

# Protecting community lands and resources

Evidence from Liberia



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County officials witnessing a MOU attesting to a community's harmonized boundaries.

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## **Protecting community lands and resources:**

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**cover image:** Community member signing MOU attesting to the harmonized boundaries of his community's land. © Ali Kaba.

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## Executive summary

In recent years, governments across Africa, Asia and Latin America have been granting vast land concessions to foreign investors for agro-industrial enterprises and resource extraction. Often, governments make concessions with a view to furthering development and strengthening the national economy. Yet in many cases, these land concessions dispossess rural communities and deprive them of access to natural resources vital to their livelihoods and economic survival. Even when communities welcome private investment, projects are often undertaken in ways that lead to environmental degradation, human rights violations, loss of access to livelihoods, and inequity.

Liberia currently has one of the highest land concession rates in Africa<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> A recent 2012 report finds that currently, “Land allocated to rubber, oil palm and forestry concessions covers approximately 2,546,406 hectares, or approximately 25% of the country.”<sup>4</sup>

In the coming years, if concession grants are not carefully controlled, the amount of land still held and managed by rural Liberians will significantly decrease. This will have adverse impacts on already impoverished rural communities. In Liberia, strong legal protections for community lands and natural resources and a clear, simple, and easy-to-follow legal process for the documentation of customary community land rights are urgently necessary.

Community land titling processes, which document the perimeter of the community according to customary boundaries, are a low-cost, efficient, and equitable way of protecting communities’ customary land claims. Such efforts protect large numbers of families’ lands at once, as well as the common lands and forests that are often the first to be allocated to investors, claimed by elites,

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<sup>1</sup> World 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](http://siteresources.worldbank.org/INTARD/Resources/ESW_Sept7_final_final.pdf)> August 2011 at 62..

<sup>2</sup> Id. The report notes that of this land, only 7% went to domestic investors, while 93% went to foreign investment.

<sup>3</sup> These 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).

<sup>4</sup> Silas Kpanan'Ayoung Siakor, *Uncertain Futures: The Impacts of Sime Darby on Communities in Liberia* (August 2012) at 17.

and appropriated for state development projects. Importantly, formal recognition of their customary land claims gives communities critical leverage in negotiations with potential investors.

To support the Liberian Land Commission's efforts to strengthen the tenure security of customary land rights, the Sustainable Development Institute (SDI) and the International Development Law Organization (IDLO) undertook a two-year study entitled the "Community Land Titling Initiative" in Rivercess County, Liberia.<sup>5</sup> The first study of its kind worldwide, the intervention's goal was to better understand both the type and level of support that communities require to successfully complete community land documentation processes, as well as how to best facilitate intra-community protections for the land rights of vulnerable groups.

The intervention's primary objectives were to:

- Facilitate the documentation and protection of customarily held community lands through formal community land documentation processes;
- Understand how to best and most efficiently support communities to protect their lands through legally established land titling processes;
- Devise and pilot strategies to guard against intra-community injustice and discrimination during community land titling processes and protect the land interests of vulnerable groups;
- Craft country-specific recommendations for the improvement of community land documentation laws and policies in order to improve fairness and make titling procedures easier for both communities and land administrators to follow.

To fulfill these objectives, SDI randomly selected 20 communities in Rivercess County and then randomly assigned these communities to one of four groups, each of which received a different level of legal services support. The various levels of support provided were:

- Monthly legal education;
- Monthly legal education and paralegal support;
- Direct assistance of lawyers and technical professionals; and
- A control group that received only manuals and copies of relevant legislation.

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5 The project was also undertaken in Uganda and Mozambique.

Due to the President's moratorium on public land sale and the suspension of all public land sale processes (as set out in the Public Lands Act 1972-1973), the 20 study communities followed a skeletal documentation process set out in a Memorandum of Understanding (MOU) signed between IDLO, SDI and the Land Commission of Liberia.<sup>6</sup> These steps included:

1. Establishing Interim Coordinating Committees responsible for leading their communities through the land documentation process;
2. Harmonizing community boundaries and documenting all agreed boundaries;
3. Drafting and adopting community by-laws to govern intra-community land and natural resource administration;
4. Drafting and adopting community land and natural resource management plans; and
5. Electing a governing council.

