various components of such interventions – the design principles, delivery methods, providers of services, and funding models – impact the sustainability of the initiatives and the empowerment process itself. This paper, drawing on examples from the author's experience and the legal tools for land rights literature, explores these different components, presenting a possible conceptual framework for programme design. The paper concludes with recommendations for practitioners, donors and the research community on how to strengthen legal empowerment initiatives to ensure that citizens not only gain but retain the power to influence land-related decisions that affect their lives.

About the author

Robin Nielsen has 26 years of combined experience as a practicing lawyer and legal consultant supporting land and labour/employment rights. Her work in Asia, Africa and the Middle East uses the law and legal tools to strengthen land, natural resource, and labour rights of marginalised populations, establish effective local governance systems, and support pro-poor land use and development.



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1. Introduction

A growing number of land rights initiatives in lower-income countries include legal empowerment objectives.¹ The emphasis is well-placed: land rights and legal power can be a potent combination of assets, capable of increasing opportunities for local communities and marginalised people, improving livelihoods, and contributing to the alleviation of poverty. The achievement of such positive outcomes depends, however, on the continuation of the empowerment process. In part, this continuation depends on the ways in which initiatives are designed and implemented. This paper considers the factors that influence the sustainability of legal empowerment processes over the years needed for communities and disadvantaged people to create and exercise new power. The paper includes consideration of the principles, approaches, providers, and funding models that support the continuation of legal empowerment processes over time.

This paper contributes to the development of a conceptual framework that can help guide the design and implementation of sustainable legal empowerment initiatives. The paper does not, however, attempt a comprehensive analysis of issues regarding the sustainability of legal empowerment initiatives or even the processes of empowerment. The paper draws on relevant experience from Africa and Asia, where IIED's Legal Tools for Citizen Empowerment work has been concentrated.

The analysis begins in Section 2 with definitions of the foundational terms – empowerment, legal empowerment, and sustainability. Section 2 also introduces the relevance of legal empowerment to land rights. In Section 3, the paper identifies some general principles supporting sustainable empowerment processes, followed by a discussion of approaches (Section 4), choices of providers (Section 5), and financing models (Section 6). The paper concludes with recommendations for national and international-level practitioners, donors, and further research (Section 7).

1. See e.g., initiatives described in Cotula & Mathieu (2008) and Bruce *et al.* (2007).

2. Conceptualising legal empowerment for land rights

This section explores the three key concepts at the heart of this paper – empowerment, legal empowerment, and sustainability – and their relevance in the pursuit of land rights for poor communities.

Empowerment is the capacity of an individual or group to make effective choices and influence the decisions that affect their lives (Stern *et al.*, 2005). Empowerment can refer to both an outcome (a state of empowerment) and a process (the movement toward greater empowerment). As such, empowerment may be a development objective or a means by which other development objectives are achieved (Alsop *et al.*, 2006). In either case, empowerment initiatives are often described as involving the interaction of: (1) assets or resources (e.g., land rights, legal knowledge, self-confidence); (2) agency or transformation (i.e., an individual or group's use of their assets to exercise choice); and (3) an opportunity structure (i.e., the formal and informal institutions that shape human interaction and can promote or restrict the exercise of agency and achievement of desired outcomes).² Initiatives support the process of empowerment by improving the asset base that individuals and groups can draw on, supporting the exercise of agency, and addressing institutional barriers in order to provide people with greater opportunities to exercise their choices.³ The process continuously loops back on itself: a land right, for example, can be both an asset supporting the empowerment process and an objective of an empowerment initiative.

Legal empowerment. Despite a growing body of literature focused on legal empowerment,⁴ the concept remains slippery. Some ambiguity can be attributed to multiple origins of the concept, which emerged as a reaction to perceived limitations in access to justice initiatives, as a rights-based strategy for poverty alleviation, and as a legally-oriented subset of more general empowerment initiatives. Lingering uncertainty results from whether the term 'legal' describes the nature of the empowerment process (the means) or the nature of the power achieved (the end). For Cotula (2008) and many others, the term 'legal' pertains to the nature of the tools used to 'tackle power asymmetries and help disadvantaged groups have greater control over decisions and processes that affect their lives.'⁵ Legal empowerment initiatives are broadly inclusive, encompassing initiatives supporting legal reform, those strengthening the abilities of citizens to exercise their choices, and those developing opportunity structures in order that citizens can seize opportunities offered by existing laws.⁶

2. See for example Sharma (2010); Alsop *et al.* (2006); Narayan (ed.) (2002); Narayan (ed.) (2005); Singh & Titi (1995).

3. Pick & Sirkin (2010).

4. See Golub (2009); Golub & McQuay (2001); Bruce *et al.* (2007); Cotula (2008); Mathieu (2008).

5. Cotula (2008: 15), building on Golub & McQuay (2001) and Golub (2005).

6. *Ibid.*

Bruce *et al.* (2007) conclude that a definition in which 'legal' describes the type of power achieved is most meaningful:

Legal empowerment of the poor occurs when the poor, their supporters, or governments – employing legal and other means – create rights, capacities, and/or opportunities for the poor that give them new power to use the law and legal tools to escape poverty and marginalization. (p. 29)

This definition recognises that the empowerment process usually requires a mix of activities, only some of which are legal in nature; the process is legal empowerment if the ultimate objective – the new power attained – is legal in nature (Bruce *et al.*, 2007). For example, an initiative supporting community land delimitation and recording may include activities that build community capacity to engage in collective action, negotiate with third parties, and assert their right to public services. The legal empowerment objective is to support the community's capability to use its recorded land rights and experience gained from the land delimitation and recording process to negotiate with prospective investors and assert their rights to other public services from the government, such as health programmes.

