



THE CHALLENGE OF PROTECTING COMMUNITY LAND RIGHTS:

AN INVESTIGATION INTO COMMUNITY RESPONSES
TO REQUESTS FOR LAND AND RESOURCES



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Acknowledgements and sincerest gratitude to Ali Kaba, Nelson Alfredo, Teresa Eilu, Robert Ojok, Jaron Vogelsang, Erin Kitchell, Kaitlin Cordes, Silas Siakor, and Elizabeth Alden Wily for their contributions to this report.

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Cover Image: A community paralegal in Liberia questions a potential investment during a meeting.

Inside Cover Image: A woman processes palm kernels into palm oil in the village Masethele, Sierra Leone.

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Image: A woman contributes to a bylaws drafting meeting in her community in Oyam District, Uganda.

I. CONTEXT

For billions of rural people, land is their greatest asset: the site of their homes and livelihoods, the source of food, water, medicine and building materials, and the locus of culture, spirituality, and community. Yet over the past decade, rising global demand for land and natural resources has put pressure on rural communities, who are increasingly being approached by international and national investors seeking land for logging, mining, agribusiness and tourism ventures and by government agencies claiming land for mega-projects and infrastructure development.

Deciding whether or not to allow an investor to use community lands and natural resources is one of the most important decisions that a community can make. If an investment project is implemented in a respectful and inclusive way, it can contribute to authentic community development and prosperity. Yet when an investment is undertaken in bad faith, or without proper community consultation and a legally enforceable community-investor contract outlining mutually beneficial terms, it may claim land that community members rely on for their livelihoods; pollute local rivers, lakes, air and soils; block access to sacred areas and paths to water sources; and violate community members' human rights.

An estimated 90% of the 2.5 billion rural and indigenous people do not have formally recognized rights to their lands.¹ A 2013 World Bank report concluded that, in Africa, "90 percent of Africa's rural land is undocumented [...] making it highly vulnerable to land grabbing and expropriation."² Without formal recognition or documentation, communities' lands, livelihoods, and cultures are more susceptible to exploitation by those with political, legal, and economic power. Strong legal protections for community lands – in particular the common wetlands, forests and grazing areas that community members depend upon for their

livelihoods and to gather natural resources critical to household survival – are especially necessary, as these areas are often the first to be allocated to investors, claimed by local elites, appropriated for state development projects, and mismanaged by individuals intent upon claiming scarce natural resources for themselves before they are claimed by others.³ While many countries have laws that make it possible for communities to formally document their lands and thus increase their tenure security, such laws often go implemented due to lack of political will and associated resource constraints.

When communities' land rights are undocumented or not formally recognized, investors and government officials seeking land for projects may not consult communities or ask for their free, prior informed consent (FPIC) to a potential investment or infrastructure development project.⁴ As defined by the Food and Agricultural Organization of the United Nations, FPIC goes beyond the right to be merely "consulted" before an investment may go forward:

- "Free" means that consent should be given without coercion, intimidation, or manipulation;
- "Prior" means that communities should be given enough time to meet to discuss the proposed investment before making a decision, and investors and government must respect local decision-making processes, and should not pressure a community to make a decision quickly;
- "Informed" means that communities have the right to be fully informed about the investor's plan, including the nature, size, purpose, and scope of the proposed venture, as well as any likely economic, social, cultural,
 - or environmental impacts and risks of the project; and
- "Consent" includes the right to say "no."⁵

1 Oxfam, International Land Coalition, Rights and Resources Initiative [2016], *Common Ground. Securing Land Rights and Safeguarding the Earth*, Oxford, United Kingdom, at p. 39.

2 F.F.K. Byamugisha [2013], *Securing Africa's land for shared prosperity: a program to scale up reforms and investments*, Africa Development Forum, Washington, D.C.: World Bank Group.

3 Common pool resources – forests, fisheries, grazing areas, etc. – are often the only defense that the poorest families have against starvation: poor families rely most heavily on common areas for the provision of their basic necessities. Yet it is not only the poor who rely on common lands: even relatively wealthy rural families depend upon on communal land to gather wild foods and medicines, hunt and fish, graze their animals, collect wood for fuel, and source building materials. [Qureshi, M. H. and Kumar, S. (1998), *Contributions of common lands to household economies in Haryana, India*, *Environmental Conservation* Vol. 25(4): 342–353; Shackleton et al. (2001), *The role of land-based strategies in rural livelihoods: the contribution of arable production, animal husbandry and natural resource harvesting in communal areas in South Africa*, *Development Southern Africa*, Vol. 18:5; Gray, Matthew and Jon Altman (2006), *The economic value of harvesting wild resources to the Indigenous community of the Wallis Lake Catchment, NSW*, *Family Matters*, Vol. 75: 24 – 33, Australian Institute of Family Studies.

4 The Right to FPIC is set out in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). For Indigenous Peoples, the right to be consulted and give or withhold FPIC is protected by international law. In addition, projects funded with loans from multilateral lending institutions like the World Bank, the Asian Development Bank, and the International Monetary Fund (IMF) require communities' FPIC before the project may proceed. Some companies may also require FPIC before a project may proceed. Yet not every country has laws requiring FPIC; non-indigenous communities in such countries may not have a legal right to be consulted.

5 <http://www.fao.org/indigenous-peoples/our-pillars/fpic/en/>

When FPIC is done properly, a community consultation gathers the whole community together, clearly explains the proposed investment, then gives community members the time and opportunity to ask questions, review relevant project documents, and hold private meetings to discuss the proposed investment among themselves. Afterwards, community members may decide to agree to the investment, reject the investment, or provide feedback about how the investment would need to be modified to be acceptable to them. In an ideal world, a “community consultation” does not occur during the investor’s first meeting with the community, but is a series of meetings that provide the community with the information necessary to fully understand the scope, aim, and potential impacts of the investment, then make an informed decision.

Unfortunately, as this research report illustrates, consultations are often characterized by significant power imbalances.⁶ Investors and/or government officials may carry out a “consultation” as an opportunity to only inform a community that an investment will be happening; often, investors arrive for the first time accompanied by government officials, who tell the community “that they are being consulted” and demand an immediate “yes.” As described in this report, communities may feel that they have no choice but to accept an investment that has already been approved by their government. Alternatively, external actors may seek only the consent of local leaders rather than the full community, or may act corruptly, by bribing leaders to sign consent forms or by passing around what they fraudulently claim are “attendance sheets” for people to sign, which they later claim as community members’ consenting signatures. Such “consultations” may be used by the company and/or the government to give the impression to external interests – international standards certification bodies or financial backers, among others – that FPIC principles have been complied with and community members have genuinely consented to the project.

Community members who request more information, demand written contacts, or ask for environmental or social impact assessments may be labeled as “anti-development” and criticized as being at odds with government, investors and the community at

large. In the worst cases, as described in some of the cases detailed in this report, communities that choose to reject an external actor’s request for their lands and resources may face coercion through the use or threat of violence, criminalization, and false arrests by either the government or the investor and his agents.⁷ Community leaders that oppose the investment may be taken out of power by superiors, and replaced with individuals more “amenable” to outside interests.

Community members may be asked to consent before they are well-informed about the proposed investment and its potential impacts on the community’s environment, economy, health, and wellness.

Even in situations when investors do follow FPIC principles, consultations are often shaped by significant information asymmetries. The investor may not inform community members about key aspects of the investment, including: the anticipated investment activities and the products the company will produce; the overall net worth of the company and the expected annual profits the investor will gain from the venture; the expected impacts on local waters, air, forests, sacred areas, and rights of way; and other key matters. Even when such information is provided, it may not be communicated in a language or format that communities can understand. As a result, community members may be asked to consent before they are well-informed about the proposed investment and its potential impacts on the community’s environment, economy, health, and wellness.

Furthermore, communities may not know the market or rental value of their lands, or be aware of their

⁶ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, [2014] U.N. Doc. A/HRC/27/52/Add.4; Columbia Centre on Sustainable Investment (2019), Innovative Financing Solutions For Community Support In The Context Of Land Investments, available at: <http://ccsi.columbia.edu/files/2019/03/CCSI-Innovative-Financing-report-Mar-2019.pdf>.

⁷ See e.g.: Global Witness’s 2017 Annual Report, “At What Cost?” <https://www.globalwitness.org/en-gb/campaigns/environmental-activists/at-what-cost/>

legal rights to ask for rent from private investors, or for compensation from the government when it expropriates land under compulsory acquisition law. Meanwhile, although many countries' laws allow communities to ask investors to provide benefits or rental payments in exchange for the use of the community's lands and resources, community members may not always understand the full range of "fair benefits" they may ask for in exchange for their lands. For example, communities may ask for one-time benefits like the construction of a school or clinic — yet fail to ask for rental payments, royalties, or other benefits that get closer to the market value of the land.⁸

A community may ask for a school to be built, yet fail to negotiate the date by when it will be built, the quality of construction materials, and the provision of desks, chairs and school materials to ensure that the building can function for its intended purpose.

Finally, the agreed outcomes of a consultation and any related community-investor negotiations may not be documented in writing — in a written agreement, memorandum of understanding (MOU), or enforceable contract detailing the benefits to be paid or provided in exchange for the land. Alternatively, investors may ask communities to sign vague or undetailed contracts that do not include: clear definitions of the boundaries of the land being granted or leased; timelines or concrete promises for payments or benefits; adjustments for inflation over time to rental payments; or a clear articulation of how the community can hold the investor accountable to timely and full payment of benefits, environmental protections, and other key terms of the contract.⁹ With nothing or very little written down, it may be challenging for communities to enforce the terms upon which they agreed to share their lands.



Image: A young man sits on a logged tree in a timber concession within his community.

⁸ Such benefits also do not consider the replacement cost of the resources that community members gather from common pool resources like forests and grazing lands, or the incalculable value of sacred sites, burial grounds, and other spiritual/religious resources. See: <http://blogs.worldbank.org/publicsphere/blog-post-month-we-are-looking-gold-and-calling-it-rock-supporting-communities-calculate-replacement>

⁹ See example contacts at: <https://namati.org/news/bad-faith-contracts-unjust-investments-how-can-communities-protect-their-interests/>

II. BACKGROUND: A LEGAL EMPOWERMENT APPROACH TO COMMUNITY LAND PROTECTION

For the past decade, Namati and its local partner organizations have co-designed, through iterative learning and experimentation, an innovative legal empowerment approach to community land protection. The overall goal of Namati's approach is not only to support communities to document and protect their land rights, but to empower community members to:

- Create and adopt strong community by-laws that hold leaders accountable and ensure good governance of lands and natural resources;
- Strengthen land rights protections for women and other vulnerable groups;
- Sustainably use and manage their natural resources and regenerate the local ecosystem; and
- Negotiate with potential investors seeking land from a position of legal empowerment and knowledge.

From 2009 until 2016, Namati worked very closely with three partner organizations: the Land and Equity Movement in Uganda (LEMU), Centro Terra Viva (CTV) in Mozambique; and the Sustainable Development Institute (SDI) in Liberia. The fieldwork was carried out in Lira, Oyam and Apac Districts in Northern Uganda, in Inhambane Province in Mozambique, and in Rivercess County in Liberia. During this time, Namati, SDI, CTV and LEMU together developed an integrated community land protection process by: gathering and analyzing data on impacts, confronting challenges and innovating solutions, and, most importantly, by listening to communities'

experiences, needs and desires.¹⁰ The resulting process took roughly 18 months and included five general steps (adapted to align with each country's laws and policies). These are:¹¹

1. LAYING THE GROUNDWORK

The "Laying the Groundwork" activities were designed to create structures for inclusive community participation throughout the land protection process; raise awareness of the importance of protecting community lands; and motivate community members' participation. From 2011-2016, this process included:

- **Community definition.** Facilitators consulted with relevant government officials, customary leaders, and community members, together balancing various factors – population, land area, existing shared land management institutions, common social identity, administrative designation, etc. – and arrived at mutually agreeable definitions about how best to determine the "community unit" that undertook the land protection activities.¹²
- **Selection and training of community-level animators/mobilizers.** Each community selected male and female community members, called "animators" or "mobilizers," to help coordinate the work within the community and ensure that meetings were well publicized and attended by women, men, youth, elders, and members of minority groups. In some communities, these individuals also learned national laws more deeply than their fellow community members, and took on a quasi-paralegal role.

10 Namati's community land protection work in Uganda, Liberia and Mozambique began as a three-country randomized controlled trial, carried out by the International Development Law Organization (IDLO) in sixty communities in Uganda, Liberia and Mozambique from early 2009 until late 2011. The trial aimed to investigate how to best support communities to successfully complete their nation's formal land documentation procedures to protect their community lands. The 2009-2011 study's findings, analyzed jointly and by country, are available at: <https://namati.org/resources/protecting-community-lands-and-resources-evidence-from-liberia-mozambique-and-uganda/> After the study ended in 2011, for the next five years Namati picked up where IDLO left off continued to partner with LEMU, SDI and CTV to complete the community land protection work in all sixty communities (some of which had been control groups), as well as more than forty additional communities.

11 For a more detailed description of Namati's current community legal empowerment approach to community and protection, see Namati's full Community Land Protection Facilitators Guide at <https://namati.org/resources/community-land-protection-facilitators-guide/>.

12 Defining the "communities" was a complex endeavor; the process differed in each of the study nations according to the cultural, political and geo-spatial realities and the preferences of local leadership:

- In Rivercess County, Liberia, rural social and political organization in Rivercess is composed of a series of nested units, with anywhere from 10 to 22 towns making up a clan, and two to three clans making up a chiefdom. During a series of consultative meetings with customary and state leaders, these leaders decided that the project should work at the clan level.
- In Inhambane Province, Mozambique, rural communities are organized in a series of nested units with a handful of zonas making up a povoado, and three or four povoados making up a regulado. All but one study community elected to delimit itself at the level of the povoado.
- In Oyam, Apac and Lira Districts in northern Uganda, common grazing lands are generally shared by members of one to five separate villages. Some of these villages have direct ownership rights, while others have permanent or seasonal use and access rights.

- **Visioning:** Community members reflected on the condition of their lands, natural resources, and socio-cultural life thirty years in the past, in the present, and thirty years in the future (if circumstances continued along the current trajectory), then envisioned the “desired future” they would choose to leave for their grandchildren. The community then brainstormed a work plan for how to achieve its vision; this plan then became the basis of their community land protection process.
- **Valuation of community land and natural resources.** Community members listed all of the natural resources that they gather from community forests, grazing lands and watersheds, then calculated how much they would have to pay to purchase these resources in the local market if they could not go into their common lands to freely gather them. This activity helped community members understand the value of their lands to them, and understand how much they would potentially lose if they lost access to their common lands and resources.
- **Legal education.** Throughout the community land protection process, the field team taught community members about their rights and responsibilities, under the national constitution and relevant national land, environment, forestry, and mining laws.
- **Meetings with relevant government officials.** At the inception of the work and throughout the process, the field teams liaised with regional and local government officials to explain the work, brief them on progress and obstacles, and seek their support and participation as necessary. In Mozambique and Liberia, regional land officials and technicians became closely involved in aspects of the community land protection work, often helping to resolve land conflicts and make technical maps, among other tasks.
- **1st Draft:** Each community collectively “shouted out” all of their existing local rules, as well as rules that their ancestors had followed in the past but had fallen out of practice. To ensure that all voices were heard, the meeting was split into groups of men, women and youth. The groups presented their rules back to the community, and everything was written down onto large sheets of paper organized into three categories: rules about leadership and land governance, rules about natural resource use and management, and cultural and social rules.
- **2nd Draft:** Over many months, each community reviewed the 1st Draft of their by-laws, learned about national laws, eliminated old rules that were no longer useful or violated national and human rights laws, changed existing rules that needed to be updated to address current realities, and added new rules. Facilitators strongly encouraged community members to make rules on how they would respond to potential investors seeking land. Women-only meetings were convened to support women to advocate for rules that strengthened their land rights and increased their participation in land governance.
- **3rd Draft:** An advocate, lawyer and/or judge then reviewed the community’s 2nd Draft to ensure that it did not contradict the national constitution and other relevant laws, and the community then made any necessary changes to ensure that their rules aligned with national law.
- **Bylaws adoption:** At a well-publicized meeting of hundreds of community members and neighbors, each community read out its bylaws, then voted to adopt them in the manner they had agreed in their bylaws (by consensus or supermajority vote).
- **Creation of a land governance body:** Communities then elected a land governance body composed of trusted community leaders, women, youth and members of marginalized or minority groups to manage the community’s lands and resources according to their adopted by-laws, and to enforce the by-laws, with the support of local government.

2. DRAFTING AND ADOPTING COMMUNITY BYLAWS

A participatory, inclusive process of drafting and adopting community bylaws for land governance, natural resource management, and social justice is the heart of Namati’s approach to community land protection. From 2011-2016, the process included:

3. HARMONIZING BOUNDARIES AND DOCUMENTING COMMUNITY LANDS

The activities in this step were designed to support communities to resolve boundary disputes and land conflicts, then agree upon and document the boundaries of their land. From 2011–2016, this phase included:

- **Participatory community mapping** using sketch maps.
- **Boundary harmonization:** Communities met with their neighbors, sometimes for many months of protracted negotiations, to agree on shared boundaries.
- **Land conflict resolution.** Facilitators supported community members and respected, trusted local leaders to mediate long-standing boundary-related conflicts between neighboring communities and agree on their common boundaries.
- **Documentation of agreed boundaries.** Depending on the legal context, communities undertook most or all of the following steps: drafting and signing MOUs with their neighbors to formally document all boundary agreements on paper; taking photos and making videos of the agreed boundaries; planting boundary trees or placing locally-accepted markers to physically indicate the limits of their lands; making technical maps using GIS/GPS technology; or contracting a licensed surveyor to survey their land.