SDI's field team observed and recorded the communities' progress through the requisite steps, noting: all obstacles confronted and their resolutions; all intra- and inter-community land conflicts and their resolutions; and all internal community debates and discussions. A pre- and post-service survey of over 700 individuals and more than 100 structured focus group discussions supplemented the field team's observations.

Unfortunately, due to the length of time it takes to facilitate community land documentation processes as well as various political obstacles, none of the study communities has yet received a deed for their customary lands. Phase II of the Initiative, to be carried out jointly by SDI and Namati as part of Namati's Community Land Protection Program, will continue to support all 20 study communities until they have successfully attained documentation for their customary lands.

This report details the communities' experiences undertaking the land documentation activities and summarizes the initial impacts of these efforts under the following subject headings: **conflict resolution and prevention** (encompassing boundary harmonization and demarcation); **intra-community**

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<sup>6</sup> The original design of the Community Land Titling Initiative was to support communities through Liberia's Public Land Act 1972-1973. The aim was that, by following a legal process, the project could identify procedural obstacles to fast, inexpensive, and streamlined community land titling and craft country-specific recommendations for the improvement of community titling laws and regulations. However, due to the President's moratorium on public land sale (defined within the Public Land Act 1972-1973) the project could not proceed as initially planned. As such, it was not possible to assess or evaluate Liberia's existing legal and administrative procedures through which communities may seek documentation of their land claims. Rather, the procedures set out in SDI's MOU with the Land Commission and followed by the Liberian communities were purely local; they did not necessitate filling out forms or pursuing specific administrative or legal processes.

**governance** (encompassing by-laws/constitution drafting); and **conservation and sustainable natural resource management** (encompassing land and natural resource management plan drafting). It briefly reviews the **obstacles and hurdles confronted** during the community land documentation the process, and then describes conclusions relative to the **optimal level of legal intervention necessary** to support communities' successful completion of community land documentation efforts. The report also details findings concerning how **best to facilitate intra-community protections for the rights of women and other vulnerable groups** during the land documentation process.

The report concludes by setting forth **findings and recommendations intended to inform policy dialogue** and to provide useful information for the Land Commission, the government of Liberia, and all interested stakeholders seeking to develop laws and policies for community land documentation.

The report's nine main findings are briefly outlined below, followed by recommendations for policy and practice.

It is important to note that additional investigation is necessary to determine the long-term social and economic impacts of community land rights documentation. Moreover, it will be critical to provide on-going support and monitoring to understand how to best support community efforts to implement their newly adopted by-laws and land and natural resource management plans. Research can also help to discern what additional assistance is necessary to ensure that even documented community lands claims are protected over the long-term.

## Main findings

### 1. Community land protection efforts are not merely documentation exercises.

Community land documentation activities should combine the *technical* task of mapping and titling community lands with the *peace-building* work of land conflict resolution and the *governance* work of strengthening land and natural resource management. When these efforts are joined, the findings indicate that community land documentation processes have the potential to:

- Resolve long-standing land disputes;
- Improve governance and establish mechanisms to hold local leaders downwardly accountable;
- Encourage transparency and equality in rule enforcement;



- Stimulate communities to conserve and sustainably manage their natural resources;
- Align community norms and practices with national law; and
- Strengthen the rights of women, strangers and other vulnerable groups.

To achieve and sustain such impacts, the process must be outlined in a clear land policy and legal framework and supported by implementation efforts backed by strong political will and the allocation of sufficient resources.

## **2. New land laws and policies designed to protect communities' land and natural resources claims are urgently necessary.**

In the current context of Liberia's issuance of large-scale land concessions for palm oil, logging, and mining investments, existing community land claims must be actively protected. By continuing to allocate land concessions while failing to take concrete steps to protect community land claims, the government is increasing the level of land tenure insecurity in rural areas throughout Liberia.

Liberia's new land policy should support the efficient, just, and equitable documentation of communities' customary land claims. Liberian policymakers should anticipate an immediate high demand for community land documentation, and establish proper protocols and systems to ensure that the government can review and process all applications at an appropriate pace.