In the end, the two definitional approaches to legal empowerment share much. Both definitions recognise the multi-faceted nature of legal empowerment initiatives and the need for related and complementary activities that are not legal. Most important, under either definition, the ultimate objective is the same: initiatives supporting the legal empowerment of the poor are concerned with addressing asymmetries of power. Through the empowerment process, people obtain new power to address poverty and marginalisation.⁷

Sustainability. Simply put, sustainability is the capacity of something to endure over time (Adger & Jordan, 2009). In a project context, sustainability is the long-term availability of the means required to achieve long-term goals (Ravichandran, 2007).⁸ The quality of sustainability can be considered with relation to all the various elements of legal empowerment initiatives (e.g., providers, funding, delivery methods). Some authors have noted the risks and limitations in focusing on the sustainability of the institutions and financing arrangements supporting legal empowerment, as opposed to the sustainability of impact.⁹ This paper considers the

7. *Ibid.*; Cousins (2009); Bruce *et al.* (2007). Like Cotula, Cousins focuses on the role legal empowerment plays in a broader political struggle. Cousins calls for legal empowerment initiatives to be 'linked strongly to civic activism (i.e. politics) in order to address imbalances of power within the realm of the formal economy, which is the primary source of substantive inequality' (p. 906).

8. See also Kramer & Miguel (2008) and Peattie (2011).

9. As Golub (2009) notes, focusing on the sustainability of institutions and financing supporting legal empowerment distracts from the ultimate goal of impact and is, to some extent, misplaced. Assumptions regarding the sustainability of government institutions' reforms and programmes compared to NGOs contributed in part to the preference of many rule of law programmes for projects narrowly focused on state institutions. Golub argues that the assumption regarding the greater sustainability of state institutions is erroneous, but that in any event, legal empowerment initiatives supporting the poor should not be designed with an expectation that the state or NGOs will at some future point assume primary responsibility for supporting access to legal services for the poor. To make such an assumption would be to require institutions and organisations in lower-income countries to meet a standard not applied in industrialised countries, where legal services for the poor rely in large measure on support from foundations, charitable donations, and government resources that are not as available in low income societies.

elements of initiatives within the framework of the empowerment process and as one area within the broader 'legal empowerment in practice' experience that practitioners in different countries and regions are documenting.¹⁰ This paper's concentration on the elements supporting the process may, in turn, help inform analysis of impact as experience with legal empowerment initiatives supporting land rights continues to expand and mature.

Legal empowerment for securing rights to land and natural resources.¹¹ Millions of people in the world's lower-income countries live in a state of economic and social deprivation. Particularly in rural areas, millions suffer from lack of assets, physical isolation, illiteracy, and poor health. Land is often their most valuable asset. Land can provide food, shelter, and status. Land can be a source of income and wealth generation and a means for protecting against shocks. Using Alsop *et al.* (2006)'s empowerment terminology, assuming a favourable opportunity structure (e.g., formal and informal rules, markets, public services, value systems), land is a material asset that individuals and groups can use to make meaningful choices and improve their livelihoods.

In many lower-income countries, however, rural communities and the disadvantaged face multiple challenges to this exercise of agency. Rural communities and the disadvantaged often lack the knowledge, capacity, and institutional support to protect their rights against more powerful interests – including, in some cases, their own governments. The barriers commonly faced are numerous and wide-ranging, including: insecure rights to land; entrenched social norms; limited access to education; lack of experience in accessing public support systems; and lack of confidence to assert legal rights. The legal system governing access to land and natural resources and tenure security can exacerbate rather than assist rural communities. Natural resource tenure is often shaped by both statutory and customary law, leading to overlapping responsibilities (or gaps in governance) between the relevant authorities. Laws are often complex, conflicting, poorly implemented, and challenging to enforce. In addition to these already significant challenges, the land and natural resources on which most rural residents depend for their livelihoods and that have the potential to support empowerment are under increasing pressure from population growth, development of large-scale agribusiness, conflict, climate change, and the exploitation of natural resources.

Legal empowerment initiatives are designed to support the rights of rural communities and the disadvantaged and assist them in addressing the barriers that limit their ability to exercise their rights. The particular circumstances faced by communities and their interests dictate the nature of legal empowerment initiatives. Possible interventions and activities are as numerous and diverse as the interests of a community and barriers faced. Initiatives can range from helping building local

10. See <http://www.iied.org/legal-tools-for-citizen-empowerment>

11. Some of the sources consulted regarding contemporary pressures on rural land include the series of reports produced in 2010-2011 by the International Land Coalition's Commercial Pressures on Land Initiative, available at <http://www.landcoalition.org/global-initiatives/commercial-pressures-land/commercial-pressures-land-portal>; Cotula *et al.* (2009), and World Bank (2010).

capacity for collective action, to assisting in documenting customary land tenure, to supporting community negotiations with third parties for land development.

The process of empowerment is, however, complex, and the design and implementation of successful legal empowerment initiatives equally complex. As with other types of development efforts, despite best intentions, undesirable consequences can occur. For example, land-related interventions often increase the value of land and care must be taken to ensure that all members of communities are able to participate and benefit (Knight *et al.*, 2012). As years of research on women's land rights have confirmed, without proactive and dogged efforts to ensure the meaningful involvement of women, the benefits of initiatives are often vulnerable to elite capture (World Bank, 2005). The balance of the paper considers how initiatives can be designed and funded to help sustain the empowerment process over the long term while protecting against undesirable outcomes.

3. Programme design principles for sustainable empowerment processes

The experience of legal empowerment initiatives suggests that several general principles of programme design can help support the sustainability of the empowerment process. The process of empowerment is more likely to endure if initiatives: (1) are controlled by the intended beneficiaries and reflect their changing needs and priorities over time; (2) have a broad programmatic base; and (3) provide intended beneficiaries with concrete benefits.

3.1 Need-based and client-driven

Legal empowerment initiatives distinguish themselves from more traditional access to justice projects by their focus on marginalised populations and the active engagement of those populations in project design and implementation (Golub, 2004). That bottom-up approach is an essential factor in the sustainability of empowerment processes. Comparative studies from multiple countries and legal environments conclude that legal services programmes are most sustainable where the services are tailored to the identified needs of the clients, and the clients direct the provision of services (Zemans & Thomas, 1999; Hughes, 2011).¹²

Several long-term legal services programmes have incorporated this need-based and client-driven principle in their designs. In Sierra Leone, the non-governmental organisation (NGO) Timap for Justice created Community Oversight Boards that help identify local legal needs, ensure that the NGO's community-based paralegals address those priorities, and hold the paralegals accountable to the communities for the delivery of appropriate services (Koroma, 2008; Dale, 2009). Likewise, the Community Legal Field Workers project in Cameroon specifically trains new lawyers to serve local communities and act in the communities' interest (Nguiffo & Djeukam, 2008). Both of these programmes have been in existence for more than a decade and over time have made structural adjustments to their programmes to be more responsive to community needs. Anecdotal evidence collected during an evaluation of the Timap programme describes positive legal empowerment outcomes: community members report that the paralegal services improved their ability to enforce their rights and provided them with experience asserting legal claims. Through their experience, community members gained the knowledge and confidence to pursue other legal rights and additional issues of importance to their families and communities (Dale, 2009).

