

PROTECTING COMMUNITY LANDS & RESOURCES IN AFRICA

GRASSROOTS ADVOCATES' STRATEGIES & LESSONS

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. Namati works in partnership with national organizations to implement community land protection programs, research impacts, support governments to enact and implement legislation that protects community land rights, and advocate for increased global protections for community land and natural resource rights.

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Natural Justice works at the local, national and international levels to promote social and environmental justice. To challenge local forms of marginalization, Natural Justice provides legal support to Indigenous peoples, local communities and their representative organizations. To tackle systemic injustice, Natural Justice's lawyers work at the national level to improve the quality of legislation and its implementation, and engage directly in international processes. Since 2010, Natural Justice has run the Global Initiative on Community Protocols, as a means to empower communities to use the law to speak for themselves and to engage other stakeholders as equals.

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Participants at the 2013
Symposium in South Africa.
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INTRODUCTION

Advocates across the world are pioneering new strategies to protect, conserve and safeguard community lands and natural resources. These efforts must be coordinated, sustained, and synchronized.

Millions of rural Africans live precariously between development, conservation, and the law. In recent years, governments across Africa have been granting vast land concessions to national elites and foreign investors for agro-industrial monoculture plantations, logging, and mineral exploitation. Such concessions are exacerbating trends of increasing land scarcity and weakening the land tenure security of rural communities. At the same time, governments are creating national parks and promoting wildlife conservation in ways that exclude and undermine customary rights and local ways of life, contributing to communities' dispossession from their ancestral lands and undermining local livelihoods and cultural traditions. These dynamics are leading to disenfranchisement, environmental degradation, human rights violations, impoverishment, and growing inequity. Such trends are exacerbated by governments' lack of effective legal recognition (and implementation) of a range of Indigenous Peoples' and local communities' rights, including rights to: 1) self-determination 2) culturally-appropriate forms of governance and associated institutions; 3) land, water, and natural resources, and 4) traditional knowledge.

BUILDING A GLOBAL MOVEMENT FOR COMMUNITY LAND PROTECTION

Innovative ways to empower communities in protecting their lands, natural resources, and cultures are urgently needed. Advocates across the world are pioneering new strategies to protect, conserve and safeguard community lands and natural resources, many of which also support communities to leverage the momentum surrounding land protection efforts to create positive intra-community change, such as:

- » Clear identification of community resources, including thorough mapping of community lands, natural resources, and areas of cultural or spiritual value;
- » Resolution of intra- and inter-community land conflicts;

- » Increased downward accountability for local leaders and promotion of good governance in community land and natural resource management;
- » Increased community participation in local land and natural resources decision-making;
- » Establishment of intra-community mechanisms to protect the rights of women and vulnerable groups;
- » Promotion of sustainable natural resource management practices and conservation;
- » Increased legal awareness and legal empowerment;
- » Heightened community capacity to negotiate for and actualize fair partnerships with external investors, such that investment brings authentic local prosperity; and
- » Increased community capacity to vision, plan for and realize locally-defined community development.

Yet despite the great potential of these approaches, such pioneering efforts are often undertaken in isolation from each other. To be most effective, such efforts must be coordinated, sustained, and synchronized. Many expert practitioners working in human rights law, forest conservation, land tenure security, mineral resource extraction, water rights, Indigenous People's rights, and environmental law rarely share their experiences and strategies across disciplines. To connect practitioners and support a more integrated approach to community land and natural resource protection, Namati and Natural Justice convened a symposium of 20 expert advocates from across Africa for a three-day symposium in late 2013. The symposium aimed to highlight participants' expertise and creativity, creating a forum for participants to:

- » Share experiences and practical strategies for effectively supporting communities to protect their lands and natural resources;
- » Design effective strategies to address commonly-faced challenges;
- » Brainstorm new and innovative forms of legal empowerment; and
- » Strengthen a cross-disciplinary community of practice to foster continued learning and dialogue.

The symposium discussions illuminated many similarities between the threats to communities' lands and resources, as well as the underlying factors that drive and exacerbate those threats. Discussions also made clear that each situation is complex and unique – requiring advocates to be nimble, creative, and strategically adaptive. Symposium participants shared their experiences and a wide-range of strategies that can be adapted to specific contexts and challenges. The ingenuity of the advocates' strategies made clear the usefulness and benefit of sharing their stories with a wider audience.

STRATEGIES BY PRACTITIONERS, FOR PRACTITIONERS

Since the symposium in 2013, pressures on community land and natural resource rights have only increased. It is more necessary than ever to share strategies, successes, lessons, and resources across a wide network of local practitioners, legal champions, policy advocates, media allies, and supporters.

This book synthesizes many of the findings and strategies collected at the 2013 symposium. It has been written specifically for practitioners and advocates and takes a practical approach: it avoids abstract, theoretical discussion and focuses instead on concrete experiences of working with communities to protect their lands and resources. The case studies in this book share experiences and reflections directly from local land and natural resource defenders and advocates from across Africa. It has been written by practitioners, for practitioners. The case studies detail a variety of ingenious and creative strategies to proactively confront trends that undermine community land and natural resource tenure security.

Strategies are grouped based on common challenges that communities face concerning their lands and natural resources. Each chapter in this book examines a specific type of challenge, though these often overlap and combine in many situations:

- » Chapter 1 addresses issues related to state-imposed definitions of “community” and divisive identity politics;
- » Chapter 2 discusses strategies for resolving intra- and inter-community land conflicts;
- » Chapter 3 suggests strategies for strengthening local governance of community land and natural resources and promoting endogenously-driven community development;
- » Chapter 4 illustrates strategies for confronting state-driven mega-projects, exclusionary conservation efforts, and forced resettlement;
- » Chapter 5 offers strategies to empower communities when faced with large-scale land concessions and investments.

This book concludes with an analysis of the case studies as a whole, describing how communities and their advocates must be agile, adaptive, creative, and resourceful when working to protect community land and natural resource claims. As threats to community lands and livelihoods become more complex, advocates must be prepared to leverage several strategies simultaneously, work with multiple stakeholders at various levels of state and customary governance, and liaise not only with national actors but with global actors and audiences as well.

Above all, advocates can find motivation in the strength and beauty at the core of our collective efforts. Loss of community control over lands and natural resources is not inevitable: working together, advocates and communities are asserting their own powerful, locally-defined visions of ‘development’ and ‘prosperity’ that integrate individual and community well-being, participatory and inclusive decision-making, vibrant cultures, flourishing local economies, and healthy, resilient ecosystems.

CHAPTER

1



ADDRESSING IDENTITY POLITICS & STATE-IMPOSED DEFINITIONS OF “COMMUNITY”

“A community self-constitutes and organises in relation to its past and its desired future.” – WILMIEN WICOMB, SOUTH AFRICA

Defining “community” is a complex endeavor. Processes of community definition must be sensitive to dynamics of geography, identity, history and culture, and must address overlapping definitions of authority, territory and identity. Such processes are often further complicated by:

- » The nested quality of rural social organization, in which smaller spatial or social units are contained within larger units, which themselves may be part of even larger units;
- » The structure of decentralized national government, which may not always align with traditional or locally-recognized social structures;
- » Differences between locally-recognized or customary territorial boundaries and the boundaries recognized by the state or government administration;
- » Historical fracturing and division of social units, often based upon intra- and inter-family conflict or scarcity of resources;
- » The existence of common areas shared between populations that identify as separate communities;
- » Historical migration patterns, ecological changes, and infrastructure development; and
- » Competition over valuable or scarce natural resources.

A community’s decision about how to define itself will depend upon various, sometimes conflicting, cultural, political and geo-spatial realities and the preferences of local leaders and community members. A community’s self-definition may also be amorphous or shift in response to different contexts or changing internal factors. In certain circumstances, communities may need to define themselves strategically for the purposes of engagement with external parties, such as government mega-projects or large-scale investment

projects.¹ Different ethnic groups who have never identified collectively may decide to do so in the context of an external threat to their use of an area of land or to further a shared interest. For example, traditional healers across South Africa define themselves as a “community” despite their geographical spread and divergent ethnic identities in order to develop a shared code of conduct, catalogue natural resources used in healing, and take action to protect their traditional knowledge. External pressures may also lead to a desire for a clearer collective identity, such as: pressure to differentiate from neighboring communities, dominant ethnic groups, or other outsiders or encroachers; desire to increase political representation or participation in national or regional political decision-making processes; or an attempt to build unity to further a shared goal or struggle that surpasses ethnic, religious, linguistic and livelihood boundaries. Indeed, a given “community” may be defined in myriad ways – perhaps the only overarching definition of a community might be “a group of individuals coalescing around shared aspirations and values.”

Those seeking to weaken or exploit a population may attempt to exacerbate internal divisions and disagreements between community factions to undermine local resistance. Therefore, robust internal definition processes (for the community members themselves) are often as important as community definition for external actors. Arriving at a coherent, inclusive community definition for the purposes of defending community land and natural resources claims may help to sooth intra-community tensions, calm internal power struggles and rediscover or create a shared sense of identity. Internal cohesion can then empower the community to address external threats more successfully.

Critically, there are often differences between how the people living in a specific territory choose to define themselves and how the state has defined – or seeks to define – that same group of people or specific territorial area. State-mandated definitions may be set out in laws and policies or created during the drawing of political boundaries. Governments may discourage ethnic self-identification by minority groups in an effort to reduce ethnic conflicts, or to reduce the political power of those groups. Conflicts may arise where administrative boundaries differ from pre-existing customary or indigenous boundaries of a self-identified community. Indeed, when government actors, external ‘experts’ or outside organizations impose a definition of “community” onto a group of people or specific geographical area, they risk creating inappropriate, exclusionary and problematic definitions of what constitutes “the community.”

Allowing communities to determine their own identity and territory may help to strengthen community empowerment, promote cultural flourishing, and improve local land and natural resource governance. However, having communities self-identify also presents challenges, particularly regarding inclusion and exclusion. The inadvertent or conscious exclusion of particular individuals or groups – often along ethnic, tribal, or class lines – can be a significant

1 As in the Save LAMU case study detailed in Chapter 4: a number of different ethnic, linguistic and livelihood groups located in Lamu, Kenya have come together to develop a “community protocol” that allows them to speak with one voice in their shared struggle against developments related to the Lamu Port, South Sudan and Ethiopia Transport Corridor (LAPSSET).



driver of conflict and may disrupt or undermine community organizing efforts. Organizations working with communities must make sure that field teams intimately understand the nuanced structure of – and sub-groups within – the communities they work with. Advocates must be alert for exclusionary tendencies and carefully that everyone living in the area, using land or natural resources in the area, or with strong historical or cultural ties to the area, can effectively participate in community definition processes.

The case studies below illustrate many of the challenges of externally-imposed community definitions and the complexities inherent in supporting communities to define themselves. In South Africa, the *Legal Resource Centre* supported communities to define themselves outside of the single “community” structure imposed by the national government, who, in its efforts to resettle seven villages that had previously existed separately, created one “community” indifferent to the villages’ different histories and separate identities. In Mozambique, *Centro Terra Viva*’s efforts to support the Marrúcu community to register its customary lands illustrate the challenges that arise when administrative definitions of the ‘community’ and community members’ own understanding of the community’s definition and limits differ. In Botswana, the *Botswana Khwedom Council* is fighting for state recognition of the San’s tribal-based community definitions so as to allow the San to seek rights to use and benefit from their lands under community based natural resource management schemes. In Tanzania, the *Ujaama Community Resource Team* supported the Hadzabe pastoralists to break away from administrative definitions of “community” to seek a Certificate of Customary Right of Occupancy (CCRO), legitimizing their land and natural resource rights and allowing them to continue to govern their lands and pursue their livelihoods according to custom. And in Liberia, the *Sustainable Development Institute* regularly confronts challenges related to ethnic conflict, power struggles between leaders, divergent conceptions of community identity, and logistical and territorial tensions as it supports communities to define themselves for purposes of land documentation and land and natural resource governance.

Emerging from these case studies are several considerations and recommendations relevant to processes of community definition:

- » **Ensure that all potential stakeholders are able to participate in the process of community definition.** Inviting everyone living in the area – including women, youth, elders, minorities, and leaders – to participate meaningfully in the community definition process can help to reduce conflict, strengthen community cohesion, and protect against discrimination or unfair exclusion. Advocates have a responsibility to ensure that any community’s self-definition process benefits poor and vulnerable community members and not only powerful community members.

- » **When community definitions are contested, support residents, local leaders and relevant government officials to recount local community “origin stories” and remember shared traditions.** Distilling shared ideals and values from community origin stories, traditions, and historical identities (such as those based on family lines, clans, language groups or other shared identities) can help to clarify the evolution of the community and create or revitalize a sense of shared collective identity. Such efforts are particularly important when a valuable resource is discovered or when resources are scarce. Public remembering or recounting of the local “story of origin” – or the variety of sequential stories of how the community came to include different peoples – can be used to address who “belongs” and prevent exclusion of minority groups or less powerful families. Origin stories and shared cultural traditions can be particularly helpful when challenging state-mandated community definitions, as illustrated in the *Legal Resource Center* case study:

“Community strength often depends on how diverse interest groups join forces. Every community, no matter how small, carries with it the tensions of inherent heterogeneity, asymmetry and diverse interests. Within a community where these divisive factors are countered by the pull of commonality and cohesion based on history, on dynamic interaction, or simply on familiarity, it can provide creative tension and a richness that strengthens the community.”

- » **Consider the advantages and disadvantages of defining a community in different ways before making decisions.** Communities can identify at various points along a spectrum, ranging from the smallest, “most local” or least diverse level, to the largest, most encompassing, most diverse level. As illustrated in the *Sustainable Development Institute’s* case study below, the choice of level and scale of “community” can have significant strategic and logistical implications.
- » **Remember that communities define themselves at different speeds.** Processes to clarify community definition are often motivated by external factors, which may create pressure to make decisions quickly. When possible, avoid imposing external deadlines on community definition processes, or advocate that communities be given sufficient time to arrive organically at a definition that feels comfortable to all stakeholders. A community’s definition will likely have significant impacts not only on all aspects of local land and natural resources governance but also on all aspects of the community’s socio-cultural and political experiences.
- » **Remember that “communities” are dynamic and fluid.** A community self-constitutes, re-constitutes and shifts in relation to its past, its desired future, and the current context. In defining itself, a community builds on its history, its living customary law, its current engagements and challenges, and its relations with its neighbors. Advocates should be aware of the motivations behind why a particular group is choosing to identify as a “community,” and ensure that a community’s definition is flexible enough to encompass future needs as well as community growth and expansion.

CASE STUDY**1.1**

REDISCOVERING LEVELS OF 'COMMUNITY' AMONG DISPLACED POPULATIONS IN SOUTH AFRICA

BY WILMIEN WICOMB,

LEGAL RESOURCES CENTRE (LRC)

The Legal Resources Centre (LRC) is a public interest law firm based in South Africa. It uses the law as an instrument of justice for the vulnerable and marginalised, including poor, homeless, and landless people and communities who suffer discrimination by reason of race, class, gender, disability or by reason of social, economic, and historical circumstances. The LRC seeks creative and effective solutions by using a range of strategies. These include impact litigation, law reform, participation in partnerships and development processes, education, and networking within South Africa, the African continent and at the international level.

One focus of the LRC is providing legal support to communities. They specialise in impact litigation, choosing their cases carefully in the hope that the outcome will have an impact on a broader group of people than only the community in question. This can happen through setting of precedents or actual law reform. In South Africa and the other Southern African countries where they work, the statutory frameworks that protect community lands and natural resources (in particular land held under customary tenure) are weak. As a result, they attempt to use customary law as a source of law to counter these weak frameworks and provide better legal protections for communities' land and resource rights. But there is a second important reason why they regard customary law as a useful tool for protecting community rights. Government or investor consultations with communities are often framed in terms that alienate communities. These consultations tend to pertain to complex environmental impact assessments, or assume and impose a single development paradigm (mining as the only road to community prosperity, for example). They also often follow the procedural rules of formal Western law (i.e. allowing 30 days for the entire consultation process).

LRC asserts customary law as the legal framework for consultation procedures not only to raise the bar to require community consent, but to ensure decision making according to a community's customs, and at a community's pace and timing. The conversation, then, is not about legalistic impact studies, but about the community rules and actual impact.

WWW.LRC.ORG.ZA

THE CHALLENGE OF COMMUNITY DEFINITION IN SOUTH AFRICA

The existence of a clearly identifiable, easily defined 'community' is almost always a fallacy. Rather – and ideally – a community self-constitutes and organises in relation to its past and its desired future. In defining itself in this way, a community sometimes (a) builds on its history and living customary law and (b) develops out of engagement and struggle, inventing itself as a community different to its neighbour. This invention is a process. The community's boundary is often fluid, depending on changes in the environment.

In South Africa, the identities of 'communities' have become deeply contested. This is the case in many African countries that experienced colonial rule. More than a century of imposed and discriminatory statutory regulation by British authorities transformed communities in South Africa from fluid groups bound together through kinship, indigenous governance systems and relationships of reciprocity, to geographically and socio-politically fixed and bounded units based on statutory definition and, more often than not, centred around an all-powerful traditional leader. As a result, community identities often became artificial and as a result, lacked legitimacy.

This becomes a major problem when outside interests seek to acquire or control lands or natural resources belonging to that 'community.' In order to avoid intra-community contestations and time-consuming community engagement, investors and government tend to pick an individual or elite structure, such as the traditional leader or traditional council, to speak on behalf of 'the community.' This often results in elite capture, corrupt leadership and communities sinking ever deeper into poverty.

These fixed forms of community identity with centralised, unaccountable and all-powerful leadership structures can be countered by smaller communities *within* the community challenging state imposed identities, definitions and representatives. They do this through organising and self-identifying in different ways, for example, around a common issue. The example of the communities of Dwesa-Cwebe is one such case.

THE COMMUNITY OF DWESA-CWEBE

In the last three hundred years at least, seven communities descended from the royal lineage of the Xhosa lived on the East Coast of South Africa in the area today demarcated as the Dwesa-Cwebe Nature Reserve. The area is on the banks of the Mbashe River, close to where Nelson Mandela was born and raised. It was formally annexed by the British in August 1885. Soon after, Mfengu people came to settle on the Dwesa side of the Mbashe River.

The exquisite beauty of the virgin forests surrounding the mouth of the Mbashe River quickly caught the attention of colonists. As early as 1893, British authorities began demarcating the Dwesa and Cwebe Forest Reserves on both banks of the river. Between 1898 and 1931, forced removals relocated all the local villages. However, the removals took five decades to be finalised



because of resistance from the local villages. The areas that people were relocated had poor quality soil and lacked the necessary resources for cultivation, so communities kept returning and re-establishing themselves on their former land. These communities were relocated again in the early 1980s as a result of the so-called ‘betterment’ schemes of the apartheid government which again forcefully encouraged ‘villigisation.’ This is where most villages are still located today.

THE STATE RE-DEFINES THE COMMUNITY

From around 1995, the first democratic government of South Africa identified the Dwesa-Cwebe area as a flagship for its land restitution programme. The sense of euphoria and possibility that came with the promise of a new democratic era inspired this ambitious settlement proposal. It would not be slowed down by unnecessary complexity. The government created new representative structures within the community in order to facilitate the return of the land, despite the fact that various customary governance structures still existed within the community. The Restitution Commission decided to combine all seven villages removed over the previous decades to demarcate the Reserve and create a new community called the ‘Dwesa-Cwebe community.’ This new community was given legal personality and was represented by a Land Trust that in turn represented the seven villages. As part of this structure, each village created a separate communal property association.

The creation of the ‘Dwesa-Cwebe community’ glossed over the fact that the only commonality amongst its members was the shared history of dispossession from the same area. The seven villages had previously existed separately and were spread out over a large area, made all the more vast by the inaccessibility of various parts of the ‘community’ by road. The villages have different histories of lineage, of settlement in the area and of dispossession. They also had markedly different histories of reaction to and interaction with the authorities – some exceedingly vigilant and even militant, while others had never produced a single protest.

LRC’S SUPPORT FOR THE COMMUNITIES OF DWESA-CWEBE

By the time the LRC encountered members of the Dwesa-Cwebe community in 2010, the national government had still not completed the land restitution they had promised. Instead the initial Land Trust structure had been replaced with successive structures and multiple court cases emerged as mistrust and allegations of mismanagement tore the community apart. On the ground, poverty and desperation had only increased.

The LRC’s entry point into this community was on behalf of a small community within the larger Dwesa-Cwebe community: fishers from the village of Hobeni. They appealed to LRC for support when they were barred from accessing their traditional fishing grounds by the declaration of a no-take Marine Protected Area, facing arrest or worse for continuing to fish to support their families.

In 2012, the LRC defended some of these fishers who had been criminally charged with attempting to fish in the Reserve. A concurrent application was launched in 2013 on behalf of the fishers of Hobeni and fishers from other Dwesa-Cwebe villages with the intention of forcing the government to address the complaints of these fishing communities. LRC's approach to the case relied fundamentally on the customary law system of 'the various fishing communities' – which included their local governance systems for managing access to their traditional fishing grounds. Therefore, the case was framed entirely from a community perspective, leading community witnesses in court to recite their history, a local sangoma to explain the significance of the resource to the community's culture and two expert social scientists to testify to the community's historical governance of the resource.

Given that the defence in the criminal matter was based on the fishers' customary rights to the resources, the LRC had to develop a deeper understanding of the custom of the fishers as a community, the broader village as a 'community' and, ultimately, of the custom of the Xhosa people of the area. This entailed multiple focus group meetings with the men, women and elders of Hobeni – sometimes in one group, sometimes separately – to discuss the customs of the community.

LRC staff sat down with the fishers of Hobeni for the first time on 20 January 2012. None of the houses in Hobeni had electricity, despite power lines running through the village to service the one tourist hotel inside the Reserve. LRC lawyers had to drive their car up to the window of the meeting room and charge their laptops on the car battery. Starting with a list of questions about the history of the community and fishing practices, the elders took turns recounting their childhood days when they learned not only to fish but to fish within the system of that community. Under this management system, rocks had names and belonged to families. Fishing was done by the men and the harvesting of mussels by the women. Access to the sea was regulated by knowledge of the resource and how to utilize it: people only went to sea if they understood the ocean. Above all, no-one would catch more than what they could carry. The sea was also about a lot more than fish and mussels, the elders explained. It was an integral part of their culture and religion: the ancestors live in the sea within the Reserve and must be honored there. Twins must perform specific rituals in the ocean. Traditional healers must go to the sea in order to become fully qualified. The sea water made the women fertile.