## **3. Community land documentation should be prioritized over individual and family titling in the short term.**

In the context of the continued granting of large-scale land concessions throughout Liberia, community land documentation should be a priority. A focus on documenting family and individual lands will be expensive, time-consuming, and leave rural communities vulnerable as a group. Furthermore, family and individual land titling efforts fail to protect the common and reserve areas upon which communities depend for their livelihood and survival. In contrast, community land documentation has the potential to safeguard an entire community's land at once.

Registering community land as the "meta-unit" may be the least costly — and most scale-able — means of protecting rural households' land claims. The research found that even when providing full legal support, community land documentation efforts cost only a few thousand dollars per community. In

Liberia, a rough estimate of the costs (not including GPS) came out to \$7,700 USD per community. Considering the number of families living in each study community (anywhere from 100 to 1000 families), community land documentation is an economical way to protect large numbers of families' land claims.<sup>7</sup> For a hypothetical community of 500 families and large common areas, registering the tenorial shell would cost less than half of efforts to register individual or family lands.

#### **4. Boundary harmonization and demarcation are peace-building and conflict-resolution exercises and should be conducted accordingly.**

The boundary harmonization process comprised the following activities: community mapping; boundary negotiation and conflict resolution with neighbors; and boundary demarcation (tree planting, GPS mapping, and MOU-signing ceremonies). Taken together, the communities' boundary harmonization experiences yield three important lessons:

- While the potential for conflict was significant, communities' desire to obtain documentation for their lands created a strong impetus to peacefully resolve long-running boundary disputes. Compelled by the goal of documenting their land claims, many of the study communities worked to negotiate compromises and resolve land disputes that had endured for years.
- Positively, the resolution of long-standing land conflicts both within and between communities appeared to have an overall constructive impact on land tenure security and intra-community conflicts.
- Facilitating agencies should proactively prepare for land conflict resolution to be a central component of the documentation process and as such should craft curricula and trainings designed to support open, non-violent communication during boundary negotiation, a range of creative compromise strategies, and mediation/dispute resolution tactics. Facilitating agencies should also stand ready to support resolution of particularly intractable land conflicts.

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<sup>7</sup> While cost estimations for individual titling vary widely according to national legal framework and economic context, one global analysis found first-time household land registration costs to occasionally exceed US\$100 per parcel, with average costs between US\$20 and US\$60 per parcel. Tony Burns, Land Administration Reform: Indicators of Success and Future Challenges, Agriculture and Rural Development Discussion Paper 37 The International Bank for Reconstruction and Development/The World Bank. 2007.

## **5. Improved local land governance should be a central objective of community land documentation processes.**

The aim of a community land documentation process should not only be to obtain formal recognition of community land claims, but also to stimulate important intra-community changes in local land and natural resource governance. To this end, legislators and policy makers should structure community land documentation procedures to include community-wide, democratic, and fully participatory discussions concerning how to best manage community lands and natural resources.

Such processes are critical: while documentation of community land rights provides protection against land usurpation by outsiders, it alone can do little to either protect against intra-community threats to common lands or to ensure that communities protect, conserve, and steward their land and natural resources for community development. To permit a community to apply for land documentation without creating and implementing systems for transparent, just and equitable administration of that land is an invitation for mismanagement, corruption, and local elite capture.

Members of all study communities reported that the land documentation process provided the opportunity to publicly discuss and evaluate community rules and norms for the first time in living memory. Throughout the exercise, community members argued against rules they felt to be arbitrary and discriminatory, and advocated for the inclusion of rules that would protect their interests. As a result, the process appears to have made four significant shifts in various facets of local governance. The findings indicate that the process:

- Enabled community members to directly participate in governance decisions previously taken solely by customary and state authorities;
- Created the opportunity for community members to institute new mechanisms to hold local leaders downwardly accountable;
- Allowed communities to establish consistent norms and institute clear, publicly known penalties for infractions.
- Helped to align local custom and practice with national law; after learning about national laws relevant to community land and natural resource administration, community members took steps to change local rules so that they no longer contravened national law.

## **6. Community land documentation efforts have the potential to foster sustainable natural resource management and conservation.**

The process of discussing and amending their rules for land and natural resource management fostered two main shifts in community members' ideas about natural resource management. First, communities' rules reflect a clear — and renewed — concern with conservation and the sustainable use of natural resources. During the by-laws drafting process, communities both crafted new rules to conserve their resources as well as “remembered” and reinforced old rules that promote sustainable natural resource use.