12. The need-based and client-directed quality of legal empowerment initiatives is consistent with traditional attorney-client relationships in many western countries. For example, the Model Rules of Professional Responsibility governing US lawyers mandate that the lawyer abide by the client's decisions regarding objectives of the representation and consult with the client regarding the means by which the lawyer shall pursue the client's desired outcomes. Rule 1.2 Scope Of Representation And Allocation Of Authority Between Client And Lawyer.

3.2 Broad-based and integrated

Initiatives that are designed with recognition of the complexity of rural livelihoods and the interconnectedness of the economic, social and political spheres in which rural people operate are more likely to sustain the process of empowerment over time. Some of the most durable initiatives are those that have been embedded within broader development approaches or linked to other programmes (Golub, 2009). The experience supporting community efforts to formalise their land rights in Liberia, Mozambique and Uganda are an excellent example; the conclusions drawn from significant and diverse experience highlight the interconnectedness of the land rights recording activity with more general conflict resolution, intra-community governance, and sustainable natural resource management (Knight *et al.*, 2012).

Particularly in societies where initiatives supporting the land rights of communities and disadvantaged individuals threaten entrenched interests, practitioners may be able to accomplish land rights-related legal empowerment objectives more easily by proceeding through larger projects (see box).

In Angola, initiatives designed by USAID and FAO to formalise the land rights of rural communities have suffered on occasion from lack of political will (ARD, 2008b). However, in the same political environment, as part of projects supporting agricultural production and marketing of commercial crops, the Cooperative League of America (CLUSA) has assisted some farmers in formalising their land rights (CLUSA, 2009; ARD, 2009). CLUSA's broader enterprise development objectives and established organisation create a structure through which land rights objectives (i.e., strengthened tenure security) could be accomplished despite a challenging political environment. Through CLUSA's broader agriculture programme, the farmers' process of empowerment could be sustained over time.

Embedding empowerment processes within a larger programmatic structure can also provide a degree of risk reduction. Engaging in activities that challenge existing power structures is risky business and asserting and defending land rights against more powerful interests often requires large measures of confidence and courage (Cotula & Mathieu, 2008). Housing empowerment processes in larger development projects or creating linkages, partnerships, and other types of collaborations can help de-emphasise land rights-related activities and provide communities with ongoing, land-related support that encourages continuation of the empowerment process.

3.3 Concrete benefits

Passive empowerment activities, such as those that focus solely on legal reforms or the acquisition of knowledge, tend not to change behaviour (Pick & Sirkin, 2010). Legal literacy programmes, for example, may build community awareness of a particular law, but absent a method of experiencing the abstract concept of legal rights through a benefit or tangible effect, the process of empowerment may be truncated.

For example, simply introducing the concept of marital property is unlikely, in itself, to assist married couples in imagining the benefits of joint ownership of certain assets, particularly where contrary practices are deeply ingrained in the society. However, where the concepts of joint and individual titling are introduced in connection with new housing benefits or the development of women's home-based business enterprises, as the local NGO, Samarasa, did in the Indian state of Karnataka, married couples have a context for understanding legal rights and the impact of selecting joint or individual ownership (ICRW, 2006). Grounding awareness-building in processes that include the provision of material benefits in addition to information builds the capacity of people to understand abstract concepts and apply that understanding to new situations, sustaining the process of empowerment.

4. Programme approaches for sustainable legal empowerment processes

Legal empowerment initiatives vary substantially in scale and duration (e.g. a one-off tribunal, training of paralegals over several years, or staffing a legal clinic). They can also be rooted in one locality or rolled out nationally. However, the sustainability of the process of empowerment often depends less on the scale of the initiatives and more on the approaches used. Experience with empowerment initiatives suggests that three particular approaches can help sustain the process, those that: (1) build communities of interest; (2) support collective action; and (3) develop and mobilise local knowledge and capacity (Sharma, 2010; Pick & Sirkin, 2010).

4.1 Build communities of interest

Supporting the ability of people to work together and organise themselves around common interests can help sustain the process of empowerment. When operating individually, remote communities and disadvantaged individuals may not have the capacity to overcome social and economic barriers restricting the exercise of their legal rights and effective choices. A woman whose land is threatened with expropriation may receive valuable advice from a solo practitioner, but she may have limited social resources to support an action asserting her right to retain her land or obtain adequate compensation. The solo practitioner may not have the interest, resources, or orientation necessary to undertake legal action on behalf of the woman. In contrast, a legal clinic can provide a structure for the development of a community of interest around shared issues like land expropriation, gaining advantages for their clients. Clinics can use their proximity to communities and knowledge of local issues to help individuals facing similar problems form groups that allow them to benefit from their common experience and shared priorities (Zemans & Thomas, 1999).

In addition, participation in communities of interest can provide disempowered individuals with critical psychological support, allow for pooling of resources, and create forums for learning (Sharma, 2010). As such, communities of interest are a method of creating a base of power to confront barriers to opportunity and challenge existing sources of rural power (Harper, 2011). In some cases, communities of interest, such as natural resource user groups and savings groups, may already exist and practitioners can help members build capacity specific to legal empowerment initiatives.

4.2 Support collective action

One of the promising conclusions of the International Development Law Organisation (IDLO)'s extensive research into the operations of customary justice systems is that the disempowered can successfully challenge societal power bases and powerful agents, especially when acting collectively (Harper, 2011). Communities of interest can create the organisational foundation for disadvantaged people to take such collective action (Narayan, 2005). Activities such as the introduction or refinement of communication techniques that support social mobilisation can be instrumental in continuing the process of achieving new power. As an example, the Senegal-based NGO Tostan has supported women's use of RapidForum, an SMS-based discussion group. Women's groups use the mobile phone-based technology to build literacy skills, facilitate the transmittal of information about community issues, and mobilise residents to collective action (Tostan, 2010). In Uganda, the Uganda Land Alliance (ULA) is a consortium that gives its individual members a forum through which to develop consensus options on land issues affecting marginalised populations. The alliance gives even the smallest grassroots NGOs a platform from which they can provide input into processes such as the development of the Land Policy (ULA, 2011).

