COMMUNITIES’ CAPACITY TO RESPOND TO EXTERNAL THREATS TO THEIR LAND RIGHTS

Rachael Knight, lead researcher

With national researchers: Theresa Auma Eilu, Nelson Alfredo and Ali Kaba
This webinar aims to:

- Illustrate the complexities of supporting communities to authentically decide whether to share their lands with government agencies, international investors, and national elites;
- Identify the ways in which powerful actors fail to get genuine FPIC; and
- Explore strategies to ensure against bad faith land claims by those with power, money, and access to state force.

Participants will learn more about:

- The power and information asymmetries that communities face when approached by investors and government officials seeking land;
- What often happens when communities try to demand that their rights are respected;
- Actions that local, national and global actors might take to address these challenges.

Panelists:

- Rachael Knight, IIED (formerly of Namati)
- Ali Kaba, SDI
- Theresa Auma Eilu, formerly of LEMU
- Nelson Alfredo, CTV
1. Idealistic innovation: co-creating a legal empowerment, community-led approach to community land protection

2. The findings of our research on communities’ capacity to respond to external threats to their lands

3. What can NGOs, global policymakers, advocates, foundations, multi-lateral agencies, and the media do to address power asymmetries in land transactions?

4. Questions by the moderator for the national experts

5. Questions from the audience
From 2009 until 2015, Namati partnered closely with LEMU, SDI and CTV, during which time we innovated a legal empowerment approach to community land protection in Uganda, Liberia and Mozambique.

Process co-developed with LEMU, SDI & CTV by:
- Gathering and analyzing data, failing terrifically, making improvements;
- Confronting challenges and innovating solutions cross-nationally; and
- Listening to communities’ expertise and experience.

2012-2018: International scale-up into 150+ communities across 7 countries.

2019 – onward: Namati focusing this work in Kenya and Sierra Leone.
THE COMMUNITY LAND PROTECTION PROCESS WE INNOVATED

- **Step 1: Laying the groundwork**
  - Community definition; visioning; valuation; selecting and training Community Land Mobilizers/Animators/Paralegals and Interim Coordinating Committees.

- **Step 2: Strengthening land and natural resource governance**
  - Drafting by-laws for good governance of community lands and resources; making a zoning plan (linking rules to the landscape); and electing diverse, representative “Land Governance Councils.”

- **Step 3: Harmonizing boundaries & documenting community land**
  - Sketch mapping of community lands and natural resources; harmonizing boundaries with neighbors; documenting agreed boundaries (with boundary trees, MOUs, digital maps, photos/videos).

- **Step 4: Completing government registration procedures**
  - (Step 5: Preparing communities to prosper)
Strengthened land governance

Resolved longstanding land conflicts

Stronger substantive and procedural land rights for women, rules against DV

Reported sense of stronger tenure security

Improved conservation

“Fish are back in swamp now, and people are doing simple fishing in this dry season. Yet before the community land protection work, the swamp had been encroached and dried up when people divided up water into channels towards their rice gardens. Today, water and pasture for animals have increased and people don’t have to go far looking for it as was the case in previous years.”

DUATS in Mozambique

Significant impact on Liberian Land Act
In late 2017, Namati evaluated the impacts of its work on communities’ response to outside actors seeking community lands and natural resources.

Central assumption tested: “Once communities know their rights and have documented their land claims, they will act in an empowered way when approached by government officials and/or investors seeking land, which will result in improved outcomes.”

Researchers called leaders and community-based paralegals of 61 communities who completed their CLP efforts between 2009 and 2015.

Of the 61 communities, 28 (46%) reported that they had been approached by external actors seeking land while 33 (54%) reported that they had not.

Researchers then traveled to those communities and conducted community meetings and key informant interviews to record the details of the 28 communities’ 35 separate interactions.
WHO WAS SEEKING LAND FOR WHAT PURPOSE?

- Government officials seeking community lands for government projects: 34%
- International investors seeking community lands and natural resources for tourism, agribusiness, mining and logging ventures: 40%
- National, regional or local-level elites/investors seeking community lands and natural resources for investment purposes: 26%
WHAT DECISION DID THE COMMUNITY MAKE, AND WHAT HAPPENED NEXT?

- 57% of communities accepted the request.
- 11% of communities tried to reject the request but the investor did not accept the situation: pressured or bribed the community to change its mind or went around the community to take the land by force.
- 14% of communities rejected the request, the actor went elsewhere for land or was not heard from again OR there were rumors that the actor was planning to return.
- 17% of communities had not yet made a decision, was still in discussions.
SUMMARY OF FINDINGS

The findings show a clear picture of communities who, even at their most legally empowered, are no match for:

1. State power and the threat of violence behind that power
2. The desperation of poverty in the face of potential government infrastructure development.

