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Holding Leaders Accountable and Ensuring Community Participation in Land Transactions

By Ali Kaba and Chelsea Keyser

Namati and the Sustainable Development Institute in Liberia (SDI), have worked with the community of Duah for over 3 years to document the community’s land and establish an inclusive local governance system for land and natural resources. In the spring of 2013, Duah faced a serious challenge: Clan elders agreed to a large land deal with a local palm oil investor without the involvement of the community or its new Land Governance Council. This *Lesson from the Field* describes how, with support from SDI, Duah community members held their leaders accountable to their newly adopted community by-laws and successfully reversed the land deal. The case of Duah highlights some of the challenges faced when promoting inclusive, participatory, and accountable community land management in rural Liberia.



Traditional leader in his community’s forest, Rivercess, Liberia

Liberia currently has one of the highest land concession rates in Africa.¹ Between 2004 and 2009, 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. Today, even with a moratorium on public land sale in place, private investors continue to seek and acquire land concessions throughout the country: in 2010 alone, more than 661,000 hectares were granted to two foreign corporations for palm oil production.²

A recent 2012 report found that “land allocated to rubber, oil palm and forestry concessions covers approximately 2,546,406 hectares, or approximately 25% of the country.”³ By January 2013, another study estimated that over 5.1 million hectares (almost 54% of Liberia’s landmass) had been granted or promised to investors through

¹World Bank Group, *Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits?*, (2010) XIV, <http://siteresources.worldbank.org/INTARD/Resources/ESW_Sept7_final_final.pdf> August 2011 at 62.

²These concessions were granted to the Malaysian palm oil company Sime Darby in 2009 (311,187 ha) and to the palm oil company Golden Veroleum (350,000 ha).

³Silas Kpanan’Ayoung Siakor, *Uncertain Futures: The Impacts of Sime Darby on Communities in Liberia* (August 2012): 17.

concessions agreements, 5 million hectares of which were allotted to transnational corporations.⁴

In addition, vast amounts of land are being acquired by Liberian investors and local elites at unprecedented rates; such acquisitions often happen quietly and are not accounted for in national estimates. Because of their low-profile, it is especially difficult for communities and civil society to hold domestic investors accountable to requirements for community participation in land transaction decisions. Elites and domestic investors are often coercive, such as when an investor claims he or she is related to the community or when feared former soldiers or guerrilla fighters intimidate leaders and community members into agreeing to give them land.

In light of the external and internal pressures on land in Liberia, Namati and the Sustainable Development Institute (SDI) have been working since 2009 with communities in rural Liberia to strengthen their customary land rights. The work, which began with 20 communities in Rivercess County and has since expanded to almost 70 communities across the nation, aims to:

- Support communities to document and protect their customary land rights by following formal community land documentation processes; and
- Establish strong intra-community land governance mechanisms to hold leaders downwardly accountable, resolve conflicts, and secure land rights of women and other vulnerable groups.

⁴Rights and Resources Group. 2013. Investments into the Agribusiness, Extractive, and Infrastructure Sectors of Liberia: An Overview. Washington DC: RRG.

⁵SDI has collected a variety of anecdotal reports that local leaders/traditional authorities have been coerced to agree to large land transactions initiated by the government and other powerful elites.

⁶In this case, lands that are not deeded are generally considered as public land. However, these are the same lands claimed and managed by customary communities.

The Role of Elders in Land Allocations

Elders and traditional leaders play significant roles in negotiating and allocating land in most rural communities in Liberia. Traditionally, town elders and quarter chiefs made decisions about the use and allocation of land and natural resources. In the 1950s, the Liberian government integrated town elders into the official governance structure. Elders became responsible for signing tribal certificates, one of the first steps to move public land into a private claim. Elders are also responsible for resolving land disputes in their communities.