At first, only a few fishers – all men – had the courage to speak. But as the onlookers observed the LRC's enthusiasm at hearing the details of their history, their customs relating to the sea and the internal rules of the community, more and more community members, including the women, joined in. They sensed that this was their moment. The lawyers never struggled to fill a room with people whenever they returned to seek more information.



As community members became more forthcoming with their information, LRC lawyers pushed them further and further to articulate their rights in the words of lawyers, asking questions like "Where did your rights to fish come from?" and "Who gave the rights to you?" The lawyers were leading them to answer that their rights were not given to them by the government, but that their rights belonged to them because of their history and customary practice in the area. They kept pushing, asking the question in different ways. Finally, one of the older men looked at them and said (as translated):

You are using the wrong words. We didn't have a 'right' to fish. Fishing was simply life. What you call 'rights,' for us was simply a part of life. It is you who use this language of rights. We don't know that. We want our life, but if we can't have that, then maybe at a minimum we can have these rights to fish that you are talking about.

Similarly, at another meeting some months later, the LRC pushed the fishers for an explanation of community sanctions when community rules are broken. The purpose was to demonstrate the existence of a governance system and the logic of sanction was integral to it. Every time lawyers asked what would happen if someone broke a rule, for example, by catching more fish than he could carry, the fishers responded by saying that that would not happen. Again they would ask, "Ok, but let us pretend that someone had broken a rule. What would happen to that person?" "It wouldn't happen", they responded. It was not even possible for them to imagine.



Hobeni community participants showcase materials produced with LRC as part of their legal case. © LRC

OUTCOMES

This growing confidence of the Hobeni community inevitably meant that the fishers from the neighbouring villages, also part of the greater Dwesa-Cwebe community, took notice and wanted to partake. Multiple 'communities' emerged: fishers from neighbouring villages arrived at the court house in support of their Hobeni brothers and united in song. The relationship between the marine resource and the land meant that the land structures became part of the conversation and the community used the struggle around fishing rights to further the greater community's land rights.

As well, the success of the 'sub-community' of Hobeni fishers had ripple effects throughout the larger communities of the Dwesa-Cwebe villages. The Land Trust structure created by the government to represent 'the community' became less powerful as community members realised that they could define themselves outside of these 'official' structures. It was back to the drawing board for the imposed structure and leaders now faced renewed expectations from their constituencies to be transparent and accountable.

LESSONS AND RECOMMENDATIONS

The divisions and tensions that inevitably exist within communities are often used by opponents to further weaken the community position. In the case of the Hobeni fishers and the larger Dwesa-Cwebe villages, litigation provided an opportunity to build community identity and unity. The court case created an opportunity for individuals and sub-communities of resource users to come together to elaborate on the narrative of their history and culture. By working together on a common issue and revitalizing their shared history and customs, the Hobeni fishers and larger Dwesa-Cwebe villages rediscovered and strengthened their sense of community, identity and pride. This process was a means for them to become a clearer and more unified 'community' such that they could be recognized by the law and the government. This strategy was successful: the renewed sense of cohesion amongst the fishers significantly strengthened their bargaining position with government.

However, litigation can at times also create new divisions and tensions. In a community as complex and divided as Dwesa-Cwebe, this was a real risk. The LRC attempted to mitigate this challenge – and continue to do so – through ensuring absolute transparency. Before calling a meeting, the LRC would notify every possible party within the greater community– even those structures whose legitimacy or intentions were doubted. Minutes of meetings were recorded, typed and distributed across the villages. In addition, the LRC tried to dissociate itself from any factions within and beyond the community boundaries – some even involving other NGOs. This strategy was specific to this community; in many other cases where traditional leadership structures undermine community agency, the LRC intentionally sidesteps the leadership and even represents community members against those structures. But the LRC felt that the dynamic in Dwesa-Cwebe required a different approach. The contestation between



different structures had more to do with frustration and incoherence than real power grabbing. It was worthwhile engaging everyone in the community as far as reasonably possible.

Lawyers are often forced to 'strategically essentialise' communities for the purposes of litigation. That means that lawyers must speak about 'the community' as an entity with a single view all the while knowing that that is not the case. This can only be done once the idealistic notions of 'community' as unproblematic and reified entities are discarded; that is, if lawyers learn to live with and learn from the tensions. As lawyers working with claims based on custom, culture and history, the LRC have become used to coping with the tension between the language of law and the language of 'facts.' Anthropologists, historians and sociologists also try and understand the history and customs of communities. But in these sciences, researchers are encouraged to avoid essentialism and reductionism and instead unveil the complexity of communities and cultures. But a court is rarely interested in hearing about concepts that are too complex to define. Courts want to work with clear principles. The job of a lawyer representing communities, then, is to make sure that principles are infused with meaning that would benefit the poor and vulnerable – rather than the rich and powerful. The job, as lawyers, is to unashamedly *inject* meaning into these legal concepts before the more powerful forces do so – and re-appropriate those terms already conquered.

It is important to remember that communities are dynamic, fluid structures. A community self-constitutes and organises in relation to its past and its desired future. In defining itself it builds on its history and living customary law and develops out of engagement and struggle, and invents itself as a community different to its neighbour. This invention is a process and the community boundary is often fluid depending on changes in the environment. Significantly, this self-constitution should not be dictated by a few elite interests, but ideally emerges from intra-community interaction. The local community so constituted may emphasise a particular aspect of its identity depending on the nature of the political, organisational or legal engagement, as how the Hobeni community organised around their right to their fishing grounds. The community then gives itself a political and organisational definition and presents its representative structures for the purposes of the particular engagement based on its own experience and strengths.

Finally, community strengths often depend on how diverse interests of different interest groups join forces. Every community, no matter how small, carries with it the tensions of inherent heterogeneity, asymmetry and diverse interests. Within a community where these divisive factors are countered by the pull of commonality and cohesion based on history, on dynamic interaction or simply on familiarity, it can provide creative tension and a richness that strengthens the community. But within the constructed realm of a community created on paper, the differences often only result in undermining of the whole. This was the story of the Dwesa-Cwebe villagers. A critical role for advocates and practitioners is to support the self-definition and emergence of legitimate communities, including the healing and self-rediscovery of communities fragmented by outside interference.

CASE STUDY

1.2



HARMONIZING CUSTOMARY BOUNDARIES & ADMINISTRATIVE BORDERS IN MOZAMBIQUE

BY NELSON ALFREDO, **CENTRO TERRA VIVA (CTV)**

(TRANSLATED BY MARENA BRINKHURST, NAMATI)

Centro Terra Viva (CTV) is a Mozambican NGO whose vision is of a national natural resource management policy and practice that is environmentally sound, scientifically-based, economically viable, and institutionally responsible. CTV's mission is to contribute to improved national policies and legislation and to increase the capacity of civil society to participate in environmental management through informed and relevant contributions. CTV's approach is to work with rural communities to strengthen their legal protections and rights for community land and natural resources. CTV uses a multi-step, facilitated process to define a community's lands, negotiate boundaries with neighboring communities, document the boundaries, and develop local land and natural resource management by-laws and governance structures. CTV's approach is based on empowering and training community members to champion their own community land protection efforts.

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The first step of CTV's community land protection efforts is to work with the local population to decide how each community wants to define itself for the purpose of protecting its community lands. Mozambican law empowers communities to protect their lands and common interests by seeking formal documentation of their land claims. To leverage these protections, local communities must define themselves and their boundaries.

At first, the question of how to define 'local community' in Mozambique may seem to be an easy task because there are several regulatory provisions that define 'community' - some simply and others in detail. However, in practice complications can arise that confound official definitions. In particular, documenting and harmonizing boundaries between communities can illustrate 'grey zones' in the official definitions that must be resolved at the local level. The result is a balance between the regulatory definitions of 'community' and local processes of letting communities define themselves. This case study provides an example of complications that can arise during community definition and boundary negotiation processes in rural Mozambique.



THE THEORY OF ‘COMMUNITY’ AND MOZAMBICAN LEGAL DEFINITIONS

In Mozambican law, the term ‘local community’ is defined by either: 1) reference to groups of individuals who share common interests and work together as a unit, or to 2) the idea of a ‘community’ as based within a geographically defined rural area. Mozambique’s *Lei de Terras Article 1, Section 1* (Land Law), the *Lei de Ordenamento Territorial* (Law of Territorial Organization) and the *Lei de Florestas e Fauna* (Forestry and Wildlife Law) all define a local community as:

“A grouping of families and individuals, living in a territorial area that is at the level of a locality or smaller, which seeks to safeguard their common interests through the protection of areas for habitation or agriculture, whether cultivated or lying fallow, forests, places of cultural importance, pastures, water sources and areas for expansion.”

The self-definition approach aligns with the recommendations of many analyses of community land rights laws. According to research on traditional forms of community participation in natural resource governance in Mozambique, the criteria that many laws use to define the local community is whether or not its members have an awareness of belonging to a community that has interests to defend, both in the present and future.² Other advocates argue that communities should be able to define themselves and that the self-definition should be allowed to go beyond geographic boundaries to include distant or absent individuals that are considered to be part of the ‘community.’³

Working with rural communities in Mozambique, CTV has also found that when communities define themselves, they are more motivated to complete community land protection activities and that it is easier to reach agreement over community boundaries. However, self-definition can also bring challenges, as the following case study illustrates.

MARRÚCUA: ONE COMMUNITY, TWO DISTRICTS

The *Lei de Terras* requires that the area of a community may not exceed that of its *localidade* (the administrative areas that divide a District).⁴ However, a community’s traditional or self-defined boundaries do not always coincide with the state’s administrative boundaries – a self-defined community may cross the borders of several *localidades* or even Districts. This is not to say that the area claimed by a community exceeds that of their *localidade*, but rather that the self-defined and administrative borders do not align.

2 Ivala, Adelino Zacarias. 2000. Formas Tradicionais de Participação Comunitária na Tomada de decisões, gestão de recursos naturais e resolução de conflitos, Nampula.

3 Carvalho da Silva, Rosalina e Simon, Cristiane Paulin. 2005. “Sobre a Diversidade de Sentidos de Comunidade.” *PSICO*: 36(1): 39-46.

4 Although there appears to be nothing in the law that prevents one community from seeking registration and land use certificates for two areas of land in two different Districts, although this has yet to be tested.



Community meeting in Marrúcuá to discuss boundary harmonization. © CTV

This is the challenge faced by the community of Marrúcuá. For years, the community has been unable to secure legal protections for its customary lands because its self-defined boundaries span an administrative border: the line between the Morrumbene District and the Massinga District. According to the traditional authorities of Marrúcuá and Muhaque (the community with which Marrúcuá shares the contested boundary), the boundaries between the two communities never coincided with the administrative boundary between the two districts. Despite the District boundary that runs through Marrúcuá's lands, the community members of Marrúcuá have always identified as one, united community. However, District officials of Massinga and Morrumbene Districts have refused to endorse changing the official boundaries between the two communities. Instead, they insist that the traditional limits coincide with the administrative boundary between Massinga and Morrumbene Districts.

CTV is currently working with Marrúcuá to find a way through this administrative impasse by providing legal analysis and negotiating the case with local authorities. It is CTV's position that the boundary agreement between Marrúcuá and Muhaque does not violate the law or any constitutional provisions.⁵ Marrúcuá is a local community and an entity with rights and

⁵ The situation in Marrúcuá highlights a gap in the legislation concerning the definition of a local community. Based on CTV's legal analysis, Marrúcuá is caught in a misinterpretation of the law that defines a local community as "... a territorial constituency at the *localidade* level or lower ..." which was intended to set a maximum area that a community can claim. The question of whether or not a community's land can be allowed to span more than one *localidade* or District as a result of a misalignment of customary and administrative boundaries is not specified in the law. This gap is presumably the result of an assumption on the part of the law's drafters that if a community's area did not exceed that of its *localidade* then it would automatically not cross *localidade* or District borders.



duties in the management of land and natural resources, in accordance with the *Lei de Terras*, regardless of the opposition from officials in Massinga District. CTV's legal analysis has not found any reference in the legislation to the need for administrative and traditional boundaries to coincide, and there is no restriction on a community having land at two different locations in two different districts. The CTV field team working with Marrúcuá is now building community awareness about the challenges with their boundary claim and identifying strategies to demand respect for their boundaries.

Because the problem in Marrúcuá appears to be an issue rooted in political and administrative concerns, CTV is endeavoring to work with the District officials to create space within the administrative system for a community that defines itself contrary to existing administrative boundaries. Through conversations and education sessions with District officials, CTV staff are attempting to increase acceptance of traditional land governance systems and persuade officials that proper interpretation of the *Lei de Terras* does not prevent a community's lands from spanning District borders. Currently, CTV is trying to negotiate a compromise that respects Marrúcuá's customary boundaries but also can be practical within the District administrative system. While Marrúcuá could have a strong legal case if it were to take the issue to court, CTV's experience has been that litigation is not often the most effective means to resolving such disputes. Rather, CTV and Marrúcuá will continue to advocate their case to decision makers within government.

LESSONS AND RECOMMENDATIONS

While many researchers and practitioners recommend that communities be allowed to define themselves, there can be many obstacles to achieving this in practice. The example of Marrúcuá illustrates how complexities of politics, administrative systems and power dynamics can stymie efforts to draw community boundaries using a grassroots-driven, participatory approach.

While a community itself may have no difficulty in identifying what constitutes the community and the community's lands, a community does not exist in isolation. Communities have neighbors with whom they share boundaries, and often historical and cultural ties. Most communities are also nested within a larger system of wider communities and administrative levels with whom they have to interact. A community's self-definition is not always acceptable to neighbors, administrative officials or other authorities, whose refusal to recognize a community's self-definition may be an insurmountable obstacle to legal recognition of a community's lands, unless a solution can be agreed upon. Resolving these disagreements can be particularly challenging if they are rooted in struggles over power or access to resources.

In its efforts to support communities to define the boundaries of their lands, CTV has learned two critical lessons:

- » **Involve a wide range of local officials in the community self-definition phase of community land delimitation processes:** The case of Marrúcuá highlights the challenges that can arise if a powerful authority is left out of the community definition processes. The experience has inspired CTV and the leaders and community members of Marrúcuá to invite closer involvement and collaboration with local government officials in order to anticipate challenges and work together to resolve issues. Before Marrúcuá, CTV would only meet with local officials within the main District that the community was located within according to official records and not any neighboring Districts. Since working with Marrúcuá, CTV now extends this initial consultation phase to include neighboring Districts if there seems to be potential that a community's land will cross administrative boundaries.
- » **Build relationships with local government officials:** CTV has learned that the courts should be only the last resort in cases like these. When it is a political or administrative dispute, as in Marrúcuá, it is uncommon for the courts to rule against the state, even in cases of clear violation of the rights of communities. It is preferable, and often more effective therefore to build awareness with local officials and negotiate space for communities to define themselves within their wider administrative context.



CTV facilitates large, participatory meetings during the community land protection process. © CTV



BOX 1 BALANCING BETWEEN COMMUNITY SELF-DEFINITION & NATIONAL IDENTITY IN BOTSWANA

KEIKABILE MOGODU (Botswana Khwedom Council)



The Government of Botswana defines a 'community' as simply a group of people residing in a given locality. This definition is influenced by the government's philosophy on nationhood that holds that all citizens of Botswana are Batswana and should therefore shed their tribal identity to avoid tribal conflicts. Under this definition, anyone may legally reside wherever he/she wishes (as long as they acquire their land through legal means) and must be included in the 'community' of that locality. The government of Botswana has also endorsed community based natural resource management (CBNRM) as a mechanism to grants communities the rights to use and benefit from the natural resources that they have managed for a long time. CBNRM requires communities to establish Community Trusts, which includes the creation of a community constitution that defines the 'community' and conditions for membership in the community.

The government's stance on tribal identity has created challenges for CBNRM practitioners and community activists seeking to protect their community's lands from encroachment. Certain areas of Botswana are inhabited by homogenous tribal groups with distinct customs and traditions and a shared sense of a distinct ethnic identity, as is the case with San communities. In these areas, communities typically self-identify based on ethnic identity but the government refuses to recognize tribal-based community definitions, including minority tribes like the San. This has created some conflicts between communities seeking CBNRM and the government's definition of 'community.' For example, when the San community of Khwai created their community constitution for CBNRM, they defined their community as San people. The State refused to register Khwai's constitution arguing that it was discriminatory and exclusive.

In response, community activists have developed a compromise: conditions for how and when newcomers to a community can benefit from CBNRM, such as requiring residency of five consecutive years and participation in community activities. While this approach faced initial opposition from settlers and government officials, activists were ultimately able to convince them that conditions on community membership were necessary to protect resources of the community and the approach was eventually accepted. This compromise allows the government's stance on national unity to co-exist with communities' desire to manage the definition of who is a member of the community, at least for the purposes of land and resource management.

CASE STUDY

1.3



SECURING COLLECTIVE LAND TENURE FOR HUNTER-GATHERERS IN TANZANIA

BY EDWARD LOURE & EDWARD LEKAITA,
UJAMAA COMMUNITY RESOURCE TEAM (UCRT)

The Ujamaa Community Resource Team (UCRT) has been working for over a decade to address the land rights and related natural resource management issues of roughly 40 pastoralist, agro-pastoralist, and hunter-gatherer communities across northern Tanzania. UCRT assists these indigenous communities to secure rights to their lands in order to access, manage and benefit from their natural resources, while simultaneously conserving their environment for future generations. This effort requires a multi-pronged approach that builds capacity for collective action on multiple levels, from individual households to national policy-makers. Some of the approaches utilized by UCRT include land demarcation and boundary reconciliation processes, mapping, village registration, certifying land occupancy, and facilitating the development of land use plans and community by-laws. UCRT has also played a lead role in enabling local communities to build linkages with external sustainable development, tourism investment, and wildlife conservation interests.

UCRT develops its programs in full collaboration with local communities in order to ensure community ownership and program sustainability. UCRT believes that all members of a community deserve an equal right to participate and make decisions regarding community affairs, and that decisions should not be undermined by elites or vested interests. To achieve this vision, UCRT avoids political involvement and gives communities enough room to interact on agendas and develop joint resolutions before moving forward with any project. In this way UCRT has developed strong and close relationships with target communities.

WWW.UJAMAA-CRT.ORG



CONTEXT: PASTORALISTS IN TANZANIA

Historically, pastoralists and hunter-gatherer communities in northern Tanzania have faced severe encroachment and loss of their traditional lands to a number of external entities. They have lost large portions of their homelands to the creation of national parks and other conservation and tourism interests, to commercial agricultural and ranching schemes developed by the government and investors, and to illegal land-grabbing schemes carried out by local and national elites. As land shortages in Tanzania become increasingly acute, and investor interest rises in sectors such as biofuels and agriculture, threats to indigenous lands and livelihoods are intensifying.

Tanzania began a process of land reform in the 1990s to address some of these issues. The Village Land Act of 1999 was intended to delegate land control to local communities through the establishment of village councils and land use plans. However, while the Act dealt extensively with the land rights of Tanzania's numerous agricultural and pastoralist groups, the rights of hunter-gatherers were not mentioned. Additionally, there has been no mention of hunter-gatherer communities in any contemporary Tanzanian law. This has created obstacles in trying to assist these communities to define and secure their rights over those of dominant neighboring tribes. Moreover, later legislation such as the Wildlife Conservation Act of 2009 threatens the very survival of the hunter-gatherer community by criminalizing hunting without a license.



Hadza community members take UCRT staff members out on the land to demonstrate and document their traditional knowledge of the landscape. © UCRT

CASE STUDY: THE HADZABE

The Hadzabe are one of only two hunter-gatherer groups remaining in Tanzania that have not yet lost all of their lands and culture to dominant neighboring agricultural and pastoral communities. They reside in the Lake Eyasi basin of northern Tanzania, adjacent to Serengeti National Park and the Ngorongoro Conservation Area, and number about 1,500 individuals. Because the Hadzabe depend on hunting and gathering for a significant portion of their subsistence needs, they have institutionalized mechanisms within their culture to maintain a healthy natural environment with sustainable land use.

The Hadzabe was one of the first communities that UCRT began work with after it was founded in 1998, as the organization's vision was to assist hunter-gatherers and pastoralists to improve their livelihoods and the Hadzabe were the largest group of hunter-gatherers in Tanzania. At that time, a majority of the community lived in Mongo wa Mono village. The land of the village is traditional Hadza land but it had been encroached upon by agricultural and pastoralist communities from other parts of the country. As mandated by the Village Land Act, a village council was elected to determine the boundaries of village land and control local land use planning. The Hadza did not participate in these local elections because they maintained their own traditional governance structure separate from the village, and neither understood their rights nor realized the full extent of control the Village Council would have over their affairs once elected. Ultimately, this resulted in a lack of Hadza representation within local governance, and subsequent loss of control over their lands to outsiders when the Council designated zones for various land use purposes throughout the area without prioritizing Hadza interests. Without adequate access to hunting and gathering grounds, the Hadzabe were unable to practice their cultural traditions or customary methods of subsistence.

This is the situation UCRT found upon first entering the village, and began engaging in civic education and developing the community's capacity to strengthen internal governance. For several years UCRT also negotiated with the Village Council to set aside land strictly for Hadza settlement and hunting and gathering activities in their land use plans. The Council finally agreed to do this in 2003, but no legal documentation secured the oral agreement. Thus the local government was free to revise the land use plans at any time, and lands designated for Hadza use continued to be redistributed to non-Hadza users. As migration to the area continued and the Hadzabe increasingly became a minority population within their own village, it was clear by 2004 that the Hadza needed a further step to secure their land tenure.