Second, communities created rules that more closely control and monitor non-residents' use of community lands and natural resources. These rules generally do not fully impede “outsiders” use of community natural resources, but rather allow the community to control, monitor and tax these activities for profit and development. The land and natural resource management plans indicate that communities are not adverse to outside investment so long as:

- The community itself is involved in discussing and negotiating all aspects of the investment project, and has authentically given its full free, prior informed consent;
- Restrictions are put into place to protect the environment as well as community members' health, livelihoods and culture;
- Benefits/fair compensation accrue to the community; and
- A signed contract ensures that all community benefits are paid and promised benefits delivered.

## **7. If well-facilitated, community land documentation processes strengthen the land rights of women and other vulnerable groups, and support communities to establish mechanisms for rights enforcement.**

The process of drafting community by-laws can create a space for women to question practices that disadvantage them and to advocate for rules that protect their interests and strengthen their land tenure security. Women's active involvement in the by-laws drafting debates appears to have strengthened women's procedural and substantive rights within their communities. Procedurally, the process appears to have shifted community members' perceptions that land is “men's business.” As a result, women's opinions were taken seriously during discussions and many communities' by-laws include provisions that the elected land governing bodies must include elected women and youth representatives.

Substantively, the process provided an opportunity for women and other vulnerable groups to ensure the inclusion of stronger protections for their land and inheritance rights. These efforts resulted in:

- The strengthening and/or actualization of existing women's rights;
- The maintenance of women's rights that might have been lost in the transition from oral to written rules (as a result of women's advocacy efforts, community rules explicitly protect women's daily natural resource use);
- The rejuvenation of customary norms that had existed in the past to protect women's land claims but had recently eroded or been abused;
- The alignment of local rules with national laws that protect women's land rights; and
- A re-conceptualization of "strangers" and corresponding shifts in the rights of strangers who have made their home in a community for many years.

Such efforts to create intra-community mechanisms to protect and enforce women's and other vulnerable groups' land claims will become increasingly necessary as land grows in value and becomes more scarce, and as intra-community competition for land exacerbates discrimination and disenfranchisement of vulnerable groups.

## **8. Paralegal support proved to be the optimal level of assistance necessary for successful completion of community land documentation processes.**

Cross-national statistical analysis of the treatment groups' progress found that the level of service had a statistically significant impact on the stage communities attained in the land documentation process. In this analysis, the full-service treatment group communities performed more poorly than both the education-only and paralegal treatment group communities across a range of indicators. Cross-nationally:

- The control group completed an average of 19% of the process. (In Liberia: 45.2%)
- The education-only treatment group completed an average of 50% of the process. (In Liberia: 70%)
- The paralegal treatment group completed an average of 58% of the process. (In Liberia: 85.2%)
- The full legal service treatment group completed an average of 34% of the process. (In Liberia: 57.6%)



These relatively surprising outcomes lead to various conclusions. First, this finding indicates that leaving communities with the responsibility of completing most project activities on their own motivated them to take the work more seriously, integrate and internalize the legal education more thoroughly, address intra-community obstacles more proactively, and claim greater “ownership” over the land documentation process than when a legal and technical team completed this work on the community’s behalf.

Second, the strength of paralegals may be related to their ability to help communities navigate through intra-community tensions or obstacles that a full-services team of outside professionals may either inadequately address, fail to perceive, or accidentally exacerbate. In fact, the statistical analyses indicate that when a community faces one or more intra-community obstacles (elite interference, weak community cohesion, intra-community land conflicts, etc.), offering full legal services makes no statistical difference to that community’s ability to successfully complete the documentation process than offering no services at all.

Third, the relative success of certain education-only and control group communities neighboring the paralegal group communities — as well as the evidence that these education-only and control group communities actively sought out advice from neighboring paralegals — indicates that well-trained and rigorously supervised paralegals may not only help their own communities, but may also have spillover impacts throughout the region in which they are based.

Furthermore, a paralegal-driven process may also be less costly and more scale-able than the full-service approach, as the model allows a few professionals to supervise multiple community-based paralegals. Once the land documentation has been issued, the community may benefit from having two trained paralegals in their community who may support resolution of intra-community land conflicts and strengthen community members’ capacity in any forthcoming consultations with investors.