4. GOVERNMENT REGISTRATION AND TITLING.

During this step, the study communities followed national legal procedures to formally document and register their lands and receive state documentation of their rights. However, as explained below, this was not always possible, especially in Liberia, as the Land Rights Act had not yet been passed.¹³

5. PREPARING THE COMMUNITY TO PROSPER

After a community adopted its bylaws, made its map, and submitted its registration paperwork, Namati envisaged that a fifth phase of the work, loosely

titled “Preparing to Prosper” should be offered to communities.

This step, designed to foster long-term community growth and prosperity as defined by each community’s own plans and intentions, includes a number of activities designed to support community members to regenerate local ecosystems, take steps to actualize their “vision for the future,” and pursue community-driven enterprise development/diversification of livelihood strategies. Unfortunately, no communities were able to reach this phase from 2009 until 2015 for a variety of reasons, including the length of time that the previous four “steps” took to complete, grant funding cycles, community and facilitator fatigue, and other factors.

Namati’s legal empowerment approach to community land protection is designed to ensure, among other things, that communities: are well-aware of their legal rights; have clear documentation of their land claims (even in the absence of legal title); and have adopted strong local rules that ensure that their leaders are downwardly accountable, that their natural resources are managed sustainably and equitably, that major decisions about community lands are made by the entire community as a group, and that the community has a clear protocol for responding to investors’ requests for community lands.

It is important to point out that from 2009 until 2016, not every community completed every step of this process. The process, and the outcomes achieved, varied significantly by country as a result of the national legal framework, and by community, depending on the degree of intra-community conflict and the number of external challenges the community faced. Crucially, not every community who completed the community land protection process received formal documentation of their lands. The reasons for this were related to each country’s specific legal context:

- In Liberia, because the Land Rights Act (2018) had not yet passed, none of the communities received deeds for their land. The communities carried out their community land protection efforts according to the terms of an MOU signed in 2010 with the Liberian Land Commission (now Liberian Land Authority) which set out that once a land law was

¹³ The Liberian community land protection work was undertaken specifically to provide a model that the Liberian Land Commission and relevant lawmakers could look to as they shaped the draft law.

passed, the communities taking part in the project would be first in line to get deeds to their land.

- In Uganda, more than a decade after the Land Act (1999) was enacted, the Ugandan government had not yet deployed the registrars whose responsibility it is to issue titles for community lands, and, despite on-going efforts to request titles, no community titles were processed from 2011 to 2016.
- Notably, under Uganda’s Land Law, communities have *de jure* private ownership over their customary lands with or without a formal title document.¹⁴
- In Mozambique, almost every participating community received a DUAT Certificate (Direito de Uso e Aproveitamento dos Terras, or “Right of Use and Benefit”). Perhaps because a DUAT does not signify private ownership, government officials in Inhambane Province were very supportive of communities’ efforts to document their land rights as set out in Mozambique’s Land Law (1997).¹⁵



Image: Community members plant a boundary tree to mark the borders of their customary lands in Rivercess, Liberia.

¹⁴ Land Act 1998 (Ch. 227), Act 16/1998, Republic of Uganda stipulates that customary tenure provides for “communal ownership and use of land; in which parcels of land may be recognized as subdivisions belonging to a person, a family or a traditional institution; and which is owned in perpetuity.” The Land Act 1998 underscores the Constitution’s recognition of customary land rights as legal, enforceable land claims by formally establishing that customary land rights held by individuals and groups are ownership rights, equal to private, individual land rights. Under the Land Act 1998, customary land rights do not need to be titled or registered to be considered valid; the law recognizes customary rights of ownership regardless of whether the owners have a legal document as evidence of their land claims.

¹⁵ For further details on the legal contexts of Liberia, Uganda and Mozambique from 2009 until 2016, see Appendix A.

III. STUDY OBJECTIVE AND METHODOLOGY

Namati's definition of "legal empowerment" goes beyond knowing one's rights to being able use those rights in practice when confronting an injustice, addressing corrupt leadership, or challenging poor governance and bad faith transactions that negatively impact a community's interests. Namati's community land protection work is grounded upon the assumption that when community members proactively document their land rights, govern their lands equitably, manage their natural resources sustainably, have their own vision of how their community will grow and develop over time, and prepare in advance for future interactions with potential investors, then if and when those investors come, the community will be more able to: demand that they are consulted; reject the investment or give their authentic consent; negotiate beneficial contracts that support community prosperity; and ensure that any agreement includes protections against environmental and human rights violations.

This study, undertaken from December 2017 until February 2018 – after at least two years had passed since more than 100 communities across Uganda, Liberia and Mozambique had completed efforts to protect their lands – was designed to investigate the veracity of this assumption. The central hypothesis tested was: "Once communities know their land rights and have documented their land claims, they will act in a legally empowered way when approached by government officials and/or investors seeking land, and achieve improved outcomes." By documenting communities' responses to external threats to their land claims, the study aimed to analyze their experiences and identify trends in outcomes and impacts. Specifically, the questions explored included:

- Are communities that have completed the community land protection process able to respond to external threats to their land rights in an empowered manner that promotes their tenure security, dignity, wellbeing and prosperity?

- Does formal documentation of community lands lead to greater tenure security? Alternatively, even in the absence of a formal title, deed, or certificate, does completion of Namati's community land protection approach – which leaves a community with a map of its lands, formally adopted rules for local land and natural resource governance, MOUs of boundary agreements with neighboring communities, among other documents – lead to stronger tenure security?

To test these questions, Namati worked with the original managers and staff of the 2009 – 2016 fieldwork, as they were known and trusted by community leaders and members alike.¹⁶ The reasoning behind working with these individuals – rather than more impartial enumerators – was that the possibility of any falsely positive information given to appease the field staff who helped them in the past was significantly outweighed by the benefits of leveraging the pre-existing relationships between the researchers and the community. Given the sensitivity of the information being solicited, deep trust was necessary for the individuals interviewed to feel safe enough to be fully honest and transparent. Such trust is not easily earned, but rather proven and built slowly over years of working together to achieve shared goals.

In each country, the researchers carried out data collection in two stages. First, the researchers called the leaders and the community-based "animators" or "mobilizers" of 61 communities in Liberia, Uganda and Mozambique who completed their community land protection efforts between 2009 and 2015, and asked them a series of questions to ascertain whether the community had been approached by external actors seeking lands and natural resources in the years since then. Researchers contacted 22 communities in Uganda (out of a total of 48), 25 communities in Mozambique (out of a total of 37), and 14 communities in Liberia (out of a total of 21).

¹⁶ Nelson Alfredo conducted the research in Mozambique; from 2009 until 2015, he served as CTV's project lawyer. He is an expert in Mozambican land law, and, having grown up in the study region, speaks the local language fluently. Ali Kaba conducted the research in Liberia; from 2009 until the present he manages and directs SDI's Community Land Protection Program. Teresa Eilu and Robert Ojok conducted the research in Uganda; from 2009 until 2015, Teresa Eilu managed LEMU's Community Land Protection Program, while Robert Ojok served as a principle member of the field staff from 2013 until 2017.

In all three countries, the researchers called the communities who had most successfully completed the community land protection process.

If the individuals interviewed by phone reported that their community had been approached by outsiders seeking land, the researchers arranged a date and time to travel to the community. Then, in each community, they held community meetings and/or key informant interviews to record the story of the outsiders' request for land, how the community responded to that request, and what has happened since the request was made. Depending on the community and how much notice was given, some of these community meetings included up to 30 people, while others were as small as five individuals.

Key informant interviews involved community leaders and project animators/mobilizers.

Of the 61 communities who were reached by phone, 28 (46%) reported that they had been approached by external actors seeking land and natural resources, while 33 (54%) reported that they had not. Eight out of the 14 Liberian communities (57%) were approached, 11 out of the 25 Mozambican communities (44%) were approached, and nine out of the 22 Ugandan communities (41%) were approached. Some of these communities had been approached multiple times by different actors.



Trucks transporting lumber out of forestry concessions in Rivercess County, Liberia.

IV. FINDINGS

When the researchers went to the field and held focus group discussions with community leaders and other relevant community members to collect communities' stories, **the 28 communities told a total of 35 stories**. During the focus group discussions, the researchers solicited each "external actor seeking land" story in a conversational way, asking the people being interviewed to tell their story freely, so as to capture the overall experience and "felt sense" of the communities' experiences. The researchers then typed up each story in the community's own words, and, based on that narrative transcript, filled out a close-ended questionnaire detailing the specific dimensions of each land request. The researchers were trained to actively ask about any details not included in the respondents' narrative, so as to ensure that they could fill out the close-ended questionnaire completely. In the few instances where the recorded story failed to

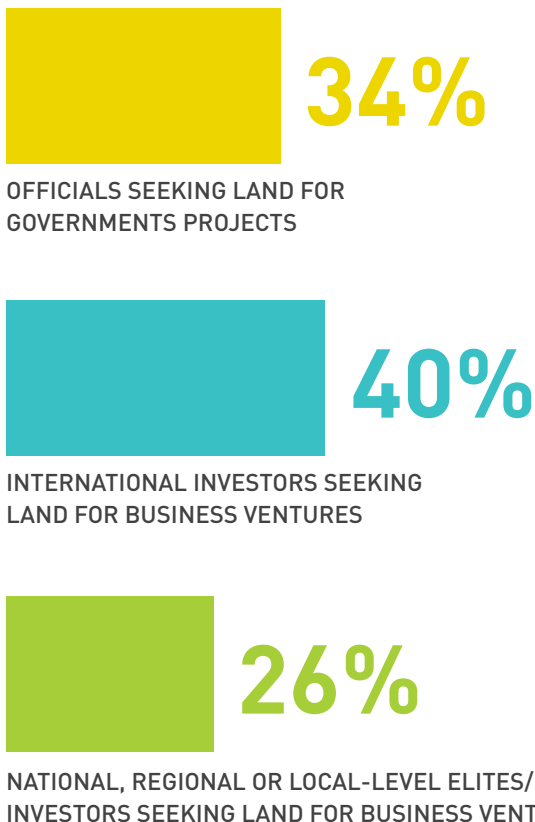
provide the requisite data, the researchers left the form blank. The data from this questionnaire allowed the communities' experiences to be analyzed quantitatively to identify trends and outcomes.

A. OVERVIEW OF THE DATA

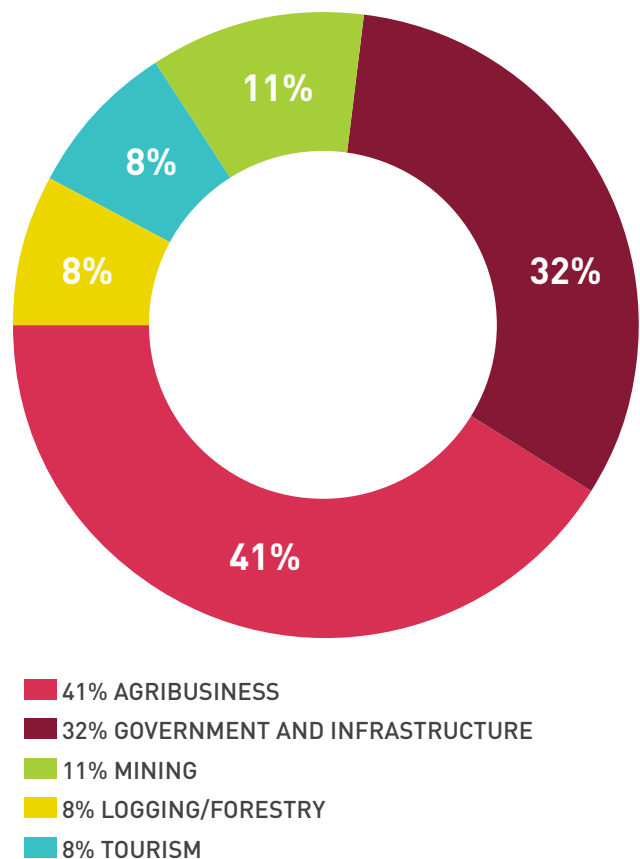
The 28 communities reported that they were approached by external actors seeking community lands 35 times. They were approached:

- 12 times by government officials seeking community lands for government projects (nine from Uganda and three from Mozambique);
- 14 times by international investors seeking community lands and natural resources for tourism, agribusiness, mining and logging ventures (one from Uganda, eight from Mozambique, and five from Liberia); and

WHO WAS SEEKING LAND AND FOR WHAT PURPOSE



WHAT DID THEY SEEK TO CLAIM OR USE LANDS FOR?



- 9 times by national, regional or local-level elites/investors seeking community lands and natural resources for investment purposes (one from Mozambique, three from Liberia, and five from Uganda).

These actors sought to use the communities' land for agribusiness 32% of the time, for tourism 18% of the time, for government infrastructure 32% of the time, for logging 8% of the time, and for mining 10% of the time. The tourism requests came only from Mozambique, as the study region is located along a pristine coastline, and has, over the past twenty years, become a regional tourism destination. The logging requests came only from Liberia, as the study region is located within an area of some of the last remaining indigenous forest in West Africa. The government infrastructure and agribusiness requests were spread across all three countries. There were no reported cases of someone seeking land solely for speculation purposes.

In Uganda, after the project helped communities to resolve land conflicts and protect their vast grazing lands, local government officials immediately moved in to try to claim that land for state development projects.

Taken together, the data and stories of these 35 requests for community land indicate that **almost every community had difficulty successfully advocating for its interests when potential investors were accompanied by powerful government officials or were themselves powerful government officials.**

These outcomes were prevalent whether or not community leaders and members' articulated that they knew their legal rights in such situations – and were the same independent of whether or not the community had received formal legal recognition of its land rights.

The data suggest that community land documentation and legal empowerment initiatives are, on their own, not sufficient to balance the significant power and information asymmetries inherent in interactions between rural communities and government officials, coming on their own behalf or accompanying potential investors.¹⁷ The trends broken down by country are as follows:

In Mozambique, community members repeatedly described how, despite having a government-issued DUAT (Right of Use and Benefit) certificate for their lands, **when investors came accompanied by government officials who they could clearly see had already backed the potential project, they felt that they had no choice but to acquiesce to the project.** In the majority of stories from Mozambique, **the government used subtle intimidation, rather than brazen rights violations, to exert pressure on communities and compel their agreement.**¹⁸ One leader explained how "You have to be brave to say 'no,' because the investors are accompanied by the district government; if you do not agree, you may suffer retaliation." While a few communities successfully requested benefits in return for their lands, not one of these communities received written documentation of the promised benefits.

¹⁷ It is important to note that in all three of the study countries, every adult above the age of 25 has lived through war and violent civil conflict. One enduring consequence of those conflicts may be that community members calculate that standing up to the government will result in persecution and impacts far worse than an investment operating within their community. In other contexts, communities may not feel as strong an undercurrent of threat and intimidation.

¹⁸ During research undertaken in Mozambique by the author in 2001, community members in the province of Manica described how for decades there was a climate of fear and silence throughout Mozambique, particularly during the civil war between FRELIMO and RENAMO. One man explained, "From 1975 upwards, criticism itself – opinions – were no longer existing. For they said that only FRELIMO is the one who has both opinions and decisions, all together...if you spoke up or complained, you were taken away and punished." One woman said, "In the past community meetings used to be rare, and they were mostly aligned with government laws or the political party situations. And at those meetings there was not supposed to be any criticism or even opinions, because if you criticized something, you were going to be arrested." R. Knight, *Camponeses' Realities: Their Experiences and Perceptions of the 1997 Land Law*, 2002, at p.10. Available at: https://namati.org/wp-content/uploads/2012/01/camponeses_realities_mozambique1.pdf

“This experience made us realize that having a certificate is not enough to guarantee your rights because when the interest is from the state itself, is difficult to defend because the state uses all the means it has available to achieve what it wants.”

Leader of the community
of Marrengo, Mozambique

The Mozambican communities also described situations in which government officials claimed community land for public projects and, when community members cited the national constitution's rules for compulsory acquisition and asked for compensation, flatly refused to agree to pay. Mozambican community members described being disillusioned by how the government appeared to put little stake in their DUAT certificates: respondents in nine out of the eleven Mozambican communities who received requests for their lands unambiguously expressed that **having an official document for their land made no difference whatsoever, as the government exerted its power and authority to “force” community members to accept the land request.** The leader of the community of Marrengo plainly described how: “This experience made us realize that having a certificate is not enough to guarantee your rights because when the interest is from the state itself, is difficult to defend because the state uses all the means it has available to achieve what it wants.”

In Uganda, where there is very little “free” and undeveloped land available, respondents described how after the project helped communities to resolve land conflicts and protect their vast grazing lands, local government officials immediately moved in to try to claim that land for state development projects.

Community members' desire for development was a significant factor in the ease with which government procured their lands.

While one community successfully denied repeated government efforts to claim its grazing lands, in most instances community leaders and members alike handed over their land to the government with few questions asked, eager to benefit from the proposed development projects. All but one of these communities did not try to limit the size of the land granted, request compensation, or ask to get formal documentation of the land transaction and written commitment to the proposed project. In one situation, the government forcibly dissolved a strong land governance body elected at the conclusion of the community land protection process, putting in its place leaders more allied to the government and amenable to giving community land to the government for free.

In Liberia, where corruption is rampant and rule of law is weak, the study communities' experiences illustrate how **corruption by powerful state actors easily trumps legal knowledge and empowered community efforts to protect their land and natural resource rights.**

The Liberian communities approached by investors made the most vigorous efforts to reject external requests for land. However, in most of the situations these communities' efforts to protect their land rights were no match for investors acting in bad faith - and the corrupt government officials they found to back their efforts. In two cases, the communities' increasingly desperate efforts to resist what were essentially land grabs¹⁹ led only to violence, bribery and ultimately, defeat. As in Uganda, in one community, government officials dissolved the land and forest management committee fighting against the investment on their community's behalf and appointed new leaders more easily bribed to support the company.

Ultimately, the data and stories indicate that regardless of whether or not they have a document for their lands, how well they know their rights, or how strong their leadership is, only in very rare situations do communities have the power to deny or resist investment or infrastructure projects backed by powerful government officials.