4.3 Develop local knowledge and capacity

Some approaches provide for the continuation of the process of empowerment by their very structure. Knowledge acquired through long-term, participatory processes is most likely to be internalised within individuals and communities and thus more likely to endure (Pick & Sirkin, 2010). Community-based paralegal programmes, law school clinical programmes, and legal internships and apprenticeships can deliver legal services to disadvantaged individuals and communities while simultaneously building local capacity to serve local interests over the long term.

Community-based paralegal programmes have particular potential to serve the needs of communities in a locally relevant manner while also increasing the capacity of communities to handle legal issues over the long term (Mennen, 2010). Training community members to serve the legal needs of their communities helps ensure that legal empowerment initiatives reflect the community priorities within the local social and political context. More than civil society organisations (CSOs) or local officials, community members tend to understand the customary laws and norms, know sources of power and conditions of marginalisation, and can identify productive entry points for initiatives (Hughes, 2011). In a three-country community land rights formalisation project, paralegal support was often more effective than full-service legal support in helping communities accomplish their goals (Knight *et al.*, 2012).

Training community members in the law and legal processes and procedures is a programmatic method of internalising legal knowledge within the community and continuing the process of empowerment. Projects that train community members as

mediators, as in Papua New Guinea (Johnstone, 2011), or as land rights paralegals as in Mali (Ba, 2008), Philippines (Rebuta *et al.*, 2012), or Liberia (Knight *et al.*, 2012), can help develop and retain the learning and experience within the community. Paralegals who know how to find, read, understand, and apply a land law are able to apply those skills to other laws. Paralegals who develop research, fact-finding, and negotiation skills can support a multitude of community endeavours over time, such as helping residents apply for social programmes, establish business enterprises, and form cooperatives (Harper, 2011).

Where complex legal skills are required or paralegals lack necessary authority, they can be supported by lawyers. In Cameroon, the Centre for Environment and Development (CED) and the Rainforest Foundation partnered in the development of the Community Legal Fieldworkers project, which trains recent law graduates in forest law, laws supporting the rights of indigenous people, and methods of supporting the legal rights of local communities. The new lawyers support and extend the work of paralegals and are themselves supported by more senior lawyers (Nguiffo and Djeukam, 2008).

Other programmes focus primarily on building the capacity of lawyers to serve the interests of local communities and the disadvantaged. University poverty law programmes provide law students with clinical experience working with and for the interests of the disadvantaged, and mandatory apprenticeship and internship programmes can be a relatively low-cost method of delivering services to underserved populations (McCutcheon, 2000).¹³ Such programmes require development of supportive regulatory frameworks and active engagement by the legal community, but the rewards can be substantial. As a result of their experiences in clinical courses and apprenticeship programmes, legal professionals often make long-term commitments to work with the disadvantaged, especially in countries that have established law schools and a diversity of employment options for new attorneys with an interest in public service. Those who go on to other work environments are more likely to carry a pro-poor perspective with them, creating a broader support base for the rights of the disadvantaged (McQuoid-Mason, 2009; Golub, 2004).¹⁴

13. Some law school programmes provide specialised advice and representation on land issues. For example, the Campus Law Clinic at the University of Natal-Durban represents clients before the Land Claims Court, in addition to bringing litigation before the Constitutional Court, appellate tribunals, and law reform commission (SAFLI, 2011; Golub, 2004). The Clinic also supports the efforts of small NGOs, such as the Association for Rural Advancement, which provides training on land rights issues in remote areas (AFRA, 2004).

14. University programmes may also offer another source of legal services: pro bono work by law professors who are licensed to practice in the relevant jurisdiction.

5. Institutional arrangements for sustainable empowerment processes

Providers engaged in legal empowerment initiatives include state institutions like land administration offices and ministries of justice, all sizes of NGOs and NGO consortiums and networks, private lawyers staffing neighbourhood clinics on a pro bono basis, and public interest law firms. Over the course of a legal empowerment initiative, several different entities may provide different activities: providers may change with the need and priorities of local communities and individuals, the ebb and flow of various project opportunities, and the local social and political context. With each arrangement bringing different benefits and opportunities and weaknesses and limitations, flexibility in institutional arrangements can be a critical factor in the sustainability of empowerment processes.

5.1 State and customary authorities

Legal empowerment initiatives managed by the governments of developing countries are often components of larger development projects and funded by large donors as part of multi-sector programmes. In such circumstances, there are some risks that the programmes may not always reflect the needs or priorities of local communities and disadvantaged individuals and may lack the relevance critical to sustainability of the empowerment process. Equally, political will necessary to the success of the initiative may be limited or absent, leaving the empowerment process vulnerable to abandonment at the end of donor engagement (Golub, 2009).

In certain contexts, however, initiatives driven by state and customary authorities can offer distinct advantages. Mozambique's Center for Juridical and Judicial Training, which was created within the Ministry of Justice, promotes legal empowerment activities across several different sectors: the Center trains paralegals, local land officials, police, and judges in the application and enforcement of the land law to help communities assert and defend their rights (Tanner, 2008). Like many government empowerment and land programmes, the Center benefited in its design and implementation from the long-standing and significant support of civil society and international organisations (in this case, primarily FAO). However, the locus within the central government gives the activities a legitimacy and authority that civil society operating alone can lack and the institutional structure to build capacity and awareness within and across government institutions. Assuming continued political will, the combination of the authority of the Ministry of Justice and the multi-sector approach will allow the empowerment process to proceed through a number of different agencies and local actors.

In India, some state governments have needed no external encouragement to lead long-term efforts empowering some of its poorest farmers by strengthening their

land rights. In West Bengal, sharecroppers (known as bargadars) had a variety of protections under the formal law, but the law was unenforced and landowners had almost unfettered ability to evict bargadars – power they used to impose draconian terms on the bargadars. In 1978, the government launched an intensive village-level programme that recorded the names of bargadars and educated the bargadars and landowners about their legal rights. Out from under the threat of eviction and with locally recognised and enforceable tenure security, bargadars used their bargaining power to force owners to enter into fair sharecropping arrangements. Twenty years after the state initiated the programme, a significant percentage of bargadars had achieved sufficient economic and social status to negotiate with landowners for the purchase of barga land (Nielsen & Hanstad, 2004).