However, SDI observed that while motivated communities can perform many steps of the community land documentation process on their own, communities need targeted legal and technical assistance to successfully complete community land documentation efforts. SDI’s experiences indicate that legal and technical professionals must actively provide the following support:

- Introduce the land documentation process and provide periodic legal education and capacity-building concerning the community’s legal rights to their land, the process to formally document these rights, and how to successfully complete the necessary procedures;

- Provide mediation and conflict-resolution support during any particularly contentious land conflicts or boundary disputes that communities are unable to resolve on their own;
- Provide legal support and technical assistance during the completion of the community's second and third drafts of their by-laws/constitutions;
- Implement a women's empowerment/participation strategy and work to ensure women's full involvement in all community land documentation activities; and
- Provide assistance to communities during all administrative components of the land documentation process.

Furthermore, SDI's experiences indicate that a legal and technical team must closely supervise community paralegals' efforts, not only to ensure that their work product is of high quality, but also to step in when necessary to demonstrate to stakeholders that a community's efforts are supported by a team of lawyers who have the capacity to take legal action.

## **9. Community land documentation may not be appropriate for all communities without pre-intervention support.**

While every study community faced a variety of challenges, some communities were able to overcome obstacles more effectively than others. The research suggests that an unhealthy or dysfunctional community may not be able to successfully complete the complex process of documenting community land claims. SDI's observations illustrate that communities that struggle with elite sabotage, intractable boundary disputes, internal discord and weak pre-project cohesion, and weak leadership or power struggles between leaders may not be able to progress through community land documentation processes, irrespective of how much support they are offered. In such situations, the process may become a pawn in intra-community conflicts of power. Similarly, peri-urban communities and communities with little or no internal cohesion or a highly transient population may not be appropriate for community land documentation initiatives.

Should a dysfunctional community initiate land documentation efforts and not be able to complete them, the process may invigorate tensions and create or exacerbate conflict, leaving the community in a worse situation than before the intervention began. Before beginning land documentation efforts, facilitating NGOs or government agencies should carry out an analysis to determine whether the community can work together productively and is

willing to authentically address and resolve intra- and inter-community land conflicts. Supplemental conflict resolution training, community-building, and leadership-enhancement activities may need to be provided before a community can undertake land documentation efforts.

In instances where weaker community members initiate land documentation efforts in order to protect their land from being grabbed by local or national elites, or where elites obstruct community progress, seed conflict, or otherwise create obstacles to community land documentation progress, legal advocates must proactively address intra-community disparities of power and influence. In such instances, despite internal conflict, these communities should not be rejected as appropriate candidates for community land documentation support. Rather, civil society and government advocates should first address and resolve the underlying intra-community conflict at issue before beginning community land documentation efforts.

## Recommendations for policy

### **1. Make all community land documentation processes local, accessible, and inexpensive, so as to allow them to be truly “usable and used” by rural communities.**

To facilitate community land documentation efforts, the administrative procedures necessary to document customary land claims should be streamlined, practical, and easily navigated by rural communities. To this end, laws and regulations should:

- Administer and process community land documentation applications at the county, district, or provincial level, rather than in the national capital.
- Permit the use of GPS technology. The high costs of hiring a licensed land surveyor essentially preclude poor rural communities from seeking formal documentation of their land claims. Regulations should eliminate the requirement of a technical land survey and instead allow for the use of Global Positioning System (GPS) technology to record the dimensions of community lands.
- Impose only reasonable procedural burdens, which take into account the income, capacity, language, and literacy restrictions of rural community applicants.

## 2. Make improved local land and natural resource governance a central objective of community land documentation processes.

To leverage the land documentation process to improve community land governance, policy makers and legislators should:

- Mandate procedures through which communities must examine and amend existing community rules, norms, and practices. As in the pilot process set out in the MOU with the Land Commission, communities seeking to document their lands should discuss community norms and practices, and formally adopt a set of by-laws that govern the sustainable use of land and natural resources.<sup>8</sup>
- Mandate the creation of elected intra-community governance structures. To ensure downward accountability and a community check on the powers of local authorities, land documentation processes should include the creation of an elected group of men and women who determine land matters in concert with the wider community.
- Vest the rights to the land in the community and allow for the community name to be on the title, deed, or final community land registration document. Governments should issue all deed or title documents in the name of the community and assign the actual rights to the land to the community as a whole. Allowing a few individuals' names to appear on the land registration document may more easily facilitate corrupt land and natural resource management or illegal sale of community land and resources.<sup>9</sup>

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<sup>8</sup> Importantly, law should ensure that communities adopt by-laws by a process other than simple majority vote. Allowing an absolute majority to vote to adopt community by-laws has the potential to marginalize members of minority or more vulnerable groups. Although consensus is ideal, a super-majority vote system may be most feasible.