UCRT'S ROLE

UCRT called a Hadza community gathering and explained the process of obtaining a Certificate of Customary Right of Occupancy (CCRO), the primary means of securing collective rights under the new land laws of Tanzania. The Village Land Act prescribes that an individual or group living on customarily held lands over 250 hectares in size may apply for a CCRO from their local Village Council with the approval of the Commissioner of Lands. The application process requires that the local council define and approve community by-laws, receive a certificate of village land, and agree on boundaries and land use plans through a district-level demarcation and zoning process. Upon approval, the CCRO provides permanent tenure to the holder. The Hadza community agreed via consensus to move forward with this approach because it would mean that the village government would no longer have the power to undermine Hadza land rights.



Left: Hadza men prepare traditional hunting equipment during a cultural event. © UCRT

Above: Hadza community members describe a cultural site to UCRT staff during cultural mapping of their traditional lands. © UCRT

THE HADZABE CCRO PROCESS

The Hadzabe faced several obstacles in attempting to obtain a CCRO. Despite the stated purpose of the legislation, the CCRO process had only been utilized by individuals and corporate entities to obtain land tenure prior to the Hadzabe application, and the central government was unsure how to approach a community-based application for the first time. Additionally, the legislation requires that group applicants either be registered as a legal entity, or be recognized as a formal group under customary law.

The Hadzabe were not interested in registering as a legal entity for two reasons. First, the community wanted their land rights secured as quickly as possible, and the registration process was complex and time-consuming. Second, the process of registration would require the Hadzabe to replace their traditional leadership system with state-mandated institutions and procedures that did not necessarily fit with their modality of life. Additionally, proving that the Hadzabe were a formal group under customary law was difficult, because as mentioned above, hunter-gatherers had never been addressed in Tanzanian legislation, and government officials were largely ignorant of the community's existence. It was up to UCRT to negotiate a streamlined CCRO process that would allow the Hadzabe to secure their lands while also retaining their unique lifestyle and traditions intact.

UCRT had already been involved for some time in the lengthy process of mapping, zoning and demarcating Hadzabe land with village and district governments. Now UCRT also began holding a series of discussions with the office of the Northern Zone Assistant Commissioner for Lands in Moshi. The negotiations were long and difficult due to the complicated requirements demanded by the Ministry of Lands and the government's general lack of understanding regarding the customs and institutions of the hunter-gatherer community. For example, it was necessary for UCRT to explain to the government the difference between the community's practice of hunting on their own lands for subsistence and cultural purposes and poaching for entertainment purposes as practiced by commercial hunters on lands they have no connection to.

It was also challenging for the government to accept the nature of the community's leadership institutions, as the Hadzabe are an egalitarian society that makes decisions based on consensus by the entire group rather than maintaining a system of organized hierarchy. This was not an officially recognized form of governance that the Ministry was comfortable entrusting with land management and ownership rights. UCRT addressed this concern by arranging a compromise between the community and the government. The Ministry would put the certificate of ownership in the community's name collectively, but the Hadzabe would need to select several respected leaders to be appointed as trustees and held legally accountable for land management. This way, the community develops a new mechanism to interact with the government's administrative system while maintaining its traditional self-governing institutions intact.



The turning point finally occurred when the Assistant Commissioner was convinced to visit the Hadzabe in their homeland in order to view their predicament firsthand. The community welcomed her with traditional song, dance and food, followed by public presentations on their experiences and endeavors. They showed her their ancestral lands and explained their cultural and spiritual attachments to various locations and natural resources as well as the hardships Hadzabe have suffered as a result of dispossession. The Commissioner was moved by this experience and committed to assisting the community with their land claim.

OUTCOMES

After several years of negotiations back and forth, the Assistant Commissioner and District government finally acknowledged the Hadzabe for their uniqueness in 2011 and granted the community a Customary Right of Occupancy for as long as they continue to exist. Three certificates of land were issued for an area of 23,000 hectares that includes two villages, Mongo wa Mono and Domanga, and allow Hadzabe from both villages to use any of the areas. Restrictions on land use are based on the zoning previously determined by UCRT, the Hadzabe and the Village Council: certain areas are zoned for settlement and grazing, while a large portion is retained purely for hunting and gathering activities. This is the first legal certification of land granted to a hunter-gatherer community in Tanzania, and creates an opportunity for other indigenous groups to secure their land tenure through the same process.

With support from The Nature Conservancy and Norwegian People's Aid, UCRT organized a celebratory meeting between Hadzabe from the three villages of Mongo wa Mono, Domanga and Mangola later that year. UCRT invited the Land, Legal and Game Officers from the Mbulu District Council to help facilitate alongside three teams of UCRT staff. The six-day meeting brought together more than 150 participants, 67 women and 83 men, and made it possible for Hadzabe from across the region to discuss a number of issues as a group, including:

- » How to mobilize the community to continue to collectively address land tenure and natural resource and governance issues;
- » How to increase security over land and natural resources; and
- » How to build a more unified community and cultural identity.

During the meeting, the community agreed to appoint local scouts in order to increase security of their newly certified lands. The community assembly selected thirty Hadza youth to patrol the area and protect their boundaries from encroachment. Any intruders will be reported to the District Council, which can authorize police to enforce local land use plans and by-laws.

The Hadza also gained new economic opportunities as a result of obtaining their CCRO. Now that they are the recognized owners of their land and natural resources, they are able to participate in conservation programs with Carbon Tanzania, for example, wherein revenue from the sale of certified carbon offset credits is paid to community members for managing the conservation of their forest areas. A percentage of this revenue has already been paid to the local scouts for enforcing Hadza land use plans.⁶ Other opportunities have since emerged for the Hadza in collaboration with local eco-tourism initiatives.

ANALYSIS AND RECOMMENDATIONS

Securing land tenure for the most vulnerable members of society often requires a multi-faceted approach that blends formal legal processes with negotiation strategies. In this scenario, it was necessary for UCRT to broker communication and cultural differences between the Hadzabe community and several layers of government leadership from the Village Council, District Council, and the Ministry of Lands in order to bridge the divide between official decision makers and those whom the decisions affect on the ground. Building relationships with individuals at each of these levels was key to the success of this process. Also essential was creating a sense of personal responsibility amongst government leaders by physically introducing them to the community members involved and showing them the physical and cultural losses at stake.

UCRT would encourage civil society organizations and activists working for hunter-gatherer communities not to lose hope, but to continue to advocate for their rights. The livelihoods of indigenous communities are extremely different from those of mainstream groups and it can be quite challenging to find existing legislation or policy in their favor. However, it is possible both to create relationships with individuals in existing institutions in order to find alternative solutions to address indigenous concerns, as well as to push for the creation of new legislation and institutions to provide legal protections for these rights. In this respect Tanzania is reaching a milestone, as the proposed Constitution currently awaiting referendum approval now includes express provisions on hunter-gatherer protections. Constitution-making is a political process that requires numbers in order to win rights, but our consistent advocacy work over many years has resulted in recognized, legalized rights for hunter-gatherers for the first time. The journey can be very long and with numerous challenges, but success is possible.

⁶ Anderson, J., Baker, M. and Bede, J. 2012. *Reducing Emissions from Deforestation and Forest Degradation in the Yaeda Valley, Northern Tanzania*. Carbon Tanzania and UCRT. www.planvivo.org/wp-content/uploads/Yaeda-REDD-PDD-published.pdf

CASE STUDY**1.4****COMPLEXITIES OF COMMUNITY
SELF-IDENTIFICATION IN LIBERIA⁷**

BY ALI KABA,

SUSTAINABLE DEVELOPMENT INSTITUTE (SDI)

The Sustainable Development Institute (SDI) works to transform decision-making processes in relation to natural resources and to promote equity in the sharing of benefits derived from natural resource management in Liberia. The organization's vision is of a Liberia in which natural resource management is guided by principles of sustainability and good governance and benefits all Liberians. Its activities cover a range of crosscutting issues including governance and management, the environment, state and corporate social responsibility, economic and social justice for rural populations and the democratic participation of ordinary people in government management of natural resources. The organization received the Goldman Environmental Prize in 2006. Community Land Protection is one of SDI's main program areas. SDI works with communities in rural Liberia to strengthen tenure security, improve land use and management, and most importantly, develop transparent and accountable community land governance systems. SDI staff work with communities to facilitate an integrated, multi-step process for community land documentation and governance. Central to SDI's approach to community land protection is training and supporting a team of community-based paralegals who guide their communities through the process of mapping and documenting community lands and drafting community by-laws and management plans. The program is currently working with 65 rural communities across the counties of River Gee, Maryland, Lofa and Rivercess.

WWW.SDILIBERIA.ORG

⁷ Reproduced in abridged form from a Namati and SDI 'Lessons from the Field' brief, available at: <https://namati.org/resources/lessons-from-the-field-complexities-of-community-self-identification-in-liberia/>

CONTEXT

Beginning in the 1950s, statutory laws and regulations systematically eroded customary governance of land and natural resources in Liberia. In 1956, lawmakers passed legislation (The Aborigines Law) that made communities' undocumented customary lands into state-owned land, turning customary land *ownership* rights into mere land *use* rights.⁸ This legal sleight of hand made communities' lands vulnerable to state-sanctioned concession grants and facilitated significant dispossession of rural communities from their customary lands. Over the past fifty years, huge tracts of rural land have been leased or privatized to elites and foreign investors: current records show that over 50% of Liberia's land has been contracted out or promised to foreign investors, while an additional 20% is claimed as private land by urban and rural elites or churches.⁹

In recent years, Liberia has developed several laws and policies designed to strengthen communities' customary tenure security. Taken together, the 2006 *Community Rights Law*, Liberia's *Land Rights Policy* (2013) and the draft *Land Rights Act* provide critical protections for customary land rights.¹⁰ These protections include communities' rights to self-identify their territory and membership, to legally claim their customary lands, and to manage local natural resources according to their own visions and goals.

Specifically, the 2013 *Land Rights Policy*, allows communities to choose to self-identify in order to secure a deed to their customary lands.¹¹ The policy recognizes that "the nature of communities varies greatly throughout Liberia" and therefore allows that "communities may define themselves and determine how their land is managed, used, and allocated but within a framework of transparency, accountability, inclusiveness, and shared responsibility with the Government of Liberia" (¶16). The policy also commits the government to "provide sufficient resources and undertake the necessary activities to support communities in self-defining, obtaining deeds for their Customary Land, establishing the community as a legal entity, determining community boundaries, and ensuring community governance and management" when communities choose to undertake these activities (¶16.6.1).

Although the *Land Rights Policy* has widespread support among civil society organizations and rural communities, the community self-identification component of the policy has proven challenging to implement. This is due in part to the lack of clarity around the process by which a community may "self-identify" (in the official sense of the *Land Rights Policy*).

8 Under the Aborigines Law of 1956, the state categorized land ownership into private (deeded lands) and public/state lands (undeeded lands), with all undocumented lands (including customary lands) included in the category of undeeded lands.

9 Report commissioned by the Liberian Land Commission in 2013
http://eeas.europa.eu/delegations/liberia/documents/press_corner/20130916_01.pdf

10 The Land Rights Policy has since been translated into a Bill, which was subsequently submitted to the National Legislature in late 2014 to be voted into law. At the time of publication, the draft Bill is still under deliberation by legislative committee.

11 Communities are not required to self-identify in order to have land rights. Section 6.2.1. of the *Land Rights Policy* states that "... Customary Land rights, including the rights of ownership, use or management, are equally protected as Private Land rights, whether or not the community has self-identified, established a legal entity, or been issued a deed..."



This ambiguity, while intended to give communities the freedom to define themselves as they deem appropriate, risks community identification processes that are chaotic, conflictive, and inefficient. There is also a risk that outsiders such as politicians and investors may manipulate the community identification process to their own advantage. In response, SDI is endeavoring to establish best practices for responsible community self-definition as the first step in any community land protection process in Liberia.

“COMMUNITY” IN LIBERIA

The complexities of community identity in Liberia stem largely from a long and convoluted history of state intervention in traditional governance structures and shifting conceptions of “community.” Over the past six decades, Liberia’s national governments repeatedly tried to standardize the statutory and customary administrative structures of Liberian society. The state rearranged administrative boundaries, carved new communities out of preexisting ones, coalesced multiple communities into one, and redrew boundaries to separate ethnic groups. The state recruited and installed Chiefs as local customary authorities and absorbed customary leaders into the administrative system by paying them as civil servants and requiring them to report to statutory superiors. These changes eroded many communities’ customary accountability mechanisms,¹² intensified the power of Chiefs, and in some cases compromised their local legitimacy.¹³ As a result, today many Chiefs feel they can agree to land deals without consultation or approval from their communities.

In addition, in recent years major demographic shifts have weakened customary systems and changed community identities. Liberia’s civil war from 1989 to 2003 uprooted and displaced over two thirds of the country’s population, mixing diverse groups and exacerbating divisions along ethnic and religious lines. More recently, land scarcity and lack of jobs are pushing young men to leave their communities to seek employment in other areas where they often marry into local communities. Liberia is also experiencing significant population growth and rapid urbanization. Most urban constituents still maintain strong ties to – and influence over – their rural hometowns and villages.

12 While the roles and powers of customary chiefs in Liberia vary, many customary governance systems contain mechanisms for community consultation and participation in decision making as well as checks on Chiefs’ power.

13 From conversation with a former official of the Ministry of Internal Affairs who explained that the state’s interventions have significantly eroded local trust in Chiefs.

CUSTOMARY GOVERNANCE STRUCTURES

The government's efforts to standardize and co-opt customary governance structures have been only partly successful. Significant diversity remains among the effective local customary governance systems; however, most rural people in Liberia now recognize the three level of customary leadership that were promoted by the state: Paramount, Clan, and town Chieftaincies:¹⁴

- » **Paramount Chieftaincy:** A Paramount Chiefdom is the largest customary governance unit, both geographically and socio-politically. A Paramount Chiefdom is typically responsible for two to three Clans.¹⁵
- » **Clan Chieftaincy:** The Clan Chiefdom is the second highest governing body in the customary structure. Historically, Clan Chiefdoms comprised settlements of closely-related families with shared historical links. A clan usually shared an area of common land that includes a common forest for hunting and gathering. Today, Clans contain anywhere between three to thirty towns.¹⁶
- » **Town Chieftaincy:** Towns are only weakly regulated by the state and are often poorly defined. Recognition as a town is determined primarily by neighboring towns and the Clan Chief. SDI has found that recognized and self-identified "towns" can average from 3 to 600 households,¹⁷ composed of related family networks. Town households tend to live close to shared common resources, including residential space, water holes, farmland, thatch bush, and low forest areas. Individual and family rights to access to land and natural resources are managed and negotiated at the town level. Towns are thus a key social unit in the protection of community land rights. However, geographic boundaries between and within towns are weakly regulated. Most towns have several contested boundaries. Such conflicts tend to cause infighting and division between towns, which can easily frustrate a community's efforts to self-identify and claim their customary land rights.

Below a town are other sub-community customary units, including "Quarters" (town subdivisions determined by prominent landholding families, often descended from the first-settler families, sometimes governed by "Quarter Chiefs" in large towns), "Sections" (subdivisions of some towns) and "Villages." A village is the smallest customary unit, consisting of 1 to 10 households from a single family. A village is managed by the family

¹⁴ It should be noted that these structures have been largely standardized by the state. In many areas there are additional customary and religious structures, such as the Poro and Sande Society, which act as a shadow government and in some areas, particularly in the north of Liberia, can be more powerful than the Chiefs.

¹⁵ Because of low population density in the south, Paramount Chiefdoms in the south tend to cover larger areas but smaller populations while those in the north tend to govern smaller areas but much larger populations.

¹⁶ Differences in population density between the north and south mean that northern Clans tend to have fewer, but larger towns while in the south Clans tend to encompass more, but smaller towns – some of which may be a single homestead.

¹⁷ However, some large trading towns have over 1,000 homes.



that lives there and its customary legitimacy relies upon its ties to a town. As villages grow, they may demand town status, along with increased customary privileges and responsibilities. There is often considerable political wrangling concerning the formation of villages and towns: denial or delay of a request to become a town may cause a village to ally itself with a different town, or even a different Clan. Some villages try to secure private land rights in order to become private family estates.



Community mobilizers facilitate a community land protection meeting in Rivercess county. © SDI

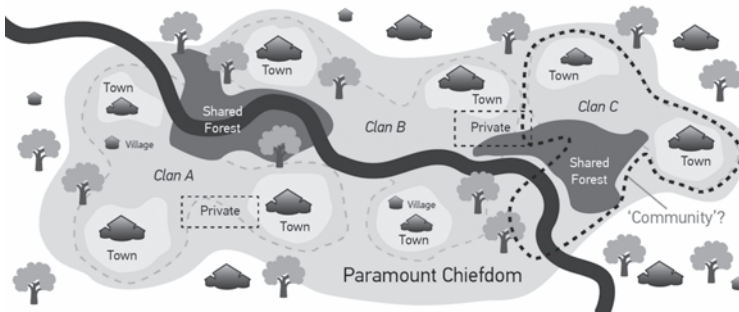
WHERE IS THE “COMMUNITY?”

Common conceptions of a rural “community” in Liberia share several components: defined territorial limits, shared common resources like a sacred bush or forest, historical kinship ties, and/or a sense of common social identity and belonging (apparent through shared language, culture, traditional religions/spiritual practices, etc.). However, SDI has found that turning these components into a shared sense of “community” identity often requires detailed research and patient efforts.

The scale of a “community” has important ramifications for community land documentation, registration, governance, participation, monitoring, and management. For example, even though Paramount Chieftaincies often command significant respect and could protect a vast area under one “community,” their large areas and populations present serious practical

and logistical challenges to processing a land claim. Identification at the town Chieftaincy level may mean that individuals are much more likely to participate in decision-making at the town level, due to proximity, ease of access, and familiarity. Yet community identification at the town level presents challenges related to the loose regulation of town status and associated confusions concerning the affiliation of town settlements. Due to their high number and small size, town-level community definition would involve significantly more land conflicts/boundary disagreements between settlements and neighboring towns. While Clan Chieftaincies may represent a good middle ground between Paramount Chieftaincies and towns, clan meetings may still require attendees to travel for over 15 hours on foot, a serious obstacle for representative and inclusive meetings, especially for women and the elderly. (For an illustration of the nested, overlapping nature of settlements and social units in Liberia, see the diagram below.)

FIGURE 1 SETTLEMENTS & SOCIAL UNITS IN LIBERIA



Shared common areas like forests and water bodies present another challenge to community identification: when multiple towns or sub-units share rights to a single common area, these shared and overlapping use and ownership rights must be carefully navigated. Documenting community land rights at the town or sub-unit level may provoke boundary or resource conflicts between the overlapping units. In such instances, communities may best be protected and documented at a level that reflects the shared resource claims. These considerations are examples of the critical information and reflections that SDI staff provide and facilitate throughout communities' self-identification processes.



COMMUNITY SELF-IDENTIFICATION: SDI'S METHODOLOGY

SDI's community land protection program has worked with over 60 communities to self-identify their lands. SDI's approach to supporting community self-identification involves many interviews, focus group discussions, and community-wide meetings. There is no formal blueprint of this process, but in order to ensure widespread community participation SDI always undertakes four core activities:

1. Scoping Research: Before entering a community, SDI completes initial background research on the community to ensure that staff have a basic understanding of the area and region. Staff investigate the history of the area and the settlement location(s), population demographics, statutory and customary governance structures, and land use patterns. Staff consult national and international sources and, if possible, interview local informants and experts familiar with the location or region. The goal is a preliminary understanding of the administrative and governance structures as well as a general grasp of dynamics relating to community cohesion, population, culture, land use and management, and livelihoods.

2. Community Leadership Consultations: Understanding community dynamics takes time and requires patience. Ultimately, facilitators must visit the location to build relationships with community leaders (including women, youth, and important clan elders). Staff meet with statutory and customary leaders in order to introduce the project and begin to sketch out potential socio-political and geographic boundaries of the community. These meetings should include one-on-one discussions and larger focus group discussions. Over the course of multiple meetings, facilitators must ensure that these individuals understand and embrace: a) the goals of community land protection work; b) the efforts and activities involved; c) the importance of community ownership over and participation in the community land protection process; and d) the potential benefits and challenges involved.

With skillful facilitation, these meetings often result in leaders' reaching an agreement on how they will define their community, according to what is most feasible, practical, and effective for the location. The leaders' joint decision provides direction for all resulting community land protection work. If leaders cannot come to agreement at this time, the meetings are still helpful for facilitators to gain a preliminary sense of how the community is likely to self-identify in the future.

3. Community-wide Consultations: It is critical that leaders are not the only ones making decisions on community self-identification. Therefore, staff verify or redraft the information received from leaders using focus groups and wider consultative meetings open to everyone living within the target area. SDI organizes multiple open meetings to accommodate populations within the various levels of potential self-identification. Participants at these meetings discuss similar questions as those discussed by the local leaders.

After completing several rounds of community-wide consultations,¹⁸ the field team should have a clear and widely accepted understanding of how people in the location self-identify as a land-owning community. This process should also produce information on the following:

- » **Structures and power dynamics within and between the highest and lowest statutory and customary administrative units in the location:** What governance structures and institutions exist and function well? What governance structures are functioning poorly? Are leaders able to cooperate, or is there a high degree of conflict between leaders?
- » **Land use and ownership rights, degree of tenure security and potential threats to community land claims:** Are there large-scale land concessions in the area? What companies or investors are active in the area? Have investors approached, seeking access to lands and natural resources?
- » **Cohesion within the community:** What is the ethnic make-up (homogenous or highly diverse) of the community? What is the incidence of land related conflicts? What is the rate of rural to urban migration? Is there a highly transient population living temporarily within the community?
- » **Feasibility of working with the population:** What degree of local commitment is there to undertake the community land protection process? What logistical or resource-related challenges may arise as the community begins to take action to protect its customary land? What factors might weaken community members' determination to complete the community land protection process?

4. Final Decision Making Process: After the community-wide meetings, it is important to bring together local leaders and the broader community to reconcile differences and collectively confirm whether and how the community should self-identify. It is important to have as many people as possible participate in this meeting and to encourage all households to be present. If an agreement is reached, the meeting should conclude with a celebration where each sub-population and their leadership publicly consent to the agreed level of community identification and commit to the process of community land documentation at this level. SDI has found that the ceremony helps to build trust and consensus across the entire self-identified community.