¹⁹ A “land grab” may be defined as the act of seizing land in an opportunistic or unlawful manner, done by manipulation or force.

The few times that communities were able to stop a land grab, deny an investor's request, or negotiate a successful investment that benefitted the community were when:

1. The investor or land grabber was from the local area, and had relatively less power and authority than the government officials the community successfully appealed to (two instances); or
2. When the community succeeded in having an NGO present at the community consultation (one instance).

These findings are explored in detail below. First, the respondents' assessments of the governance impacts of Namati's legal empowerment approach to community land protection are described, including what the 61 communities said they would do if approached by an external actor seeking community land is described. Next, the stories of what happened when the 28 communities who were approached by 35 external actors seeking land are presented. The paper then explores what happened in those instances where the community shared its lands with the external actor. To illustrate these trends more fully, a few of the communities' stories are recounted in detail, arranged by the kind of actor who arrived seeking land (government, international investor, and national elite/investor).

Communities' efforts to protect their land rights were no match for investors acting in bad faith - and the corrupt government officials they found to back their efforts.

B. COMMUNITY MEMBERS' ASSESSMENTS OF WHETHER THEIR LAND PROTECTION EFFORTS LED TO IMPROVEMENTS IN GOVERNANCE, LEGAL EMPOWERMENT, AND CAPACITY TO RESPOND TO EXTERNAL REQUESTS FOR LANDS AND RESOURCES

The heart of Namati's legal empowerment approach to community land protection is the community bylaws drafting process, which is predicated upon the assumption that a comprehensive exercise in participatory governance and local rule-making will help: hold local leaders accountable to protecting the community's interests; increase transparency in rule-making and decision-making; ensure representative, diverse leadership (including women and youth); more easily resolve land conflicts; and strengthen community power, authority and unity during interactions with outside actors, among other impacts.²⁰ The central assumption is that stronger, more equitable and inclusive governance will result in stronger community land tenure security. Some of the survey questions were designed to test this hypothesis.

Positively, when researchers called the leaders and mobilizers/paralegals from the 61 study communities, and asked "What is the most significant change you have seen in your community that you believe resulted from the Community Land Protection work?," respondents' answers generally affirmed Namati's assumptions:²¹

- 30 respondents explained that their community had resolved longstanding land conflicts with neighbors and now had clearly demarcated, agreed boundaries of their land;
- 20 respondents explained that their community has experienced a sense of greater tenure security;
- 18 respondents explained that their community has stronger leaders and improved land governance;

²⁰ These include: strengthening women's land rights and participation in land governance, increasing community cohesion, and ensuring sustainable natural resource management/ecosystem regeneration.

²¹ Respondents were free to say anything in response; the results were then post-coded. Two communities did not answer, and 14 communities responded that they had seen no change at all (half of these communities had stalled, due to intra-community conflict, and thus failed to complete the community land protection work). Respondents from the other 45 communities gave an average of 2.5 responses each.

- 14 respondents explained that their community now feels more prepared to respond in an empowered manner to investors seeking land or bad faith land grabbers;
- 12 respondents described that their community now knew their rights and felt legally empowered; and
- Nine respondents described that their community has become more united and inclusive, with more open dialogue.

Describing how people in their community now have a deeper awareness of their legal rights, a sense of legal empowerment, and a feeling of being more prepared to interact with outside investors, respondents offered such answers as: “This work has prepared the local leadership and all community members who participated with a deep knowledge of our rights and duties, which helps us a lot to discuss with any investor,” and “We feel prepared for the day we receive some investors, because we already know our rights to our land and other natural resources.”

Of those respondents that described the community land protection work as having helped them to strengthen the governance of their community lands and hold local leaders accountable, respondents highlighted different aspects of improved governance, including: clearer rules about how to manage their lands; remembrance and enforcement of protective

customary rules; local people asking permission to cut trees or gather natural resources from common areas; a reduction in crime; greater respect for leaders; the election of better, more accountable leaders; and the end of people from neighboring communities trespassing into community lands and gathering resources without permission. Respondents explained how:

- “Strong leaders have been elected.”
- “For now, we have our by-laws that we can live by.”
- “Resources such as trees are used in a regulated manner because interested community members now ask for permission from the governance council. Before the community land protection work, it was done indiscriminately.”
- “People have stopped using dynamite to fish.”
- “Cutting trees have been regulated, people cut trees only after approval from the grazing land committee – and people coming from outside our village have stopped coming to use our resources.”

To further assess changes in governance, the researchers also asked respondents from each of the 61 surveyed communities a series of questions focused on what should happen as well as what they hypothetically would do when approached by an external actor seeking land.

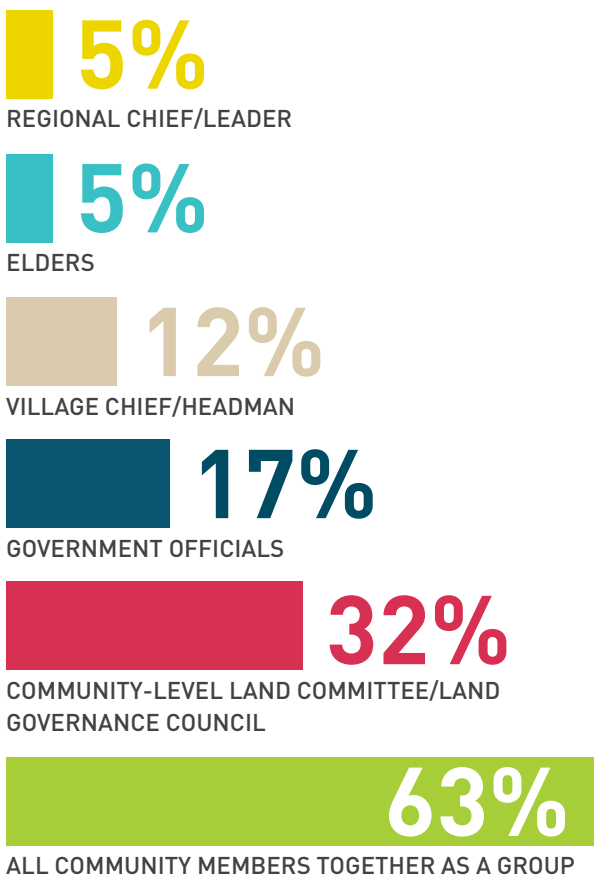
“People now use the community land to graze their animals without the hindrance of encroachers. Most importantly, after one year of following the bylaws, there is clear evidence of eco-system restoration: fish are back in swamp and people are doing simple fishing this dry season - yet before the Community Land Protection Program, the swamp had been encroached and dried up as a result of people dividing up the water into channels towards their rice gardens. The water has come back, and so have the fish, in such a short time period. Water and pasture for animals has increased; people don't have to go far away, outside of the community to look for water and green grazing lands, as was the case in previous years. Grazing land leaders no longer have personal enemies because the encroachers have withdrawn and are respecting community rules for protecting land.”

Community Leader in Barodir, Uganda

When asked, “Who has a right to tell a company or investor what they can and cannot do on your community land?” 63% of respondents answered that “the entire community as a group” has this right, while 32% answered that the “community-level land committee or land governing body” has this right.²²

Interestingly, even though the majority of the respondents were community leaders, they rarely indicated that village chiefs, regional chiefs, and elders had the right to make such decisions on their own, which may be interpreted as a positive indicator of the governance impacts of the community land protection activities. Notably, 17% of respondents indicated that government officials had this right, which may reflect – as this research illustrates – the hard reality that no matter how empowered a community may be and what national law says, government officials often exert significant control over a community’s response to external requests for its land.

WHO HAS THE RIGHT TO TELL A COMPANY OR INVESTOR WHAT THEY CAN AND CANNOT DO ON COMMUNITY LAND



Similarly, when asked, “If an investor or outside company comes along and wants to use your community’s land, who should make the final decision about whether to sell or lease the land?,” 67% of respondents indicated that the community as a whole must make this decision, while 20% of respondents felt it was the role of the community-level land committee or land governing body. Only eight respondents (13%) felt that the government should make the final decision; very few felt it would be either the village leader or chief (8%), regional leader or chief (5%) or group of community elders (7%). These numbers reflect a significant change from pre-community land protection conceptions of decision-making authority – which overwhelmingly located decision-making power in the hands of leaders and elders – and may be treated as a positive governance outcome of the community land protection process.

A second set of open-ended questions asked how respondents thought their community would react when either faced with a situation where they were being asked to share their lands and did not want to, or when local leadership arranged a land transaction without consulting the community. Respondents’ answers to these questions were very similar. When asked “If an investor or government official came to your community and tried to buy or take your lands, and you did not want to lease, rent or sell your land to them, what would you do?” almost half of the respondents (48%) felt that the community would “demand that the investor consult the whole community,” while 26% said that they would “call a trusted NGO for help.” 18% said that they would “show the investor their community’s by-laws and tell them that they must follow the rules for consulting the community,” and 17% of respondents said they would “chase the investor away.” Others suggested appealing to local leadership (7%) or their newly-elected or reconstituted community land governance body (5%) for help. Respondents seemed to have little faith in the law or legal systems: only a handful of respondents suggested that they would call a local lawyer or advocate (3%), call a trusted government official for help (3%), or take the investor to court (5%). Notably, 8% of the respondents said that they would “do nothing.”

²² Respondents could choose as many options as were applicable, for this question and all others in this series.

These answers are difficult to square with what happened when the communities were actually faced with external actors seeking community lands. As described below, the communities very rarely did much at all: of the 35 distinct stories of external actors approaching seeking lands and natural resources, only five called an NGO or advocate, only seven sought help from local, regional or national government officials, and none went to court, called a lawyer, or used their bylaws to demand the deal be voided.

Positively, in all of the stories, there was very little mention of community members fighting amongst themselves, divided about what to do, and only a few stories of leaders acting alone to make suspicious back room deals. Yet as will be described in the following section, the data indicate that even significant intra-community changes in legal empowerment, accountability of leaders, and inclusive community decision-making may be insufficient bulwarks against the power of pressure from government officials supporting international investors and national elites seeking community land.

C. WHAT HAPPENED WHEN COMMUNITIES WERE APPROACHED BY EXTERNAL ACTORS SEEKING COMMUNITY LANDS AND NATURAL RESOURCES

1. BASIC DETAILS OF THE INITIAL REQUESTS AND RELATED INTERACTIONS

As stated above, 28 of the 61 communities received 35 requests for land, of which 34% were government officials seeking community lands for government projects, 40% were international investors seeking community lands and natural resources for tourism, agribusiness, mining and logging ventures, and 26% were national, regional or local-level elites/investors seeking community lands and natural resources for investment purposes. These actors sought to use the communities' land for agribusiness 32% of the time, for tourism 18% of the time, for government infrastructure 32% of the time, for logging 8% of the time, and for mining 10% of the time.

When the external actors first approached the communities, they met only with local statutory leaders 40% of the time, with only customary



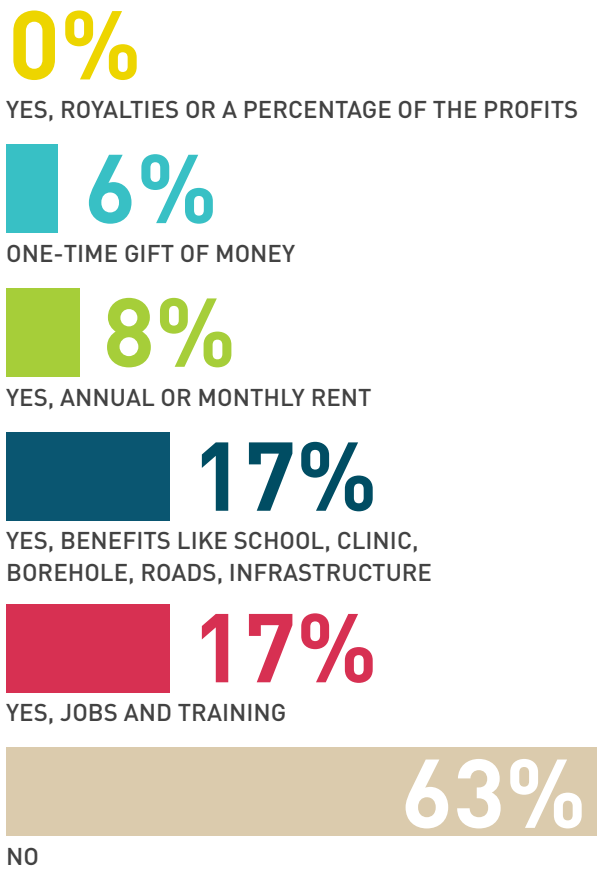
Photo: A community member participates in a land rights meeting in Oyam District, Uganda.

leaders 9% of the time, with the elected land or forest management body 9% of the time, and with the whole community 32% of the time. At these meetings, only four of the potential investors - all in Liberia - brought gifts; the rest came empty handed. One of these Liberian investors, one national elite brought a cow and some money, another Liberian businessman gave women in the community funds for a loan scheme, and Equatorial Palm Oil, a large international palm oil company, built latrines, hand-operated water pumps, and a town hall in one community, and paid another community \$2,200 USD (before any deal was negotiated).

22 of the external actors (63%) asked for less than 100 hectares, while 3 actors asked for between 100 and 500 hectares (9%). 10 of the requests were for an unspecified quantity of land (29%). In exchange for this land:

- 22 external actors (63%) did not offer any payment of rent or benefits at all;

DID THE INVESTOR OFFER TO PAY RENT OR PROVIDE BENEFITS IN EXCHANGE FOR YOUR LANDS?



In only 5 out of the 35 situations did the external actor show the community any permit or authorization from the government.

- Three investors (8%) offered annual or monthly rental payments;
- Six (17%) offered to provide benefits like schools, health clinics, road, electricity, boreholes/piped water, and telecommunications structures;
- Six (17%) offered future employment; and
- Two (6%) offered a one-time gift of money.

Not one potential investor/external actor offered to pay royalties or a percentage of future profits.

In only 5 out of the 35 situations did the external actor show the community any permit or authorization from the government:

- Two of these instances were the Government of Uganda itself communicating in writing with community members about a potential land acquisition;
- One international palm oil corporation seeking land in Liberia provided official documents; and
- Two tourism investors in Mozambique provided government documents.

In the rest of the situations, neither government officials nor investors showed any documents to community members.

Describing their experience interacting or communicating with the external actors, respondents reported that in 18 of the interactions, the process was not at all transparent and open (51%), while ten of the interactions were “somewhat transparent” (29%). Only seven interactions were described as being “very transparent” (20%). Notably, almost every Mozambican interaction was characterized as “not at all transparent.”

GOVERNMENT AGENCIES SEEKING LAND FOR PUBLIC PURPOSES

The communities told twelve stories of the state coming to ask for their land for public purposes. Three of these interactions took place in Mozambique, and nine took place in Uganda. Two of the most illustrative government stories are as follows:

Marrengo, Mozambique. In 2013, the Minister of Defense, accompanied by provincial and district government officials, came to the community of Marrengo and held three community consultation meetings to claim land for an agribusiness investment. **The community, who had a formal, government-issued DUAT for their land, was very clear that they did not want to give the land to the Ministry of Defense, as it was being actively used for local livelihoods. They refused to give their permission. However the Ministry of Defense did not heed their clear “no,” and instead claimed the land.** The Ministry did not offer to pay rent or provide any benefits to the community, did not show the community any paperwork, and did not create any contract or written agreement. The Ministry began cultivating the land in 2014. As a result of losing this land, community members have had to leave the community and travel long distances to find work. Describing his community’s experience with the Ministry of Defense, the Community Leader of Marrengo explained:

“As a result of the entrance of the Ministry into our community, many people lost land that they depended upon for their livelihood. ...It was an opportunity to really learn who is the partner of the community, whether it is the private sector or the government, because we always think that we should defend ourselves from outside investors when they come to our community, but today we realize that the investors are not always a problem, because the state itself lets this happen...This experience made us realize that having a certificate is not enough to guarantee your rights because when the interest is from the state itself, is difficult to defend because the state uses all the means it has available to achieve what it wants.”

Akwic, Wilyec and Teaduru, Uganda. In September 2016, the Minister of Health wrote to the Chief Administrative Officer (CAO) of Oyam District, Uganda, informing him of a contract between the Ministry of Energy and a Chinese company, Sino Hydro Corporation, to construct an electrical generation plant at Karuma Waterfall on the Nile River. As part of this contract, Sino Hydro Corporation would, as part of their Corporate Social Responsibility obligations, construct a district hospital in Oyam District. The Minister of Health asked the CAO to identify a large area of land suitable for construction of the hospital. Officials from the Ministry of Health, Ministry of Energy, and Oyam District visited three possible sites for the hospital. Competition thereafter arose between the communities who owned these sites, as each wanted to be the “beneficiary” and have the hospital constructed on their land. Eventually, the officials recommended the large grazing land shared by the communities of Akwic, Wilyec and Teaduru for the hospital.

Within a week, district leaders convened the first of four general community consultation meetings. All four meetings were held within a month: the first meeting was with community members and sub-county leaders; the second was with the community, sub-county officials, and district officials; the third meeting involved officials from the Ministries of Health and Energy and included an extensive site visit to the land, and the fourth meeting involved officials from Sino Hydro Corporation, the Ministries of Health and Energy, Oyam district officials, sub-county leaders and more than 600 community members. At this the fourth meeting, community members were asked to sign a consent form agreeing to give their land for the construction of a new hospital. Community leaders were also given multiple copies of the form and asked to go door to door to get all the households in the community to sign. In the end, roughly 2,000 community members signed the consent form. However, no copy of this form remained in the community. Describing the consent form exercise, a local leader from Wilyec explained

that elected officials “moved around with the consent forms, but did not explain to community members that they were signing to give away their land; they only asked for names, national ID numbers and to sign the form left by the Ministry of Energy.”