<sup>9</sup> Furthermore, governing officers are elected, non-permanent managers who may no longer be in office after the second election cycle. As such, putting their names (or any other individual names) on the final document will mean that the document will become inaccurate and require a change of title the moment new officers are elected or the named individuals pass away. Any process that necessitates frequent change of title procedures will add administrative hurdles, make the community land documentation process more difficult, or weaken the accuracy and strength of the final community land registration document.

### 3. Ensure that new land policies and legislation explicitly call for the creation of local mechanisms that protect women's and other vulnerable groups' land rights.

It is not enough to simply declare that women and other vulnerable groups have land rights; the law and its accompanying regulations should mandate express protections to ensure that rights of women and other vulnerable groups are implemented and enforced at the local, regional, and national level. Such interventions might include:

- Establishing a process by which women and other vulnerable groups can take action to ensure that intra-community rules for land and natural resource governance enshrine and protect their rights;
- Ensuring that all formal or informal family land documentation application forms include spaces for the names of both the husband and the wife or wives;
- Including provisions in national legislation that safeguard women's land rights (for example, requiring that the written consent of all adult family members living on the land be obtained before land can be sold or mortgaged);<sup>10</sup>
- Establishing that any community land and natural resource administration and management body include female representatives;
- Training local leaders to play a more active role in protecting the land claims of women and other vulnerable groups; and
- Creating local, accessible, and culturally acceptable mediation/arbitration mechanisms (composed of both customary and state leaders and elected women representatives) to resolve cases concerning the violation of women's and other vulnerable groups' land rights.

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**10** This is the law in Uganda. Uganda Land Act 1998, section 39.



#### **4. Establish support, facilitation, and oversight roles for government officials both during and after the community land documentation process.**

Local and regional government officials have an important role to play as supporters of community land documentation efforts. When legal frameworks devolve control over land and natural resource management to rural communities, governments should empower district and regional officials previously in charge of local land administration to take on the role of supporters and advisors. To this end:

- Local and regional land officials should actively provide support to communities during community land documentation efforts. This assistance should be request-based, rather than mandatory, as requiring state oversight may stall or impede community progress.
- Local and regional land officials should provide long-term support for community land and natural resource administration and management. Communities will likely require a range of ongoing government support after obtaining documentation. Such assistance might include:
  - » Providing technical support for intra-community land and natural resource administration and management.
  - » Protecting community lands from encroachment by elites and local power holders. Necessary enforcement support will likely concern both 1) addressing bad faith efforts to appropriate community lands and 2) penalizing illegal resource extraction. In such situations, communities should be able to seek recourse from the police and through the state court system, as theft and corruption are criminal acts under national law. In the event that the “land grabber” is a district official or has ties to powerful local government figures, the central state should enforce a community’s property rights.
  - » Acting as a check against abuse of power by community leaders and elected governing bodies. Communities may need support addressing corruption, mismanagement and unjust actions taken by elected local officials. Upon a community’s request, state officials should monitor and supervise community land administration and management bodies to ensure that the elected officers are fulfilling their fiduciary duties and acting in accordance with constitutional principles.
  - » Enforcing women’s and other vulnerable groups’ land rights, as set out in the national constitution and the community by-laws. Such enforcement support may include training customary leaders in relevant

national law, working alongside customary leaders to jointly address rights violations, and making justice systems and formal rights protections more accessible to rural women and other vulnerable groups.

- » Enforcing contractual agreements with investors. State officials should actively support communities' interests during negotiations with outside investors. State officials should also supervise and enforce the fulfillment of all benefit-sharing and/or rental agreements that communities have with investors. An impartial or independent ombudsman may best undertake these roles.