Community leaders and elders at a community meeting

Over the years the process of allocating rural land in Liberia has suffered from a weak regulatory framework, manipulation by the powerful, and asymmetries of power and information between community elders, the state, and external actors. Furthermore, years of civil war and mass movement of people between towns and cities have left many rural communities fragmented. In addition, in many communities there are emerging tensions between youth and elders over different priorities for the use and management of community land and natural resources.

A common source of frustration among communities in rural Liberia is that while elders hold the power to decide most land-related decisions, included leases and allocations (to community members and outside investors alike), most are not experienced with or trained in

negotiating contemporary types of land deals such as large-scale land transactions for plantations or speculative land deals by local and national elites.⁵

In this context, it is not uncommon for elders and traditional leaders to allocate large areas of customary land⁶ to private investors without consulting the broader community or understanding the full terms or implications of land deals. Even in cases where elders and leaders intend to bring benefits to their communities, the decisions are generally not made through an inclusive or accountable process and fail to account for the full range of potential impacts on community land use and livelihoods.

The Duah Elders and the Investor

Namati and SDI have been working with the Duah Clan community in Rivercess County since 2009. During this time, Duah made significant progress in their community land documentation process. The community successfully:

- Mapped their lands;
- Met with neighbors to resolve boundary conflicts and agree on harmonized boundaries;
- Signed inter-community MOUs with their neighboring communities to formally document agreed boundaries and planted boundary trees;
- Brainstormed, debated, amended and formally adopted community by-laws and a natural resource management plan to govern the administration and management of their lands and natural resources; and
- Democratically elected a representative Land Governance Council to oversee management of the community lands and enforce the community's by-laws.

The community land protection process has appeared to support improved community governance, including gender parity and youth participation in land discussions. For example,



A boundary tree planting ceremony in Rivercess county

all members of the Duah community took part in these activities, adhering to their agreed 'ground rules' of inclusivity, transparency, and consensus-based decision-making.

Over the past 3 years, Duah's newly-elected Land Governance Council has benefitted from SDI's trainings on conflict resolution and sustainable resource use and management, as well as educational workshop on national laws and international agreements on land and natural resources. Local statutory leaders and elders have also participated in these trainings. Two members of the Duah community, elected and trained to be local 'paralegal' (called 'Community Animators' by SDI) also supported their community's land protection process, liaising between SDI's legal and technical team and their community members and leaders.



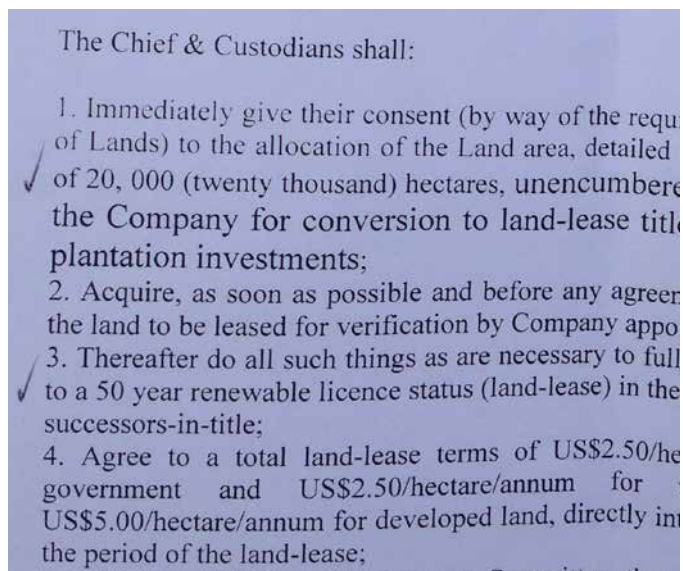
Community animators at a SDI training session