The three communities gave land in different sizes, according to the amount of land they owned: Akwic and Teaduru each gave 50 acres and were left with no communal grazing land; Wilyec gave 100 acres and was left with roughly 150 acres for grazing and a group farm. The government did not pay for this land. According to community members present at the consultations, no one spoke out to ask for compensation or to question the notion of giving the land away without compensation, as everyone was excited to “get a hospital,” which would bring healthcare, commercial growth, and local development. According to the former Chairman of the Grazing Lands of Wilyec, the process was conducted in such a way as to quietly stifle any opposition:

“During the land negotiation process, **the sub-county officials dissolved all the committees created during**

“It was an opportunity to really learn who is the partner of the community, whether it is the private sector or the government, because we always think that we should defend ourselves from outside investors when they come to our community, but today we realize that the investors are not always a problem, because the state itself lets this happen.”

**Community Leader of Marrengo,
Mozambique**

our community land protection work and asked that all chairpersons for the grazing lands step down. Then they appointed new chairpersons. If our committee for managing the community lands was not dissolved by the sub-county authorities, it would have been difficult to take away our

land... We wanted that our land should be given out under certain conditions. We even drafted these conditions...but some members of the negotiating team refused to sign, so it never got to the [table] during the community consultation meetings. Personally I feared being called a ‘development saboteur’ [for questioning the wisdom of giving their land away], since everyone in the community supported the project without question.... The pressure for the community land give-away came from both below and above: the district and sub-county leaders put pressure on the community due to their political interests, but the community members unquestionably accepted the land request... They saw the hospital as the only hope for the development to come to our community.”

Describing their story, community members questioned: “Now that we have given away 200 acres of our community land for free, the sub-county is beginning to process a land title in its name before the hospital is built. What shall we do if the title is got but the promise of the hospital never gets fulfilled?” and “During community consultation meetings the district asked us for 100 acres but during the land demarcation officiated by the sub-county and district leaders we ended up giving 200 acres; why do they need all this land for a hospital?”

Reflecting on their communities’ desperation to “get” the regional hospital that would be built by Sino Hydro, one community member openly expressed a sense of shame at the communities’ lack of savvy: “I think we have got a raw deal from this hospital offer, we did not follow LEMU’s teachings about who really owns our land, we should have used the knowledge from LEMU to negotiate better terms for the villages that have now lost our major livelihood.”

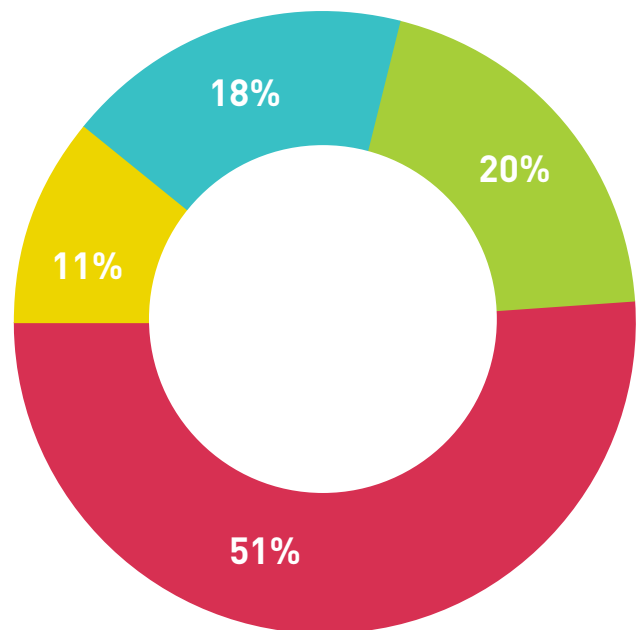
When asked if they sought help handling the request for their lands from the government, community members reported that **in 24 instances (69%) they did not seek help from the government because the investor came accompanied by the government officials they would have contacted for support, or because the external actor seeking land was itself the government.** In only seven situations (20%) did communities look to the local, regional or national government for support.

For those seven communities who reported seeking help from the government, in four instances the government’s response was generally lacking or disappointing:

- One community was “told to accept” the investor;
- One community was told that the government official would “look into it” and get back to them, then never followed up;
- Two government officials in Liberia responded by allegedly colluding with the investor and forcing the community to accept the investment; and
- One government official told the community to “wait and see” if the investor would fulfill their as-yet-unfulfilled promises of benefits.

More positively, two communities in Uganda were helped by government: one was supported by district officials, who confirmed a local elite had not stolen the community’s lands and that therefore their legal ownership continued undisturbed; while another was helped by local politicians who mobilized for community meetings, resisted district attempts to pass a resolution to take the community’s land, and offered financial aid for the community to title its land.

DID YOU SEEK ADVICE FROM THE GOVERNMENT?



- 11% DID NOT SEEK ADVICE FROM ANYONE
- 18% NO, THE GOVERNMENT WAS THE INVESTOR
- 20% YES, WE WENT TO THE LOCAL, REGIONAL OR NATIONAL GOVERNMENT
- 51% NO, THE GOVERNMENT CAME WITH THE INVESTORS

GOVERNMENT REFUSAL TO COMPENSATE COMMUNITIES FOR THEIR LAND

Across all three countries, in all instances when the government approached a community seeking land for public infrastructure, the communities were not compensated for their lands. In the following stories, the communities knew their rights, reminded the government officials about national compulsory acquisition law, requested compensation, and were ignored or refused.

Paindane, Mozambique. In 2014, the Jangamo District Government contacted the leaders of the community of Paindane to select a plot of land to build a public fish market. Community leaders informed the government officials that the government was required by law to pay compensation for their land. The government officials refused to do so, instead expropriating the land without payment. In response, the expropriated families threatened their local leaders, accusing them of failing to get the landowners' rightful compensation. Faced with constant threats, these community leaders personally gave their own money towards the value demanded by the families. The mobilizer of the community of Paindane explained how, "Our situation clearly showed that the government itself, which is the defender of citizens' rights and guarantor of the Constitution of the Republic, forgets all these guidelines when it seeks to meet the needs of its own governance."

Magumbo, Mozambique. In 2016, the Morrumbene district government sought to build a local police station. It was the government's responsibility to locate the land to build the police station on; a tourism investor would be financing and overseeing the construction as part of his "payment" of benefits to the district. The government selected a piece of land owned privately by a family in the community of Magumbo, and despite the landowners' repeated demands, the government refused to pay compensation on the grounds that the future police station would be "social infrastructure" that would serve the greater community. The community did not seek outside help, and accepted the situation.

“Our situation clearly showed that the government itself, which is the defender of citizens' rights and guarantor of the Constitution of the Republic, forgets all these guidelines when it seeks to meet the needs of its own governance.”

Mobilizer of Paindane Community, Mozambique

Oulu, Uganda. In 2012, the Amolatar District government and the sub-county government approached Oulo to request land to build headquarters for a newly-divided sub-county government. To request this land, the Sub-County Chief approached the Chairman of the Grazing Land and asked that he call a community meeting. Two community meetings were held, with all the owners of the grazing land present, and they consented to give ten acres of their grazing land for the construction of the government headquarters. During these meetings, people asked the sub-county leaders to buy the land but the government officials declined to pay for it on the grounds that they were "bringing development nearer to the people." Despite being denied payment for their land, the community members who attended the meetings signed "attendance lists" which (they may or may not have known) served as the consent form for giving away the land. The sub-county leaders then brought a surveyor, marked the boundaries of the land, and got a title to the land in the name of sub-county. The community now regrets giving away ten acres without demanding to see the building plans, as it has become clear that two acres would have been sufficient.

POSITIVE LOCAL GOVERNMENT SUPPORT FOR COMMUNITY LAND RIGHTS

Atura, Uganda. In 2016, the community of Atura discovered that the Catholic Diocese of Lira had made an illicit deal with the Lira District Councilor: the Diocese appeared to have secretly secured a title for the community's grazing lands and then sold the land to the Councilor. Community members explained how:

"We were not approached by anyone, we only realized there was someone else co-owning our community land with us when they started stopping us from using our land.... [When we investigated], the Councilor and the Parish Priest told us the Diocese had already processed the land title from the Ministry for our community land. They simply grabbed the land, they did not offer us anything."

When the community resisted, the church officials and the Councilor threatened to arrest the entire community. The community then contacted LEMU staff, who helped the community ask the district government to carry out an investigation. The district government's investigation found that some individuals believed that the land contained valuable minerals and thus sought to grab it, but had not yet secured a private title to the land. The District demanded that the Councilor leave the community's land. After the district leaders' intervention, the Councilor and the parish priest did not return to claim the land. The community thereafter became very unified and worked diligently to complete the community land protection process and apply for a title to protect against future land grabs.

Oulu, Uganda. In 2011, the Director of Amolatar District, the director of the district prison, and the Area Councilor convened a community meeting in Oulu, which owns and manages the vast Alemere Community Grazing Land. The government officials requested 300 acres of the community's grazing land to start a prison-run farm and livestock breeding center. In return, they promised that the government would build a school and a hospital for the community, give community members jobs, and provide villagers the opportunity to cross breed their local cows with the "high breed" cows owned by the prison farm. The entire community rejected this request and "almost erupted into violence." They argued that their community land was the main source of their livelihood and the government could not just come and take all of it for a prison farm.

Following the rejection, the district leaders left the community, but returned the next year and attempted to bribe the then-Chairman of the Grazing Land, promising him ten million Ugandan shillings, a tractor, and to process a land title for his personal land at no cost if he agreed to give the community's land to the government. This man accepted the bribe, turned against the community, and thereafter went around the community telling people that he had "nugunu ngunu wanga otoo," a Luo proverb used to mean "blithely giving away something without caring about its value to one's own family." When the community members heard this, they asked the local chief and Area Councilor to call a community meeting so that the Chairman of the Grazing Lands and his committee could explain their actions. The Chairman did not come to this meeting, and in response, the community removed this Chairman, dissolved the committee, and elected a new nine-member Grazing Land Management Committee.

The ousted-Chairman then reported to the police that the new committee members were thieves, and the police arrested them and took them to jail. After explaining the situation fully to the police, they were released, and immediately wrote a letter to the district government leaders involved in the land request. According to the new Secretary of the Grazing Land Committee: "All the district leaders...confirmed that the district had not yet taken over the land; it was still community land because we, the owners, had not yet consented. Thereafter, the community informed the [district officials] that 'the district should never come back to ask for the community land because the prison farm has no benefits for the community.'"

In addition, these local government officials teamed up with local politicians to help the community resist district attempts to pass a resolution to take the community's land, and offered financial support to the community to seek a title for the land. The community has now secured the support of their Member of Parliament and has made getting a land title the most urgent task of the current Grazing Land Committee. The community credits the community land protection process facilitated by LEMU with giving them the strength and knowledge to achieve this victory.

In 28 out of the 35 land requests (80%), community members did not seek support or advice from any outside actor.

Interestingly, despite having completed an extensive community land protection process with land rights-oriented NGOs and advocates, in 28 out of the 35 land requests (80%), community members did not seek support or advice from any outside actor. Only seven communities (two in Uganda, two in Mozambique, and three in Liberia) reported reaching out to an NGO for help addressing the request (20%). Yet even when they did not call for outside help, taking part in a community land protection process seems to have resulted in a degree of legal empowerment; for example, in a Liberian community called Dowein, one community member described how, during a consultation with Equatorial Palm Oil, “Some of the community members used SDI’s Investor Guide to ask questions. I don’t remember the questions but I know the guidebook was in some people’s hands.”

Keyah’s story, (described on p. 24), shows how powerful it can be to invite an NGO or legal advocate to a community consultation meeting. With outside advocates present, it was possible to slow down the consultation process, demand a private community meeting to discuss the proposal, and assess the investment request carefully.

2. COMMUNITIES’ DECISION-MAKING PROCESSES IN RESPONSE TO THE REQUEST

In 22 of the situations (63%), respondents reported that communities made decisions about the land requests together as a group, at a meeting convened for the purpose of discussing the land request. However, this data should be squared with the fact that often, especially in Mozambique, the only meetings convened were called by the investor or the government, and a decision was required or requested by the end of that meeting. Respondents reported that community leaders made the decision

on their own in seven instances (20%); while no decision had been made yet in six communities (17%) at the time the research was conducted.

Positively, many respondents indicated that while in the past only the community leaders would have made the decision, now the whole community was convened, discussed the matter and decided as a group. They explained how:

- “When the rumor that a local elite was secretly asking for part of the community land reached the community, a meeting was called and the entire community made a decision not to accept. In the past this would have gone only through the Grazing Land Committee;”
- “The big difference was that this time there was a meeting with the community and it was explained what the investment consisted of and what kind of benefits could be provided to the community. There is what we can call a community consultation, although it did not follow all the steps provided for by law. In the past we were only informed of an investor’s entry and nothing else happened;” and

“The big difference was that this time there was a meeting with the community and it was explained what the investment consisted of and what kind of benefits could be provided to the community. There is what we can call a community consultation, although it did not follow all the steps provided for by law. In the past we were only informed of an investor’s entry and nothing else happened.”

Community member, Mozambique

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- “[In the past] it was normal just to hear them speak and then say yes without asking anything. That does not happen today. At that time the consultation was always held at the place where the investment project was to be implemented, but now the consultation took place at the community headquarters and everyone was invited to participate.”

One community leader explained how: “This was the first time the entire community was invited to attend the negotiation meeting with the investor. Prior to this process, these issues were the sole responsibility of community leaders ... But this time the whole community was invited to take part in the meeting, which leads us to believe that they are changes brought about by the [community land protection] process.” Such answers may be interpreted to be indicative of: government officials’ increasing awareness of the importance of at least a show of community consultation; leaders’ understanding of the importance of the community being involved; and community members’ new knowledge of their right to be consulted.

Community members reported that there was no intra-community debate about how to respond to the request in 23 out of the 35 instances (66%), while there was some degree of disagreement and conflict within the community in eleven of the situations (31%). Many of the internal debates reported were from Uganda, where there was some intra-community conflict related to leaders wanting to make decisions alone - and being irritated by requirements that all the owners of the land must be consulted, as they had enshrined in their bylaws during the community land protection process. In Liberia, internal conflicts reportedly stemmed from outside investors bribing or “giving gifts” to certain community members, who then allied themselves with the investor. Interestingly, not one Mozambican community reported any internal disagreement – likely because there was only one consultation meeting, and no time allocated for intra-community discussion.

Several community members in Mozambique and Uganda also described not speaking up because of a subtle sense of intimidation in

HOW NGO SUPPORT HELPED A COMMUNITY PROTECT ITS LANDS

Keyah, Liberia. In 2018, leaders of Keyah Clan were approached by representatives of the international company Equatorial Palm Oil (EPO) seeking land for a palm oil plantation. When they first arrived, the EPO officials did not call a large community meeting, but rather started meeting privately with select leaders and elders, giving these individuals money and zinc for their roofs, and promising to build bridges between towns within the clan. However, youth in the community started asking questions, and EPO was forced to hold a community-wide meeting. The community invited SDI to this meeting. During the meeting, which SDI attended, the company

brought \$300,000 Liberian Dollars (\$2,200 USD at the time) as a gift to the community and promised to build roads, a health clinic, and schools, and to create jobs for community members. SDI and community members residing in Monrovia supported the clan to hold off on making an immediate decision at this meeting so that they could to hold their own, private community meetings to discuss the matter. Community leaders explained how, after a very long discussion, “We came to realize that what the company was proposing was not in the interest of the people, so we rejected their proposal as a clan.”

community discussions, or a fear of facing negative ramifications or ostracization from other community members. As explained by one Ugandan man:

“No one directly said ‘no.’ Even if you wanted to say no, you would not, due to fear of victimization from leaders and other community members... I think if anyone dared to say no during the community consultation meeting, he could even be stoned or beaten up...when I was leaving my home, my wife warned me that she knows I am always stubborn but I should ‘not try to say no’ during the meeting.”

Another Ugandan man explained how he did not speak up because “personally I feared being called a development saboteur since everyone in the community supported the project without question.” Similarly, a man in Mozambique explained how “If you say no, then you are then excluded from further discussion – branded as ‘the opposition’ and excluded. No one wants to risk this exclusion.”

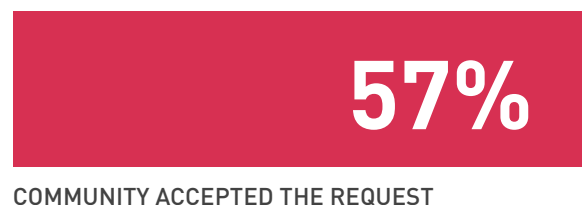
Notably, respondents reported that in 24 of the 35 situations (68%), the community either accepted the investor’s request or reported that they were “not consulted” or “were forced” to accept the request. More specifically, respondents explained that:

- In 13 situations, the community accepted the request and the external actors returned, claimed the land and natural resources, and began project development;
- In seven situations, the community accepted the request and external actors returned and claimed the land, but had not yet started operations at the time of the research;
- In four situations, the community tried to reject the request but the investor did not accept the situation, and either pressured or bribed the community to change its mind, or went around the community and took the land by force;
- In five situations, the community rejected the request, and the actor went elsewhere for land, or was never heard from again, or there were rumors that the actor was planning to return;
- Six communities had not yet made a decision, and were still in discussions at the time of the research.

3. IMPACT OF HAVING – OR NOT HAVING – A DEED, TITLE, OR LEGAL CERTIFICATE ON COMMUNITIES’ RESPONSE TO EXTERNAL REQUESTS FOR THEIR LANDS

- Ten out of the eleven Mozambican communities who were approached by investors had an official document for their lands, while none of the 17 communities in Liberia and Uganda who were approached by investors had a title or deed (although the Ugandan communities have *de jure* private ownership, as set out in Uganda’s 1998 Land Act).

WHAT DECISION DID THE COMMUNITY MAKE AND WHAT HAPPENED NEXT?



