



# EXECUTIVE SUMMARY

THE CHALLENGE OF PROTECTING COMMUNITY  
LAND RIGHTS: AN INVESTIGATION INTO  
COMMUNITY RESPONSES TO REQUESTS  
FOR LAND AND RESOURCES





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

Inside Cover Image: Women processing palm kernels into palm oil in the village Masethele, Sierra Leone.

## EXECUTIVE SUMMARY

This is, in many ways, a heartbreaking report. Overall, **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.**

Yet, 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 considerably 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.

From 2009 until 2015, Namati partnered with the Land and Equity Movement in Uganda (LEMU), the Sustainable Development Institute (SDI) in Liberia, and Centro Terra Viva (CTV) in Mozambique to undertake community land protection work in more than 100 communities. In late 2017, after six years had passed since the first group of communities had completed the community land protection process and at least two years had passed since the last group of communities had finished documenting their lands, Namati evaluated the impacts of its community land protection approach on communities' response to outside actors seeking community lands and natural resources.

This study, undertaken from December 2017 until February 2018, aimed to understand whether and how community land protection efforts affect communities' tenure security. **The central assumption tested was: "Once communities know their land rights and have documented their land claims, they will act in an empowered way when approached by government officials and/or investors seeking land, and will have improved tenure security outcomes."** 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?

During the study, researchers called the leaders and community-based animators/mobilizers of 61 communities in Liberia, Uganda and Mozambique who had completed their community land protection efforts between 2009 and 2015 and asked if they had been approached by external actors seeking to claim or use their lands in the years since they completed the community land protection work. Researchers called 22 communities in Uganda, 25 communities in Mozambique, and 14 communities in Liberia. 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.

When the researchers went to the field and held meetings to collect these communities' stories, the 28 communities told stories of their 35 interactions with outside actors seeking land. Eight of these stories came from Liberia, twelve came from Mozambique, and fifteen stories came from Uganda. Of these:

- 12 stories involved government officials seeking community lands for government projects;
- 14 stories involved international investors seeking community lands and natural resources for tourism, agribusiness, mining and logging ventures; and
- 9 stories involved national, regional or local-level elites/investors seeking community lands and natural resources for investment purposes.



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## FINDINGS

Taken together, the data and stories of these requests for community land show a clear picture of **communities who – even at their most legally 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 – had difficulty successfully advocating for their interests when potential investors were accompanied by government officials or were themselves powerful government officials.**

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 document for its land rights (Mozambique);
- Had legal private ownership under law (Uganda); or
- Fought against the land grab, seeking external support from NGOs and political representatives (Liberia).

The data show how **corruption within the land sector goes far beyond large-scale land deals; the stories described in this report illustrate broad-based corruption that allows land to be claimed by powerful elites and government institutions with little regard for required legal procedures.** From just a small sample of 61 communities, the experiences related by community members illustrate 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.

Ultimately, the data indicate that without state support, neither ownership rights enshrined in law nor formal documentation of community rights offer

enough legal protection for communities' power to decide what happens on their lands. States bear the duty of enforcing their citizens' land rights; when governments fail to do so, communities may have little recourse, particularly in countries with weak rule of law and limited grievance mechanisms.

Specifically, 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.** 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.

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“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.”

**Community leader, Mozambique**

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The Mozambican communities also described situations in which government officials claimed land for public projects, yet, when community members asked for compensation, citing the Mozambican Constitution's articles on compulsory acquisition, the government officials flatly refused 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**; the leader of one community 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 their community land protection efforts helped to resolve land conflicts and protect their vast grazing lands, local government officials immediately moved in to try to claim those lands for state development projects. **Community members' desire for development and local prosperity 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 the 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.

“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.”

Community member, Uganda

- In Liberia, where corruption is rampant and there is weak rule of law, the study communities' experiences plainly 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 grabs led only to violence, bribery and ultimately, defeat. Here too, in one community government officials dissolved the land and forest management committee fighting against the investment on their community's behalf and put into place new leaders more easily bribed to support the company.

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In 24 out of the 35 instances described, the community either accepted the investor's request or reported that they were "not consulted" or "were forced" to accept the request. Egregiously, **not one community signed a contract or was left with a written copy of any agreements.**

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; or seek help from trusted government officials and NGOs – to mixed results.** Some of these communities' efforts were successful: the few times that communities were able to thwart a land grab, deny an investor's request, or negotiate a land transaction on their own terms were when:

- 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;
- The community called an NGO and succeeded in having that NGO present at the community consultation.