Finally, during these meetings, SDI staff also decide whether a community is ready to undertake community land protection work. Not all communities are ready to complete the full process of land protection activities, especially if there are concerns about weak leadership, intra-community conflict, rapid urbanization, or a high percentage of transient

¹⁸ SDI determines how many meetings are required based on spatial distribution of the various land claiming units within a community and population size. SDI organizes meetings in different locations in order to increase access.



migrants currently living within the community. If staff decide that it is feasible and appropriate to support the community to undertake the land protection process, they then work with leaders to organize a large community meeting, including all relevant stakeholders, to begin the work: community visioning, mapping, boundary harmonization and land conflict resolution, the drafting of land and natural resource management by-laws, and the establishment of clear and accountable local land governance institutions.¹⁹

COMMUNITY SELF-IDENTIFICATION IN ACTION: LOFA COUNTY

Lofa is one of the most diverse and populous counties in Liberia. Located in the northernmost part of the country, Lofa borders Guinea and Sierra Leone and shares ethnic identities with the two countries. The county is home to six of Liberia's sixteen official ethnic groups as well as large Christian and Muslim populations. Some towns in Lofa have well over a thousand households and large, urbanized trading posts. This has led to cross-ethnic interactions across the county, including cases of intermarriage and overlapping land use and land claims. These diverse identities and cultures are governed as Clans, towns, and quarters, with final authority resting with Paramount Chiefs who report to Commissioners within the state administration.²⁰

Over the past few years, especially during Liberia's fifteen years of civil war (1989 to 2003), Lofa has experienced significant ethnic and religious conflict. During the civil war, Lofa changed hands between warring factions multiple times; in the process, politicians and warlords exploited and created tensions between groups. The worst tensions arose between Lorma and Kpelle (a majority with largely Christian and traditional African beliefs) on the one hand and Mandingoes (a predominantly Muslim minority) on the other. The conflicts of the civil crisis fomented tension and distrust between these settlements, particularly around land use and ownership, posing a serious challenge to identifying cohesive land owning community units in Lofa County.

SDI expanded its Community Land Protection Program into Lofa County in late 2013. At that time, SDI's field team applied the community identification methodology described above. In their initial deliberations, community leaders in Lofa preferred using the Clan unit as the level of “community” for purposes of customary land protection and documentation. The leaders pointed out that towns were too small to maximize the project time and resources, while Paramount Chiefdoms were too large to meet expectations around community participation in meetings and coordination. The majority agreed that the Clan was the most practical unit. However, a few of the leaders suggested community identification be done at the “sectional” level. In Lofa, sections are a subset of a Clan,

¹⁹ For more information on the steps of the Community Land Protection process visit namati.org/communityland.

²⁰ Lofa contains settlements of many groups from diverse ethnic and religion backgrounds. Generally people are loosely subdivided at the town and Clan levels by ethnic affiliation.

consisting of 200 to 350 households. These leaders felt that given the smaller population and relative proximity of towns in each section, working at the section level would ensure greater participation in community decision making.

SDI attempted to resolve the differences of opinion through further focus group discussions, but agreement remained elusive. Finally, the team organized a large meeting to which leaders from all the targeted areas were invited. Staff facilitated a consensus process, during which the leaders eventually agreed to identify their community at the Clan level, which they expressed “is both a customary sense of community as well as a [manageable unit] to get a cohesive working relationship between members.” However, all the leaders agreed that it was best that the people themselves “have the final say on the unit they feel most comfortable to work with,” reaffirming the participatory and inclusive nature of the self-identification process.

Following the leaders’ mandate, the SDI team held meetings with community members in all towns in the region. These meetings included religious leaders, heads of minority ethnic groups, youth, and women. During the meetings, community members discussed the practical feasibility of managing natural resources at each level, as well as the various socio-political and customary identities - including the ethnic and religious diversity within each community. Most community members at first preferred their Paramount Chieftdom as the unit for identification, while others suggested documenting their lands by section. In one meeting, an elder warned that dividing the Clan into sections and making those the level for the community’s land claim could weaken the customary governing structure and diminish the community’s bargaining power in interactions with outsiders.

After days of debate (at times on their own, and at times with SDI facilitating) the elders, religious leaders, town men, women, and youth of the towns agreed to self-identify at the Clan level, agreeing that the “[Clan] chieftdom seems the most authentic customary authority” to identify as a land owning community.

LESSONS FOR FACILITATING COMMUNITY SELF-IDENTIFICATION PROCESSES

Over the years, SDI has learned that communities’ desire for formal recognition of their land rights creates a strong impetus to peacefully resolve long-standing inter- and intra-community disputes. Even with this motivation, however, the first step of community identification is sensitive, time-consuming, and has repercussions for the entire process. The role of facilitators is to help a community make decisions that represent the interests of everyone, including women, youth, elders, minorities, and different groups and sub-populations. To do this, facilitators must make an effort to get to know different people and listen to their stories.



To ensure appropriate community self-identification choices, facilitators must support communities to explore and consider important community dynamics such as:

- » **Community history and origins:** What are the origins of the community? How was land ownership organized in the past? How has it changed? What previous efforts have been made to protect and document the community's land? Facilitators may want to ask the community to sit together, discuss, and write out their community's origin story.
- » **Community institutions:** What community institutions already exist? What is their role in the community? How can these institutions be useful in helping the community land protection process move forward? Community institutions may include women's groups, youth groups, or other community-based organizations.
- » **Local decision-making:** Who has the final say in the community? Who is consulted when a decision needs to be made? Who is influential in the community? Remember, some people may be influential in the community and hold no official title. As a facilitator, it will be important to build relationships with these people.

SDI's experiences from working with communities to self-identify have led to four major learnings that should be central to community self-identification processes:

1. Customary units provide a useful starting point: The customary units most typically used as a basis for self-identification are: Paramount Chiefdom, Clan Chiefdom, or town. In Rivercess, River Gee, and Maryland, communities decided to define as a Clan. In Lofa, while appreciating the importance of Paramount Chiefdom, community leaders chose the Clan level to be pragmatic. While the customary units are a useful starting point for discussions about self-identification, ultimately the members of a potential community must come together and agree on a level of land-holding that makes sense to them based on their current context, history, socio-political dynamics, and practicalities of governance.

2. Small is beautiful, but....: Self-identification at a smaller level, such as a town or section, has the advantage of increased opportunities for broad participation and inclusive governance. However, defining the community as a small unit risks leaving common areas, such as forest land shared by multiple towns or sections, unprotected. If the community is defined at a larger scale, these shared areas can be protected by including them within the community and without resorting to complex legal mechanisms to record how they are used by neighboring communities. Another consideration for identifying at the town level is that it risks a higher number of boundary conflicts. For example, a typical Clan in Rivercess would have 12 to 15 towns, each with their own boundary conflicts that would need negotiation. If a community identifies at the Clan level, only the outside Clan boundaries would need to be negotiated for the purposes of the community land protection process, leaving internal town boundaries to be resolved once the community's overarching customary land rights are secured.

3. Go big, but...: During self-identification, a community must balance the desire to maximize the amount of land to protect with the need to ensure all members of the community can fully participate in all decisions concerning their lands and natural resources. Defining a community as a larger geo-political unit has the advantages of having fewer boundaries to harmonize and protecting large areas at once. However, as the population or area included within the community increases, it is more challenging to have participatory, representative and accountable governance systems. The larger the community, the more difficult it is to ensure full participation in all steps of the community land protection process, and in subsequent governance processes. The larger the territory, the more difficult it will be to ensure inclusive representation in community meetings and decisions. Similarly, it will be more difficult to ensure accurate representation on community governance bodies. In addition, the geographic distribution of settlements and resources may complicate efforts to develop and enforce consistent, detailed, and effective land and natural resource management rules.

4. Community cohesion is critical: Community cohesion - the sense of togetherness and shared values between different actors and subgroups, women, strangers, youth, elders - is essential for inclusive, peaceful, and effective participatory decision-making around issues of land and natural resource management. Without cohesion, reaching agreement about community self-identification will be very challenging and may be prone to disagreement and manipulation by elites and other interest groups. Also, the later steps of the community land protection process, such as drafting by-laws and establishing local governance arrangements, are much more efficient and effective when the community feels itself to be a coherent group. In Liberia, community cohesion is most often derived from shared ethnic and religious groups or a common ancestral heritage. SDI has also found that an external threat, such as an investor, can also increase community cohesion and unity.

CONCLUSION

Community self-identification is a challenging but powerful step towards protecting communities' customary lands. In Liberia - and other regions where community definition has changed or been undermined - the process of community identification will be complicated and thus require caution, time, and patience. This process must be sensitive to dynamics of geography, identity, history and culture. It must be based on consensus, both within the community unit as well as from neighboring communities, in order to ensure that people do not feel excluded by the definition. For these reasons, community definition should not be left to bureaucrats or external 'experts' because this risks imposing an inappropriate definition and deprives communities of an opportunity for collective action and cohesion-building. Rather, skilled facilitators have an important role to play in helping communities to navigate the self-identification process to define their territories and membership.



Women in Rivercess complete a sketch-map of their community lands. © SDI

CHAPTER

2



RESOLVING INTER- & INTRA-COMMUNITY LAND CONFLICTS

“Conflicts over community lands are typically symptoms of a larger problem – lack of effective governance.” – LAND AND EQUITY MOVEMENT IN UGANDA

Climate change, environmental degradation, large-scale land concessions and expanding industrial activity across Africa are significantly impacting the availability of land and natural resources. Meanwhile, population growth is placing increasing demands on the lands that remain. As land and resources become more scarce they grow in value, which can further escalate competition for land and conflicts over control of resources. Three kinds of land conflicts tend to arise:

1. Intra-community conflicts between members of a household, between families within a community, or between factions within a community. Key drivers of intra-community conflicts may include:

- » Individuals encroaching upon the land of another community, group or family and claiming the land as their own;
- » Inheritance disputes within families, including dispossession of “weaker” family members by “stronger” family members;
- » Historical ownership based on a “founding/elite family” claim to community land, where a powerful family feels entitled to more extensive or stronger land rights than other community residents;
- » Elite or landless families claiming communal areas for their own homes and farms; and
- » Migration patterns, population shifts, or post-conflict settlement of internally displaced people, which tend to create overlapping or multiple, contested claims to a single piece of land.



2. Inter-community conflicts between one community and a neighboring community. These conflicts often center on boundary disputes. Key drivers of inter-community conflicts may include:

- » Differences between indigenous/customary and state-drawn/administrative boundaries, which create an opportunity for each community to side with the boundary that gives it claim to more land;
- » The suspected or known presence of valuable natural and/or mineral resources on a given piece of contested land;
- » The historical division of families (related to internal power struggles or intra-community disagreements) where one side of the conflict split off and formed a new community;
- » Competition for territory or resources between communities that practice different or overlapping land uses, such as between hunter-gatherers and cattle herders or farmers;
- » A community elite or leader who is trying to ensure that boundaries are never harmonized, so that the community's land cannot be formally documented, thus allowing more time to grab community lands.

3. Conflicts between a community and an outside actor, such as a local elite, an investor, or a government official. (Chapters 4 and 5 address these conflicts.)

It is best to intervene directly in conflict resolution only if a community is unable to resolve the conflict on its own after sustained effort and has proactively requested help. Ideally, advocates can work with communities to prevent conflicts and proactively build their own capacity for peacefully resolving conflicts as they arise. To do this, advocates can: train local leaders and community members in a variety of dispute resolution techniques and strategies; build the capacity of existing customary tribunals/conflict resolution bodies; train communities on relevant national and international laws, which they can then use when discussing the conflict; and build community cohesion, as to as to better prepare communities to manage conflicts as they arise.

Strengthening community land and natural resources governance is also an important part of conflict prevention. As described below in the case study from the *Land and Equity Movement in Uganda*, strong, well-functioning community governance over lands and natural resources can help both to avoid land conflicts and ensure that conflicts are dealt with fairly and effectively as they surface. Strengthening local land governance can also help to reduce the severity of the conflict: the greater the underlying community unity and sense of trust in local leaders' authority and integrity, the less chance that the land conflict will turn violent or get out of hand.

Conflict resolution support from outside advocates may be most necessary in conflicts characterized by:

- » Significant power asymmetries, such as land grabbing by powerful individuals and elites;
- » Information asymmetries, misunderstandings, or break-downs in communication;
- » A breakdown in the validity of local leadership authority, such as when local leaders have been found to be biased, corrupt, and/or surreptitiously selling or leasing land in bad faith; and
- » Entrenched conflicts, particularly those related to historical injustice, forced dispossession, ethnic-based tensions, and generations-old boundary disputes.

The three case studies in this chapter detail conflict resolution strategies used in Uganda, Liberia, and Mozambique to address intra- and inter-community land conflicts. In Uganda, the *Land and Equity Movement in Uganda* helped the community avoid a long court case and potential violence by bringing in respected district government officials to intervene when a local elite threatened anyone challenging his illegal encroachment. In Liberia, the *Sustainable Development Institute* supported communities fighting over a disputed boundary to seek the counsel of customary chiefs, who helped the communities find an innovative solution to the conflict: a leasing agreement that honored historical boundaries but allowed the encroaching family leasehold rights over the disputed area. In Mozambique, *Centro Terra Viva* supported both communities to recount the history of the conflict, then to physically walk the disputed boundary, using history and landscape-based evidence to help determine a fair solution.

The case studies show that advocates must carefully tailor the method of conflict resolution to the specific details of the conflict and to the situation of the communities involved. Taken together, the case studies illustrate that in order to effectively and appropriately support the resolution of land and natural resource-related conflict, advocates should:

- » **Prepare to be patient.** Conflict resolution often takes many meetings and iterations of agreements.
- » **Choose community liaisons wisely.** The ever-changing dynamics of a conflict take time to understand. As outsiders, field teams must rely on local people to help understand and navigate a conflict. However, organizations must choose their advisors carefully, or else risk receiving biased information or being manipulated by those with vested interests in a conflict. In a large public meeting, ask each community to select a team to advise and guide the conflict resolution process.



- » **Research the history, context and underlying dynamics of a conflict**, including each side's story of the conflict's origins, the identity and interests of all stakeholders involved, and any external factors that may be aggravating the conflict. Trace and document the development of the conflict, including any past resolution attempts, such as court judgments or imposed decisions. Assess why previous interventions failed and any resulting negative impacts of these interventions.
- » **Pursue alternative dispute resolution strategies, avoiding litigation if possible.** In many instances, litigation (filing a case in court or a local government tribunal) will only prolong the conflict, consume valuable time and resources, and entrench hostilities. As well, courts - and court procedures - may be biased towards elites or power-holders. In contrast, alternative dispute resolution strategies like mediation can be less costly, less time consuming and more likely to achieve reconciliation between the parties. Mediation processes are more informal and have fewer procedural rules, which helps people feel more comfortable speaking freely when presenting their case. Moreover, mediation may resonate more with customary/indigenous practices that prioritize compromise and community cohesion (rather than punishment or an adversarial process of winning/losing). When community members have to live closely together, mediation's focus on win-win solutions can help restore local harmony.
- » **Assess the likelihood of resolution and the risk of escalation.** Realistically consider the likelihood of resolution, the risks involved, and whether it is appropriate to undertake conflict resolution. Evaluate what type of involvement is likely to be the most effective. Be clear about what your organization can and cannot do, and who would be appropriate to go to for additional dispute resolution support.
- » **Ensure that the parties to the conflict are truly interested in reaching a resolution and ending their conflict.** In some cases, one party to the conflict may not truly be interested in resolving the land dispute. In such cases, even the best mediation may not be effective and other means of resolution should be pursued (such as appeal to higher levels of government).
- » **Encourage the community to involve a wide spectrum of stakeholders in all conflict resolution efforts.** It may be useful to hear the viewpoints and perspectives of many community members who are familiar with the conflict at issue. As demonstrated in the *Sustainable Development Institute's* case study below, it may be helpful to encourage traditional/customary leaders from conflicting communities to come together to agree on mutually-beneficial terms, such as agreeing that conflicted land remain as shared land (particularly relevant for common areas or resources, or to invite the leaders of neighboring communities to be impartial mediators. Other successful strategies include inviting respected local government officials or religious leaders to help mediate the conflict.

- » **Never impose a solution.** Resolutions to a conflict are likely to be stronger, more legitimate/respected, and more durable when they are generated by community members and leaders themselves. Advocates should take care to avoid imposing solutions or even strongly recommending a specific course of action. Even if accepted by all, such solutions may be seen as externally imposed, and the agreed solutions may not be implemented to adhered to. Rather, advocates should support the community to arrive at its ideas of how best and most fairly to resolve the conflict.
- » **Maintain flexible expectations of the outcomes of a conflict resolution process.** It may not be necessary that a final agreement clarify all aspects in legalistic detail. In some situations, insisting upon absolute clarity may strain the process or prevent an agreement. However, it is advisable to ensure that all agreements are written down, signed by both parties, and witnessed publically in order to support an agreement's legitimacy and future enforcement.
- » **Advocate for appropriate action by law enforcement when necessary.** Communities may benefit from external enforcement support. Try to build relationships with local officials and/or police proactively during a conflict resolution process so they can help enforce agreements, if required.
- » **Be alert to danger.** Advocates and NGO staff may become targets for violence if powerful actors see conflict resolution efforts as a threat to their interests. Be mindful of dynamics in a community and take seriously any expressions of anger or frustration directed towards staff. Only undertake conflict resolution work in communities with whom you already have established a strong relationship of trust. If you do not have such a relationship, it may be best to work through another organization that does have such a relationship.

CASE STUDY**2.1**

SUPPORTING INTRA-COMMUNITY LAND CONFLICT RESOLUTION IN NORTHERN UGANDA

BY THERESA AUMA O. EILU, JEREMY AKIN & PALMER HURST,
THE LAND & EQUITY MOVEMENT IN UGANDA (LEMU)

The Land and Equity Movement in Uganda (LEMU) aims to secure the land rights of vulnerable persons in Uganda through harmonizing the land administration efforts of stakeholders at all levels, including: grassroots land owners, traditional institutions, local government, civil society organizations, students and universities, clans, elders, volunteers, policy makers, researchers, police, and the judiciary. LEMU works to improve practices of protecting customary land rights by making sure that the right policies, laws and structures are put in place to effectively enable the poor to claim their land rights, particularly in the Northern, Eastern, and Bunyoro regions of Uganda. LEMU serves as a link between government and communities: it brings knowledge of national laws and policies to local land owners while facilitating policy makers to understand rights and responsibilities within customary tenure and how it is changing.

LEMU works to protect family and community customary land rights. In its community land protection work, LEMU responds to requests from communities to safeguard communal grazing lands and wetlands by guiding each communities through a process of:

- » Collectively envisioning the past, present, and future use of the community land;
- » Publicly drafting, evaluating, and agreeing rules for the management of communal lands and resources;
- » Strengthening and supporting local governance structures for accountably managing communal land;
- » Resolving disputes over community land and agreeing and documenting boundaries with boundary trees and maps; and
- » Formally documenting the community's land by either registering as a Communal Land Association and/or applying for a Certificate of Customary Ownership or Freehold Title.

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THE CONTEXT IN NORTHERN UGANDA

Rampant land conflicts are the most persistent challenge to LEMU's community land protection work. In most cases, the conflicts are not genuine disputes, but rather deliberate land grabbing¹ attempts by powerful community members or local elites. In over 70% of the communities LEMU works in, certain individuals actively deny the community's land rights by encroaching and claiming part or all of the communal lands as their personal property. These encroachers typically act in bad faith and frustrate any attempt to resolve the conflict, leaving communities frustrated and powerless. Efforts to resolve these conflicts using mediation or alternative dispute resolution (ADR) often fail, as these processes are non-binding. Local Council Court decisions over these conflicts are rarely enforced. Thus, the vast majority of community-initiated attempts to resolve the disputes are unsuccessful. In the face of these challenges, LEMU has developed alternative techniques to addressing land conflicts peacefully and effectively. This case summary illustrates these techniques in action in a case where a community member was attempting to claim the community's shared land.

LEMU has identified three different kinds of land encroachers frequently encountered in communities in northern Uganda:²

1. Deliberate (Elites): These individuals use their power or influence to grab land from the community by any means, fully aware they have no rights to personalize communal land. These perpetrators are obstinate and determined. They rarely respect local authorities or customary leaders (or may themselves be local or district authorities) and are typically the first to rush to court when challenged to leave the common lands they have appropriated in bad faith, knowing they can use their money and influence to defeat the community in court. For example, one individual, Olek,³ in Barapworocero Community has continuously threatened community members with violence to discourage them from using their common land. The community has defeated Olek in three different Local Council courts, but he has refused to honor the rulings and leave his encroachments. The case has since been pending in Lira Magistrates Court for the last three years, and Olek's advocate regularly has the case adjourned. As well, LEMU has documented instances of the community's case file "disappearing" in the court registry, a worrying sign of Olek's influence over the court staff.

1 LEMU understands "land grabbing" as the illegal and opportunistic act of depriving someone of land rights; while "bad faith" describes the dishonest or obstructive way someone approaches the dispute resolution process. Land grabbing is considered a crime under Section 92 of Uganda's 1998 Land Act (Cap. 227), which states that "a person who... makes a false declaration in any manner relating to land" or "wilfully and without the consent of the owner occupies land belonging to another person"... "commits an offence." Notably, however, the Penal Code Act does not mention land-related crime or theft, robbery, or grabbing of immovable property. This discrepancy is problematic. See J. Akin (2014), *"Power & vulnerability in land dispute resolution: Evaluating responses to domestic land grabbing in northern Uganda"*. A publication of the Northern Uganda Land Platform.

2 Reproduced in abridged form from a Namati and LEMU 'Lessons from the Field' brief, available at: <https://namati.org/resources/lessons-from-the-field-how-to-determine-appropriate-responses-to-encroachment-on-communal-lands/>

3 All individuals' real name have been changed for confidentiality purposes.



A woman explains the importance of guarding against future encroachments on her community's common land. © LEMU

2. Opportunistic: These individuals take advantage of a lack of strong management structures for the common land. Weak land governance and leadership often mean that there are no punitive consequences for appropriating community lands in bad faith, so opportunistic individuals may “try their luck” by moving onto the community land and waiting to see what happens. In most cases, these people are following the example of “ringleader” encroachers and, when questioned or challenged, assert that they will only leave the land when the lead perpetrator leaves. If confronted, they may either abandon or intensify their encroachment.