When asked how not having a title or deed for their land impacted their response to the investment request, the Liberian communities responded that if they had had a deed, they would have been able to respond in a more empowered way. Community members explained that “a deed would help give us the power to make decisions on our own about our land,” while “not having a deed for our community land gave us difficulties when discussing with investors.” In Uganda, where the primary actors seeking land were government officials, community members described how: “[If we had a title,] the government would not have even requested for our land, and if they did we would have put tough conditions and asked for benefits and they would have paid for it;” “Because we do not have a land title, the district government keeps imagining strategies to take our land for their purposes;” and “If we had a land title, the sub-county would not have even come to request for our land. It would be impossible, they would fear.” Only one Ugandan community indicated a sense of tenure security despite not having a title, explaining how, “We do not feel insecure because we have strong leaders and our boundaries have been demarcated during the community land protection process. Instead of planting only boundary trees, LEMU planted concrete stones on the boundary and so we feel secure.”

Respondents in nine out of the eleven Mozambican communities that received requests for their lands expressed unambiguously that having an official document for their land made no difference whatsoever: the government exerted its power and authority to “force” community members to accept the land request, which it arguably may do as the ultimate owner. (As explained above, all land in Mozambique is held by the state, and a DUAT is not a private title but rather a “right of land use and benefit.”) Their disillusioned answers paint a clear picture of the irony of a state that, while proactively issuing formal documents for community lands, holds very little respect for such documents:

- “It is very important to have a document proving ownership of our land and natural resources. After getting our delimitation certificate, we were able to be more demanding, but we did not get far because our DUAT lacks government support. Without government support for our rights, a document alone can not make much difference.”

“It is always advantageous to have any type of document proving your land rights, because it helps in the negotiation process with investors. But you have to be brave to say “no,” because the investors are accompanied by the district government; if you do not agree, you may suffer retaliation.”

Mozambican community member

- “For our community, everything was decided by the district government, so our having a DUAT did not change much. But we have gained knowledge about our rights during the delimitation process, which can make a difference.”
- “The fact that we had a certificate of delimitation did not impact what happened; we did not have enough space to discuss and put forward our opinions on the type of relationship [we wanted to] to establish with the investor, because he was presented by the government to the community as someone who already acquired the right to use the land, so there was nothing else we could do. So it was as if we had no document justifying the community’s right to the land and the natural resources in the area.”
- “It is always advantageous to have any type of document proving your land rights, because it helps in the negotiation process with investors. But you have to be brave to say “no,” because the investors are accompanied by the district government; if you do not agree, you may suffer retaliation.”

Ultimately, the communities’ stories indicate how neither: 1) private ownership rights enshrined in law, but without formal documentation, nor 2) formal documentation of community rights without private

ownership rights offer sufficient legal protection to communities negotiating external requests for their land. As expressed by the respondents, the state bears the duty to enforce a community's rights, and if the state is not doing so, the community may not have much recourse, particularly in countries with weak rule of law. Ultimately, strong political will to honor community land rights by government actors from all branches of government is necessary to "make rights real."

D. WHAT HAPPENED IN THOSE SITUATIONS WHERE COMMUNITIES CONSENTED - OR WERE FORCED - TO SHARE THEIR LANDS AND NATURAL RESOURCES WITH OUTSIDE ACTORS

As described above, in 24 out of the 35 instances, the investor or government agency had claimed the land and/or begun to take steps to launch the project/investment by the time the research was conducted. Respondents from these 24 communities were asked a third series of questions about the process of negotiating the terms of their agreements with the outside actors, the benefits offered and agreed to, how their communities have or have not benefited, and what has changed in their communities as a result of the presence of the investment or government project.

1. LENGTH OF THE CONSULTATIONS AND NEGOTIATION PROCESS

As explained above, an authentic FPIC process should include multiple meetings that allow time for the community to first receive the request, then privately discuss and investigate the request, then

Ultimately, strong political will to honor community land rights by government actors from all branches of government is necessary to make rights real.

finally make a decision during internal community meetings. Only after multiple community meetings should the community be expected to communicate that decision to the outside actor. If the community agrees to accept the request and invite the investor to use its lands and natural resources, there should be (many) additional meetings to negotiate the terms of that use. Yet when the 24 communities were asked how much time – and how many meetings – it took for their community and the external actor to negotiate a final agreement, they described how:

- In eight communities (33%) only one meeting was convened to discuss the potential investment;
- In five communities (21%) two meetings were convened;
- In one community (8%) three meetings were held, although community members qualified that "There was no agreement, the government decided after the third meeting and began to work;"
- In three communities (13%) four meetings were convened (two of these were the Ugandan communities involved in the Sino Hydro hospital project);
- In three communities (13%) "five meetings or more" were held; and
- The remaining three communities (13%) reported that "there was no meeting at all."

All but three of the communities explained that the whole process took between one week and one month from start to finish. At the end of the consultation process, not one community signed a contract or was left with any written copy of all agreements. Explaining this, respondents described how:

- "We do not know why a contract was not signed. Even though we had already studied our rights, we were not in a position to demand that the investor enter into a contract with the community, where everything he promised was in the contract. I think we still needed the support of the government or another entity to get there."
- "The government technician accompanying the investor explained that it was still premature to make a contract;"

- “The Minister of Agriculture present at the meeting assured us that a contract was not necessary, as he would be available to resolve any conflict that arises;” and
- “We did not sign any contracts because the investor only appeared with the government, not to negotiate. There was no room to discuss the terms of the investment.”

Notably, a few Mozambican communities did demand that “the minutes of the consultation...be delivered to the community and shared with all” – a possible indicator of legal awareness and efforts to protect their rights. However, at the time of research, none of them reported that they had received these minutes; one community explained that “Unfortunately, until the present moment, the community has not yet received our copy.”

2. REQUEST FOR – AND PROVISION OF – RENTAL PAYMENTS AND TANGIBLE BENEFITS

Notably, during the consultation and negotiation process, the investors offered benefits more than the communities asked for them. Community members in 14 of the 24 communities that shared their land with an investor reported that they did not ask for any benefits at all (58%). Of the remaining ten:

- Six communities asked for tangible improvements like schools, clinics, boreholes, roads, and/or electricity and telecommunications infrastructure;
- Three asked for jobs and/or skill-building training;
- Three asked the investor or the government to pay compensation for the loss of the land, specifically when the land was claimed by the government; and
- Not one community asked for annual or monthly rent, for a percentage of the profits, or annual royalties.

From the investors’ side, the investors did not promise to provide any benefits at all in 10 instances (42%). Of the remaining 14 instances where an external actor claimed the community’s land:

- Nine investors/government actors promised to provide infrastructure improvements (such as schools, community meeting houses, roads and boreholes);

- Nine agreed to provide jobs and training; and
- One offered to pay compensation for land.

In only one of these instances did the external actor specify a date by which they would provide the promised benefits.

Of the 14 external actors who promised to provide benefits, only six had begun efforts to fulfill their promises by the time the research was undertaken. The associated six communities reported that they had received “Some of the promised benefits, but not up to the quality/timing/frequency/amount we were expecting.” The other eight communities reported receiving no benefits or payments yet. Not one community reported that they had received all of the promised benefits and were “more or less happy” with them.

When asked if their community had so far made any attempt to enforce the terms of their (oral) agreements, respondents in only five of the 14 communities indicated that they had taken or were planning to take action to demand that promised benefits were delivered. Leaders of two of these communities lamented that they have no written contract to enforce. In Mozambique, one community explained how “Today, we have a classroom built by the investor...[but] it was necessary to force the investor, through demands made at the district level, until this happened. The classroom was built,

During the consultation and negotiation process, the investors offered benefits more than the communities asked for them. Community members in 14 of the 24 communities that shared their land with an investor reported that they did not ask for any benefits at all.

but not in the minimum conditions required, and the infrastructure is of very poor quality.” Another Mozambican leader explained that they have “complained to the government and to the investor himself that after so much time the promised borehole has never been built. The investor justifies this by telling us that he is waiting for authorization from business partners outside the country to execute his promise.” While their efforts did not lead to satisfactory results, such stories illustrate a high degree of legal empowerment: the communities made strong efforts to leverage local government support to hold investors accountable.

3. REQUESTS FOR ENVIRONMENTAL, HEALTH, AND SAFETY PROTECTIONS

When asked if their communities made any demands of the investor or government agency to not pollute the environment, protect the community’s social fabric (by regulating company workers’ behavior within the community), or leave open access to rights of way or sacred sites, 18 out of the 24 communities reported that they did not; some explained that they “did not even think about this.” Of the six communities who reported that they did make requests (five from Mozambique, and one from Liberia):

- Six communities asked that the external actor ensure open access to roads, paths, rights of way, waters and common natural resources;
- Three communities asked that the external actor keep community waters clean and drinkable;
- One community requested that the investor not pollute the community’s air and land; and
- Three communities asked the investors to make sure that their staff treat community members with respect, and/or not drink, fight, rape, or within the community.

When questioned about why they made these requests, community members explained that they did so because of negative experiences and conflicts they have had with investors in the past, which made them aware of the need to impose conditions to protect community members’ livelihoods, health, and wellness. One community explained how blocks to their “access roads have always been the main cause of conflict between the community and investors, so

we intended to correct this error by demanding that paths should not be closed by investors;” another explained that “[We made these requests because we] have knowledge about our right to the land, and because the community essentially depends on these resources for our survival.”

BENEFITS REQUESTED BY COMMUNITIES; PROMISED INVESTORS

■ COMMUNITY REQUESTED

■ INVESTOR OFFERED

0%

0%

ROYALTIES, RENT, PERCENTAGE OF THE PROFITS

■ 14%

■ 4%

COMPENSATION FOR LOSS OF LAND

■ 14%

■ 38%

JOB AND TRAINING

■ 27%

■ 38%

INFRASTRUCTURE: SCHOOLS, CLINICS, BOREHOLES, ROADS, TELECOMMUNICATIONS

■ 58%

■ 42%

NO BENEFITS REQUESTED OR OFFERED

INTERNATIONAL INVESTORS SEEKING LAND AND NATURAL RESOURCES

The communities told 14 stories of being approached by international investors. Seven of the stories were from Mozambique, and primarily involved tourism developments along the coast. Six of the stories were from Liberia; half of these involved discussions with the companies Equatorial Palm Oil and Golden Veroleum, which have been allocated vast concessions from the Government of Liberia and were exploring where to expand their operations within the concession area. Only one of the stories was from Uganda, involving an Indian agribusiness company who leased the community's grazing land for a few years, paid rent as promised, then left the community land degraded and deforested.

These stories illustrate the variety of ways that international investment requests, especially those that come accompanied by powerful government officials, are challenging for community members to refuse. As explained by Mozambican community members, "In the situation we faced, the government had already arranged everything with the investor, they only came to inform us that the investment would take place in our community." Even communities who knew their rights and were empowered enough to ask for help from their government were either betrayed or denied support, as in Sawpue's case. Three of these stories are summarized below:

Sawpue, Liberia. In 2016, a Chinese gold mining company, incorporated as "KAIFA," entered Sawpue Clan. As explained by the community animator, "Since the end of last year, we have been terrorized by a Chinese Gold mining company." The company first presented itself as an agricultural cooperative – the community's first experience of the company was of company officials asking community members to pay five hundred Liberian Dollars to register to take part in a "cooperative cocoa farm project" – but later revealed itself to be a mining company. The animator explained how, "To our surprise, people associated with the company started building hand pumps around in the community and eventually we saw mining equipment!" KAIFA officials asserted that they had an MOU with local leaders from one of the towns in the clan. Yet when the animator and other community members contacted the leaders of that town to request to see the MOU and offer "some of the advice and training

we received from SDI through the community land protection project," the town leaders refused to produce a signed MOU or seek legal support from SDI.

The animator and other leaders from the rest of the clan then reached out to the company and insisted that they stop mining because the whole clan had not signed an MOU with them, and they were operating outside the bounds of the one town they alleged to have an agreement with. They also asked the company to show them their "documents from the Government such as tax clearance or permit from the Ministry of Land Mines and Energy." The company refused. Finally, they sought advice from their elected senator, but did not receive a positive response. Then, a few weeks later, that senator sent clan leaders an MOU prepared by the company without the input of community members. According to the community animator, although most people refused to sign it, "**a handful of people were bribed to sign the MOU.**"

Community members explained that since the company started mining in their community, **at least twelve towns no longer have a safe drinking water, as "all our rivers and creeks have been polluted with chemicals and mud, which is causing serious health problems."** The company's continued violations of the community's rights and misuse of the community resources eventually **led to violent conflict in late 2017, when community youth forcibly entered the company's mining site and burned its mining equipment. When the company reported this to the senator, he sent in the Emergency Response Unit (ERU), who "brutalized some of the towns in our clan and fired shots. People ran into the bush."** The arson resulted in the company halting operations. Officials from Liberia's national peace-building office intervened, and although people were able to return to their homes, residents reported that they "are still living in fear" as there are rumors that the company will return soon and resume mining activities. At the time of the research, community members reported that women from the clan were planning to take jars of the polluted water to Monrovia and try to meet with the President to seek his help.

Teekpeh, Liberia. The community of Teekpeh was approached by international investors in 2010 seeking

land for a logging venture. The community members interviewed have no memory of being consulted, nor any idea of the name of the investment company. At the signing ceremony to formalize the agreement, community leaders, county government officials, the County Superintendent, and some traditional leaders were present, and although the investors, the leaders and the government officials discussed the venture among themselves, “no one told [community members] what was being discussed.” The company brought gifts for the community leaders, and slaughtered a cow to celebrate the occasion; food and drinks were distributed to the community members present at the signing ceremony. Although the agreement was signed in 2010, the company did not start work until 2013. According to community members interviewed:

“The process was not transparent or inclusive at all. We celebrated our own downfall, people taking our only land, forest, and livelihood... Since they started operations, we are having some serious issues. We can’t hunt or go get spices and medicine in the forest, and the logging camps have led to lot of problems with fighting. One time, an elephant came out of the forest and the company killed it - that was the first elephant we had seen in a long time. Also, all of the things the company promised to do, such as building roads, schools, a hospital clinic, none of them came through. Most of our bridges that connect the towns within our clan have been damaged by the heavy trucks the company uses to carry their logs.”

Community members have tried to address their concerns through their Community Forest Development Committee (CFDC), but feel that the Chairman of the CFDC “takes bribes without pushing our concerns.” The community would like to remove him from his position, but is finding the process difficult. The community feels betrayed and is hoping to find a way to address their most serious concerns.

Guiconela-Guifugo, Mozambique. In 2013, the community of Guiconela-Guifugo was approached by an investor named “James” who sought land for a tourism project and a conservation park that would include wild animals. The investor was accompanied by the then-Minister of Agriculture. A community consultation meeting was held at the place where the project was intended to be implemented. No representatives of the District Government attended this meeting. At the meeting, the investor and the Minister of Agriculture promised to build classrooms and a clinic, improve the main access road to the community, and provide subsidized transportation and a community tractor. In the consultation, the then-Minister of Agriculture guaranteed the community

that there would be no problem with the investor since the project would be under the direct control of the Ministry. To underline this claim, he provided his personal contact information, should the community have any questions or concerns. According to the Community Leader, “We did not sign any contract because the Minister of Agriculture present at the meeting assured us that it was not necessary, as he would be available to resolve any conflict that arose.” The Community Leader explained that although the community knew its rights, the community leaders felt they could not demand a proper consultation and contact, largely because the Minister of Agriculture himself was behind the project, but also because the community had not yet received its DUAT:

“If by the time the investor in the community arrived we had a document that proved our right to use and take advantage of the area of our community, I believe that our positioning could have been different, because the first thing we would have required was a community consultation, legally made, where the minutes of the consultation with all the promises and agreements made would have been signed by all parties. We knew this, even before we received the certificate, but it was difficult to discuss, because the consultation was led by the then-Minister of Agriculture.”

The community accepted the investor, agreeing to the tourism project but not the wild game park (on the grounds that it would potentially endanger the lives of community members), and the investor began constructing a lodge on the parcel of land the community allocated to him. In the years since, however, the investor has not followed through on any of his promises, and when the community went to the District Government to complain, the local government officials claimed that they could not help the community, as they community had dealt directly with the Ministry of Agriculture. The community leader explained how:

“This situation brings to the surface the lack of honesty that exists in public administration, because it was not for the community to request the presence of the district government since it was a central government institution in front of the investor. Meanwhile, we understand that the central and local governments are in permanent coordination, so it was not possible that the Ministry was processing cases at the district level without the district’s knowledge. The result is that the community has lost land, no promises have been fulfilled, and no one takes responsibility, because the district government does not recognize the investor and the then-Minister of Agriculture is no longer in government and cannot be contacted.”

Notably, a few communities in Mozambique described having attended a government seminar where they learned that “no investor has the right to prevent the community from access to the sea, or to natural resources necessary for our survival.” Another Mozambican community explained that: “Our demands were the result of some work the government has done to disseminate information about the need to talk with investors to maintain good relations with the community. But these demands were also a response to the teachings that we have received throughout the community land protection process.”

The other 18 communities’ failure to make such requests may be attributed to the brevity of the consultation/negotiation process. As explained above, in 67% of the stories, only two or less meetings were held to discuss the terms of the investment.

4. IMPACTS OF SHARING THEIR LAND WITH EXTERNAL ACTORS

When asked if their communities had experienced any positive outcomes resulting from the external actor entering their community:

- Ten out of the 24 communities (42%) who shared or were forced to share their land with outside investors responded that they had not seen any positive impacts (although some respondents remained hopeful that one day the promised benefits would be delivered);
- Four communities (18%) reported that the external actor had built a school or a clinic, new roads, boreholes, or other infrastructure;
- Six communities (27%) reported that the investor had provided some employment to community members;
- Three communities (14%) reported that the investment brought better access to markets and/or government services; and
- Five communities (21%) indicated that the project had not yet started, and as such it was too early to see any positive impacts.