To some extent, India (and particularly the state of West Bengal while under a communist government) is unique in its ability to implement a large-scale land programme to support the rights of poor farmers. Because land rights are a source of power, sustained political commitment as well as capacities at all levels is critical to reform, and even in India changes in government institutions threaten the gains made. In Angola, for example, despite success with a pilot project to formalise rights to land, subsequent changes in provincial level personnel in key government positions was one of the factors preventing project replication, at least in the short term (ARD, 2008a). Thus, while the support of the government or traditional authorities for empowerment initiatives can result in durable empowerment processes, risks remain. Civil society and project sponsors have important roles in ensuring that the design and implementation of programmes support legal empowerment objectives and the process of empowerment continues over time.

5.2 Civil society-led initiatives

In many lower-income countries, the state may not be best placed to be a primary driver in initiatives aimed at strengthening the land rights of local communities. Government policy may be actively adverse to the interests of the disadvantaged, or may simply be unformed and easily manipulated by elite interests. State institutions may be crippled by lack of capacity or corruption. In these environments, CSOs can play a critical role in supporting processes of legal empowerment over the long term (Golub, 2009).

CSOs in general are neither constrained by government bureaucracy nor enslaved by the need to demonstrate profits. This puts them in a position to create and adapt programmes to serve the needs and priorities of local communities. CSOs can put staff on the ground in remote places for extended periods of time, and unlike state providers, they can survive coups and regime changes. In the Makira Forest project in Madagascar, the Wildlife Conservation Society and local partners devoted more than ten years to working with the government and local communities to map natural resources, develop zones of land use, strengthen capacity within the local government and communities to manage the natural resources, and negotiate

contracts for benefit-sharing (WCS, 2008). Leadership programmes and the development of new and inclusive governance arrangements for securing land and resource access are important capacity-building roles for CSOs to support long-term legal empowerment. Such programmes can benefit from a staged process; the Humbo Project in Ethiopia¹⁵ is designed to transfer project management and responsibility for sales of carbon credits from the lead international NGO to a new community-owned Forest Cooperatives Union in 2013 (Humbo, 2009).

NGOs in particular often have a good awareness of the range of activities and development programmes in an area, and through collaborations and alliances can link legal services with other complementary programmes extending and deepening the process of empowerment. Namibia's Legal Assistance Centre (LAC), for example, offers legal advice to support rural community efforts to register conservancies and links with other NGOs that provide long-term support for community development of conservation and management plans (LAC, 2012).

CSOs often have their own constraints imposed by mission statements and donors, and they may suffer from limitations on capacity and expertise. Many lack the necessary financial security to develop long-term strategic planning essential for legal empowerment initiatives. Some CSOs can also face challenges of fair representation or elite capture of resources. Also, the political nature of asserting land rights can lead some local organisations to shy away from promoting more direct or confrontational approaches for fear of reprisal. For example, the government has accused Cambodian CSOs of 'inciting' protest and has threatened them with closure (ABC News, 2011). Creating partnerships with sources of local expertise, including other CSOs such as universities and private enterprise, can extend the capacity of weaker or less mature CSOs. Similarly, funding systems like basket funds (discussed in section 6.3) encourage the service providers to create networks and affiliations that can support long-term CSO-driven legal empowerment processes (Irish Aid, 2010).

5.3 Private entities

Private entities such as professional services firms and corporations provide a significant source of technical support for legal empowerment initiatives in some countries. Historically, private lawyers working on a pro bono or reduced fee basis have been responsible for some of the most effective public interest litigation and legal reforms in countries like South Africa (McQuoid-Mason, 2009). The engagement of established private professionals can give legitimacy to the rights of the disadvantaged and can raise the profile of local communities in dealings with government agencies, courts, and adversarial parties (Dias & Welch, 2009).

15. Humbo Community Managed Natural Regeneration Project in the Southern Nations, Nationalities and People's Region (SNNPR) of Ethiopia.

However, wholesale reliance on legal and other private professionals to sustain the process of empowerment relating to land rights may be misplaced. First, private entities, sensitive to the interests of their clients and shareholders, are often unwilling to engage in land cases. The South African firm of Bowman Gilfillan, for example, makes a significant commitment to public service, requiring all lawyers to provide 50 hours of pro bono service a year, sponsoring two lawyers in the public defender's office, and staffing legal clinics. However, the firm does not generally provide pro bono services relating to land rights (Bowman, 2011). Public interest firms may have more freedom to take on sensitive issues but require internal or external mechanisms, such as commitment to a percentage of high-value work or fee-shifting rules, to supply sufficient financial support. Second, most of the pro bono services offered by private practitioners are individual efforts that tend to be less effective in promoting the collective rights of the disadvantaged (Goriely, 1999), which may be important for sustaining the impact of the services. Third, private professionals operating under pro bono or reduced fee arrangements often have multiple demands on their time and more limited supervision and oversight than other service provider arrangements. Despite their good intentions, in some cases the effectiveness of private professionals cannot always be guaranteed (Torres *et al.*, 2003). For all these reasons, private entities operating alone may be best suited to provide targeted technical expertise rather than ongoing support for an empowerment process.

5.4 Public-private partnerships

Public-private partnerships are increasingly common structures for various types of land-based investments that can include components for the legal empowerment of rural communities. 'Blended value investments' offer investors specific opportunities to undertake and support projects that include desirable components, such as community development and environmental conservation, in exchange for a more modest profit potential (Nelson, 2006). If the investments are conceived with a pro-community objective and are well designed and managed, they can be productive platforms for legal empowerment initiatives, and may be more self-sustaining financially.

Private entities can, of course, fail to recognise the rights of communities or give only lip service to principles of community participation. Even well-intentioned investors can be misled by governments eager for investment, pressured by the need for short-term profits, and defeated by the significant amount of time and resources required to work with communities as true partners. CSOs experienced in community development and legal empowerment initiatives can provide valuable guidance, and the imposition of international standards and use of land tenure assessment tools may help guide corporate behaviour.¹⁶

16. See for example FAO (2012).

6. Financial structures

The process of empowerment takes time, and legal empowerment initiatives require long-term strategies and a plan for financial support. Comparative studies of legal services programmes across a number of countries find that the vast majority of successful programmes supporting the legal rights of the disadvantaged have protected financial structures; stable and secure funding gives providers a basis on which to design the type of long-term strategies required for legal empowerment (Zemans & Thomas, 1999).