3. Vulnerable (Impoverished): These individuals are often elderly, displaced, poor, or internally displaced people (IDPs) from the conflict in northern Uganda who have no alternative place to live. These individuals have moved onto the community land to settle or subsistence farm. Once their encroachments are exposed, they are usually willing to leave if an alternative living arrangement is provided. On rare occasions, these people have genuine use or access rights to the common lands, but are breaking community rules regarding settlement and farming in the common grazing lands. An example of this is an elderly widow in Okeng Community (Oyam District) who gladly left her settlement on the community land once other members agreed to construct a house for her on a nearby plot of land, where she could settle and cultivate.

Each kind of encroacher warrants a different strategy. The case study described below describes a deliberate encroacher, and details LEMU's efforts to support the community to evict him from their common grazing lands.

BEYOND THE ENCROACHER OF THE MOMENT: THE CASE OF BAR KITWE

In 2013, LEMU began working with the community of Bar Kitwe, consisting of 17 villages located east of Lira in Amolatar District, to protect its communal grazing land. In the early stages of agreeing and defining the boundaries of their common lands, the community found itself in serious conflict with one of their own, a man named “Olet.” Olet had expanded his fields into the communal land, reducing the area available to the community for cattle grazing and collection of firewood, water, building materials, wild fruits, and herbs. Olet’s encroachment directly threatened the livelihoods of a number of villagers, including elders.⁴ The community and LEMU agreed that the community needed to resolve this dispute before moving forward with the community land protection process.

Many years before, Olet had been exiled from his native community after repeatedly encroaching upon land belonging to others, including an elderly widow. Banished from his community, Olet came to Kitwe by way of his paternal uncle, who gave him a piece of land on which to cultivate and settle. He was a welcome member of the community, winning a seat on the Village Local Council committee and assisting in enacting community-wide rules barring individuals from selling or encroaching on communal grazing lands. But in 2010, Olet began to cut down shrubs and construct buildings for his two wives within the clearly marked and agreed-upon boundaries of the community grazing land. When rebuked by community members and elders, he agreed to return to his legitimate home site in Kitwe, provided he could have time to conduct much needed repairs on his dwellings, which had fallen into disrepair. The community assented, but rather than perform his obligation, Olet continued to farm and build in the community land.



Discussion about land disputes can escalate quickly in community meetings. © LEMU

⁴ Communities depend on their communal grazing lands for many livelihood resources such as; pasture and water for animals, building materials, timber, water for domestic use, wild fruits and vegetables, edible insects and birds, recreational activities and craft materials.



LEMU'S INVOLVEMENT

Responding to a LEMU radio public service announcement in 2011, the Amolatar District Environment Officer contacted LEMU and referred the Kitwe case. LEMU visited Kitwe in April 2013. Through interviews with clan leaders and local government officials, LEMU gathered information concerning the history of the community land and the ongoing dispute. During a community meeting to introduce LEMU, Olet threatened the community and demanded compensation of 50 million Ugandan shillings for his efforts to “clear the bush.” Community leaders responded by demanding that he should leave the land immediately.

As is typical in many land grabbing cases, Olet attempted to intimidate community members with violence and on several occasions also threatened LEMU staff with witchcraft and violence. He even went so far as to attempt to frame Kitwe villagers for burning his home. On May 14, 2013, Olet sought legal aid from another local NGO, misrepresenting LEMU as causing his vulnerable situation. The organization filed a suit against LEMU for criminal trespass on Olet's behalf, but after LEMU explained the situation, the NGO dropped the suit.

LEMU continued to work in Kitwe at the request of the community, assisting all 17 stakeholder villages to map and agree on the boundaries of the communal grazing land. But due to increasing hostility between Olet and the community, LEMU withdrew from Kitwe, fearing for the safety of its staff. LEMU's withdrawal emboldened Olet, who claimed victory over what he claimed was illegitimate NGO influence. Olet's behavior now increased from land grabbing to theft: stealing farm implements and animals from his neighbors who, seeking to use the community land, found themselves “trespassing” on Olet's “private” land. Tensions mounted until one day in June 2014, when Kitwe community members informed LEMU that the community was preparing to lynch Olet. The community had become impatient with the dispute resolution system and demanded action. Concerned for Olet's safety and the stability of Kitwe, LEMU returned to the community to assist and monitor a community hearing to resolve this longstanding dispute.



Left: LEMU supports communities to document, debate, and agree on community land management rules to protect their natural resources and avoid land conflicts. © LEMU

Above: A community elder shares the history of the community land to help inform agreement on boundaries and management rules. © LEMU

A NEW STRATEGY

Recognizing the urgency and potential for violence, LEMU appealed to the Resident District Commissioner (RDC)⁵, District Lands Officer, District Environment Officer (DEO), and District Police Commander (DPC), to intervene swiftly and effectively. LEMU notified and gathered local government and police officials to Kitwe for the emergency meeting. At the meeting, the community— now with the backing of the RDC, DPC, and DEO—issued Olet an ultimatum of two weeks to remove himself and his buildings from the communal grazing land. He was ordered to stop cultivating the encroached lands, return any stolen tools and animals, and to never encroach again. Should he be found cultivating communal lands again, he would be arrested and imprisoned according to the Provisions in Section 92 of Uganda's 1998 *Land Act*.

This strategy seemed to have the desired effect in the short term. Previously, Olet had disregarded the community's warnings and LEMU's efforts to mediate the dispute because he knew that an NGO has no legal mandate to evict encroachers. *"Yes, let's go to court, where I know the issue can take even more than 100 years before being resolved. By then, all of you will be dead,"* Olet had declared.⁶ By bringing a team of District leaders and officials, LEMU changed the game. Olet realized these authorities were acting within their mandates, and that he had to leave. He even signed a resolution written by the RDC stating that he would leave his encroachment in two weeks' time. The people of Kitwe were now fighting Olet's illegal power with legitimate power.

Three weeks after being ordered to leave the communal lands, however, Olet remained defiant. He claimed that the judgment did not give him enough time to remove himself and his two wives from the land and sought the help of a lawyer, claiming wrongful eviction by the community. In July 2014, leaders from Kitwe returned to the RDC and LEMU, reporting that instead of leaving the land as promised, Olet had begun to cultivate an even larger section of the grazing land. After the involvement of many actors, the dispute is still not resolved and the community's land rights remain vulnerable.⁷

5 The RDC is appointed by the President to serve as his representative in each district. The RDC is chief executive, primarily responsible for security issues in his jurisdiction.

6 Olet was involved in an earlier court case between him and a community member bordering the community land. When the judge dismissed the case without costs, Olet returned to the community celebrating that he had "won the case", later even holding a "Thanksgiving" service at church. This disappointed the community, who felt that they could not rely on such a corrupt justice system.

7 Research by J. Akin (2014) shows that compromises reached through alternative dispute resolution often fall short of protecting land rights because they do not address the underlying culture of impunity on the ground. This is especially apparent in situations where parties exhibit defiance or predatory motives. For such cases, some kind of *appropriate* dispute resolution (ADR) is needed. Since mediation and alternative forms of dispute resolution rely on parties' willingness to negotiate in good faith, cases involving 'bad faith' and land grabbing—where powerful parties deliberately exploit someone else's vulnerability in order to illegally claim land—pose a serious challenge for local land rights practitioners like LEMU.



ANALYSIS: POOR GOVERNANCE IS OFTEN AT THE ROOT OF LAND CONFLICTS

Moving forward, the Resident District Commissioner has requested that LEMU provide a legal opinion on the Kitwe case so that his office can pursue the case in the justice system. This represents an important “win” for community land protection: a district official is taking up his role to protect community land rights by using official legal channels. LEMU is continuing to advocate for appropriate action by law enforcement.

Even with the challenges of this case, this approach has several key strengths. First, LEMU was able to quickly assemble District officials to address the situation when it turned critical because LEMU had built relationships with the officials and they genuinely supported LEMU’s mission and the community’s demands for justice. LEMU fostered and modeled responsive governance and respect for the rule of law by channeling the demands and needs of the community to the responsible government office. LEMU does not strive to solve problems directly on behalf of communities; rather, LEMU aims to strengthen the rule of law and accountability of leaders by connecting communities to state and non-state resources and offices mandated to protect their land rights. This approach is ultimately more sustainable and empowering for communities.

However, through the case of Kitwe and others like it, LEMU has learned that conflicts over community lands are typically symptoms of a larger problem: lack of effective intra-community governance. Without community-agreed rules and management structures in place, any dispute resolution is ad hoc and temporary at best. The decision by District officials in this case entrenched divisions between Olet and the community by creating “losers” and “winners.” The decision was imposed and not internally negotiated or motivated, and as such did not ultimately solve the conflict. As the LEMU staff working with Kitwe observed, *“A change of heart is more sustainable than following orders. Yet this is not easy in cases of bad faith—the softer you are with people like Olet, the more time you give their encroachment to grow roots.”* LEMU has found that simple verdicts, like the one in this case, that leave encroachers to reintegrate into their community after a prolonged and painful dispute is both risky and complex, especially where no rules or governance structures are in place to manage the community land.

To address this, LEMU is working with Kitwe to address governance gaps, challenging community members to channel their frustration into a process of drafting a comprehensive set of rules and electing a representative committee to govern the communal land. To motivate this work, LEMU explained that although Olet is the encroacher ‘of the moment’ there will be future encroachers unless Kitwe can establish strong and effective community land governance mechanisms.

LEMU has also learned that it is necessary to keep every stakeholder (government, courts, police, and community members) involved in a land dispute-resolution process. Land governance and leaders' accountability is weakened significantly when any stakeholder is left out of the dispute resolution process. In order to identify all stakeholders and support their involvement, it is necessary to understand and respect both the context of the land dispute and the history of the community. Taking the time to build strong rapport with the community—much of which involves listening to and incorporating communities' needs and ideas—is essential to a successful result. Such efforts require sensitivity and adaption to community dynamics.

ENCROACHMENT CONFLICT ASSESSMENT: TOOLS AND RECOMMENDATIONS⁸

Based on its experiences in the field, LEMU has developed a process and tools to analyze encroachment conflicts when one is encountered during the early stages of the community land protection process. LEMU staff undertake the following analysis steps and use that information to determine appropriate next steps.

1. Identify the Type of Encroacher (vulnerable/ impoverished, opportunistic, or deliberate).

LEMU analyzes the type of encroachment, based on the three categories described previously, using the following sources of information:

- » The history of the land claim and all related and associated land transactions;
- » The history of the dispute;
- » Whether the perpetrator shows any “warning signs” of intent to defraud or abuse the land rights of the community (for example, demobilizing or refusing to attend community meetings, threats of violence, uprooting of boundary trees, refusal to honor agreements made, or the use of abusive language when challenged);
- » Statements from elders and community members about the encroachment; and
- » Whether there is any perceived “power” which the perpetrator is using to make the community vulnerable and unable to defend itself against encroachment, and the source of that power.

⁸ The following recommendations are reproduced in abridged form from a Namati and LEMU ‘Lessons from the Field’ brief, available at: <https://namati.org/resources/lessons-from-the-field-how-to-determine-appropriate-responses-to-encroachment-on-communal-lands/>



After completing this analysis, LEMU takes the following actions to address the situation, depending on the type of encroacher:

2a. If the encroacher is vulnerable/impoverished or opportunistic, continue the “strategic deferral” approach. In this instance the clans, Community Support Persons⁹, and Local Councilors should support their communities to vision for the future of their community land, draft rules for administration and management of common areas, and elect a land and natural resource management committee. The management committee can then facilitate mediation/conflict resolution sessions using the community-agreed rules. Once an agreement is reached, the parties should sign an MOU attesting to the agreed boundaries, plant boundary trees, and draw a sketch map of the disputed land. If this approach fails to resolve the conflict or if the conflict worsens, LEMU begins to treat the case as if the encroachers are “deliberate.”

2b. If deliberate, investigate where the encroacher’s power comes from and counter it. Confront any remaining (or future) encroacher’s power with legitimate power, built quickly so as to not allow time for extensive demobilization of community participation in community land protection efforts. To build this power base, continue to advocate that the National Environment Management Authority (NEMA), District Environment Officers, and the police to intervene in the case. At the community level:

- » Support community members to seek enforcement by state law authorities. In Uganda, the relevant authorities include the District Environment Officer (for cases involving wetlands), the National Environment Management Authority, and police. With community members and leaders, LEMU staff document and share the facts of the encroachment case with these authorities, and bring their attention to national laws that mandate them to act to protect community lands owned under custom.
- » Support the community to file a representative suit in court or in a Land Tribunal, if state law enforcement does not help. This is a last resort option, as litigation takes a great deal of time and money, and there is a risk of judgments going unenforced. Alternatively, a community may ask to take the case before the Resident District Commissioner (RDC). While this representative of the President does not have legal authority to decide land cases, this appeal to political power may sometimes pressure resistant encroachers to leave “voluntarily” after the RDC gives a warning.

Meanwhile, continually seek ways to reconcile the deliberate encroacher or to inspire a change of heart to ensure harmony in the community even after a court or administrative judgment.

⁹ Community Support Persons are trained community members who function like grassroots paralegals to help their community navigate the Community Land Protection process and motivate them to complete each stage.

3. Continue to build “mass power” from multiple angles. It is important to confront any remaining (or future) encroachers’ power and influence with legitimate power from a unified community. This collective power must be built quickly, so as to prevent demobilization of community efforts in the land protection process. To do this at the community level, LEMU recommends:

- » Conducting visioning exercises at the village level to involve more people and build a broad base of awareness and support (working with clan leaders and Local Councilors);
- » Using the radio to publicize cases where individuals voluntarily leave land that they have grabbed in bad faith; celebrate these people and encourage other encroachers to vacate the land willingly. This may increase social pressure on deliberate and opportunistic encroachers, making them stand out from the rest;
- » Continuing to support the community to draft and adopt rules for the administration and management of their common lands and elect a strong land management committee; and
- » Community power should also be strengthened with support from external authorities.

CONCLUSION

Resolving conflicts over community land is not always easy and may require sustained pressure from all angles. A community must be committed to sacrifice time and energy in order to secure their land from ongoing encroachments. In some cases, encroachers voluntarily leave when confronted, but in others, intervention by state law enforcement authorities is necessary, and is mandated by law.

There is no one-size fits all strategy to resolve community land encroachments. Rather, LEMU tailors its response based on our assessment of the situation on the ground. It is particularly important to understand what is motivating encroachers and the strategies they use to protect their interests. LEMU uses a framework of three categories of encroachers (“vulnerable”, “opportunistic”, and “deliberate”). Based on which type of encroacher is involved, LEMU either attempts to defer the conflict resolution process until the community can address it internally or, if the conflict threatens to seriously undermine the community’s land protection efforts, LEMU takes a more involved, proactive approach to addressing the conflict.

LEMU is continuing to test and monitor its encroachment conflict assessment tools and approaches. Informed by further field experiences, LEMU plans to further refine its responses to encroachment conflicts so as to most effectively foster authentic peace, governance, and protection of community lands and resources.

CASE STUDY**2.2****USING TRADITIONAL SOLUTIONS IN LAND
CONFLICT DISPUTE RESOLUTION IN LIBERIA**

BY ALI KABA & ROWENA HNEDE GEDDEH,
THE SUSTAINABLE DEVELOPMENT INSTITUTE (SDI)

For information on the Sustainable Development Institute, please see the SDI case study in Chapter 1.

WWW.SDILIBERIA.ORG

NATIONAL CONTEXT IN LIBERIA

Liberia is a major hotspot for land and natural resource grabs: a January 2013 study found that over 5.1 million hectares (almost 54% of Liberia's landmass) have been granted or promised to investors through concessions agreements for agricultural plantations, mining, logging, and production of rubber and palm oil.¹⁰ Of these, 5.02 million hectares of land (98% of total concession area) have been allotted to transnational corporations.¹¹ Demand for land remains high and communities across Liberia are under increasing pressure to make deals to lease their community lands to investors, often on very unfavorable terms. Given this context, there is an urgent need to strengthen community's rights to and governance of their community lands and natural resources.

Local land governance in Liberia was weakened by two protracted periods of civil war, from 1989–1996 and 1999–2003. The conflict damaged the social fabric of rural communities and significantly destabilized community leadership structures in rural areas. Community leaders' authority and ability to manage resources and mediate local conflict was severely undermined. In the years since the civil wars, poor local land and natural resource governance has contributed to growing tension and competition over resources, both within communities, between communities, and with private investors.

¹⁰ Rights and Resources Group. 2013. Investments into the Agribusiness, Extractive, and Infrastructure Sectors of Liberia: An Overview. Washington DC: RRG.

¹¹ Ibid.

In 2013, Liberia passed a new policy to protect customary community land claims, which has encouraged communities to demarcate their land claims. However, the social upheaval and displacement experienced by current generations during the civil wars, as well as the loss of community elders and leaders, means that the process of agreeing upon the boundaries of community lands is often fraught with conflict. As such, much of SDI's work on community land protection focuses on conflict resolution and the harmonization of boundaries between communities.



Members of the Sihan Clan Land Governance Council plant boundary marker trees along their agreed boundary, Rivercess county. © SDI

CASE SUMMARY: A COMPLICATED ENCROACHMENT

From 2009 to 2011, SDI worked with two communities in Rivercess County to harmonize the boundaries of their customary community lands. Just as boundary negotiations were about to conclude, it emerged that a family from community A had planted a plot of tree crops in an area that the boundary negotiation teams had agreed belonged to community B. The family from community A was a prominent and powerful family in the area and insisted that they would only support the boundary agreements if the land where their farm of valuable tree crops was located was granted to community A. This was in spite of the fact that the historical boundary line (a body of water) clearly placed the land as belonging to community B. The dispute with this powerful family threatened to destabilize the boundary agreements that had



taken months to negotiate, which would have caused widespread frustration with the process and potentially escalated into serious conflict between the two communities.

SDI'S RESPONSE: REDISCOVER TRADITIONAL SOLUTIONS TO LAND DISPUTES

At first, SDI kept a hands-off approach to mediating the dispute, preferring to let the communities and their community-based paralegals attempt to resolve the conflict themselves. SDI visited the two communities on a monthly basis, meeting with each separately to discuss progress on the boundary harmonization and conflict resolution attempts. In these meetings, SDI staff facilitated problem-solving processes to identify what was blocking progress in the mediation. The initial emphasis was on providing community members and leaders with additional conflict mediation training and encouraging the two communities to find win-win solutions.

However, after months of difficult meetings with no progress, the two communities both asked SDI to intervene more directly. Based on discussions with community leaders, research on the dispute, and insights from the community-based paralegals, SDI staff decided that the best way forward was to have the communities invite a party of respected, neutral individuals from outside both communities to mediate the dispute. Together with the two communities, SDI staff identified and invited respected elders from the region to a series of special conflict resolution meetings, held in both communities.

In meetings with community A, where the encroaching family lived, SDI staff facilitated sessions about the benefits of being fair and honest in boundary negotiations. They encouraged the community to think creatively about how to resolve the dispute by looking at solutions used in similar situations. For example, SDI pointed out that in this region, it is customary to allow 'strangers' from outside a community to ask a community to use land. SDI asked the community whether it might be possible for a family or individual from a neighboring community to ask to use land in this way. In this way, SDI encouraged community members to think about other land governance practices to search for alternatives to claiming the land in a case of encroachment. Facilitators kept these conversations abstract and hypothetical in order to encourage creative problem-solving without fear that ideas would be immediately applied to the particular dispute. The visiting respected Elders added other suggestions from other communities and traditional practices, such as paying a token for the encroachment.

In meetings with community B, SDI emphasized the benefits of having harmonized boundaries and documented community land rights, benefits that would be at risk if the dispute over the small contested area continued. Staff also explained that under Liberian land law, it is possible to own land but have others have rights to use it, like with a lease, in order to encourage the community to think of possible compromises that would allow them to keep ownership of the land but allow the family to continue to farm their tree crop.

After many meetings that explored and discussed different solutions, the communities were drawing closer to finding a resolution. SDI organized a large meeting with Traditional Chiefs from different nearby communities in order to reach an agreement on how to solve the conflict. The Traditional Chiefs agreed that the land belonging to community B but also that the tree crops belonged to the family needed to be respected, ideally in a clear agreement between the two communities. They suggested that the land be registered as belonging to community B, provided that community B agree to allow the encroachment with use of token payments from the family. They suggested that the family pay this token each year after harvest, in form of a cash payment and a portion of the food crops harvested from the land that belonged to community B. Under this arrangement, the family would be allowed to use the land for their crops but community B would retain the underlying claim to the land. The token payment symbolized that the family recognized that the land belonged to community B and that community B was granting them permission to use it for their tree crops.

The family and both communities agreed to this proposal and the community gathering witnessed the agreed boundary. To date, the boundary agreement is still holding and the family has paid the token as agreed upon. However, the agreement did not specify the exact bundle of rights that the family now has over the land, such as whether the family has the right to exclude individuals from community B from accessing the land or gathering plants or other resources growing on the land. It may be that specifics of this informal 'leasing' arrangement will need to be clarified in future years, but for now the communities are satisfied with the arrangement and inter-community relations have improved. SDI staff continue to check in on the communities to monitor the situation and it is hoped that now the communities' greater capacity for conflict resolution will help prevent any relapse of the situation. SDI staff hope that this positive outcome and experience of working together to resolve this dispute will be enough of a foundation for the two communities to negotiate through potential future challenges to the arrangement.

ANALYSIS

There are several reasons why this strategy was successful. First, the larger effort to harmonize the two communities' boundaries so that they could secure their land rights created pressure to solve the conflict. Both communities wanted their boundaries recognized and were devoting a great deal of time and effort towards achieving this objective. Therefore, the larger goals and benefits of the community land protection process greater positive incentives and reasons to address the land dispute. The fact that the dispute was connected to a larger process meant that the wider community became involved in discussions about the situation, creating opportunities for more people to provide input and suggestions. Typically a dispute like this would be left to the families involved, where the disagreement can easily get more adversarial or gridlocked. Having both communities involved helped to diffuse tensions, created peer pressure to be reasonable, and maintained



a focus on the overall positive goals of resolving the dispute, not just for the families involved but for the benefit of both communities. On a related note, many alternative and innovative solutions to the dispute were identified during community brainstorming sessions and conflict resolution trainings. The respected elders who helped mediate the dispute provided many ideas for solutions and helped generate pressure for the dispute to be resolved.