Overall, respondents from nine out of the 24 communities who shared their lands with outside actors felt that their community was better off since the external actor entered their community (38%), while respondents from ten of the 24 communities

felt that their community was worse off (42%). Respondents from the remaining five communities either were internally divided about whether their community was better or worse off, or felt that there was no real change (20%).

Of the respondents who described their communities as being better off or having seen positive impacts, they explained their answer in terms of concrete improvements: a school had been built, and their children could access local education; they now have an access road; “some community members” have access to potable water; or, for those communities that gave their lands to the government, some government services are now more easily accessible. Yet a few of the Mozambican communities explained that the distribution of benefits has primarily been only to those few community members hired to work at the tourist developments:

“[We have seen] prosperity and more for the people who work in the tourist areas, because they can improve their lives and build better houses. But for the community at large, there has only been the fulfillment of promises such as a water hole, a classroom that never arrived and when it did come was of a poorer quality than expected... The majority of the community almost sees no improvement in their lives as a result of the arrival of these investors.”

It is worth noting that some of the communities that described themselves as being better off as a result of sharing their land with an outside actor had not yet seen any improvements - their assessment was purely aspirational. These respondents made statements like, “if the hospital is built as we anticipate, we could be better off with respect to access to medical services.”

Of the respondents that described their communities as being worse off or having seen negative impacts:

- Six communities had lost land necessary for community members’ farming/food security;
- Four communities lost forest land and access to all the natural resources in the forest, such as firewood, medicinal herbs, building materials, hunting, wild fruits and vegetables, etc.;
- Two communities lost land for grazing; and
- Two communities lost houses and infrastructure.

Members of these communities explained how “Our water sources are polluted with chemicals, which are causing serious health problems in the community;” “The area claimed by the investor is the area most fertile for agriculture; its unavailability has led to families’ food insecurity;” and “We have lost our forest where we used to go to harvest firewood, construction materials, and medicinal plants.” One Mozambican community explained how “The electric energy, which is something that we had always hoped for, has arrived, but only feeds the tourist developments. Lots of people lost their land in exchange for insignificant amounts of money. The investors have closed access roads and banned us from accessing homes and restaurants built within the community.” Notably, Sawpue, the Liberian community struggling with the Chinese mining company whose bad faith actions have polluted local waters and incited violence (described on p. 30), lost all of the above, as well as access to important water sources, sacred areas, and burial sites.

“The electric energy, which is something that we had always hoped for, has arrived, but only feeds the tourist developments. Lots of people lost their land in exchange for insignificant amounts of money. The investors have closed access roads and banned us from accessing homes and restaurants built within the community.”

Community member, Mozambique



Image: Tourism development on the beach in Inhambane, Mozambique.

NATIONAL ELITES SEEKING LAND FOR PERSONAL INVESTMENT VENTURES

The communities told nine stories of national or local investors approaching them for their lands (one from Mozambique, three from Liberia, and five from Uganda). National investors are generally of two types:

- Powerful or wealthy elites, often themselves government officials/politicians or associates and relatives of government officials/politicians; or
- “Sons of the soil,” community members who left the community as young adults and eventually became comparatively rich, returning home to invest in land in or near their natal community.

The national or regional investors in the first category sometimes illicit the same kind of intimidation as government officials seeking land for state enterprises or accompanying international investors: the investor, while coming in a personal capacity, appears to community members to be “the government,” in terms of the force and power that they represent or can harness, should the community refuse to share their land. Sometimes these individuals come with regional or local government officials, having already bribed or exerted pressure on regional government. In such instances, it may be nearly impossible for even the most empowered community to resist a land grab by such powerful individuals, as the investor has already used his or her power and authority to corrupt the very local officials that the community might otherwise have sought assistance from.

Likewise, in situations where the investor is related to community members, it may also be difficult for community members to deny the requests for land, as there is a strong impetus to trust relatives of community members who have become relatively more wealthy or “successful.” Positively, however, as in the story of Mata, the bonds between investor and community may create similarly strong obligations for the investor to follow through on promises made.

Zarque, Liberia. In 2016, the community of Zarque was approached by a company called Xlylophia, owned

by the wife of a former high-ranking government official. When the head of Zarque’s elected Land and Forest Management Committee asked questions about the request and demanded that the investor share its documents with the community, the investor became upset and left the community. The community later learned that the investor had gone directly from the community to meet with county officials. Following that first meeting, Zarque’s leaders immediately called SDI’s “Early Warning System” hotline (set up to provide emergency advice and support to communities approached by potential investors). In response, SDI began closely following the case and advising the community. Some months later, the investor returned for a second time with the County Superintendent and District Commissioner and met only with community elders. That day, **the**

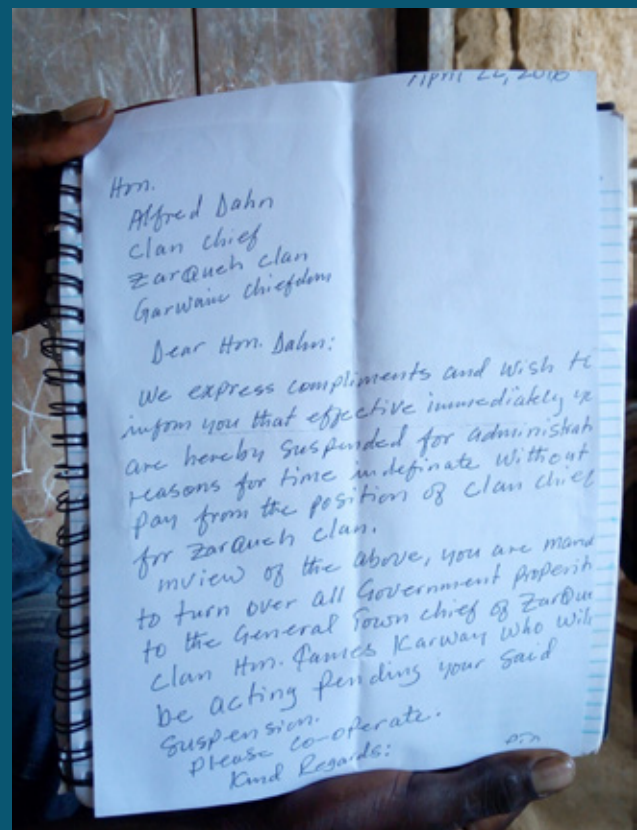


Image: Letter informing the Clan Chief of Zarque that he has been suspended for “administrative reasons.”

government officials who accompanied the investor dissolved the community's existing Land and Forest Management Committee and personally appointed a new land and forest management team. In addition, the Clan Chief of Zarque who opposed the deal was unceremoniously relieved of his duties as a clan chief because he refused to sign the MOU.

A few days later, the investor returned again, this time with the senior Senator for the region, the County Superintendent, various county commissioners, and two community leaders from Monrovia. They came with an MOU ceding the community's land to the investor for community members to sign. **Some community youth protested, demanding that the community invite SDI staff to participate in the meeting and/or review the MOU. In response to the community resisting the investment, and the senator brought in three police officers to forcibly control the situation.** The rest of the "negotiation" was done through the Senator, who told community members: "This company is my pepper bush" (my resource to extract).

The community described how: "Like the training SDI gave us, we asked the company to give us relevant documents from the Government such as its tax clearance and proof of permit; they didn't give us any of them. We asked that they give us a copy of the agreement/MOU to review for at least two weeks, and they refused."

Next, a few members of the community were invited by the Senator to his office at the capitol building in Monrovia. There, the Senator showed community leaders a copy of the proposed MOU and told them to inform the community back home that they had five days to sign it. A few days later, the County Superintendent came to the community with \$3,000 USD for the express purpose of bribing community members to sign the MOU. According to community leaders, a few people were paid to sign the MOU at 11:00pm, in a room of a private home, rather than at a community meeting, and the signing process was overseen by the District Commissioner and Superintendent. Leaders explained how:

"In the end, the MOU was signed overnight through a third party. Up to now, no one has a copy of the agreement in our community. Our elders and town men were coerced, and they signed because according to them, the company will bring development for our community. The County Superintendent told us: 'This is the best company to operate in your community,

and it could benefit the community, including youth and women...' Since we signed to give our forest to the company, our community is now divided, with brothers against brothers and family against family. We do not have peace."

Mata, Mozambique. In 2015, the community of Mata was approached by a prominent "son of the community" living in Maputo. The investor went to the community alone and presented his desire to launch a tourism venture within the community, first to community leaders, then again during a large community meeting. The community accepted his proposal. He did not offer to pay rent or purchase the land; he only made promises to build community infrastructure. The investor then began the process of legalizing the project with the local government. He also immediately improved the access road into the community and brought in a clean water supply for the community's use, both of which he had promised to do. When interviewed, community members expressed that they were very satisfied with this investor because he had always been honest with them and had already fulfilled two of his promises. The community had previously had a negative experience with an international investor who came with government officials and had learned from this experience. Describing this situation, community members explained that "Because he is a 'son of our house' there was no need [to make a formal agreement with him], but by the way we approached the issue with him was enough for him to realize that we were very well organized." The community leader reported that, as a result of the investor's actions:

"There have been significant improvements in community life, especially in the access road that has always been the main problem in our community. Today we have an improved route that helps us to get coconut, manioc, fish and other products to market. Access to potable water, despite not being in the whole community, is a great gain for the community. While there are still challenges ahead, there are reasons for some satisfaction."

Mata was one of the few communities who reported that they were happy with the investor and had received the majority of the benefits promised. Indeed, if the investor truly is a "son of the soil," he may authentically desire to bring prosperity to his community, or may at least be bound by complex familial/social obligations that compel him to act with integrity.

V. CONCLUSIONS

Taken together, the data and stories of these requests for community land show a clear picture of **communities that – even at their most legally knowledgeable and empowered, and regardless of whether or not they have a document for their lands, how well they know their rights, or how strong their leadership is – rarely have the power to resist requests for their lands by government officials, international investors, and national elites.**

These outcomes were prevalent despite community members' articulation that they knew their legal rights in such situations – and were the same independent of whether or not the community:

- Had a formal government-issued certificate documenting its land rights (Mozambique);
- Had *de jure* legal private ownership under law (Uganda); or
- Fought against the land grab, seeking external support from NGOs and political representatives (Liberia).

Ultimately, the data indicates that neither ownership rights enshrined in law (but without community-specific formal documentation) nor formal documentation of community rights (without ownership rights enshrined in law) offer enough legal protection to communities' right to decide what happens on their lands. States bear the duty of enforcing citizens' land rights; when governments fail to do so, communities may have little recourse, particularly in countries with weak rule of law.

Critically, of the 28 communities approached by outside actors seeking community lands, only eleven made any attempt to refuse the request; ask for benefits, compensation or environmental protections; demand that their rights be respected; ask hard questions; or seek help from trusted government officials and NGOs. Some of these communities' efforts were successful: the few times that communities were able to stop a land grab, deny an investor's request, or negotiate a land transaction on their own terms were when: 1) the investors, land grabbers, or government officials were very local,

and had relatively less power and authority than the government officials the community successfully appealed to; or 2) the community called an NGO and succeeded in having that NGO present at the community consultation. In Liberia, Keyah Clan sought help from SDI in response to Equatorial Palm Oil's requests for land, and has to date successfully rejected the request on the grounds that "what the company was proposing was not in the interest of the people;" in Uganda, the community of Oulu has so far successfully denied the local government's repeated requests to claim all 300 acres of its communal grazing land to turn into a prison farm; and, by reaching out for government support, the community of Atura successfully blocked a land grab instigated by low-ranking government and church officials.

Yet when the community of Sawpue, Liberia sought help from its senator to stop a Chinese mining company from illegally entering the community, that senator turned on the community, allied himself with the company, and forced the investment upon the people, who then resorted to violence to protest the company's environmental violations. Similarly, the story of Zarque, Liberia illustrates how, when the community started asking questions about a national elite's proposed investment and reached out for legal support from SDI, company officials returned with every ranking government official in the community's administrative line – from the county superintendent and county commissioners to the region's senator – to ensure the company secured the land and natural resources it sought. Meanwhile, every Mozambican company that asked for compensation when the government claimed land for state development projects was denied, in direct contravention of national law.²³

Indeed, the experiences of some of the communities interviewed for this study illustrate how corruption within the land sector goes far beyond large-scale land deals: the stories described in this report show how underlying, broad-based corruption allows land to be claimed by powerful elites and government institutions with little regard for the law and required administrative procedures. **The experiences related**

²³ Constitution of Mozambique, Article 82, Land law [1997], Article 18(1)(b).

Every Mozambican community that asked for compensation when the government claimed land for state development projects was denied, in direct contravention of national law.

by community members in this report illuminate how government officials leverage their power and influence to ignore or override citizens' land rights in order to:

- **Claim land already owned by rural villagers for state projects without paying compensation;**
- **Support bad faith land grabs – or at least dubious “consultations” for international investors; and**
- **Provide preferential treatment or protection to investments they have a personal stake in.**

Critically, it is necessary to examine why 17 out of the 28 communities sought no help from either government or civil society, asked few questions, failed to demand to see project documents, and did not request payment for the use of their lands and natural resources. Or why not one of the 24 communities who shared their land with an external actor managed to get a written MOU or contract documenting the agreed land transactions. All of these communities had recently completed an extensive, 12- to 24-month process of learning their rights, resolving land conflicts and harmonizing their boundaries with neighbors, drafting bylaws for good governance of their lands, electing diverse land and natural resource management bodies, making maps, and seeking formal documentation of their land claims. Analyzing the findings, four possible explanations emerge:

- **Fear of the state:** The lawyer working with the communities in Mozambique reflected that the community members he interviewed knew their

rights; they related to him how “We told the investors – don’t close our ways and access, don’t take the materials we need to build our homes, don’t block our access to the water.” In response, he asked, “But why didn’t you get these promises in writing? We told you, ‘Get it on paper.’ What happened?” In response, the communities uniformly expressed how, when investors come accompanied by government officials who they could clearly see had already backed the potential project, they felt that they have no choice but to acquiesce to the project; a sense of fear and intimidation overrode their legal knowledge of their rights in the presence of the state. Much of this fear is a holdover from decades of civil war and state oppression.²⁴ As well stated by one leader, “You have to be brave to say no,” to government officials, because “You may suffer retaliation.”

- **Lack of good laws and administrative complaint mechanisms to support communities’ efforts to address injustice.** In Liberia, much of communities’ power was curtailed by the lack of a land law that clearly set out community land rights. (The Liberian Land Act passed, post-survey, in September 2018). Liberia also lacks a strong rule of law and well-functioning complaint and redress mechanisms.²⁵ SDI’s Community Land Protection Project Director explained how: “People are asking questions now, demanding to see contracts, saying ‘no’ in ways they definitely did not in the past. But the power differentials are huge. Investors come with senators and the county superintendent - there is very little opportunity for community members to contest... Nowadays they know their rights and they are aware; it is just that the whole structure is not good.”
- **Community desperation for development/ investment and the perceived resulting prosperity.** In Uganda, while some communities successfully denied government efforts to claim their lands, in the majority of instances community leaders and members were so eager to benefit from proposed infrastructure development projects that they failed to ask critical questions, require contracts, or demand compensation. While an empowered community may decide to offer its land to the government for infrastructure,

²⁴ See footnote 19 for the historical roots of this intimidation and fear.

²⁵ Allard K. Lowenstein, *Governance of Agricultural Concessions in Liberia: Analysis and Discussion of Possible Reforms*, International Human Rights Clinic At Yale Law School, 2017.

the process by which they do this would ideally be thoughtfully considered, informed by legal support, and result in written agreements, enforceable in court, which the community may use to hold the state accountable to providing the promised infrastructure in a manner that does not impoverish the community or harm the environment. As explained by community members in Akwic, Teaduru and Wilyec, who gave 200 hectares of their communal grazing land to the government for a hospital, “People have started regretting why they gave away their land in a hurry and for free; they should have consulted legal minds before making the decision. They now say they have lost their livelihoods, especially lands for crop cultivation and livestock grazing.”

- **Fear of intra-community disenfranchisement and exclusion.** Importantly, in all three countries, community members explained that although they knew their land rights, they were afraid to speak up against a proposed project for fear of possible resultant stigmatization and/or marginalization. It is critical to not underestimate the power of social pressure in a small village. Communities are complex; in all but the most unified, intra-community politics are often fierce and highly nuanced, with various factions arguing for external investment and others arguing against. Community members must carefully assess the consequences they may face as a result of voicing objections to a project or investment. As explained by the Liberian project director:
“If you do not say ‘yes’ to the investor, then you are isolated: they brand you as anti-development. And you live in that community, so it makes your life very difficult, as community solidarity and acceptance are very important. So people who do not agree with an investor coming into the community: they will not protest, they will just withdraw, sit back, say nothing. People are rational actors – they have limited options and they know that.”

Above all, **in all three countries, government actors’ disregard for the communities’ land rights is striking.** The effects of this disregard on community empowerment are complex. After learning their legal rights and working to protect their land – and then seeing government actors ignore and override those rights with impunity – community members

“If you do not say ‘yes’ to the investor, then you are isolated: they brand you as anti-development. And you live in that community, so it makes your life very difficult, as community solidarity and acceptance are very important. So people who do not agree with an investor coming into the community: they will not protest, they will just withdraw, sit back, say nothing. People are rational actors – they have limited options and they know that.”

Project Director, SDI, Liberia

described becoming disillusioned. As quoted above, one Mozambican community mobilizer described how: **“Our situation clearly showed that the government itself, which is the defender of citizens’ rights and guarantor of the Constitution of the Republic, forgets all these guidelines when it seeks to meet the needs of its own governance.”** Reflecting on the Mozambican communities’ experiences, the project lawyer said:

“I feel very, very sad, because the government is the first one who does not respect the communities’ land rights. I believed that the delimitations would strengthen their rights – the government itself delimited the community lands! But then the government is the first one to not respect these rights. This is so difficult. Because it is something serious to say to people ‘You have rights!’ But when the government itself wants the land, then it does not respect the rights it granted by law.”