6.1 Dedicated funding

The lack of consistent, predictable financial support is one of the most commonly cited barriers to the development of legal empowerment initiatives. Funding for state programmes that stretch beyond budget cycles is always vulnerable, and large donor-financed programmes that provide secure funding bases may require providers to commit to activities and work plans that do not allow for the flexibility necessary to support the process of legal empowerment over time.¹⁷ In some countries, well-established legal services NGOs, such as Cambodia's Community Legal Education Center and Botswana's Centre for Human Rights, have donors that supply core operational funding on a long-term basis through trusts and endowments. The financial security gives the NGOs the freedom to develop specific areas of expertise that respond to local conditions.¹⁸ Namibia's Legal Assistance Centre has developed a multi-faceted expertise in land work over the last decades, in part due to the stability of the investments of several large donors. The Centre partners with smaller NGOs and CSOs, using its position and reputation to build their capacity (LAC, 2012). Where such stable support has not been provided, NGOs can be engaged in a near constant struggle for funding that distracts from and ultimately limits their programmatic choices (Ravichandran, 2007).

6.2 Pro bono and subsidised programmes

The efforts of individual practitioners and firms are significant in some countries but often lack relation to an overarching strategy. Such efforts are, therefore, of more limited value to the process of empowerment and unlikely to meet the wider needs of wider marginalised populations (Goriely, 1999) and tackle systemic drivers of poverty. Even in countries with vibrant state-funded institutions and mechanisms

17. The World Bank's Justice for the Poor programme may be one exception (see e.g., Sumner & Zurstrassen, 2011), although its thematic and regional reach is still relatively limited.

18. For example, in South Africa, trusts established in foreign countries support the Legal Resources Foundation. The country's Association of Legal Aid Institutions (AULAI) operates on an endowment from the Ford Foundation and receives support from the interest from the mandatory trust accounts maintained by private lawyers administered by the Attorneys Fidelity Fund (McQuoid-Mason, 2009).

such as mandatory apprenticeships and fee-shifting and contingency fee arrangements that support the services of public interest legal services, the demand for legal and related services exceeds supply (Blankenburg, 1999).

The need is perhaps most acute for legal empowerment initiatives because they are so diverse and context specific that they lack some of the mechanisms for funding available to those providing for more general justice-sector needs, such as criminal representation. Moreover, the political sensitivity of land issues can cause hesitancy even among large, well-established, and committed entities. For all these reasons, the provision of funding for legal empowerment initiatives supporting the land rights of the disadvantaged deserves special attention.

6.3 Basket funds

In countries where land work is less developed or CSOs are still maturing, a basket fund can help support a national strategy for legal empowerment while nurturing the development of a variety of local service providers (Irish Aid, 2010). Basket funds are a financial tool that allows donors to pool their resources in support of a sector or shared objective. Basket funds can be used to fund government programmes, programmes operated by CSOs, or both. Most basket funds are organised with established goals and financing terms, with a donor or third party serving as manager (Radelet & Levine, 2008).

Basket funds allow donors to leverage limited financial and human resources and support a collaborative approach to funding. A fund can establish an objective and invite potential service providers to submit proposals and compete for support. In that way, a basket fund can increase the accountability of providers, reduce duplication of effort, raise performance levels, and help ensure efficient and cost-effective service (Birdsall, 2008). Basket funds can also help donors obtain an overall picture of the sector. For example, underutilised funds may evidence a previously unrecognised gap in local capacity. Managers of basket funds can respond by retooling their funding strategy to strengthen the capacity of existing providers or develop new ones.

In 2004, Denmark, Austria, Ireland, Netherlands and Norway (replaced by Sweden in 2007) set up the legal aid basket fund as an interim funding arrangement for CSOs providing legal aid in Uganda. The basket fund was designed to improve access to justice for the disadvantaged through the development of innovative, affordable models for legal aid delivery in the areas of criminal law, land, and family justice. The fund was managed by the Donor Group, which makes policy governing the fund and approves all plans, and formed an Advisory Group consisting of various stakeholders and development partners who gave the Donor Group advice regarding strategic direction and priorities (Rukare, 2006). A recent evaluation of the fund found it to be a cost-effective way of reaching an under-served population by supporting a paralegal advisory service, about two dozen small-scale CSO legal services providers, a justice centre pilot project, and various pro bono services pilot schemes. The fund also supported the creation of a regulatory framework for legal aid service providers and the development of a National Legal Aid Policy (MFAD, 2011).

Basket funds can also target a particular initiative. In Mozambique, despite the enactment of a progressive land law, local communities have been slow to benefit because their community land has not been delimited, a process that gives existing community land rights visibility considered critical to their tenure security. Government-sponsored land delimitation has been extremely slow. In an effort to increase the number of delimitations, in 2007, the government established a Community Lands Initiative with a dedicated land fund, supported by a number of international donors. The funded activities are implemented by NGOs, the private sector and government bodies. The fund is demand-driven and able to respond to particular needs, a flexibility that allows it to support other identified land-related public needs (De Wit & Norfolk, 2010).¹⁹

Although further research focused on the experience with basket funds is needed,²⁰ the experiences in Uganda and Mozambique suggest that the tool has potential to support the unique requirements of the process of legal empowerment. Basket funds allow donors to create an overall objective of legal empowerment while retaining the flexibility to support different providers and methods as needs and opportunities and new entry points emerge. A political change, for example, may create an unexpected opportunity for legal reform that the basket fund can support. Basket funds also avoid dependence on single providers or delivery methods; the fund has the flexibility to select providers and methods that are appropriate to the changing needs of a community as the empowerment process evolves. At least one caveat regarding basket funds is worth noting: support for various initiatives, particularly those deemed politically sensitive, will vary by donor and over time. The governance system adopted by basket funds should anticipate such variances and provide operational options so that the fund is not paralysed.