However, in late 2013 the Duah Clan faced a significant challenge to their efforts. A former clan resident, now living in the United States, arrived in Duah and began to negotiate with various elders, under the company name of “Lion Growth Ltd.” The investor wanted land to establish a palm oil plantation and tree plantation “for commodity production” and asked for “a minimum of 20,000 hectares,” an area larger than Duah’s total territory, under a “50-year renewable license.” The investor asked the elders to sign a vague Memorandum of Understanding (MOU) that “confirm[ed] the willingness” of the “Chief and Custodians” to “support” the plantation development. The MOU did not specify the terms of the investment, the land to be granted, the community’s rights to use and inhabit the land, or any concrete proposals for provision of benefits. However, the MOU did lay out the terms by which a lease would be signed, stating that the “Chief and Custodians” would be obliged to:

“Agree to a total land-lease terms of US\$2.50/hectare/annum to be paid directly to the government and US\$2.50/hectare/annum for undeveloped land, and a further US\$5.00/hectare/annum for developed land, directly into the Community Development Fund for the period of the land-lease.”

The MOU also required that the “Chief and Custodians” agree to sign a formal lease and

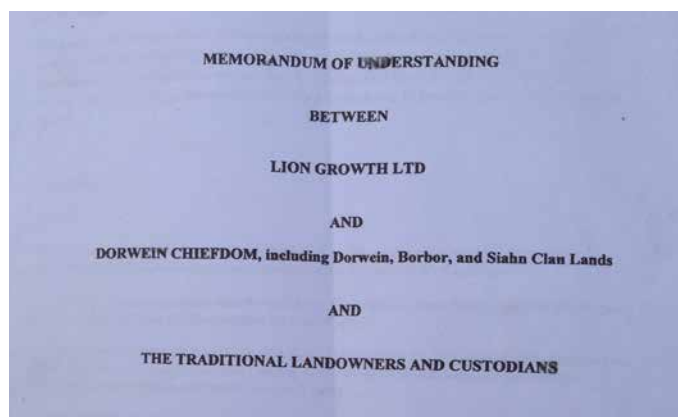
arrange for a transfer of title of the land. The MOU required signatories to not disclose its content to “any third party unless required to do so by law” and to agree that the company would have “total exclusivity over the Land” for one year. The MOU, while vague and poorly prepared, presented a serious threat to Duah’s interests and their ability to negotiate a fair lease.



Sample of the Lion Growth Ltd. MOU text

The investor convinced a small group of clan elders to sign the MOU, who then apparently convinced some members of Duah’s new Land Governance Committee to also sign (though later there was debate among the community as to which members actually signed the agreement).

As word of the land deal spread, community members aware of the deal were “worried” but were unsure how to proceed. Directly confronting traditional power holders is a very sensitive taboo in many rural communities in Liberia. Fortunately, when more community members learned of the investor’s activities and the MOU, several members of the Land Governance Council and Community Animators that SDI had trained decided to alert SDI and Namati, who immediately researched the situation and organized to meet with the community.



First page of the Lion Growth Ltd. MOU

Community Intervention

In October 2013, SDI facilitated a series of meetings in Duah, some with the Land Governance Council and Community Animators only, and others that were open to the whole community to discuss publicly the details of the situation.

SDI staff provided the Duah Land Governance Council and Community Animators with a copy of the MOU that they had located and discussed the details of the signed agreement. SDI staff explained that the MOU currently promised an acreage more or less equal to the clan's total land area (information that Duah did not have because their GPS mapping has not yet been completed). They explained that leasing this acreage would dispossess community members from their homes and farms and potential reach into the lands of neighboring communities as well.

SDI staff, the Land Governance Council, and the Animators also reviewed Duah's by-laws and the role of the Land Governance Council in community land governance. The Duah by-laws state that any decision made about community land requires community consensus through a large and inclusive community meeting. The meeting should be facilitated by the Land Governance Council and include the active participation of all land owning towns.



Duah community members at the meeting to discuss the land deal



Leaders listened to the concerns and suggestions of community members

SDI staff advised the Land Governance Council to approach the elders with a collaborative, educational approach rather than a confrontational or accusatory approach that might exacerbated the power struggle between the elders and the Land Governance Council. Based on these discussions, the Land Governance Council and Animators decided to organize a meeting with their elders.