## **5. Assess the feasibility of all proposed processes for formalizing customary land claims before enactment of a law or policy.**

Policy proposals fashioned on best practices from other national contexts should be extensively tested and adapted to the unique situation of Liberia. Most critically, lawmakers should anticipate and resolve institutional challenges and obstacles to successful implementation. Such challenges will likely stem from lack of political will, corruption, low capacity of county and local officials, and resource constraints.

## **Recommendations for practice**

### **1. Enter communities with complete transparency, calling for full community participation in all community land documentation activities, taking care to include all stakeholders.**

Community land documentation efforts call for methodical and careful verification of all information concerning land ownership and use claims. At the inception of all community land documentation work, government or NGO facilitators must convene the entire community to identify trusted leaders, elect a diverse interim coordinating committee, and gather other necessary information. Information must be solicited widely and cross-checked by all relevant stakeholders, including neighboring communities. Discrepancies should be ironed out publicly and transparently resolved.

## 2. Let communities define themselves.

Defining a “community” is a complex political process with associated socio-cultural and geo-spatial implications at the local level.<sup>11</sup> As such, communities should define themselves after extensive, highly participatory discussions. It is counterproductive and ill-advised for legislation and/or government agents to define what a community is or should be and impose this structure on existing groups. In the event of a disagreement over community definition, state and customary leaders may jointly arbitrate the matter.

## 3. Include and involve all local leaders.

SDI found that communities’ capacity to successfully compete land documentation processes was directly related to leaders’ integrity, management abilities, commitment to the project, and skill in mobilizing their communities. Leaders may need special training and capacity-building support. Efforts may also need to be made to address power struggles between community leaders and to ensure cooperation and coordination between and within all local power structures, both customary and state.

## 4. Help communities create balanced, inclusive interim coordinating committees.

Communities should be supported to create an elected interim coordinating committee that is diverse and includes trusted leaders and strong, competent representatives of all interest groups, including youth, women, members of groups that practice a range of livelihoods, and all minority groups.

## 5. Train selected community members as “land paralegals” who can support their communities throughout community land documentation processes.

Well-trained and supervised paralegals proved to be the most effective and efficient method of supporting community land documentation efforts. When facilitating paralegal selection, it may be optimal to leave the community to define eligibility criteria; mandating that all elected paralegals in a community be literate may inadvertently eliminate the most effective leaders.

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**11** In the study region, difficulties related to community definition were rooted in overlapping definitions of authority, territory and identity. Specifically, the study communities’ process of defining for themselves the composition of their ‘community’ was often complicated by: 1) the nested quality of rural social organization in the study regions; 2) historical fractioning and division of groups/social units; 3) common areas fully shared between towns that identified as separate entities; 4) differences between customary and administrative/state-drawn boundaries; 5) historical migration patterns, ecological changes, and infrastructure development; and 6) competition over valuable natural resources; and other factors.

## **6. Leave communities to do much of the community land documentation work on their own according to local knowledge and skills.**

To support communities' individual processes, facilitating agencies should introduce each community land documentation activity, build the capacity of the community to complete it, and then leave the community to do the work, guided by the community paralegals who can call on the facilitating legal/technical team for support and assistance on an as-needed basis.

## **7. Provide targeted legal and technical assistance to help communities successfully complete community land documentation efforts.**

SDI's observations – and communities' experiences – indicate that for a community land documentation process to progress smoothly, lawyers and technicians must:

- Introduce the land documentation process and provide periodic legal education and capacity-building training;
- Provide mediation and conflict-resolution support during significant, particularly contentious land conflicts that communities are unable to resolve on their own;
- Provide legal support and technical assistance during the completion of the community's second and third drafts of their by-laws;
- Implement a women's empowerment strategy to ensure women's full participation in all community land documentation activities;
- Support communities during all administrative processes, including: contracting and liaising with government agencies, working with land surveyors/GPS technicians, and completing and filing of application forms and related documents; and
- Closely supervise each community paralegal's efforts not only to ensure that their work product is of high quality, but also to step in when necessary to demonstrate to all stakeholders that the community's efforts are supported by a team of lawyers with the capacity to take legal action.

## **8. Proactively prepare for land conflict resolution to be a central component of the community land documentation work and craft trainings designed to support open, non-violent boundary negotiation.**

Facilitating agencies should provide extensive conflict resolution and mediation training before a community begins boundary harmonization efforts. They should also train and support communities to employ a range of compromise strategies and mediation/dispute resolution tactics. Such efforts have the potential not only to resolve intra and inter-community land disputes, but also to serve as a model for the resolution of household-level land disputes.