Another consideration is that the conflict resolution process that SDI helped to facilitate did not insist on clarifying all aspects of the arrangement in detail, as would likely have been required if the dispute had gone to court. All the parties could agree to the informal 'lease' arrangement, based on the customary practice of paying tokens of respect and thanks. This was a workable solution and SDI did not push the parties to negotiate all potential legal clauses - such as exclusion rights - out of concern that it might strain the already lengthy process or make the communities nervous about hypothetical impacts of the agreement and withdraw from the proposal.

Several lessons from this experience now inform SDI's work and point to recommendations for other organizations facing similar situations. First, the experience shows that with time and targeted support, communities can address even complicated, protracted boundaries disputes without going to court when they are given the opportunity, incentive, and skills. SDI strongly believes that practitioners should allow communities to undertake conflict resolution efforts themselves. However, when communities are unable to make progress after months of sustained effort, then outside organizations can play an important role in facilitating resolution. Communities may ask directly for intervention and assistance, or it may be more indirect. In this case, community members and leaders tried for months on their own, but after making no progress they expressed their frustration to SDI staff, such as saying "We've tried everything we can think of and still the other side is not listening, and we really want to solve this." At this point, SDI staff and the communities' paralegals decided that both sides wanted and could benefit from assistance to solve the problem.

Second, this case highlights the importance of personal interests in community boundary disputes. It is now part of SDI's strategy to identify all the key actors linked to a particular boundary conflict, and to ask respected members of the community to meet with these individuals to help understand their perspectives and help convince them to participate openly in the mediation process. It seems that in disputes like this case, a key part of reaching a resolution was the involvement of others who were not party to the dispute, including respected elders from neighboring communities. These other actors can provide helpful perspective on the dispute, create positive peer pressure to find a resolution, and help the disputants to see different options for solutions.

Third, SDI has learned that conflict resolution processes often take time, and the process of conflict resolution should be allowed to take its course. Interventions may be smoother when they are tailored around existing or customary conflict resolution instruments and structures in the community.

Fourth, SDI has learned that mediation efforts should explore a wide range of different scenarios and potential solutions - including customary dispute resolution arrangements, which are highly resilient and adaptable to contemporary challenges. Potential solutions should be explored generally and hypothetically to avoid getting caught up in the specifics of the case at hand or inflaming emotions.

By offering parallel examples, asking community members to think about other similar disputes, or reflecting back on general land governance practices and principles, SDI created space for people to think creatively and discuss many different approaches to resolving the situation. SDI strongly recommends that any facilitating or mediating organization not impose a solution or even strongly recommend one, because agreements are stronger when the solution comes from the communities themselves. The general process that SDI follows in cases such as this is:

1. Listen to all the parties involved in the dispute;
2. Allow them time to discuss among themselves;
3. Allow them to invite trusted community members or neighbors to help explore the situation;
4. Involve respected elders from both communities;
5. Do not pass judgment on potential solutions;
6. Consider having the community/communities establish a boundary harmonization team, consisting of elected men, women, youth, and elders, that can help bring the parties together for discussions; and
7. Provide training on conflict resolution and mediation skills and strategies.

Finally, the community-based paralegals that SDI had trained were central to resolving the dispute. These community members were a source of detailed information about the situation that SDI staff would not have known otherwise, and they advised SDI staff about the complexities and inter-personal and inter-community dynamics involved. The paralegals were also key to moving the conflict resolution process forward and encouraging their communities to commit to finding a solution. SDI relied on these local actors, and let them lead the process as much as they were comfortable with, including planning for meetings, facilitating sessions, and developing a strategy for involving external elders. SDI strongly recommends working closely with a small team of trained local community members when navigating a challenging conflict resolution process such as this case.



A woman signs her community's boundary harmonization MOU, Rivercess county. © SDI

CASE STUDY

2.3



RESOLVING HISTORICAL INTER-COMMUNITY BOUNDARY CONFLICTS IN MOZAMBIQUE

BY NELSON ALFREDO, **CENTRO TERRA VIVA (CTV)**

(TRANSLATED BY MARENA BRINKHURST, NAMATI)

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THE BOUNDARY CONFLICT BETWEEN GUICONELA-GUIFUGO AND PAINDANE

The Mozambican *Lei de Terras* sets out requirements for representative and inclusive participation in natural resource management decisions, including community self-definition and identification of boundaries. However, it is not uncommon for boundaries between communities to be contested – sometimes in the form of active conflicts, and other times as simmering, long-standing historical disputes. When two communities have very different ideas about what belongs to which community, settling on an agreeable definition of ‘community’ may require long and extensive conflict resolution efforts.

The communities of Guiconela-Guifugo and Painsane are located along the coast in the District of Jangamo. They are separated by a common boundary identified by massaleiras trees and concrete markers. In the past, before Mozambican Independence, the community of Guiconela-Guifugo was led by a man named Thowane who had the habit of forcibly violating the wives of men who had gone to work in the mines in South Africa. A subset of the community revolted against this behavior, and banned Thowane from entering their area. As part of the revolt, the community members living in this area seceded from Guiconela-Guifugo to become part of Painsane. Painsane thereafter counted this zone as part of its community, collecting taxes from residents, registering voters, and performing all other administrative duties. Guiconela-Guifugo, however, never accepted the zone’s secession, and considered the area to have been “invaded” by Painsane, albeit with the consent of the residents themselves. Over the ensuing decades, the communities had tried to resolve the matter, but negotiations always ended in death threats shouted between leaders. The boundaries remained fuzzy and flexible and for many years this was a workable stalemate.



The seceded zone became a point of conflict during the boundary harmonization exercises. Multiple meetings - some including emotional testimony recounting the trauma that led up to the succession - were necessary to arrive at a mutually-agreed solution. CTV's field team provided mediation support on a number of occasions. After much discussion of the origins of the schism, CTV led the communities to agree that the zone would thereafter be considered part of Paindane. However, while Guiconela-Guifugo argued that the boundary line between the communities was the road linking the city of Jangamo to the sea, Paindane did not agree. Representatives of both communities went to walk the boundary limit. They spent three days progressing along the boundary, stopping to confirm agreed limits and resolve disputed areas.

The final point of contention concerned a large stone in the middle of the Indian Ocean called "Guissimiane." The leaders of Paindane argued that the stone was considered to be part of their community. The leaders of Guiconela-Guifugo maintained that this stone was a cultural site for their community, where their ancestors had performed traditional ceremonies. After much debate, it was revealed that there was an investor interested in developing a tourism venture along the beach, and so both communities wanted to claim the beach as theirs to reap any potential benefits of the investment. When CTV asked the leaders of Paindane if they were aware of the cultural significance of the rock to Guiconela-Guifugo, they conceded that Guiconela-Guifugo had ownership rights over the rock and the beachfront. With this concession, the boundary conflicts were resolved, and the two communities thereafter held a large celebration to mark the end of what had been a generations-old dispute.

The problems with community self-definition in Guiconela-Guifugo and Paindane were rooted in a historical dispute that had never been resolved. While boundary negotiations between Paindane and Guiconela-Guifugo had been attempted several times before, the new conflict was more intense because of the arrival of tourism investors. This new opportunity for financial gain and new external pressure reduced the sense of flexibility



Left: CTV staff and community members document disagreements about boundary locations. © CTV

Above: An example of a community sketch map. © CTV

about boundaries that had previously accommodated a stalemate. Now the leaders of the two communities were much more sensitive about protecting and increasing their own interests. The conflict became about more than the historical grievance, but these were used as an emotionally powerful rallying point to encourage opposition to compromise.

Another interesting aspect of the conflict between Paidane and Guiconela-Guifugo was the power wielded by the people residing in the seceded zone. Their views on which areas belonged to which community proved highly influential; primarily because the implications of the decision would determine which community the families belonged to. Many families had strong positions about which community they belonged to, beliefs that were rooted in the historical grievances. The presence of these families in the seceded area meant that the territory became, in practice, part of Paidane, even though there had been no formal agreement. This was further strengthened by the fact that there is no legislation that requires a person to pay tax to one particular community over another, so the families formalized their allegiance to a community by deciding where to pay their taxes. Over time this further legitimized areas as belonging to a particular community. The respect granted to the families' right to choose their community assisted in resolving the dispute.

LESSONS LEARNED

In its efforts to support the resolution of inter-community boundary conflicts, CTV has learned several lessons:

- » **Try remedies other than litigation whenever possible.** When the dispute is rooted in a long-standing historical grievance, as in the case of Guiconela-Guifugo and Paidane, CTV has found that mediation and conflict resolution is more effective than litigation at reaching a lasting solution, especially when two communities need to co-exist in close proximity.
- » **Harmonize boundaries before considering investments.** The experiences of Guiconela-Guifugo and Paidane highlight how important it is that community boundaries are properly organized and harmonized before implementation of any project or investment within a community's lands, if at all possible. Otherwise, the existence of investment may worsen a boundary conflict with neighboring communities and make conflicts much harder to resolve.
- » **Unite internal forces around resolving conflicts.** A major challenge with the Guiconela-Guifugo and Paidane case was the prevalence of internal leadership conflicts within Paidane. During CTV's mediation of the conflict it became apparent that there was an internal movement seeking to discredit the current leadership. This faction organized a wave of opposition to all agreements that the leaders reached with Guiconela-Guifugo and kept sending them back to the negotiating table. CTV realized that it needed to facilitate internal unity within Paidane as part of the larger conflict mediation strategy.

CHAPTER

3



STRENGTHENING LOCAL & NATURAL RESOURCE GOVERNANCE

“On ne développe pas; on se développe.” (We are not ‘developed’ by others; we develop ourselves.) – FRÉDÉRIC DJINADJA, TOGO

Threats to community land and natural resources rights do not always come exclusively from outside: regional and local community leaders are often key actors in situations that undermine community tenure security. Unethical, corrupt, or ignorant leaders may transact lands that communities depend on for their livelihoods with little or no consultation with the community. As in the Namati case study in Chapter 5, there are ample reports of chiefs redefining their customary stewardship of land as actual “ownership,” and then selling common lands for their own profit.

Poorly governed, disempowered communities that lack intra-community mechanisms to hold leaders accountable to good governance often suffer most from injustice, land conflict, and bad-faith land appropriation by outside elites and investors. Positively, community land protection efforts that support communities to establish systems for transparent, just, and equitable governance of community lands can help to combat mismanagement of community lands, unsustainable natural resources use, and local elite capture. Such efforts may also strengthen women’s land rights by helping to ensure that women and marginalized groups contribute equally in community land governance.

Advocates can support authentic local land governance changes by helping communities to establish intra-community mechanisms to ensure good governance, intra-community equity, sustainable natural resource use, and authentic community approval for all transactions with outside investors. Various strategies may achieve these results, including:

- » **Drafting community by-laws for good governance of land and natural resources.** Many advocates work with communities to reinvigorate and improve local rules for community land administration and natural resources management. For example, *Namati* and its partners facilitate a process of community by-laws drafting where communities collectively brainstorm all existing customary/indigenous or local rules

in current use and rules followed in the past. Facilitators provide legal education on national law and international human rights law, and leave the community to debate their draft rules – adding new rules, deleting rules that are no longer useful, and changing rules so that they adequately address current community needs and context. The rules include specific provisions on governance structures, decision-making processes, implementation and enforcement mechanisms, and instructions for how community members can hold their leaders and representatives accountable. When the community feels as though their updated rules are complete, a lawyer reviews the by-laws to ensure that they do not contradict national law or human rights. The final by-laws are adopted by a community-wide vote:

- » **Creating Biocultural Community Protocols (BCPs):** BCPs are a community-developed documentation of a community's custom and legal rights under national, regional and international law. BCPs record and assert customary laws, community values, and local decision-making processes, particularly those concerning stewardship of lands and resources. BCPs are intended as a tool for ensuring that external actors respect community rules and governance processes. Although each community protocol is adapted to its local context, it is generally a community-led instrument that promotes participatory advocacy for the recognition of and support for ways of life that are based on customary, sustainable use and management of ecosystems.
- » **Supporting community-driven endogenous development and planning efforts:** Endogenously-driven development initiatives are designed, led, and controlled by the community itself, drawing on the community's own concept of "development." Endogenous, community-driven development leverages each community's own strengths, desires, visions and plans for its future, aligned with the community's own specific cultural, spiritual, and socio-economic traditions. Because endogenous development processes have been designed by the community to reflect the community's own needs and strengths, project implementation is often enduring and resilient, with long-lasting positive impacts throughout the community. Endogenously-driven development efforts frequently leverage traditional knowledge, which can help to restore and strengthen the community's culture and heritage and enhance respect for traditional leaders and customary governance systems. When well done, endogenously-driven development can empower communities, build community capacity, and strengthen community expertise.



Fully participatory community-by-laws drafting processes, BCP's, and endogenous development efforts can result in a variety of positive impacts, including:

- » **Systems to improve local leadership and hold community leaders downwardly accountable**, such as: establishment of term limits, periodic elections for leaders, criteria for impeachment, and rules about what decisions leaders may make versus what decisions must be made by the community as a whole (such as whether to lease an area of land to an investor).
- » **Greater democratic participation by community members in land and natural resources management decisions** that previously were made by leaders without community consultation.
- » **Increased transparency and equality in local rule enforcement**, due to the creation of consistent norms, standard processes for reporting and enforcement, and clear, publicly known penalties for infractions.
- » **Stronger rights for women, youth, and members of minority groups**; Women, youth, and minority groups have opportunities to: question discriminatory customary practices, successfully advocate for rules that strengthen their rights, be elected to governing bodies, and participate in decision-making processes.
- » **Improved conservation and management of natural resources**: In these processes, community members remember, revive, create and implement rules to ensure conservation and sustainable natural resources use, such as instituting fees for harvesting scarce resources and fines for misuse of resources.
- » **Stronger foundations that support future community prosperity**: Participatory governance processes also increase community capacity to vision, plan for, and actualize community-defined local development and negotiate fair, prosperous partnerships with outside investors.

The case studies in this chapter illustrate the importance of accountable, transparent governance of community lands and natural resources, as well as successful strategies that can help support communities to successfully address corrupt leadership and plan for their own, endogenously-driven development. In Liberia, the *Sustainable Development Institute* supported the Duah community to challenge their leaders' unilateral approval of a massive land lease to a dubious Liberian company. After community members publicly challenged their leaders and reminded them of their recently-adopted rule that required full community consultation before agreeing to land deals, the leaders cancelled the deal with the company. In Togo, *Auto Promotion Rurale pour un Développement Humain Durable* worked with the community of Ibefo to undertake a highly participatory community development and planning process that included: formation of a Village Action Plan Management Team; mapping of community lands and resources; community-led diagnosis of local concerns and issues;

identification and prioritization of solutions; and establishment of an annual community-wide meeting to evaluate implementation to date and plan next steps. To date, Ibefo's community-driven approach to village development has resulted in the community clearing a road to market and reforestation of the hills surrounding the community. And in South Africa, the *Legal Resource Centre* led a highly participatory national advocacy campaign to defeat the proposed "Traditional Courts Bill" that, if passed, would have given traditional leaders free rein to punish or silence community members who challenged their decisions.

Emerging from these case studies are several considerations and recommendations relevant to efforts to strengthen local governance and promote endogenous-driven development:

- » **Learn about the community and its worldview before taking any action.** Taking time to learn about how a community is organized, what it believes, and who holds what powers and influence can help to create a strong foundation of trust, respect, and awareness. Advocates' efforts to learn about a community's local knowledge and expertise will help to acknowledge that field staff and community members both have complementary expertise to share with one another. Such learning can also help motivate communities to reclaim, revitalize, and use their existing knowledge, structures, processes and resources to lead their own development processes.
- » **Develop a nuanced understanding of external factors that undermine community-driven governance and development processes.** These include: policies that favour corporate interests; top-down technical or bureaucratic policies and systems that are imposed upon communities (and ignore local knowledge and ideas); and factors that weaken a community's cultural heritage. Practitioners must skilfully navigate these dynamics and creatively find ways to support communities to maintain their culture, traditions, and practices in the face of external pressures.
- » **Make sure the process is fully participatory.** Local governance changes (such as drafting community by-laws, BCPs, or endogenous development plans) should be discussed and agreed by the entire community, not just a small group of elders and elites. If the by-laws, BCP or plan reflect the ideas of only a few elites, the community will likely not respect them. All community members, including women, men, youth, elders, traditional leaders, seasonal users and members of minority groups should be invited to all meetings and encouraged to actively participate.
- » **Remember that leaders' interests may differ from community members' interests.** Community opinions may differ from leaders' priorities and personal goals. To address this, build direct connections with community members to ensure that continued community support is possible even when leaders act against community interests. Respected and trusted community members can help advocates to identify key actors who might play a lead role in community-driven by-laws drafting processes and endogenous development efforts.



- » **Pay attention to internal power dynamics and elite capture** within the community, encouraging the participation of a wide cross-section of the community, and supporting less powerful community members to ensure their voice is heard and have a say in community decision-making.
- » **Be aware of relevant national, regional and international laws, policies and standards** that support a community's right to set its own governance rules, drive its own planning processes, and determine the course of its development on its own terms. Be ready to leverage these laws to protect community authority and autonomy.
- » **Support community members to identify their own strengths, assets and powers** and identify ways that these may be used in local land and natural resource governance and community development efforts. Participatory activities like community resource mapping can help communities take a broad view of their local resources and expertise.



Symposium participants shared and brainstormed numerous strategies for supporting more accountable local governance of land and resources in Africa.

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CASE STUDY

3.1



PROMOTING INCLUSIVE & ACCOUNTABLE COMMUNITY GOVERNANCE IN LIBERIA¹

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LAND INVESTMENT DEALS IN RURAL LIBERIA

Liberia currently has one of the highest land concession rates in Africa.² Between 2004 and 2009, the government granted or re-negotiated land and forestry concessions totaling 1.6 million hectares – over 7% of the total national land area.³ 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.⁴ 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.”⁵ In January 2013, another study estimated that over 5.10 million hectares (almost 54% of Liberia’s landmass) had been granted or promised to investors through concessions agreements.⁶ Of these, 5.02 million hectares of land were allotted to transnational corporations.⁷ In addition, Liberian investors and local elites are acquiring vast amounts of land at unprecedented rates; such acquisitions often happen

1 Reproduced in abridged form from a Namati and SDI ‘Lessons from the Field’ brief, available at: <https://namati.org/resources/lessons-from-the-field-holding-leaders-accountable-and-ensuring-community-participation-in-land-transactions/>

2 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> August 2011 at 62.

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

4 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).

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

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

7 Ibid.



quietly and are not included in national estimates. Communities across Liberia are under increasing pressure to lease their customary lands, often under unfair circumstances characterized by corruption and asymmetries of information and power between community members, the state, and investors.

In light of the pressure on land in Liberia, the *Sustainable Development Institute (SDI)* and *Namati* 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 that hold leaders downwardly accountable, resolve conflict, and secure the land rights of women and other vulnerable groups.



Left: Traditional leader in his community's forest, Rivercess county. © SDI

Above: Women share their perspectives and concerns about Duah land deal. © SDI

GOVERNANCE CHALLENGES RELATED TO LAND ALLOCATIONS

Elders and traditional leaders play significant roles in negotiating and allocating land in most rural communities in Liberia. Traditionally, town elders, working along with quarter chiefs, made decisions on land and natural resources. Interventions by the national government in the 1950s integrated town elders into the structure of the state system for local governance. Elders became responsible for signing tribal certificates, one of the first steps to move public land into a private claim. In many communities elders, as members of the customary governance structure, are also responsible to resolve land disputes in their respective communities. However, over the years the process of allocating rural land in Liberia has suffered from a weak regulatory framework, manipulation by powerful elites, and asymmetries of power and information between community elders, the state, and external actors.

A common source of frustration among communities in rural Liberia is that while elders hold the power to decide most land-related decisions, including leases and allocations, most are not experienced with or trained in negotiating contemporary types of land deals such as large-scale land transactions for plantations,⁸ or speculative land deals by local and national elites. Furthermore, years of civil war and mass movement of people between towns and cities have left many rural communities fragmented. For example, in some communities, there are tensions between the youth and elders about governance and resource management. Sadly, it is not uncommon for elders and traditional leaders to allocate large areas of customary land 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, if the decisions are not made through inclusive or accountable processes they often fail to account for the full range of impacts on community land use and livelihoods.

THE CASE OF DUAH CLAN

For over three years, Namati and SDI had been working with the Duah Clan community in Rivercess County to protect their customary land rights. The community had successfully:

- » Mapped their lands;
- » Met with neighbors to resolve boundary conflicts and agree on harmonized boundaries;
- » Signed Memoranda of Understanding (MOUs) with neighbors and planted boundary trees to document boundary agreements;
- » Drafted community bylaws and a natural resource management plan to govern the administration and management of their lands and natural resources; and

⁸ It is worth emphasizing here that the national government has initiated most large scale land transactions to date. As part of the process, local leaders/traditional authority are coerced to sign on these transactions.



- » Democratically elected a Land Governance Council to oversee community land management.⁹

All members of the Duah community took part in these activities, adhering to agreed “ground rules” of full participation, inclusivity, transparency, and consensus-based decision-making. Furthermore, Duah’s newly-elected Land Governance Council and various community members benefitted from SDI trainings on conflict resolution and sustainable resource use and management, as well as legal education workshops on national laws and international agreements on land and natural resources.

However, in late 2013 the Duah Clan faced a significant threat to their land protection 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”, at vaguely defined rental rates of US\$2.50/hectare for the government and US\$5.00/hectare for a “Community Development Fund.” The investor asked the elders to sign a vague 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. 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 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 became “worried” but were unsure how to proceed. Directly confronting traditional power based is a very sensitive taboo in many rural communities in Liberia. Fortunately, when more community members learned of the investor’s activities and the signed MOU, several members of the community decided to alert SDI, who immediately researched the situation and organized a community meeting.