The members of Duah's Land Governance Council approached several prominent community elders to discuss the land deal. In initial discussions, some of the elders insisted that their traditional role includes negotiating and allocating land on behalf of the community. However, after several rounds of discussion on the legal and practical challenges of the deal, some of the elders agreed to organize a larger community meeting, inclusive of all affected towns and groups, in order to discuss all the potential negative impacts and risks of the land deal.

Shortly thereafter, Duah's Land Governance Council, with endorsement from the elders, hosted a public meeting to address the Lion Growth Ltd. MOU. At the meeting, Duah's Community Animators asked the leaders who had signed the MOU to explain their actions and what they understood about the agreement. The Land Governance Council and the Animators then explained the meaning and implications of the terms of the MOU. The Land



A resource management expert discussed land management with Duah community members

Governance Council and Animators then reviewed all the community by-laws and land management plan that Duah had drafted to guide decision making about the community’s land.

Before this meeting, most community members that SDI staff talked to had seemed resigned to the fact that their elders had made the decision and there was nothing they could do to change it. However, after the full terms of the agreement were explained and the community by-laws revisited, the community members at the meeting were emboldened.

Community members stood up one by one to voice their concerns about the potential impacts of the agreement and register their opposition to the deal. Despite the taboo against directly challenging traditional authorities or elders, individuals questioned the elders and the Land Governance Council, sometimes angrily, asking them why such a disadvantageous deal had been approved and why community members had not been consulted.

Some of the issues identified and discussed by the community included:

1. The by-laws and land management plan: The community reaffirmed that decisions made by the community about land and natural

resources have to include the broad participation of all affected members (towns) of the community. Community members demanded that both their elders and Land Governance Council adhere to the community’s by-laws going forward.

2. Community Governance: The community agreed that the Land Governance Council should be tasked with facilitating community meetings on land transactions affecting the community as a whole. As well, it was agreed that the Land Governance Council must keep community members informed of all decisions and proceedings.

3. Land allocation: Equipped with SDI’s research and explanation of the MOU terms, community members also convinced the elders that the size of the land deal requested was impractical, the benefits promised were inadequate, and that the deal itself was not in the community’s interest. They feared that the deal would make the investor the owner of “all of Duah.” One of the elders who had opposed the original deal explained that because the community had not yet completed GPS mapping and registration of their land that “we don’t know how much land we have [so] how can we give people all that land?”

At the meeting, community members made it clear to their leaders that they opposed Lion



Women shared their perspectives and concerns about the land deal

Growth Ltd.'s proposed investment and petitioned them to cancel the agreement. Realizing the disadvantageous implications of the agreement, the unified community opposition, and feeling shamed that they had undermined the previous four years of work by their community, the Duah elders agreed to void the MOU. The elders travelled to Monrovia, met with Lion Growth Ltd., and cancelled the deal. They also agreed to respect their community's new by-laws for participatory land governance and ensure fully community involvement in all future discussions with potential investors.

SDI maintains ongoing communication with Duah to track its progress and support the community to hold its leaders accountable to the agreed by-laws. Staff continue to provide Duah with information and updates about investments, their rights to Free, Prior, and Informed Consent, and the status of customary community land rights in Liberia's fast-evolving land law and policy. So far, Duah's Land Governance Council is functioning smoothly and no new land disputes or attempted land transactions have been reported to SDI.

Overall, it seems that Duah's experience has strengthened and further legitimized their Land Governance Council and community by-laws. In addition, Liberia's new land policy to protect customary community land claims (passed in 2013) and an upcoming new Land Rights Act will soon result in legal mechanisms that allow communities like Duah to legally document and protect their land rights.

Challenges to Inclusive and Accountable Community Land Management

The land deal that the Duah elders signed was illegal because the Government of Liberia currently has a moratorium on the issuance of tribal certificates to public land managed by communities. While



Palm oil fruit, collected from community forest in Rivercess county

this provided legal leverage for the community to cancel the deal once it became public, the deeper and more serious concern is how this land deal was agreed to in the first place: selective and coercive negotiations; manipulation of elders and traditional leaders; and exclusion of the larger community.