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“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.”

Community leader, Mozambique

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It is necessary to look deeply into why the remaining seventeen 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. All of these communities had recently completed an extensive, 12- to 24-month process of learning about their land 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. Possible rational for community silence or inaction may include:

- **Fear of the state**, resulting from decades of civil war and state oppression;
- **Community desperation for development/ investment and the perceived resulting prosperity;**
- **Individuals' fear of intra-community disenfranchisement and exclusion** as a result of voicing anti-investment/development sentiment; and
- **Lack of good laws, rule of law, and complaints mechanisms to support communities' efforts to address injustice.**

However, the longer term effects of knowing one's rights - and then enduring government officials' disregard for those rights, are yet to be seen. To metabolize communities' open-eyed, awakened disillusionment into empowered action rather than civil unrest, it is necessary to support communities to advocate for changes in law and government - and work with government and non-governmental organizations to create meaningful mechanisms for state accountability. The following recommendations 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.

# RECOMMENDATIONS

## RECOMMENDATIONS FOR CSOS WORKING DIRECTLY WITH COMMUNITIES<sup>1</sup>

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.

A few hours of training on this topic, spread throughout a community land protection process, is clearly inadequate. Additional training could cover:

- How a consultation should be conducted, in comparison to how they are usually conducted (including presenting real life 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 NGOs, national ombudsman's offices, complaints mechanisms, and grievance procedures, etc.;
- 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), and many other topics.

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

One or two meetings on the topic that result in a few by-laws are insufficient. Additional efforts,

undertaken over the course of at least three or four meetings, could include drafting bylaws that address every aspect of community-investor negotiations. 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, the 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 may provide regular trainings for community leaders and land committees on how best to respond to investors and government agencies seeking land. It may also be helpful to draft two-page, simple, 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.

<sup>1</sup> 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/>.

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 kinds of documentation and evidence.

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.**

This action plan may include forming cooperatives, launching local small business enterprises, developing local infrastructure and other actions designed to ensure that the community’s common areas are being used productively by community members themselves.<sup>2</sup> Once a community has an action plan, advocates may then connect the community with relevant livelihood projects, local government development funds, and trainings in cooperative and enterprise development and management, among other strategies.

6

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

Advocates might also prepare and widely circulate short, low-literacy guides detailing how to respond to investors’ requests to share with communities.

7

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

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 may be useful.

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. 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. Alternatively, they might connect communities challenged by similar patterns of bad faith actions undertaken by various companies working in the same sector. Leaders could collaboratively share their strategies, brainstorm solutions to challenges, and champion each others’ 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.

<sup>2</sup> For further information on this step, see: <https://namati.org/resources/chapter-returning-to-the-vision-with-community-action-plans/>.



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

Among the myriad efforts that civil society, government, media, funders, and bilateral and multilateral agencies could take to address the power asymmetries inherent in community-investor and community-government interactions, this report recommends seven key actions:

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

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.

These lawyers may provide legal support over the phone, but ultimately, communities negotiating land transactions with even national investors need an advocate physically present in meetings where they are agreeing to share their land. A vertical network,

stretching from the community, through paralegals, to national and international lawyers may work 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.

It is urgently necessary to provide, extensive, detailed training and on-going supervision and support to government officials within the land and investment sector and to relevant judges and magistrates. As was 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; 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; legal education, and various other trainings.

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.

Investors must fully understand the negative impacts of a poorly done consultation. More empirical research should be undertaken concerning how companies' investments suffer from poorly done consultations and the resulting negative relations with communities. 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 a light on government officials' land-related corruption and abuse of communities' land rights. 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 to bring such stories to light.

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 community land rights in the context of international investment. However, in many countries, these laws do not have national analogs. Civil society must work hand-in-hand with likeminded government actors to draft and pass national equivalents of international laws that have proven to support transparent, good faith investments on community lands. Relatedly, civil society must work with government to enforce all relevant national laws that have already been enshrined into statute. 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.

To view and download *The Challenge of Protecting Community Land Rights* full report, visit <http://bit.ly/LandRequests>





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





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

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