6.4 Self-funding by NGOs and communities

Legal empowerment strategies that are based on plans by NGOs and communities to become financially self-sufficient or self-fund legal empowerment initiatives should be approached with caution. Efforts to make projects or organisations financially independent by imposing fees on services for the disadvantaged or relying on voluntary community action have often had a significant negative impact on demand; projects designed to become financially sustainable as a measure of success often end up failing to serve the disadvantaged (Kramer & Miguel, 2008).²¹

That said, some project-specific financial strategies suggest innovative ways to supplement NGO funding sources and provide a source of community income. In the Kati region of Mali, paralegals working for the NGO Deme So, which assists rural

19. An evaluation of the use of the fund was ongoing at the time of this report.

20. For example, various types of basket funds, albeit on a larger scale, have been used to support public health initiatives (Radelet & Levine, 2008) – experience that could help inform the development of baskets for land and legal empowerment initiatives.

21. Golub notes that many providers of legal services for the disadvantaged in industrialised countries rely on donor funding (Golub, 2009).

residents in resolving disputes, help rural residents obtain copies of official documents from the court. The courts are often in distant locales and charge significant official and unofficial fees. Paralegals collect a number of requests for documents and make a single trip to the court on behalf of multiple residents. They charge the residents a fraction of the cost the residents would incur if they travelled to the court individually, thereby saving the residents money while creating a revenue source for the NGO (Barendrecht, 2011).

The Angola-based NGO Development Workshop (DW), which has worked for years on issues of land tenure security for disadvantaged residents, has developed an innovative programme for financing some of its work. Building on the post-conflict interest of municipalities in land use planning, DW teamed with the international NGO Centre for Environment and Human Settlements (CEHS), the provincial government, and the national and provincial offices of planning and cadastre to implement a land rights regularisation and development project. The project supported the cost of regularisation of informal land rights and upgrading of informal settlements through the sale of serviced plots in an adjacent new development. In a pilot project, the project partners identified agricultural land adjacent to informal settlements and zoned as peri-urban areas. Project staff negotiated with the holders of the agricultural land for the transfer of the land to the project in exchange for rights to one or more serviced plots in the new settlement, which the landowner would be free to sell or exchange for new agricultural land, if desired. The project partners sold plots in the new settlement and the proceeds covered the cost of the new development and the upgrading and regularisation of the adjacent informal settlement (Cain, 2007).

A more common model for revenue development has been used by NGOs in payment for environmental services (PES) projects with legal empowerment components. The Humbo Project in Ethiopia is designed to be continued by the local communities and government without on-going donor engagement. The project supported community organisation and the creation of legally-recognised cooperatives, which applied for title to communal forestland. The cooperatives will receive monetary and in-kind benefits from successful implementation of their forest management plan, and in 2013, control of the project will transfer to a local trust, the Farmers Cooperative Union (Humbo, 2009). Similarly, in the Makira Forest Protected Areas Project in Madagascar, project sponsors supported community organisation and provided training in agricultural practices, forest preservation, and alternative livelihoods. The communities negotiated a forest management agreement with the government under which they would receive 50% of the revenue from emissions reductions to support their natural resource management, forest conservation, and community development initiatives. The balance of the revenue is shared by the government and implementing partners (WCS, 2008; Holmes, 2008).

The experience with PES initiatives like Humbo and Makira is still developing but promising. Activities like forest regeneration and carbon sequestration are long-term natural processes that can be combined with and support similarly long-term

empowerment processes. The initiatives use techniques of group formation and collective action to engage communities in managing the forest resources and communicating with government officials and third parties. The potential for revenue generation gives local communities bargaining power they can use to negotiate agreements for benefit-sharing and meaningful local control. The initiatives have, in short, the potential to help local communities obtain new power that they can use to make effective choices and improve their lives.

7. Conclusion and recommendations

The rapid acceleration of competition for natural resources and increasing pressure on land have created a need for immediate action to help local communities protect their rights to the land on which they depend for their livelihoods. If interventions are designed and implemented with an eye toward their role in a longer term process of legal empowerment, their potential value to local communities and the disadvantaged multiplies. The experience of the bargadars in West Bengal (India) is instructive: the initial activity – the enactment of a law supporting land rights of the disempowered – was not in itself sufficient to alter imbalances in power. However, when combined with village-level activities and a favourable social and political context, the process of legal empowerment began and was sustained through the years necessary for the bargadars to gain the status, skills, and confidence to negotiate with their landlords for ownership rights. In the same manner, the communities in Humbo (Ethiopia) and Makira's Forest Reserve (Madagascar) are using land rights and tools like contracts and natural resource management plans to create new choices and opportunities for themselves – as farmers, land conservationists, business owners, and investors.

The process of empowerment takes time, and it will require continued attention and support to ensure that the capacities and opportunities to use new rights and legal tools are sustained. But the effort has the potential to put communities and their members in control of their land, their options, and their futures – an impact that is certainly worth waiting for.

This paper has investigated a number of key arenas relating to sustaining for the process of legal empowerment. The paper recognises that there are a broader set of dynamic processes at play in any one locality, but that an objective and process of legal empowerment can lead to the development of useful tools and approaches that enable people to gain more secure rights to land and resources. The following are recommendations for practitioners, donors, and further research.

7.1 Recommendations for national and international practitioners

Understanding the local context

In some cases, planned or ongoing land initiatives without legal empowerment components (or legal empowerment initiatives without land components) are ripe for the development of more holistic initiatives. However, whether legal empowerment initiatives supporting land rights are designed from scratch or built off existing programmes, an assessment of the social, political, and legal environment is critical. While more research is needed (see below), some factors relevant to successful

initiatives have emerged from the experience with initiatives cited in this paper and its bibliography, including the existence of:

- political will at national and local levels
- a favourable legal framework
- stable local community leadership
- mature local CSOs
- community experience with group formation and governance
- complementary programmes to support the livelihood objectives of the disadvantaged.

Early assessment of prospective environments using these and other factors may not only help guide the selection of favourable locations but also help identify the needs and priorities of local communities and possible legal empowerment and land activities.