It was deeply disheartening that the Duah elders had signed this agreement - after years of active participation in the community land protection process - because it seemed as though the community's new land governance mechanisms had failed. The elders were also able to convince, or pressure, some of the members of the new elected Land Governance Council to agree to the deal without consulting the community.

The concept and practice of downwardly-accountable, participatory governance is still new to most rural Liberian communities. Under the state's official governance structure, elders and traditional leaders have authority over questions of land and requirements are unclear regarding community participation and approval of decisions.

Because tribal leaders continue to exercise custodial control over rural land, Namati and SDI work with traditional leaders and community members to provide training on the value and importance of inclusive decision-making. Namati and SDI's Community Land Protection Program

supports communities to design and adopt new local land governance systems grounded in accountability, transparency, equity, and participation by all community stakeholders (including women, youth, men, ‘strangers’ and members of minority groups).

However, as this case study shows, this is an on-going challenge that may take time for community leaders to comply with. Convincing leaders to surrender authoritative power and control to more participatory community processes is not a simple or quick exercise. Integrating traditional leadership and elders into the new local land governance is a challenge; the case of Duah highlights the potential for tension as power hierarchies change and communities become more democratic.

Ensuring the governance changes are effectively implemented is challenging, especially when elders or traditional authorities continue to claim and exercise authority over land decisions and exclude the Land Governance Council. As in the case of Duah, the members of the new Land Governance Council and other community members may be too intimidated to challenge established traditional authorities.



Logging trucks are a common sight across much of rural Liberia

Lessons from Duah

The community members of Duah were able to avert this disastrous land deal because they rallied together around their new community bylaws and governance rules. Instead of feeling helpless in the face of the fraudulent land deal and the power of their elders, community members successfully challenged the legitimacy of the transaction and convinced the elders to cancel it.

This was a major victory that signifies not only the strength and legitimacy of these new legal instruments and management bodies, but also shows that it is possible for an empowered, unified, and legally-aware community to successfully challenge corrupt leadership and ensure good governance of their lands and resources that is in the community’s long-term interests.

It is reassuring that after working with SDI and Namati for four years to transform and democratize their land and natural resources management, community members did effectively feel empowered to hold their leaders accountable and demand that leaders respect the community’s decisions. This is because they understood their rights and felt able to call upon their by-laws to ensure just, representative governance.

Duah’s case highlights the importance of ensuring authentic integration of new land governance mechanisms into existing local power structures. To existing leadership, the new democratic, participatory processes may seem unfamiliar, threatening, or an unnecessary hindrance in land negotiations. It is unclear if the Duah elders intentionally ignored the community’s new by-laws and governance rules or simply failed to consider them, but the experience highlights the importance of working closely with elders and traditional leaders to ensure they are integrated into new land governance bodies and committed to their success.

Namati and SDI’s critical reflection on this

case raised concerns that the community land protection process was lacking sufficient education and information: clearly, community leaders, elders, and members needed to have a better understanding of the value of their lands.

The Lion Growth Ltd. deal also highlights the importance of community education and awareness. Information asymmetries undermined both the elders' ability to negotiate with Lion Growth Ltd. and the community members' ability to participate in the negotiations. The elders negotiating the deal did not understand the extent of the land area involved, the monetary value of the land to the community, or the serious implications that the deal would have for local land use and access.