⁹ In SDI and Namati’s community land protection methodology, the Land Governance Council is a representative, participatory community institution that oversees the management of community land and natural resources. The Council is a product of a community-wide democratic process, including elections of membership and the drafting of clear administrative mandates established by the community as a whole.

COMMUNITY INTERVENTION

In October 2013, SDI facilitated a series of meetings in Duah to discuss publicly the details of the situation. When the Lion Growth Ltd. deal was uncovered, SDI staff obtained a written copy of the MOU and provided the Duah Land Governing Council and trained community members with information on the details of the agreement. SDI staff explained the estimated acreage of the clan's land, illustrating how the terms of the deal would cover literally all of the Duah's lands and potentially dispossess community members from their homes and farms, leaving them nowhere to live and practice their livelihoods.

SDI staff, the Land Governing Council, and the trained community members also reviewed Duah's bylaws (written and agreed to by all community members) as well as the role of the Land Governing Council in community land governance. The Duah bylaws mandate 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 Governing Council and include the active participation of all land owning towns in Duah Clan. SDI staff advised the Land Governing Council to approach the elders who had signed the investment contract with a collaborative, educative approach (rather than a confrontational or accusatory approach, which would have exacerbated the power struggle between the elders and the Land Governing Council). Based on these discussions, the Land Governing Council and trained community members decided to organize a meeting with their elders.

The public meeting took place three months after the original MOU was signed. It was hosted by Duah's Land Governance Council with endorsement from the elders. At the meeting, the leaders who had signed the MOU were asked to explain their actions and what they understood about the agreement. The Land Governance Council and trained community members then explained the meaning and implications of the terms of the MOU. The expressed their fears that the deal would make the investor the owner of "all of Duah." One of the elders who had opposed the original deal stated that "We don't know how much land we have [so] how can we give people all that land?"

Various community members also stood up and questioned the elders and the Land Governance Council, asking them why such a deal had been allowed to proceed, especially with no consultation with community members. The community then publicly reviewed the community's by-laws relevant to decision-making about community lands and natural resources. During this process:

- » 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;



- » The community agreed that the Land Governing Council should be tasked with facilitating community meetings on land transactions affecting the community as a whole; and
- » Equipped with SDI's research and explanation of the MOU terms, community members 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.

The meeting made it clear that community members were opposed to the MOU and its implications. The community petitioned the elders 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 cancel the tribal certificate. 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.

Positively – and perhaps because of the Lion Limited Ltd. scandal, the Land Governance Council of Duah clan is now functioning smoothly and no new land disputes or attempted land transactions have been reported to SDI. Overall, it seems that Duah's experience strengthened and further legitimized the new Land Governance Council and community by-laws.



The leaders of Duah listen to the concerns and suggestions of community members. © SDI

LESSONS LEARNED

The concept and practice of downwardly-accountable, participatory governance is still new to most rural Liberian communities, where according to state-sanctioned paradigms, elders and traditional leaders have extensive authority over questions of land. SDI and Namati's work focuses on developing transparent, accountable community land governance systems, supporting inclusive community decision-making, promoting systems to ensure downwardly-accountable leadership, and teaching communities to interact with investors seeking land from a place of power and knowledge. However, integrating traditional leadership and elders into new, accountable and transparent local land governance mechanisms can be difficult.

The case of Duah highlights the potential for tension in the balance of power between existing community elders and newly created Land Governance Councils. In much of rural Liberia it is a serious taboo to directly challenge traditional authorities and elders. When elders continue to claim and exercise authority over land decisions, as in Duah's case, it is intimidating for the members of the new Land Governance Council and other community members to question them. In fact, until SDI visited Duah and explained the full implications of the MOU and reminded the community of their newly created by-laws and governance rules, most community members had resigned themselves to the fact that their elders had made the decision and there was little they could do to oppose the matter.

The community of Duah was able to avert the 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.

However, Duah's case highlights the importance of ensuring the 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 thriving success. SDI has learned that a strong working relationship between the Land Governance Council and traditional leaders is necessary to promoting accountability, inclusive decision-making and compliance with community by-laws.



The Lion Growth Ltd. deal also highlighted the importance of community education and awareness. 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.

However, it is concerning that major information asymmetries still undermined both the elders' ability to negotiate with Lion Growth Ltd. and community members' ability to participate in the negotiations. The elders negotiating the deal did not understand the extent of the land area involved, the value of the land to the community, or the serious implications the deal would have for local land use and access. Meanwhile, community members were excluded from the process, only learning about the MOU after it had been signed. In response, Namati and SDI have added new activities to the community land protection process to reduce the asymmetries of power and information that weaken communities' negotiations with investors. These changes include:

- » Ensuring that each community receives a GPS-recorded map of their territory and information on total acreage and understands how to assess the acreage requested by an investor;
- » A community land valuation activity to help communities measure the economic value of their lands and resources so they are better prepared to understand and negotiate land deals;
- » A training module focused specifically on teaching communities negotiation skills for communities; and
- » An "Early Warning System" phone number that community members can call as soon as an investor arrives in a community asking questions or seeking land, and then receive immediate legal and technical support over the phone and in person.

CONCLUSION

Community Land Governance Councils and the development and implementation of community bylaws are important aspects of efforts to improve community land and natural resources governance, as they provide mechanisms to increase the downward accountability of local leaders. However, it is important that local leaders and the new 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 a strong working relationship between the Land Governance Council, traditional leaders, and elders for promoting accountability, inclusive decision-making, and compliance with community by-laws.

CASE STUDY

3.2



SUPPORTING COMMUNITY-DRIVEN DEVELOPMENT IN TOGO

BY FRÉDÉRIC DJINADJA,

AUTO PROMOTION RURALE POUR UN DÉVELOPPEMENT HUMAIN DURABLE (ADHD)

(TRANSLATED BY MARENA BRINKHURST, NAMATI)

Auto Promotion Rurale pour un Développement Humain Durable (ADHD) is a community-based organization in Togo that has established a participative community development program for rural, land-locked communities in Togo that focuses on three components:

- » Strengthening communities' internal capacity, organization, and management;
- » Preserving and restoring natural resources; and
- » Improving living conditions through productive investments and socio-economic infrastructure.

ADHD implements the national Village Action Plan (PAV) program, which was created in 2002 to guide and support villages in the implementation of micro-projects. This program assists the population to take ownership of development programs by reinforcing local organizational and administrative capacities, as well as their capabilities to negotiate with financial institutions. In addition to supporting communities to build Village Action Plan-related structures for local governance, ADHD provides communities with targeted support to establish local 'by-laws,' which are rules that are both locally recognized and enforceable by local authorities. These rules help to ensure that the local system of governance operates transparently in its management of community affairs. As part of this process, ADHD provides training sessions and awareness-raising activities for community members and the community committees.

ADHD also works with communities to establish specialized thematic committees focused on environmental conservation, land, education, health, child trafficking prevention, water and sanitation, among others. ADHD has been a member of the International Land Coalition since May 2011.

WWW.LANDCOALITION.ORG/EN/MEMBER/ADHD



CONTEXT: COMMUNITY DEVELOPMENT IN TOGO

Since the 1960s, development projects in Togo have yielded mixed results. Until the 1990s, government ministries of Togo planned community development infrastructure in a centralized manner without consulting the communities involved. There was no follow-up once these structures were in place, so over time they were not used, both because they did not meet the peoples' needs and because they were insufficiently maintained. Despite massive investments of financial resources, failures were numerous, while successes were rare or at best uncertain. Analysis of the accumulated failed development projects in the region showed that effective empowerment of grassroots communities is an essential condition to increase chances of success. To address this, in 2007 the government passed a decentralization law that divided villages, communities and prefectures into local cooperatives to drive their own development process. A central part of the decentralization process is the government's official Village Action Plan Program (PAV). The PAV program involves establishing Grassroots Development Committees (CDB, comité de développement à la base), a Village Development Committee (CVD, comité villageois de développement), a District Development Committee (CDQ, comité de développement de quartier), Youth Committees, and Women's Committees.

ADHD currently works with rural communities to produce and implement Village Action Plans (PAVs). While these plans are meant to address national priorities related to improving education and health, ADHD's approach is to leverage the plans in order to support community-driven projects identified as priorities by communities themselves. Alongside efforts to construct health and education infrastructure in rural communities, ADHD facilitates community meetings and research to support broader community goals and needs.

CASE STUDY: IBEFO COMMUNITY

Ibefo is a small, isolated rural community in central Togo. Ibefo community members approached ADHD and invited ADHD to work with them: it was clear from the beginning and throughout the collaboration with ADHD that the community members of Ibefo were driven to achieve positive changes in their community and move forward with a community development planning process. Specifically, Ibefo community members wanted to address several local challenges by creating and implementing a Village Action Plan:

- » The nearest community health center is 12-15 kilometers away from the village and is a peripheral care unit managed only by a nurse. The women of the community do not receive prenatal care, largely give birth at home, and, once delivered, the infants do not receive adequate antenatal care. However, health centers are only funded if they can serve 5,000 people or more, so Ibefo has been unable to secure a health center for their community.

- » The school buildings in Ibefo are made only of beams and straw and are unprotected by walls, so parents often do not send their children to school during the rainy season.
- » Currently there is no road connecting Ibefo to transportation networks. People are forced to travel 20 km through grass and forest to carry their wares to the nearest market in Anié. In addition the community is isolated by a river, which makes it very difficult to access during rainy season.
- » Ibefo's local environment has been degraded by poorly managed slash-and-burn agriculture, over-hunting, and wildfires. Soil productivity has decreased as a result of inappropriate land management, and deforestation in the surrounded forests is a serious concern.

IBEFO'S COMMUNITY PLANNING PROCESS

ADHD's process for facilitating Village Action Plans follows five phases: Preparation, Background Study, Participatory Diagnosis, Planning and Drafting, and Implementation. The following section describes how ADHD facilitated the PAV process in Ibefo.

The "Preparation" phase of the work included the following activities:

- » **Meeting with partners, technical service providers, other NGOs and civil society associations.** Typically, this first meeting brings together all the organizations working within a community. However, no other organizations were active in Ibefo, so ADHD held a meeting with traditional leaders, members of the pre-existing Village Development Committee (who had become very influential as deputy community leaders), ADHD staff, and personnel from the state Institute of Technical Support (ICAT, l'Institut de Conseil et d'Appui Technique), which provides agricultural extension workers to support farmers in rural communities.
- » **Formation of a Village Action Plan Management Team:** At the first meeting, participants established a community-led management team for Ibefo's PAV process. This team was comprised of local leaders who live in the community. Its role was to support community mobilization for the PAV process, as well as coordinate the division of labor for the implementation of projects. At this time, ADHD formed a team of four staff to support the Ibefo management team and manage activities led by ADHD.
- » **Formation and Training of Local Committees:** Ibefo had previously established a Village Development Committee; however, the committee was largely ineffective as there had been insufficient training of its members. To address this, ADHD proposed to strengthen the existing Committee. ADHD provided capacity building training to help Committee members understand each specific role within the Committee (President, Secretary, Treasurer), as well as the Village Development Committee's overall role in the



development process of the village. ADHD staff also led discussions on the relationship between traditional leadership and Village Development Committee members.

- » **General Assembly:** The last preparation step is a large community meeting to call a “General Assembly” meeting to inform the entire village about the Village Action Plan concept and process. At this meeting, ADHD helped Ibefo community members to form a Youth Committee and a Women’s Committee, as well as various other thematic committees focused on environmental conservation, education, and health.

The “Background Study” phase of the work included the following activities:

- » **Participatory Mapping:** In Ibefo, ADHD facilitated a process of participatory map-making of the village and community lands in order to collect all relevant information on the use of natural resources, animal populations, plant production, environmental issues, the skills and technical capabilities of the community population, and how and where community decisions are made. Such participatory maps are also useful for collecting data on the use and functionality of equipment possessed by the community.
- » **Problem-Tree Analysis:** ADHD staff and the Village Action Plan Management Team used problem-tree assessments to collect ideas from the Ibefo community about issues and concerns in the community and explore a deeper understanding of the causes and potential future consequences of the problems.

The “Participatory Diagnosis” phase of the work included the following activities:

- » **Identification of Solutions:** In a series of community meetings, ADHD staff facilitated Ibefo community members to identify and discuss possible solutions to each problem identified during the problem-tree analysis.
- » **Prioritization of Solutions:** After identifying community-approved solutions, Ibefo community members prioritized the various brainstormed solutions to identify which efforts to undertake first.

The “Planning and Drafting the Village Action Plan” and “Adoption and Implementation of the Plan” phases of the work included the following activities:

- » **Detailing the Plan:** After the community of Ibefo agreed on their preferred solutions and priority projects, ADHD staff and the management team drafted details on the overall direction of the proposed development plans, as well as specific strategies, project tasks, conditions and restrictions, and the desired results for the implementation of the plan.
- » **Distribution and Review:** Copies of the draft plan were then shared amongst community members and meetings were held to discuss the details.

- » **Adoption:** Ibefo's management team organized a large community meeting to review, validate and finalize the PAV. This final agreement required collective analysis, clarification, amendment and final adoption of the document by a community vote.
- » **Implementation:** Finally, Ibefo's management team and ADHD staff embarked upon realizing the priority projects chosen by the community. This required raising funds, developing specific project and site plans, and organizing resources and labor to complete the projects.

As the Village Action Plan is implemented, there is an annual or mid-term evaluation phase, during which ADHD staff and Ibefo's community members assess progress made on the implementation of the activities identified. In Ibefo, evaluation meetings are held on the 15th of August every year. A final evaluation meeting will also be held at the end of the Village Action Plan's implementation. These evaluations identify what plans and work were completed, what efforts worked well, what efforts did not work well and why, and how to improve future efforts.



Women in Ibefo begin work on a resource map of their community. © ADHD



RESULTS AND ANALYSIS

Since beginning to implement its Village Action Plan, Ibefo has had several successful projects, and motivation for continuing with implementation is high. A trail to market has been cleared and marked, and vehicles can more easily reach the community, making access to the market and health centre easier. Community members have enjoyed a slight improvement in their living conditions thanks to these changes.

In addition, Ibefo community members identified that they wanted to establish a green belt around their village to support reforestation and conservation of forest resources on community lands. Another community-identified action is the creation of a community park of over 30 hectares to conserve biodiversity.

Ibefo also established an annual community “Citizens’ Day.” The first gathering was celebrated August 15th, 2014 – the date chosen to evaluate implementation effectiveness to date. All Ibefo citizens were required to travel to Ibefo to participate in the community celebration, regardless of social status or location. During the day, members of the community gathered to celebrate and get to know one another, and to discuss development issues and choose a priority action to work on for the coming year. Each member of the community left the celebration knowing he must help (physically or financially) with the implementation of this action before the next Citizens Day. This year, the chosen action was to build several community latrines to avoid open defecation, the source of many diseases. Ibefo’s annual Citizen’s Day is evidence of strong community unity.

However, Ibefo community members and ADHD staff have identified the following three challenges to the Plan’s successful creation and implementation:

1. Low-capacity among community leaders: The first obstacle faced while designing the Village Action Plan in Ibefo community was the low-capacity of community leaders and the difficulty of identifying suitable training and support techniques. Many traditional leaders have a low level of education and so it can take a long time for them to learn new materials, especially if they are presented as written resources instead of discussions. It was very difficult for leaders and the management team to master the administrative and financial management tools that ADHD had prepared for capacity building sessions, and more difficult still for them to apply those skills on their own. Thus, ADHD spent a lot of time helping the leaders to understand how to use the tools provided. As well, there were very few literate individuals in the community and as a result meeting minutes were not often taken during process meetings and activities. ADHD staff had to develop continuing education supports and repeatedly stress the importance of recording every community meeting and all decisions so that the process could be transparent and accountable to both the public and project funders.

2. Lack of consensus: The second obstacle was the difficulty of reaching consensus among the whole community on any proposed project or development. Despite efforts to incorporate all viewpoints in the preliminary phases of developing the Village Action Plan, various community members holding contrary opinions only accepted proposed solutions under peer pressure from the group. This emerged as a problem during implementation when these individuals then tried to discourage people from engaging with the project by speaking against it and conveying false information about it to the community. To overcome this obstacle, the management team and ADHD staff engaged these individuals directly to discuss the projects and help them understand the proposal and why the community had identified it as a priority. Another strategy used successfully was to give the dissenting individuals responsibility for implementing parts of the Village Action Plan so they could feel ownership over parts of the process.

3. Lack of financial resources: Togo is still emerging from a long socio-political crisis that suspended international cooperation and resulted in aid agencies pulling their financial support out of communities. It is therefore very difficult to mobilize financial resources for projects. To overcome this difficulty, ADHD often collects contributions from community members to fund projects, or focus on actions that do not require much funding. Sometimes the lack of funds for Village Action Plan initiatives means that actions cannot be properly implemented at all.

LESSONS LEARNED

The Village Action Plan process has laid a strong foundation of community unity and motivation to support community land protection and natural resource management efforts. Because the PAV process is based on active community participation, it is a very good tool for local management of land and natural resources. ADHD staff and paralegals intend to integrate land and resource management planning into ongoing collaborations with Ibefo's management team in order to inform community members about land laws and the necessary steps to formally register land with the national government. ADHD's vision is to leverage the PAV process to lead to community action plans for land and natural resource management.

In the course of helping Ibefo to establish a Village Action Plan, ADHD learned the following:

- » Development and implementation of a Village Action Plan is often very complicated and requires working carefully with all members of a community, not all of whom have the same level of understanding about the plan. It is important to work with a wide variety of community members, including traditional leaders, youth, women and influential elites living outside the community. The results of successfully implemented PAVs can be spectacular, but there is also the potential for them to fail, also spectacularly. In these challenging cases, it is important to continue to support a community with consultation and mediation efforts in order to resolve the various problems that can hinder the successful take-off of local development projects.



- » Always fully engage the community in development activities or community projects. In ADHD's analysis of projects that have been unsuccessful, a primary reason for challenges was insufficient involvement of community members in the design phase of the projects. Always keep in mind the adage that says "on ne développe pas; on se développe" (We are not developed by others; we develop ourselves).
- » Community work is a matter of endurance, patience and tact, especially when adapting to the rhythm of organization in the community. You cannot establish a strict timetable to comply with, as is the case in the implementation of other types of projects. It is important to respect that working authentically with communities takes a great deal of time.
- » Committed participation by community members is critical to successful collaboration with a community. Community members' effective participation helps to build sustained motivation and commitment - individuals see themselves as important and necessary to the process's success. Such commitment and personal involvement helps organizers and community members stay in regular communication with ADHD staff, even outside of specific development actions.
- » The capacity building of community members in management, mobilization, fundraising and resource-collection, monitoring, and evaluation skills is central to community-led development efforts. It is very important that the community takes responsibility for these roles if the actions are to continue sustainably.
- » It is necessary to work closely with state and civil society organizations that are engaged in endogenously-driven development. Yet it is also necessary to avoid complicating efforts by collaborating with too many technical partnerships. When too many players are involved with a development project, there may be overlap, wasted resources, and conflicting strategies that may reduce community members' motivation for completing the projects.



Left: Ibefo community members on a community hillside reforestation project. © ADHD

Above: A community-organized road building project in Ibefo. © ADHD

BOX 2 TOOLS FOR SHARING & MAPPING INDIGENOUS KNOWLEDGE

By Simon Mitambo, African Biodiversity Network



African Biodiversity Network (ABN) is a regional network of individuals and organizations that seek African solutions to the biodiversity threats facing the continent. ABN focuses on reviving communities' ecologically-based indigenous knowledge, practices, and governance systems. In Eastern Kenya, ABN worked with the Tharaka community to secure recognition for the community's sacred natural sites and resources along Kathita River in the semi-arid foothills of Mount Kenya. ABN promotes this effort through two methodologies: Community dialoguing and creation of eco-cultural maps and calendars.

Community dialogues create space for elders to fulfill their vital role as the custodians of indigenous knowledge, allowing them to revive their memories and share traditional beliefs and practices with the community. In particular, community dialogues draw elders and youth together to support the inter-generational transfer of knowledge. Due to colonization, globalization and prevailing forms of Western education, Tharaka children grow up distanced from their traditional cultures and elders and as a result are gradually losing their connections with their ancestors and natural environments. To address this ABN supported several community dialogue sessions and encouraged young community members to attend. ABN also trained young community members in tools and techniques for recording and safeguarding the knowledge of their elders before they pass on. Through community dialogues, the youth came to realize that community elders have invaluable wisdom acquired through years of experience and transmission from previous generations. The elders allowed the youth to document their words of wisdom for future reference, but make it clear that the key to understanding such living knowledge is to live it by reviving their indigenous knowledge and practices.

The "eco-cultural mapping and calendaring" strategy is a process for documenting and sharing indigenous ecological knowledge and supporting community-led management of biodiversity and ecosystems.¹⁰ In eco-cultural mapping efforts, a community creates simple maps using large sheets of blank paper and colored markers that represent how community members perceive their territory, including knowledge about how the landscape behaves and how community members interact with it. Communities create three maps: one of the landscape of ancestors in the past, one of the present and the changes that have occurred in the community's sense of modern time, and one of the community's shared vision for the future. Communities can add eco-cultural calendars to discuss and document seasonal changes and the dynamic nature of the landscape and activities on the land.

¹⁰ The "eco-cultural mapping and calendaring" strategy was originally developed by indigenous communities in the Colombian Amazon with support from the Gaia Foundation.



The process of eco-cultural mapping was a turning point for the Tharaka community in realizing how much biodiversity has been lost over time and the need to collectively reconstruct their territories in a more creative way. The process of mapping and calendar also built community confidence, cohesion, trust, and understanding of community concerns and wants. The mapping and calendaring processes affirmed the authority and responsibility of the community to govern and protect their indigenous territories and traditions. The process has also been useful as the Tharaka community works on assessing, analyzing and planning their governance and management of local ecosystems. The maps have also helped to bridge the gap between the Tharaka community and the government, by documenting the community's rich local ecological knowledge, demonstrating community members' commitment to protecting their ecosystems, and communicating the community's vision and plans for the future to government actors.