Include empowerment objectives and use bottom-up or participatory approaches

Activities that reform laws to provide more equitable rights or build community awareness of rights are valuable but may not in themselves lead to legal empowerment. Experience with empowerment-focused initiatives suggests that legal empowerment must be a consciously planned objective, not simply the presumed result of a land activity or a particular delivery method like a community-based paralegal programme. Even if the initiative initially has no more than one or two activities planned, a project framework that considers the design and delivery with explicit attention to 'local priorities', 'communities of interest' and other elements discussed in the sections above, can help to sustain the legal empowerment process. Such a framework ensures that the initiative includes identifying the diverse needs anticipated over the course of the empowerment process, such as the need for legal reforms, and options for meeting those needs, such as using contracts until legal reforms are achieved.

Work through or with established or promising local and grassroots CSOs and other independent institutions (e.g. academia)

Continuation of the empowerment process over time and achievement of legal empowerment objectives requires consistent and continuing support. Even in high-income countries, CSOs provide critical services to marginalised populations and serve watchdog and oversight functions. In many lower-income countries, CSOs that have the capacity to provide ongoing support for the process of legal empowerment (such as national legal aid centres and poverty law programmes) are in early stages of development, if they exist at all. Initiatives that are designed to work through existing CSOs can help build their capacity, link them to other organisations

and entities, and provide critical funding, while also serving the priorities of the local communities and disadvantaged. In some countries, especially where authority over land and other natural resources has been effectively devolved or decentralised, initiatives may be designed to work through local government, yet will nonetheless benefit from the engagement of a CSO. As with the identification of location for interventions, the selection of CSOs will be aided by the development of selection criteria (see research topics below).

If appropriate, explore engagement with private investors

Private investors can help local communities meet their livelihood objectives or defeat those goals. In some circumstances, local communities and the disadvantaged may benefit from the involvement of private investors in legal empowerment initiatives. If consistent with the desires and priorities of the local communities (and assuming adequate safeguards, such as the mature functioning of local governance and communications systems that protect the interests of the marginalised), practitioners may wish to explore opportunities for engaging responsible investors in activities supporting legal empowerment goals.

7.2 Recommendations for donors and project sponsors

Fund national organisations, coalitions, or networks committed to legal empowerment

As noted above, supporting existing local CSOs is a way of providing for sustainable processes of empowerment that are less vulnerable to relatively short-term project cycles or a waning of political will. Supporting existing local CSOs that have a track record of working effectively with local government is a method of building capacity to engage constructively on land rights issues and strengthening relationships between civil society and government. Targeting local CSOs for support can not only help deliver empowerment activities, but can help build local capacity for independent oversight of government operations and extend opportunities to build effective regional and sector coalitions.

Consider use of basket funds and other collective funding systems

Even in countries with strong CSOs, basket funds are well suited to support legal empowerment initiatives. Donors interested in supporting legal empowerment programmes supporting land rights of marginalised populations should consider participation in basket funds or similar systems as a means of supporting sustainable processes of empowerment. The use of basket funds can also help develop strong CSOs with land expertise, keep funding responsive to changing needs of local communities, and target funding to address the priorities of ultimate beneficiaries as opposed to the interests of any particular service provider or donor.

Fund research and dissemination of information

Legal empowerment initiatives supporting land rights are still in their infancy. As the experience of practitioners grows, more effort will be needed to collect the experience of initiatives, create and refine tools, conduct evaluations, and disseminate knowledge and learning, especially at grassroots levels. Donors can support these needs by funding standalone research and encouraging the inclusion of components in initiatives that are dedicated to collection and use of relevant experience, monitoring and evaluation, and wide dissemination of results. Donors can also support development of information networks and global systems designed to provide targeted technical advice to local communities and service providers on a demand basis, which can help fill gaps in local expertise while local capacity is built.

7.3 Recommendations for research

IIED and other entities have been capturing and sharing the experiences of CSOs and local communities engaged in legal empowerment initiatives relating to rights to land and other natural resources for years. As the number of projects expands and the experience broadens and matures, systematic research targeting various elements of initiatives (e.g., approaches like paralegal programmes and university clinics, providers (especially public-private partnerships), and funding models) will be increasingly valuable. As the number of projects grows and the experience of practitioners and beneficiaries matures over time, their experiences will continue to increase in value. The efforts of researchers are important in the following areas:

Extend and refine understanding of components of legal empowerment initiatives

Researchers could assist the development of models for effective initiatives through the systematic collection and analysis of data on various elements of legal empowerment initiatives, including:

- sequencing of activities
- approaches such as use of community-based paralegal programmes, university programmes, and apprenticeships
- the use of non-legal activities, such as group formation and community mobilisation, to support legal empowerment objectives
- empowerment opportunities presented by new combinations of providers, such as public-private partnerships.

Researchers can also assist in the development of indicators for legal empowerment initiatives in general, and those that include land rights.

Collect and analyse success factors of national organisations (NGOs and other CSOs) and government bodies that provide legal empowerment services

In some countries such as Namibia, Cambodia, and the Philippines, national NGOs play a significant role in supporting legal empowerment initiatives relating to land rights. Globally, despite significant donor funding and technical assistance, many organisations struggle to develop capacity and survive political pressure. Researchers can help identify the internal and external factors influencing (positively and negatively) the development of national and sub-national CSOs and governmental bodies that effectively provide legal empowerment services over time. Collecting the experience of relevant organisations, analysing the factors that have influenced their success (organisationally and programmatically), and capturing lessons learned can help the development of CSOs and other providers of legal empowerment services in other countries.

Collect and analyse experience with basket funds and other funding options

Basket funds have become increasingly popular with donors and have in some cases shown great promise. In other cases however, funds have confronted significant challenges that have inhibited their ability to operate as they were intended. To date, the reported experience of basket funds and other types of funding options is limited. Researchers can help donors interested in funding legal empowerment initiatives by: collecting the experience of donors, practitioners, grantees, and others with various funding models; identifying the factors influencing their success and creating challenges to the intended use of funds; and using the collected experience to work with donors and other stakeholders to build and refine funding models designed to support legal empowerment initiatives supporting land rights.

Acronyms

CED	Centre for Environment and Development (Cameroon)
CLUSA	Cooperative League of the United States of America
CSO	Civil society organisation
DW	Development Workshop (Angola)
FAO	Food and Agriculture Organization of the United Nations
IDLO	International Development Law Organisation
IIED	International Institute for Environment and Development
LAC	Legal Assistance Centre
NGO	Non-governmental organisation
PES	Payment for environmental services
ULA	Uganda Land Alliance
USAID	United States Agency for International Development

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