The data suggest that community land documentation and legal empowerment efforts are not sufficient to balance the significant power and information asymmetries inherent in interactions between rural communities and investors backed by (feared) government officials.
The stories illustrate how government officials leverage their power and influence to override citizens’ land rights in order to:

• Claim land owned by villagers for state projects without paying compensation;
• Support bad faith land grabs/dubious “consultations” for international investors;
• Provide protection/facilitate land grabs for investments they/their families/their cohorts have a personal stake in.
These outcomes were prevalent despite community members’ articulation that they knew their legal rights – and were the same independent of whether or not:

- The community had a formal government-issued document for its land rights (Mozambique)
  - “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.”
- The community had legal ownership under law (Uganda)
- The community fought against the land grab, seeking external support from NGOs and political representatives (Liberia)
OVERVIEW BY COUNTRY

- **Liberia**: In two cases, the communities’ increasingly desperate efforts to resist what were essentially land grabs led only to state-backed violence, bribery of leaders, and loss of land.

- Uganda: Very little “free”/undeveloped land available, so where LEMU helped communities protect their vast grazing lands, government officials immediately tried to claim that land for projects.
  - Community desperation for development and prosperity was a major factor in the ease with which government procured their lands.

- Mozambique: Community members described how *when investors come accompanied by government officials (for a one-time consultation)*, they felt that they had no choice but to acquiesce to the project.

- In all situations in which government officials claimed land for public projects, when community members asked for compensation as per their constitutional rights, *the officials refused to pay*, in direct contravention of national compulsory acquisition laws.
FINDINGS

- 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.

- In only 11 instances did the community make 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 government officials and NGOs.
  - “You have to be brave to say ‘no,’ because the investors are accompanied by the government; if you do not agree, you may suffer retaliation.”
Why did seventeen communities fail to seek help from either government or civil society, ask questions, demand to see project documents, or request payments?

- 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.
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:

1. The investor or land grabber was local, and had relatively less power and authority than the government officials the community appealed to;

2. The investor came to the community alone, unaccompanied by government actors; or

3. The community succeeded in having an NGO present at the community consultation.
3. WHAT CAN GRASSROOTS ADVOCATES DO?

1. Increase the amount of time spent training communities about how to respond to external requests for their lands.

2. Increase the amount of time/energy allocated to drafting bylaws on what to do when facing external requests for use of lands and resources.

3. Support the community to work towards its “future vision,” then help the community to use its lands to prosper on its own terms; if land is protected but empty/unused, it is easier to grab/give away.

4. Ensure that communities have an advocate’s phone number to call or text for immediate help and advice.

5. Empower community youth, who have less fear of speaking out.

6. Connect communities to share successful strategies, take coordinated action: against one investor, or against a sector.
3. WHAT CAN GLOBAL POLICYMAKERS, ADVOCATES, FOUNDATIONS, MULTI-LATERAL AND BI-LATERAL AGENCIES, AND THE MEDIA DO?

1. Establish national hotlines for immediate legal advice and support.

2. Create a cadre of pro bono lawyers, paralegals and advocates
   - No community-investor contract should be considered valid unless it was reviewed and witnessed by an attorney representing the community.

3. Provide intensive training for government officials at every level of government.
   - “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.”
   - Visits to ravaged communities, and/or bring community members to their offices to present slideshows and give testimony.
3. WHAT CAN GLOBAL POLICYMAKERS, ADVOCATES, FOUNDATIONS, MULTI-LATERAL AND BI-LATERAL AGENCIES, AND THE MEDIA DO?

4. Fund and empower national/global media to bring such stories to light.
   - 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: **global journalists must shine a light on national corruption**.

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

6. Further sensitize investors to the negative financial impacts of failure to ensure authentic FPIC.
   (TMP Systems excellent work)
JOIN NAMATI’S NETWORK!

- Find the guide here: https://namati.org/resources/community-land-protection-facilitators-guide/
- Join Namati’s network here: https://namati.org/network/join/
2016: Investor arrived to “make a deal,” leaders asked for more information, and called SDI’s hotline.

Investor got upset and left, returned months later with the Superintendent and District Commissioner, who:
- Dissolved the community’s existing Land and Forest Management Committee
- Unceremoniously relieved Clan Chief of his position
- Personally appointed a new governing body.

Investor returned again, with the Senator, Superintendent, Commissioner, leaders from Monrovia: pressed community to sign an MOU ceding the land.
- When youth protested that they wanted SDI to review the MOU before they signed, the Senator called in the police to intimidate them.

Superintendent later arrived in the community with $30,000 LD to bribe key leaders. Elders were paid to sign the MOU at a secret meeting in a private home at 11 pm.

MOU did not say how much land, or offer any benefits.

Community never given copy of the MOU.