## **9. Document each harmonized boundary in a formal MOU and by planting “boundary trees.”**

Facilitating agencies should support communities to document all boundary harmonization agreements through formal Memoranda of Understandings (MOUs). After completing the boundary harmonization process, a community should hold a large ceremony in which neighboring communities (including families neighboring the boundary lines) come together, critically assess the agreed boundaries, and formally agree to and witness these boundaries. The MOUs should ensure that all preexisting reciprocal land use and sharing agreements, as well as rights of way, are protected. Afterwards, the community and its neighbors should plant “boundary trees” or other culturally-appropriate markers in the presence of all relevant stakeholders.

## **10. Leverage the community land documentation process to support communities to improve intra-community governance.**

A highly participatory land documentation process has the potential to galvanize communities to improve intra-community governance, foster participatory rule-making, and establish accountability mechanisms for local leaders. To achieve such outcomes, civil society and government facilitators should:

- Begin the process of drafting the by-laws at the lowest level of intra-community governance (at the town level) then merge these rules into a set of community by-laws through rigorous, iterative debate and discussion.
- Ensure full community participation in the by-laws and management plan drafting processes.
- Handle the transition from oral to written rules delicately. The process of writing down previously unwritten rules and practices may change them. The



discussion of existing rules must be deftly handled to ensure that the transition from oral to written does not undermine more inclusionary practices.

- Allow communities to merge their by-laws and land and natural resource management plans into one document.
- Allow communities to base the form and content of their rules on existing custom, norms, and practices so long as the rules do not contravene the national constitution and relevant laws, and clearly establish substantive and procedural rights for all community members, including women and members of vulnerable groups, among other necessary protections.
- Ensure that the by-laws include provisions for annual review and amendment. To avoid the potential calcification of customary rules that transcribing them might imply, a yearly review of community rules should be instituted, with clear amendment procedures and the requirement that rules be changed only after full consensus or super-majority vote.

### **11. Community land documentation processes should conclude with the election of a diverse and representative governing body.**

Facilitating NGOs or government agencies may need to monitor the election of these bodies to ensure that the elections were participatory, transparent and fair, and that the positions were not captured by elites. Communities might also create parallel “watchdog” groups to monitor the elected council’s decisions and actions.

### **12. Leverage community land documentation efforts to foster sustainable natural resource management and conservation.**

Civil society and state agencies should support community-led conservation, stewardship, and sustainable management of natural resources both during and after the community land documentation process.

### **13. Leverage the community land documentation process to strengthen women’s and other vulnerable groups’ land rights and support communities to establish mechanisms for their enforcement.**

To ensure that the community land documentation processes establish intra-community mechanisms that effectively protect and enforce women’s land rights, civil society and government facilitators should: craft strategies to proactively address gender inequities that have the potential to negatively

impact community land documentation activities; plan community land documentation meetings to take place at convenient times and locations, after women have completed their house and farm work; convene special women-only meetings to help women identify and advocate for their interests in the broader community meetings; and support communities to elect a governing council that includes female representatives; among other key strategies.

#### **14. Provide supplemental support to communities facing intra-community threats such as sabotage from local or Monrovia-based elites.**

In instances where elites obstruct community progress, seed conflict, or otherwise create obstacles to community land documentation progress, legal advocates must proactively address intra-community disparities of power and influence.

In conclusion, the data illustrate that well-facilitated community land documentation exercises may result in important impacts that go beyond increased land tenure security. As one community member in Liberia explained:

*I don't care what anyone says, this project is the best thing to happen in our history. Imagine: now we know our borders; we know our resources; we know our rules, and they are written down for everyone to see and know; people are attending clan meetings; and our clan feels stronger together. This has never happened before! Now it is easy for us to organize and ask the government or [foreign investors] for things we want or refuse things we don't want in our community.*

Once a community has successfully documented its land claims, the hope is that it may then work hand-in-hand with government agencies and local organizations to fully leverage its lands for locally driven development, prosperity, and human flourishing.

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Community members greet the SDI field team upon their arrival for the community's MOU-signing ceremony.