However, the longer-term effects of knowing one's rights—and then enduring government officials' disregard for those rights— are yet to be seen. Perhaps this sense of open-eyed, awakened disillusionment will impact future local elections: reflecting on community members' own analysis of their experiences, the project lawyer in Mozambique observed how:

“In the past, the communities did not know that the government was disrespecting their rights, acting outside of the law. Now, the people know their rights, they know the proper procedures, and even though they cannot say “no” when an investor comes and the government creates a perfunctory consultation, they are now at least aware that their representatives and officials in government are acting badly.”

To metabolize this disillusionment into empowered action (rather than civil unrest), it is necessary to support communities to advocate for changes in law and government – and to work with government and non-governmental organizations to create meaningful mechanisms for state accountability. The recommendations below – while not themselves adequate for fully addressing the nuanced and subtle ways that government actors abuse their power and influence to claim land or support investors to claim land – suggest practical, concrete actions that civil society actors, government officials, funders, bilateral and multilateral institutions, and the media may take to ensure fair, just and equitable interactions between communities and outside actors seeking community lands and natural resources.



Image: A community member in Oyam District, Uganda speaks out during a meeting.

VI. RECOMMENDATIONS²⁶

The following recommendations are divided into two sections: a) what Namati and other civil society actors might do to better prepare communities for future interactions with outside actors seeking community lands; and b) actions and steps that funders, government officials, the media, and bilateral and multilateral institutions might pursue to better ensure that community land rights are protected and that consultations with both government agencies and investors align with international standards of justice and equity.

A. RECOMMENDATIONS FOR CSOS WORKING DIRECTLY WITH COMMUNITIES

The following eight recommendations are meant to strengthen civil society actors' efforts to better prepare communities for future interactions with outside actors seeking community lands. When possible, community land protection advocates should:

1 Significantly increase the amount of time and energy spent training communities about how to respond to external requests for their lands.

As practiced by Namati from 2011-2016, a few hours of training on this topic, spread throughout the community land protection process, is clearly inadequate. Additional training could cover:

- A comprehensive overview of their legal rights to Free, Prior and Informed Consent (if applicable);
- How a consultation should be conducted, in comparison to how they are usually conducted (including presenting real world examples of poorly done consultations, role plays, theatrical performances, and visits from members of communities who failed to be properly consulted describing their experiences and the resulting impacts);

- How and when to seek external support from government, including government officials outside of their region (national ombudsman's offices, complaints and grievance procedures at the central government, etc.);
- How to respond to government corruption and bribery;
- How to create legal evidence of an injustice by documenting every interaction with outside actors, using photos, videos, audio recordings, and written notes (all of which could be done by smartphone), including sending multiple copies of this documentation to trusted civil society actors, journalists, and others for safekeeping, should the original documentation be destroyed.

2 Support communities to more comprehensively address how they will respond to requests for use of their lands and natural resources in their bylaws.

The data indicate that, as practiced by Namati from 2011-2016, one meeting on the topic that results in a few by-laws is insufficient. Additional efforts, undertaken over the course of at least three or four meetings, could include supporting communities to draft bylaws that address such guiding questions as:

- How community leaders must respond when first approached by outside actors seeking land;
- Who must be present at all meetings with external actors;
- What project documents the community will ask to see and keep copies of;
- How a consultation must be conducted to ensure FPIC;
- How all interactions with external actors seeking land will be documented;
- How the community will respond to government requests for land for infrastructure development;

²⁶ The following recommendations do not aim to comprehensively address how to best support communities once an outside actor has arrived seeking community land and natural resources. For a full set of recommendations on this topic, see Namati and CCSI's 2018 publications that directly address community-investor negotiations: <https://namati.org/news/new-community-investor-negotiation-guides/>.

- How the community will address intra-community conflict concerning the potential investment;
- How all decisions about whether to accept or reject an investment request must be made;
- What consequences community leaders who accept bribes from external actors seeking land will face;
- What actions the community will take if a consultation is not properly done, or not done at all;
- How the community will respond if government actors dissolve their existing leadership bodies and institute others in their place;
- What payments and benefits the community will request if it decides to share its land;
- The longest possible duration of any rental agreement;
- What protections the community will demand to ensure environmental and social protections as well as continued access to clean water, rights of way, communal resources, and sacred areas;
- How all agreements will be documented in a formal contract enforceable in court;
- What actions the community will take if the investor fails to abide by the agreed protections or furnish the agreed rental payments and benefits; and other key topics agreed by community members.²⁷

Communities might include in their bylaws a mandate that when community leaders are first approached by external actors seeking land, they must hand a copy of the community's bylaws, translated into English or the national language, to the government officials and/or investors to ensure that they are "on notice" of the community's agreed rules. To strengthen their power, a community could bring copies of their bylaws to be signed, stamped and acknowledged by local and regional government administrations, relevant courts and tribunals, and elected representatives.

3 Provide specialized training and resources for community leaders and land governance bodies.

In many instances, community leaders hold the primary responsibility for navigating and responding to external requests for community lands. To strengthen leaders' position in the context of significant power and information asymmetries, advocates and facilitating organizations might provide regular trainings for community leaders and land management committees on how best to respond to investors and government agencies seeking land. It may also be helpful to draft short, low-literacy "guidelines" for community leaders that set out clear directions on how leaders should respond to external requests for land, including what to do if they are pressured by government officials acting in bad faith. Such guidelines can be circulated to community members to help them hold their leaders accountable to following proper protocol.

4 Proactively create extensive documentation and proof of community land rights.

If the national government is reluctant to issue formal documentation of land rights, alternative evidence may be necessary to prove land rights to external actors. For example, if the national law allows (as in Uganda and Liberia) that communities own their land regardless of whether they have a paper title or deed, yet a community has not yet received formal state documentation of its land claims, **civil society actors might create "interim" land rights certificates in the community's name that quote the relevant section of the law and include the community's bylaws and a map of the community's lands.** In addition, communities could be supported to generate other types of documentation and evidence, such as:

- GIS-generated technical maps of their community's lands that indicate the location of sacred areas, communal forests, waterways, rights of way, areas reserved for potential

²⁷ See: <https://namati.org/news/new-community-investor-negotiation-guides/>.

investment, and any other features that the community deems necessary;

- Land use plans and clear written action plans for how the community will use and steward its lands over time;
- MOUs signed with neighboring communities detailing the community's agreed boundaries, supplemented by photographs and videos of both communities' leaders agreeing on their shared boundaries;
- Planting trees or placing stone markers at their community's boundaries, and take photographs and videos of the process of planting these trees and erecting these markers;
- Registering their lands on internet-based, globally-respected registries of community lands, such as LandMark (<http://www.landmarkmap.org/>); and
- Registering their lands as an "Indigenous and Community Conserved Area," (ICCA), which will then put the community on the "World Database of Protected Areas" (<https://www.iccaconsortium.org/index.php/register-your-icca-internationally/>), and any other kind of documentation that the community deems appropriate and necessary.

Community members might then collect all relevant documents together in a "binder," including all maps, bylaws, government documents, minutes of meetings, etc. The binder, and all paperwork within, could then be shown to any outside actor who approaches the community seeking land. The community may also choose to leave copies of this binder with trusted civil society actors or ask that copies are kept within trusted judicial institutions or regional land registries.

5

Support communities to return to their "future vision," then make and implement an action plan for how they will use their lands to prosper on their own terms and by their own efforts.

As explained above, very few communities to date have returned to their "future vision" and made a plan for how the community will leverage their newly documented lands and strong bylaws to achieve long-term growth and prosperity (as defined by the

community's own self-defined plans and intentions).²⁸

In all three countries, respondents were clear that, in many cases, although they had resolved land conflicts with neighbors, drafted rules for stronger land governance, and in some instances seen marked improvements in ecosystem regeneration, their lives had not yet particularly improved. Respondents reported various iterations of this Mozambican leaders' sentiment: "In the community of Inhamángua we see no change as a result of delimitation; people are increasingly poor despite having our community delimited." As expressed by the previous manager of LEMU's Community Land Protection Program, who undertook the research for this report, "People told me, 'Our land has been protected, but what do we do with it, how do we prosper?' So they see the land is empty, and they want development, schools, hospitals to make their land productive. If LEMU had gone an extra mile and started community projects on the land, then they might have thought twice before giving their land to the government."

It may be necessary to support communities to create an action plan to turn their vision into reality, through small business enterprise, community-driven infrastructure development, creation of cooperatives, and other actions designed to ensure that the community's common areas are being used productively by community members themselves. Once the community has an action plan, advocates and facilitating organizations may then connect the community with relevant livelihood projects, seed funding opportunities (local governments often have small "community development funds"), training in cooperative and enterprise development and management, and skill-building initiatives.

6

Ensure that communities have a trusted advisor or hotline to call for immediate help and advice.

It is concerning that only a few communities called LEMU, CTV or SDI for support when approached by external actors seeking land. To proactively address this, it may be helpful for the advocates, paralegals and field staff who supported a community's community land protection process to:

²⁸ For further information on this step, see: <https://namati.org/resources/chapter-returning-to-the-vision-with-community-action-plans/>.

- **Set up an emergency community-investor advice hotline** and make sure the accompanying free hotline phone number is well publicized throughout the region.
- **Leave all relevant contact information - and the contact information of other useful resources or organizations - with community members.** It may be best to laminate small cards with this information on them and distribute them throughout the community.
- **Call or text community leaders and community-based paralegals/mobilizers/animators quarterly,** to check in and see if they have been visited by external actors seeking land and might benefit from advice or support.
- **Prepare short, low-literacy guides.** When a community has been approached by outside actors seeking land, while personally going to the community to investigate the situation, advise community members, and support all future interactions is ideal, overburdened advocates might also prepare and send communities short, low-literacy publications detailing how to respond to investors' requests to share with communities.²⁹ Indeed, one Liberian respondent reported that, at a meeting with investors, "Some of the community members used SDI's guide to ask questions. I don't remember the questions but I know the guide book was in some people's hands."

7

Work to empower community youth, who may have less fear of speaking out.

In many rural communities, cultural norms prevent youth from speaking publicly in the presence of their elders, especially if government officials and other important guests are present. It may be useful to convene special meetings for youth to train them on their community's land rights in the context of external investment; help them create "watchdog groups" to act as sentinels for bad faith actions

by government officials, investors, or community leaders; elect youth spokespeople to ask hard questions or demand that proper procedures are followed during meetings with external actors seeking land; and otherwise be "land protectors" when their elders fail to. Concurrent efforts to train community elders how to best leverage the bravery and courage of local youth - and create opportunities for them to speak out - may be useful as well.

8

Create solidarity networks between communities facing either the same investor, or facing a similar kind of bad faith investment practice.

Many rural communities now have good access to mobile telecommunications systems. Connecting communities has enormous potential to exponentially increase their power. Such networking might be leveraged in various ways, two of which could include:

- **One company, multiple communities.** NGOs working with a community fighting a land grab from a company acting in bad faith might research where else the company is working, and forge communications between the various communities suffering from that same company's actions in multiple locations. Such networks might target either a company working in various locations within one country or a company working globally in various countries. Together, the communities might draft letters detailing their individual grievances, showing a clear pattern and practice of abuse. They might send these letters to board members and shareholders, and even travel to shareholder or board meetings to present their experiences in person. Activist shareholders may be instrumental in creating such openings and pushing the company to look at the evidence presented.
- **Multiple companies, one sector.** NGOs might connect communities challenged by similar patterns of bad faith actions undertaken by various companies working in the same sector.

²⁹ For examples of such resources see:
<https://www.youtube.com/watch?v=xBz7skFdkcs&list=PLFFreO-6Fa7-StX8MQc4g8Nl9R84tHlc3>
<https://namati.org/resources/community-guide-to-getting-a-fair-deal-from-companies-and-investors-2/>
<https://namati.org/resources/community-investor-negotiation-guide-1-preparing-in-advance-for-potential-investors/>
<https://namati.org/resources/community-investor-negotiation-guide-2-negotiating-contracts-with-investors/>

³⁰ This recommendation was developed in consultation with Liz Alden Wily and Silas Siakor, independent community land protection experts. Working with the Friends of the Earth network, Siakor and SDI had success presenting the negative impacts of Acelor Mittal's mining operations in several countries at the company's annual shareholder meeting. In response, the company became more transparent about their operations, invited NGO watchdog groups to do periodic assessments, and made internal policy changes that improved the social and environmental impacts of their ventures.

For example, the leaders of forest communities grappling with the abusive logging companies might be connected to share their strategies, brainstorm solutions to challenges, and champion each other's efforts. Once a community has piloted a resistance/protection strategy and found it to be successful, it could then share its experiences and learnings with other communities.

To build such inter-community networks, various NGOs may need to collaboratively share communities' experiences and jointly match-make across the country or cross-nationally.

However, the efforts of individual NGOs may have limited impact in the face of the complex power asymmetries between communities and government officials and/or national elites. Rather, a wide network of actors must approach these dynamics from a multitude of complementary interventions. Some of these are set out below.

B. RECOMMENDATIONS FOR NATIONAL GOVERNMENTS, CIVIL SOCIETY ACTORS, FOUNDATIONS, MULTILATERAL AND BILATERAL INSTITUTIONS, AND THE MEDIA

Although there are myriad efforts that could – and should – be made by actors and agencies throughout the field of land tenure security to address the power asymmetries inherent in community-investor and community-government interactions, for brevity's sake and to underscore their importance, this report recommends seven key actions that civil society, government, media, funders, and bilateral and multilateral agencies might take to ensure improved future interactions between communities and outside actors seeking community lands. These are as follows:

1

Establish a community-investor advice hotline and emergency response protocol that enables communities to seek and receive immediate legal advice and support when they are first approached by an outside actor seeing community lands and natural resources.

It is urgently necessary to create simple, accessible ways for communities to access legal advice and support from lawyers, advocates and paralegals.

These advocates can help communities to: know their rights; research and understand the proposed project; ensure that a proper consolation is done; reject or accept the outside actors' proposal; and, if accepted, negotiate an equitable contract and demand community benefits and protections for the local environment. Advocates may also support communities to defend themselves against bad faith land grabbing or corrupt use of state force.

In Liberia, Namati and the Sustainable Development Institute had some success piloting an "Early Warning and Response System:" a simple, low cost arrangement that allows communities to access immediate legal and technical support when they are approached by investors seeking land. The system consists of:

- A dedicated free hotline phone number set up with two or more major mobile providers, continually advertised through posters, flyers, on radio programs and at community meetings;
- At least one advocate responsible for managing and responding to calls to the hotline;
- A simple database system to track and record incoming calls;
- A low-literacy illustrated guide describing how communities can protect their interests during interactions with companies and investors, and other educational materials; and
- Field visits for direct intervention, including agreements with relevant advocates, paralegals, pro bono lawyers and trusted government officials to provide support as necessary.³¹

When calls come in, a dedicated staff member takes a full case history, then provides immediate advice over the phone. In urgent situations, advocates travel to the community to provide additional training and support; when resources are limited or the volume of calls is high, SDI staff use a triage system, sending written materials and doing additional basic trainings over the phone to communities facing less urgent circumstances. Today, SDI partners with three other civil society groups, which has allowed the Early Warning System to expand to full national coverage. The accompanying database has allowed SDI and its partners to observe and analyze regional trends in land acquisition and advocate for greater

31 For example, see: <https://namati.org/resources/community-guide-to-getting-a-fair-deal-from-companies-and-investors-2/>

accountability and transparency in large- and small-scale land acquisitions. Funders should consider investing in such systems, as they are an efficient solution capable of providing legal support to hundreds of communities at low cost.

2 Create a cadre of pro bono lawyers, paralegals and advocates who are trained to be available to support communities navigating complex interactions with companies and powerful government officials.

Although many international corporate lawyers may be “conflicted out” of representing communities against global mining, logging and agribusiness companies, such conflicts of interest may not apply to small corporations run by national elites. Alternatively, advanced law students (nationally and internationally) may be trained and supervised to support communities in negotiations with outside actors. These lawyers and law students may provide some legal support over the phone, but ultimately, communities negotiating land transactions with even national investors need a lawyer present in meetings where they are agreeing to share their land.³² Namati has found that a vertical network, stretching from the community, through paralegals, to national and international lawyers as necessary, works best, as community engagement is critical to successful legal support. Nationally, “black box” basket funds may be established for international investors to pay into annually, which might then be used to fund legal services support for communities facing challenges to their land rights.

3 Ensure that national laws mandate that no community-investor deal is valid unless it has been recorded in writing and documented in a signed contract that has been reviewed and witnessed by an attorney representing the community.

Large corporations should also write such mandates into company protocols.

4 Provide intensive training for government officials at every level of government.

While corruption in land governance is widespread, it may also be granted that much of the time government officials simply do not know the law and how to best carry out the legal procedures detailed in accompanying regulations. Intra-government gaps in information flow and a lack of logistical resources may also be critical constraints. As such, it is urgently necessary to provide, extensive, detailed training, on-going supervision, and technical and logistical support to government officials within the land and investment sector and to relevant judges and magistrates. As well said by the project lawyer in Mozambique, “We have to make the government go down to the level of the community, we have to get the district and provincial administrators to understand that they are personally impoverishing their people.” Such efforts could include:

- Field visits to communities who have suffered from poorly-done investments, including touring the environmental damages wrought and hearing community members’ testimonies;
- Presentations in government meetings by community members who have suffered from the negative impacts of investments;
- Presentations by investors whose financial profits – or entire investments – have been negatively affected by poor community relations, including protests, violence and sabotage resulting from poorly done consultations or lack of consultation;
- Extensive legal education on the content of national and international laws on customary and community land rights, compulsory acquisition, FPIC, environmental laws, and other relevant legal and regulatory topics;
- Role plays and other interactive exercises to help government officials to have a “felt sense” of communities’ experiences during forced, poorly done consultations, followed by intensive training – and more role plays – on how to carry out a well-done consultation;

³² See <http://ccsi.columbia.edu/files/2019/03/CCSI-Innovative-Financing-summary-Mar-2019.pdf>.