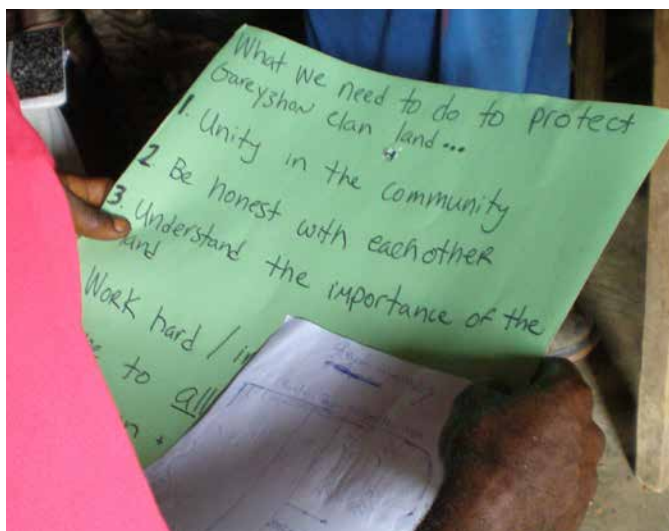
In response, Namati and SDI are adding four new components to the community land protection process to ensure that the community is fully empowered and informed to negotiate with investors on a more level playing field:

1. Detailed Geographic Information: SDI and Namati are fast-tracking their efforts to GPS all communities to ensure that they have accurate information about the total acreage of their customary lands, as well as the geographical limits and bounds of their land rights.

2. Grassroots Land Valuation: Namati is developing a community land valuation tool that will help communities measure the economic value of their lands and resources so they are better prepared to understand and negotiate terms of a land deal.

3. Negotiation Training: Namati is also developing a training module focused specifically on negotiation skills for communities.

4. Early Warning System and Support: SDI and Namati are piloting an 'Early Warning System' in Rivercess county: when an investor arrives in a community asking questions or seeking land, community members can immediately call a



A community member takes notes during a community meeting

hotline and receive immediate legal and technical support, both over the phone and in person.

5. Integrating Existing Leaders and Elders: SDI and Namati are taking steps to ensure that the new Land Governance Councils include existing leaders and community elders to ensure that they feel fully included in the new governance structure and committed to implementing the community's by-laws and land management plan. SDI and Namati have learned that a strong working relationship between the Land Governance Council and traditional leaders is important to promote accountability, inclusive decision-making and compliance with community by-laws.



An MOU signing ceremony for the whole community

Conclusion

Community Land Governance Councils and the development and implementation of community by-laws are very important aspects of SDI and Namati’s community land protection process. They provide a mechanism to increase accountability for local leaders. However, it is important that local leaders and the Land Governance Council work together and consult one another in decisions about land. The democratic process to establish the Land Governance Council is often a new concept for communities and may seem threatening or illegitimate to existing leadership structures.

The example from the Duah community highlights the importance of including elders and traditional leaders in the community land protection process. A strong working relationship between the Land Governance Council and traditional leaders and elders promotes accountability, inclusive decision-making and compliance with community by-laws. It is important that this relationship is fostered from the beginning of the land protection process.

Duah’s experience with the Lion Growth Ltd. MOU also highlights the importance of education and access to information regarding land deals. Community leaders, elders, and members need tools and support to negotiate fair land deals. Clear, tangible explanations of the terms of an

agreement and their implications are essential if a community is to give their informed consent. As well, the case of Duah illustrates how important it is to hold large, open, participatory meetings that include all affected community members in order to discuss and evaluate the costs and benefits of land deals. Leaders alone may not appreciate the full range and extent of the impacts of an agreement, especially impacts on women, minority groups, or those with specialized livelihoods.

Namati and SDI are currently designing and field testing various tools and resources to support communities to prepare for negotiations with investors. We look forward to sharing these tools and evaluations of their effectiveness in future *Lessons from the Field*.



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Namati is an international organization dedicated to advancing the field of legal empowerment and to strengthening people’s capacity to exercise and defend their rights. Namati’s Community Land Protection Program supports communities to follow national land documentation laws to protect their customary and indigenous land claims.

www.namati.org

The Sustainable Development Institute (SDI) works to transform natural resource governance to promote equity in the sharing of benefits derived from natural resource management in Liberia. The organization’s vision is a Liberia in which natural resource management is guided by the principles of sustainability and good governance and benefits all Liberians.

www.sdiliberia.org

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