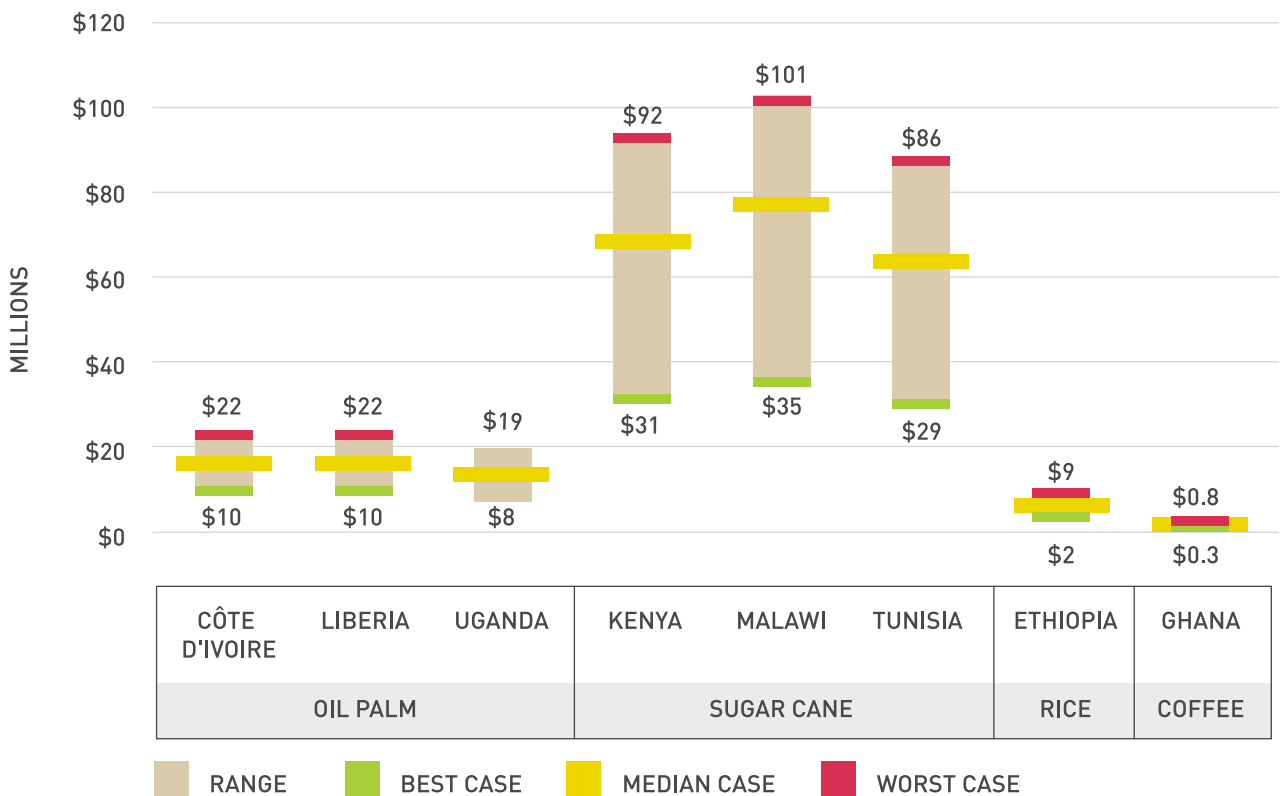
- Training on how to support communities to access national-level ombudsman’s offices, grievance procedures, or complaints offices, should they face corruption by other government actors or bad faith land grabs by national elites with links to government;
- Extensive training on how to ensure that, if a community chooses to share its land with an investor, a formal contract is drafted detailing the terms of the investment, the rent and benefits to be paid, and the protections for the community’s health and environment to be observed, as well as how to monitor the investor to ensure that the terms of the contract are being complied with;
- Training on how to cancel, void or properly monitor land concessions and land deals done in bad faith or without consultation; and
- Support identifying and addressing constraints in information flow concerning investments and community lands between ministries; among other topics.

Furthermore, within every state administration, from the central government down to the most local, are government officials who either truly want to advocate for citizens’ rights or who could be persuaded to more zealously support community land rights. Additional efforts could be made to identify these individuals, foster their legal knowledge, and support them to help communities protect their land rights both during consultations and in the face of bad faith land grabs.

5 Further sensitize investors to the negative financial impacts of a failure to properly carry out community consultations and secure communities’ free, prior, informed consent.

It is critical that investors fully understand the impacts of a poorly done consultation. As shown in the chart below - which depicts the range of project losses experienced using real data from

RANGE OF LOSSES CAUSED BY COMMUNITY-INVESTOR CONFLICT, AS PER TMP SYSTEM’S RESEARCH



companies, showing that tenure disputes can bring substantial financial costs to investors - TMP Systems' research provides quantitative evidence to help investors to evaluate the possible impact from disputes with host communities.³³ **Further research could build on this report to create a more robust picture of the negative ramifications of poorly done consultations on company profits** (as seen in the story of Sawpue, who, after not being consulted and then suffering from the environmental impacts of its mining activities, burned all of the company's mining equipment). Such reports should be widely disseminated not only to large international corporations, but to national investors as well.

Investors may also be trained on: how to conduct well-done consultations that comply with international best practice standards; how to push government officials to meet such standards when they would rather cut corners; and the importance of putting any resulting agreements into contracts that can be enforced in a court of law.

6

Use international and national media creatively.

To date, there has not been enough funding, energy or time allocated to using media to shine light on government officials' land-related corruption. If international corporations' and national elites' land grabbing, bad faith consultations, and failure to provide promised "benefits" are not widely publicized and showcased, there is little hope that such patterns and practices will change. At a very basic level, national and international media (radio, television, newspapers, social media) should be funded or supported to:

- **Launch low-literacy, multi-media campaigns that clearly outline citizen's land rights** under national and international law, with particular focus on companies' and government's obligations to respect citizens' rights;

- **Publish, broadcast or televise stories of both well-done consultations and poorly-done consultations** (or lack of consultation), including community members' lived experiences of both, the resulting community-investor relations, the resulting impacts on the community's livelihoods, health, environment, and social fabric, and advice from these communities on what they learned from their experience;
- If it can be done without endangering journalists' lives, **publish, broadcast or televise stories of land corruption by international corporations and national elites**, with the aim of widely publicizing the story, shaming the companies and elites operating in bad faith, and ensuring that justice is done and the land is returned to the community. As long as national elites know that they can operate with full impunity, they will do so. No community or national NGO is strong enough to take on a corrupt high-level official with ties to the military or police on their own; only a national or global publicity campaign detailing the abuses to millions has any hope of addressing such injustice. National and global media must be funded and empowered (and provided legal support) to bring such stories to light.³⁴

7

Advocate for national laws that require national investors to follow international best practices when acquiring land for tourism, mining, logging and agribusiness ventures.

Today, after years of hard work by global policy advocates, there is a complex tapestry of international standards, laws and principles that, if taken together and fully implemented, weave a web of strong protections for communities' land rights in the context of international investment.³⁵ However, in many countries, most of these laws do not have national equivalents. For example, only some countries have laws requiring companies to undertake environmental and social impact assessments. While large international corporations may be bound by international rules, standards

³³ TMP Systems' work shows that tenure disputes can create substantial financial losses. Their report can be found at <https://landportal.org/library/resources/qtr-report-2019/assessing-costs-tenure-risks-agribusinesses>.

³⁴ One excellent example of this (albeit only published after President Robert Mugabe was ousted from power) was the New York Time's story of Grace Mugabe's violent land grab, available at: <https://www.nytimes.com/2018/01/20/world/africa/zimbabwe-land-disputes-mugabe-mnangagwa.html>

³⁵ See e.g.: The International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the UN Declaration on the Rights of Indigenous Peoples, ILO Convention 169, and the United Nations' Voluntary Guidelines for the Responsible Governance of Tenure," Guiding Principles on Business and Human Rights, and "Principles for Responsible Agricultural Investment," among others.

required by global licensing bodies, or internal company policies - and have indeed begun to change how they approach land acquisition for mining, logging and large-scale agribusiness ventures - national companies are often free to launch investments and operate with little regard to international conventions and human rights law. **All of the regulatory efforts currently aimed at international companies could be modified by national policymakers and advocates and adapted to constrain the behavior of companies run by national elites.**

Relatedly, **civil society should work hand-in-hand with like-minded government actors to enforce all relevant national laws that have already been passed.** In countries where such laws exist but are not implemented, civil society and government should collaborate to advocate for strict enforcement. They should also establish systems to monitor and enforce national investors' compliance with international corporate social responsibility standards and international covenants that their countries have signed onto.

By showcasing the rampant injustices faced by the study communities, this report aims to shed light on how best to address such imbalances of power and strengthen global efforts to protect community land rights. With renewed focus, incisive action, and significantly more legal support, it may be possible to shift the power dynamics inherent in community interactions with outside actors and ensure that communities remain on their lands, growing and prospering with or without external investment, according to their own self-defined goals and future vision.



Image: Community members in a meeting in Oyam District, Uganda.

APPENDIX A: NATIONAL LEGAL FRAMEWORKS OF MOZAMBIQUE, UGANDA, AND LIBERIA (2009-2016)

MOZAMBIQUE:

The Constitution of Mozambique (1992) provides that while “all ownership of land is vested in the State and cannot be sold, mortgaged, or otherwise encumbered or alienated,”³⁶ “the use and enjoyment of land shall be the right of all the Mozambican people.”³⁷ Such rights can be enjoyed by both individuals and groups.³⁸ Mozambique’s Land Law (1997) sets out that communities occupying land according to customary practices for ten years or more automatically acquire a right of land use and benefit over such land.³⁹ While such rights do not need to be formally registered, if communities choose to do so, the law sets out mechanisms through which customary claims can be mapped and entered into the national cadastre.⁴⁰ Communities who choose to pursue this option follow the “delimitation” procedures set out in the Land Law’s Regulations and accompanying Technical Annex.⁴¹ Once registered formally as a community, the community holds a single “right of land use and benefit” (called a DUAT) in respect of its land. As a titleholder, the community acquires legal personality and can thereafter enter into contracts with investors, open bank accounts and undertake other legal actions. A DUAT is not a title or proof of ownership.

An investor seeking land on which to establish an economic enterprise must consult and seek the consent of the community holding the right of use and benefit over such land. The law allows communities, as legal entities, to negotiate with investors for “mutual benefits” in exchange for the use of their lands.⁴² Applications must include

a statement by local administrators confirming that a consultation with the relevant community or communities has taken place, and that the community has confirmed “that the area is free and has no occupants.”⁴³ If the community agrees to cede its land and the investor’s application is approved, the land ceases to be managed by the community for the period of the lease, which may be between 50 and 100 years.⁴⁴

Mozambique’s law does not require that a community create a formal land governance and natural resources management plan; it says only that decisions as to what rules will govern land administration and management rest with communities themselves, and that customary norms and practices are one legitimate method of managing and administering land, as long as they do not contravene the Mozambican Constitution.⁴⁵

UGANDA:

Unlike many countries in Africa, where the state holds land in trust for its people, the Ugandan Constitution (1995) and Land Act (1998) establish that all land held under customary tenure is owned by the people living and working on it; Ugandan nationals automatically own their land outright, regardless of paper title or formal documentation.⁴⁶ However, if a community wishes, it may take steps to obtain documentary proof of its land claims establishing a Community Land Association (CLA) and then apply for either a “Certificate of Customary Ownership” or a freehold title to their lands.⁴⁷ Any group of people may form a Communal Land Association for the purpose of communally owning, holding

³⁶ Constitution of Mozambique, Article 46, sections 1, 2.

³⁷ Article 46, section 3.

³⁸ Article 47, section 2.

³⁹ Land Law Regulations, Decree 66/98 of 8 December (1998), Article 9, section 1.

⁴⁰ Land Law (1997) Article 9, section 3.

⁴¹ Technical Annex to the Land Law Regulations, Article 5, section 1.

⁴² Land Law (1997) Articles 24, 25.

⁴³ Land Law (1997) Article 13, section 3.

⁴⁴ Article 17, section 1.

⁴⁵ Land Law 1997, article 24, section 2.

⁴⁶ Ugandan Constitution (1995) Article 237: “Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in this Constitution.”

⁴⁷ Section 10, sub-section 1.

and managing land, whether under customary or statutory law⁴⁸. The formation of a Communal Land Association is important if a community chooses to enter into agreements with investors that seek to use or occupy community held lands in return for rent, profit-sharing, or other consideration.

To begin the process, the group must lodge an application with the District Registrar of Title.⁴⁹ The Registrar then convenes a community meeting; at the meeting, 60% of the group convened must agree to incorporate and elect between three to nine “officers” for the CLA, a third of which must be women.⁵⁰ With the assistance of the District Registrar, the officers of the CLA are responsible for preparing a “constitution” to govern the administration and management of the jointly-owned land.⁵¹ The constitution comes into effect and is binding upon members after a majority affirmative vote.⁵² Common areas must be managed according to a common land management scheme agreed upon by CLA members.⁵³ To transact land, the officers must convene the Community Land Association and obtain approval from a majority of members. Any land transactions that have not been duly approved are considered null and void.⁵⁴

Importantly, from its passage in 1998 until at least 2011, not one community had successfully followed the abovementioned procedures to successfully form a Communal Land Association and obtain a community freehold title or Certificate of Customary Ownership.⁵⁵ This was due to the government’s emphasis on registering individual land rights, the population’s lack of knowledge about their land rights, insufficient government capacity to facilitate land registration, and lack of an official Government Land Policy until 2013. As such, while many of the Ugandan study communities successfully formed and registered some of the first Community Land Associations in the country, and a few managed

to formally survey their lands, not one community received a formal title for their lands. However, according to the Ugandan Constitution and the Land Act, their private land ownership claims are as strong as formally titled private land.

LIBERIA:

Between 1821 and the mid-1900s, the liberated slaves from the United States of America who colonized/founded the modern state of Liberia recognized the indigenous tribes’ ownership of their land according to customary boundaries and allowed local land administration and management to be governed by local custom. The Hinterland Act (1949) legalized this arrangement and allowed chiefs to formalize tribal land claims by applying for a deed in fee simple. Thirteen chiefdoms seized this opportunity and their combined 2.3 million acres remain registered today in the name of these chiefdoms.⁵⁶ In 1956, however, the Liberian Government changed its policy and, under the Aborigines Law (1956), claimed all lands as property of the state. As a result, with the exception of those 13 chiefdoms that had acquired deeds, tribes no longer owned their lands, but rather became “holders” and “users” of state land.⁵⁷

Over time, the Liberian government settled into a pattern and practice of operating as the unencumbered owner of all land in the country; in the 1970’s, the Public Lands Law (1972–1973) was passed, which not only allowed private individuals and groups (including communities) to purchase public lands, but also authorized the President to lease any portion of public lands “not appropriated for other purposes”⁵⁸ to any “foreign individual, corporation, or company for engaging in agricultural, mercantile, or mining operations in Liberia”⁵⁹ for a period of up to 50 years, with a possible 50 year extension.⁶⁰ The Liberian government used this law

48 Section 15, sub-section 1.

49 Section 16, sub-section 1.

50 Section 16, sub-sections 3, 4, 5.

51 Section 17, sub-section 1-3. If the Registrar finds that the constitution does not adequately provide for democratic and transparent procedures, it must return the constitution to the CLA within 30 days with an explanation of why it was rejected, and the Association must be given a chance to revise and resubmit.

52 Section 15, sub-section 4-5.

53 Section 24, sub-sections 1-3, 5.

54 Section 19, sub-section 3.

55 Personal communication, officials within Uganda’s Ministry of Lands, Housing and Urban Development, May 2011.

56 L Alden Wily, *So Who Owns the Forests? An Investigation into Forest Ownership and customary Land Rights in Liberia*, Sustainable Development Institute and FERN (2007) 117.

57 Article 270, Aborigines Law 1956 (Title 1: Aborigines Law, Liberian Code of Laws).

58 The Public Lands Law 1972–1973, Chapter 5, section 70.

59 *Id.*

60 All leases must be approved and ratified by the Legislature.

to grant large-scale land concessions to rubber, palm oil, mining, and logging companies. Between 2004 and 2009 alone, the Liberian government either granted or re-negotiated land and forestry concessions totaling 1.6 million hectares – over 7% of the total national land area, often with minimal or no community consultation.⁶¹ In 2010 alone, more than 661,000 hectares were granted to two foreign corporations for palm oil production.⁶² In total, the Liberian government granted nearly 25% of the nation’s land to rubber, palm, and logging concessions over the past few decades.

Positively, after more than a decade of advocacy, the Liberian legislature passed the Land Rights Act in September 2018; it returned ownership of land to the citizens living and working on that land, and set out a series of limitations and protections concerning investment.⁶³ Namati’s and SDI’s community land protection work was undertaken under the aegis of an MOU, signed with the Liberian Land Commission, that allowed for the piloting of a community titling process intended to inform the draft Land Rights Act. Indeed, the process enshrined in Liberia’s new land law is very close to the process piloted in the study communities, and current efforts are now underway to process the study communities’ title deeds.



Image: A representative from Land Equity Movement Uganda (LEMU) speaks with members of a community about their rights in Oyam District, Uganda.

61 Id. The report notes that of this land, only 7% went to domestic investors, while 93% went to foreign investment.

62 These concessions were granted to the Malaysian palm oil company Sime Darby in 2009 (311,187 ha) to the Palm oil company Golden Veroleum (350,000 ha). Silas Kpanan’Ayoung Siakor, *supra* note 4, at 18.

63 See <http://www.thisisplace.org/i/?id=25d1b2f3-5019-484a-9d60-163d52ebc91d> for further details.



Image: A community member in Oyam District, Uganda speaks out during a meeting.

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