WWW.AFRICANBIODIVERSITY.ORG

CASE STUDY

3.3



RESISTING LEGISLATIVE EFFORTS TO UNDERMINE LOCAL GOVERNANCE IN SOUTH AFRICA

BY WILMIEN WICOMB,

LEGAL RESOURCES CENTRE (LRC)

For information on the Legal Resource Centre, please see the LRC case study in Chapter 1.

WWW.LRC.ORG.ZA

EMERGENCE OF THE TRADITIONAL COURTS BILL

The Traditional Courts Bill (TCB) was first introduced in the South African Parliament in April 2008. It followed the introduction of two other pieces of legislation purporting to give effect to and regulate the South African Constitution's protection of 'living customary law' – the law of the rural communities.

- » The first piece of legislation, the Traditional Leadership and Governance Framework Act, introduced in 2003, gave every indication that Parliament sought to protect the power of traditional leaders, rather than the people they are meant to serve and represent. The Act entrenched the distorted and illegitimate boundaries of so-called 'tribal authorities' (created by the colonial and apartheid governments) to facilitate separate development and ensured that these leaders would be accountable to government rather than to their people. Few communities or activists realised exactly how dangerous the Act was when it was first passed.
- » In 2005, the second piece of legislation – the Communal Land Rights Act (CLRA) – sailed through Parliament despite severe opposition from rural people. By that stage, the trajectory of rural democracy under the new Constitution was clear: power and decision making was centered in the hands of traditional leaders who could barely be held accountable by their "subjects." The CLRA, which formalised the transferral of control over land to traditional leaders, was challenged by four communities and declared unconstitutional in 2010.



Accordingly, when the Traditional Courts Bill arrived in Parliament in 2008, communities were far more aware of the dangers of seemingly “toothless” regulatory legislation. The Bill proposed to extend the powers of traditional leaders to make, administer, and dispense with the law within their communities, but it caused such an uproar that it was quickly withdrawn.

In 2011, an identical Traditional Courts Bill was reintroduced. It provided that anyone who refused to appear at the chief’s court when summoned was guilty of a criminal offence. It allowed forced labor to be meted out as a sanction and, worse still, for “customary entitlements” – which would include rights in land – to be taken away by the presiding officer. Given that the Bill envisioned very limited opportunities to appeal, the draft bill would effectively give abusive traditional leaders *carte blanche* to deal with dissenting voices as they wished.

It thus came as no surprise that the few rural communities who came to know of the Bill rejected it outright. Women’s groups in particular voiced their deep concern with the Bill’s lukewarm response to the very real discrimination against women in many existing traditional courts. In addition, some constitutional lawyers and activists bemoaned the fact that the Bill made no attempt to reflect the law as actually practiced on the ground (such as strong, bottom-up customary accountability mechanisms, rather than the exclusively top-down mechanisms set out in the Bill). Traditional leaders, on the other hand, made no secret of their reasons for supporting the Bill: without this law, they argued, they had no power over their communities and thus could not perform their “functions.”



LRC works with many remote and rural communities across South Africa that were concerned about the proposed traditional courts bill. © LRC

THE CHALLENGE

It quickly became clear that, unlike in 2008, the proponents of the 2011 Bill had every intention of getting it passed by Parliament at all costs. Given this, it would thus not merely be a matter of ensuring the rejection of the Bill at public hearings in Parliament - it would require an attack on multiple fronts. This would not be easy, however, for various reasons. The rural constituencies most deeply affected by the Bill lived in the provinces furthest away from Parliament in inaccessible areas where communication (other than text messaging) was near impossible. For urban and university-based activists to reflect the voices of these rural communities was not an option: given the politically contentious nature of the topic and the false, but nagging dichotomy of African vs. Western values pushed by some in government, activism had to be approached with particular care. In addition, the Bill did not offer the threat of clear cut abuses around which communities and organizations across a spectrum could easily unite; rather the real problem with the Bill was its position within the existing legislative framework and the implications of many of the provisions read together with existing legislation. Within this context, a thoughtful and coordinated strategy was required.

FORMING AN ALLIANCE AND DETERMINING AN ADVOCACY STRATEGY

A handful of the organizations most active in this field, led by the Centre for Law and Society at the University of Cape Town, decided to form the Alliance for Rural Democracy for this purpose. The Legal Resource Centre became the legal representative to the Alliance. The objective of mobilizing the Alliance was to provide a vehicle for many more organizations to support the struggle, even those that did not work on rural governance issues directly. It also meant that the Alliance could design a multipronged strategy to resist the passing of the Bill by drawing on the strengths of different organizations and delegating tasks accordingly.

As a first step, however, the organizations in the Alliance spent a day debating the focus of the struggle. The question emerged - should the focus be on the Traditional Courts Bill as a narrow issue or on the broader struggle for rural democracy? After broad discussions, the Alliance decided that it was better to pick a battle that could possibly be won - thus, the campaign focused on the passing of the Traditional Courts Bill only.

With a strategy decided, the Alliance initiated actions on multiple fronts: community-based member organizations raised awareness in communities across all the provinces about the Bill and its problems, mobilizing them to make comments to parliament and encouraging them to attend hearings. Endless workshops were held where more experienced organizations trained those entering the Parliamentary fray for the first time. Information went out through text messages, on community radio stations and, where appropriate, through email chains.



Other member organizations ensured that multiple opinion pieces and articles appeared in various newspapers as often as possible, in particular every time the Bill was discussed in Parliament. The strategy was to elevate a discussion about rural people – who are in many ways completely marginalized from the mainstream media – in the public discourse. The Legal Resource Centre and the Alliance used every possible opportunity to speak about the Bill and its impacts on rural populations on the radio or television. The trick was to find ways to communicate the nuanced and complex difficulties of the Bill and its potential impact on rural communities in ways that would appeal to listeners and readers unfamiliar with the legislation and rural realities. For this purpose, the Alliance tried to mix academic and activist pieces with human interest stories. For example, it profiled stories of women who had faced discrimination and traumatic experiences at the hands of chiefs and traditional courts, and who were now afraid of the Bill's potential to further concentrate the chiefs' powers. In the process, the Legal Resource Centre and the Alliance cultivated close relationships with journalists. As the Alliance got better at bringing its message across, more and more news outlets wanted to talk about it. Traditional courts became the hot topic of the day.

HARNESSING THE LAW

The South African Constitution provides that legislation that has impacts on certain issues, including customary law, must be passed by both the National Assembly and the National Council of Provinces. Both houses, and their committees responsible for debating the Bill, have independent mandates of public participation. As the lawyers to the Alliance, the LRC focused on ensuring that Parliament took its mandate in this regard seriously – and would not get away with simply “ticking the box” by holding meaningless public hearings only. The LRC studied the rules of parliament and all applicable legislation in intricate detail and wrote to whichever committee was seized with the Bill at any given time, reminding committee members of all their responsibilities and, in particular, pointing out to what extent their public participation procedure was inadequate. All the while, the Alliance dangled the threat of litigation if the process of public participation failed to pass constitutional muster.

The pressure from NGOs, CBOs and communities had a remarkable effect. The Select Committee of the National Council of Provinces tasked with considering the Bill held round after round of public hearings, apparently unable to choose between rejecting the Bill and risking the political consequences or pushing it through and facing the wrath of rural communities. These multiple hearings – some in Parliament in Cape Town and others in the various provinces – provided important rallying points for the Alliance's campaign. Members of the Alliance attended every single hearing, monitoring and making submissions at every opportunity and, importantly, ensuring that all discussion was recorded. If the Bill was passed these recordings would be crucial evidence to show that Parliament did not facilitate adequate meaningful public engagement.

In February 2014 the Parliamentary committee seized with the Bill at the time held a meeting to consider the views of the various provinces on the Bill. The Legal Resource Centre prepared a document reflecting the widely opposing views of the provinces expressed before the meeting, indicating that the Committee could never pass the Bill and pass constitutional muster. The document was circulated with committee members just before the meeting.

The meeting all but descended into chaos with various members expressing disbelief at the fact that the Bill was still in Parliament. Two Parliamentary committee members quoted directly from the document provided. Most remarkable was the fact that the objecting members represented all the political parties – including the ruling party. It was the first time since 1994 that the ruling party turned on itself.

After an abrupt end to proceedings, a quiet announcement followed some days later: due to an apparent ‘oversight’ the Bill had not been reintroduced in the National Council of Provinces at the start of the year and had thus lapsed on the basis of a technical knock-out. While this outcome denied rural communities the opportunity of a public celebration, it could do little to erase what was an exceptional victory for democracy.¹¹

ANALYSIS

This multi-pronged strategy – mobilizing the participation of rural communities, engaging in public advocacy, amplifying the “human voice” against the Bill, liaising with Parliamentary working groups, attending public participation workshops, using the media, all the while threatening litigation – was particularly important and useful in the case of the Traditional Courts Bill. Alliance member organizations knew from experience that simply objecting to a Bill in the absence of strong public opinion and real political pressure was worthless. The challenge was thus to explore innovative ways to publicly highlight the issues. Targeting media at all levels, and using a spectrum of voices – from affected women to respected academics – helped to ensure that the message resonated with different people in different ways.

At the same time, the Legal Resource Centre, as the legal representatives of the Alliance, insisted on keeping the Parliamentary debate within the confines of the law – regardless of the political storm brewing. This served two purposes: first, it ensured that whatever the outcome of the activism, there would always be a constitutional challenge as a backup plan. Second, it provided relevant politicians with an alternative if they had to save their reputations – they could ‘blame’ the law, rather than public pressure, for having to change their minds.

¹¹ In an address to the University of the Western Cape soon thereafter, former Constitutional Court judge Albie Sachs cited the victory over the Traditional Courts Bill as one of the most significant post-constitutional indications that the South African democracy is indeed alive and well.

CHAPTER

4



RESPONDING TO STATE-DRIVEN MEGA-PROJECTS, EXCLUSIONARY CONSERVATION, & FORCED RESETTLEMENT

“‘Success’ is achieved through dialogue and compromise based on respect for the constitutional laws that protect individual and community rights.” – SAVE LAMU, KENYA

Across Africa, governments have a long history of dispossessing poor, rural and/or indigenous communities from their customary lands to make way for mega-projects such as dams and ports, for infrastructure development, and for the creation of exclusionary national parks and wildlife conservation areas. Governments are also increasingly using their powers of compulsory acquisition to remove people from their lands to make way for mining or other natural resource extraction ventures spearheaded by private companies. These projects not only dispossess communities from their customary and indigenous lands: they also undermine people’s capacity to practice their traditional livelihoods, exacerbate poverty, degrade the environment, and frequently leave communities either homeless or living in resettlement schemes often characterized by lack of basic infrastructure and poor land quality.

In the case of national parks and wildlife preserves, it is not always necessary to evict people from their lands. Co-management of protected areas, parks and nature preserves is emerging as a solution that not only allows indigenous and local communities to remain on their land, but supports these communities to play a significant role in monitoring wildlife stocks, maintaining biodiversity, and defending against poachers, illegal loggers, and other unauthorized encroachers. As exemplified in the case study below from Namibia, such co-management schemes can protect community land and natural resource tenure security as well as create jobs and eco-tourism opportunities that promote traditional knowledge and community prosperity.

For state-led mega-projects and infrastructure development, multiple strategies can help to reduce the negative impacts on local communities. With sufficient forethought, extensive community consultation, appropriate problem-solving, and proper risk management, government infrastructure and mega-projects can be crafted in ways that do less damage and allow communities' ways of life to be protected and preserved.¹ States can work with communities and their advocates to have authentic, participatory planning processes and impartial Environmental and Social Impact Assessments conducted by scientifically rigorous, mutually agreed consultants. Furthermore, emerging technologies will allow state officials to crowd-source insights on how to minimize damage to local communities and the environment.² When mega-projects do go forward, advocates can work to ensure that states comply with national laws and international best practice standards of relocation and resettlement, which mandate that communities are resettled on land of the same or higher quality, served by the full range of essential services.³

The organizations showcased in this chapter use multiple strategies to ensure that government mega projects, investment-driven forced relocation, and large-scale conservation initiatives consider and respect community interests. The *Zimbabwe Environmental Law Association* successfully supported communities facing forced resettlement by the government and diamond mining companies to demand a slowdown of the eviction process until the companies developed appropriate infrastructure at the relocation site and provided appropriate compensation. In Namibia, *Integrated Rural Development and Nature Conservation* is working within Bwabwata National Park, supporting the Khwe San community to maintain their customary natural resources rights, pursue community-based natural resource management within the park, and create a community-based tracker-training program to support traditional knowledge and professional capacity-building of local youth. In Tanzania, the *Association for Law and Advocacy for Pastoralists* worked with a coalition of local, national and regional NGOs to stop the Tanzanian government from dispossessing Maasai pastoralists from their ancestral lands for a big game hunting reserve. And in Kenya, *Save Lamu* is working with a wide range of local populations to articulate and protect their interests in the face of the LAPSET mega-project, which threatens to dispossess them from their lands, degrade the environment, and hamper traditional livelihoods.

1 Keith, Simon, McAuslan, Patrick, Knight, Rachael, Lindsay, Jonathon, Munro-Faure, Paul and David Palmer. 2008. Compulsory acquisition of land and compensation. FAO Land Tenure Studies 10. Rome: Food and Agriculture Organization of the United Nations. <http://ftp.fao.org/docrep/fao/011/i0506e/i0506e00.pdf>

2 Levitt Cea, J & Rimington, J. Forthcoming. "Designing with the Beneficiary: An essential strategy to optimize impact." *Innovations*, forthcoming, Winter Quarter 2016, MIT Press; International Accountability Project. 2015. *Back to Development: A Call for What Development Could Be*. http://www.mediafire.com/view/zw1g9k4wr83jr5v/IAP_FOR_WEB_R013.pdf

3 For example, the Inter-American Development Bank's policy on involuntary resettlement dictates that "When displacement is unavoidable, a resettlement plan must be prepared to ensure that the affected people receive fair and adequate compensation and rehabilitation. Compensation and rehabilitation are deemed fair and adequate when they can ensure that, within the shortest possible period of time, the resettled and host populations will: (i) achieve a minimum standard of living and access to land, natural resources, and services (such as potable water, sanitation, community infrastructure, land titling) at least equivalent to pre-resettlement levels; (ii) recover all losses caused by transitional hardships; (iii) experience as little disruption as possible to their social networks, opportunities for employment or production, and access to natural resources and public facilities; and (iv) have access to opportunities for social and economic development." <http://www.iadb.org/en/about-us/involuntary-resettlement,6660.html>



These organizations employed a variety of tactics to achieve these results, including:

- » Holding legal education workshops to teach community members about their environmental, economic, social and cultural rights;
- » Investigating proposed or existing projects to collect details about the plans and/or impacts, with an aim of using the information to raise awareness and to put pressure on government and project proponents to engage in dialogue and/or to pursue grievance mechanisms;
- » Using the media to alert the public about the situation and shame the government;
- » Identifying and documenting rights violations by the existing or proposed project (especially if they are constitutional violations) and leveraging these to demand attention from government and international grievance mechanisms (where available);
- » Pursuing litigation/petitioning the court to issue an injunction to stop harmful state action;
- » Engaging parliamentarians/ministers to raise awareness about the situation in parliament;
- » Creating coalitions of local, regional, national and international advocates to jointly advocate against potentially damaging state action;
- » Writing open letters to the Ministry of Lands and other relevant high-level officials;
- » Leveraging international and national laws, as well as appealing to oversight bodies charged with ensuring that investments and mega-projects are properly carried out;
- » Leveraging global virtual advocacy mechanisms, such as online petitions (e.g. Avaaz.org);
- » Undertaking and evaluating pilot projects to prove that community-managed conservation areas are as well protected as state-managed areas;
- » Creating digital maps of community land and natural resource claims and use rights to illustrate the full range of communities' territorial rights;
- » Supporting community members to establish community based organizations run by community members, capable of leading future advocacy efforts; and
- » Documenting and collating, into accessible formats, extensive information on communities' cultures, heritage, identity, traditional practices and traditional knowledge, geographical boundaries, local concerns, development needs and impacts of proposed and existing changes to their environment.

Emerging from these case studies are several considerations and recommendations relevant to efforts to ensure respect for community rights and interests alongside state mega-projects, infrastructure development, forced resettlement, and wildlife conservation efforts:

- » **Use media strategically.** When challenging state projects, it is advantageous to be the ones to frame the narrative around the issue according to the community's interests and advocacy angle. When presenting facts to or through the media, ensure that all information is impeccable, correct, and well-cited. All the case studies in this chapter emphasize the importance of using concrete, verifiable, evidence-based information and data to enhance the integrity of advocacy efforts and attract media coverage. Be wary of embellishment for advocacy purposes as it may undermine the efforts' credibility.
- » **Seek out and leverage government allies.** When advocating against state projects that involve forced resettlement, it is necessary to convince state decision makers to protect the interests and rights of the affected communities. It is often possible to find sympathetic ears within government agencies and institutions and allies may be found in surprising places. It is particularly helpful to identify and, as described in the cases below, work with ministers and administrators who can advocate for community rights within the legislature and/or state bureaucracy.
- » **Explore a variety of creative and constructive responses.** Litigation or other head-on attacks against a large-scale project might not always be the most effective strategy. Advocates, communities, and their allies should explore variety of approaches to assert community interests and open dialogue with government and project proponents. For example, communities may want to propose alternatives or modifications to projects so as voice community concerns while also showing a willingness to engage in dialogue. There are many ways to add constructive information to a project plan, such as details on how projects can avoid, or properly compensate for, negative impacts on local livelihoods or how projects can protect local environments and the ecosystem services they provide.
- » **Train community members in advocacy and public speaking.** It can be immensely powerful for advocacy efforts to involve the affected community directly, rather than filtering their voices through NGO advocates. For example, the *Zimbabwe Environmental Law Association* trained community members in the skills and content needed to defend their legal and procedural rights in the face of a forced resettlement and then supported them to establish their own community-based organization to lead the effort to sue the government over the forced resettlement.



- » **When possible, support affected communities to speak with one voice, articulating an agreed set of interests and priorities.** When a proposed state mega-project will affect dozens of diverse communities practicing multiple livelihoods and spread across vast areas, it is likely that the affected populations will fragment across ethnic or tribal lines and/or other political divisions. As undertaken by *Save Lamu*, efforts to support all affected communities to find common ground and agree on a united advocacy strategy make it more likely that the communities' voices will be listened to.



Symposium participants presented on their experiences and strategies to challenge state-sanctioned displacement of communities. © NAMATI 2013

CASE STUDY

4.1



CHALLENGING STATE-SANCTIONED EVICTIONS & DIAMOND MINING IN ZIMBABWE

BY GILBERT MAKORE,

ZIMBABWE ENVIRONMENTAL LAW ASSOCIATION (ZELA)

The Zimbabwe Environmental Law Association (ZELA) is a public interest law organization that works to promote improved natural resources governance in Zimbabwe. The organization was formed in 2000 and legally constituted as a Common Law Trust in November 2001. ZELA works to promote environmental justice, sustainable and equitable use of natural resources, and good governance in the natural resources and environment sector. The organization works to help poor and marginalized communities assert and claim their environmental, economic, social and cultural rights. ZELA also seeks to ensure that environmental and natural resources management policies, strategies and legal frameworks respond positively to the needs of marginalized women, men and youths living in urban and rural communities. ZELA works across different environmental sectors such as mining, forest management, wildlife management, energy, land, agriculture, water resources management and environmental and social services delivery in urban areas.

ZELA is currently primarily working on the extractive sector in Zimbabwe. The organization is working with communities in Manicaland and those along the Great Dyke. The Manicaland communities are impacted upon by diamond mining operations while those along the Great Dyke are affected by gold, chrome, granite, platinum and diamond mining operations. In working with these local communities, ZELA conducts research, conducts rights awareness training meetings, assists the communities to self-organize, creates platforms for engagement between local communities and duty bearers (legislators, councilors, Rural District Councils and government representatives).

WWW.ZELA.ORG



COMMUNITY LAND RIGHTS AND MINING IN ZIMBABWE

Mining operations in Zimbabwe operate within an economic enclave that is de-linked from other sectors of the economy. The result is that mining operations impose high negative social costs on local community members, with very limited benefits. Communities in mineral resource-rich areas suffer from mining-induced irregular displacements, degradation of their lands and environment, loss of life and livestock to deep open pits left by mining operations, and loss of communal land and natural resources. Because local communities do not have strong communal title, mining companies typically fail to pay compensation to local community members in cases where they are displaced. The *Mines and Minerals Act* of 1961 also prioritizes mining over other land uses, further weakening communities' land rights. There is often perceived collusion between Government and mining companies due to Government's efforts to promote investments "at all costs." Indeed, the state is now playing an increasingly direct role in mining through establishing mining operations or claiming stakes in mining operations. This conflict of interest often results in government failing to protect the rights of local communities.

FORCED RELOCATION: THE STORY OF MARANGE

In 2010, the community of Marange faced forced relocation due to diamond mining operations. Initially 136 families were earmarked for relocation; the number of families has since risen to 4,321. The companies involved in mining projects included Mbada Diamonds, Diamond Mining Corporation, Canadile, Anjin, Jinan, Rera Diamonds and Marange Resources. The companies were looking to relocate communities without paying fair and adequate compensation and before the development of adequate social infrastructure (education and health) at the relocation site in Arda Transau.

The mining companies besieged the community, catching them unprepared to resist the eviction. There was no official notice given to the community members that were earmarked for relocation. Given the surprise, the immediate response was not a concerted effort to refuse relocation. Some community members accepted the relocation because they felt they had no choice and the community had not yet mobilised to resist the demands of the mining companies. Many were relocated forcefully, in the dead of the night or at gun point. Others resisted the relocation process and demanded fair and adequate compensation before they were moved.

The relocation process posed a serious threat to the health and livelihoods of local community members. The mining companies and complicit government officials threatened to relocate the communities to a farm just outside Mutare (Arda Transau) before housing, schools and clinics had been put in place. Some community members were initially settled in tobacco-curing barns because there were no housing facilities at the relocation site. This risked a potential health crisis due to the lack of sanitation facilities. The absence of adequate housing and the arbitrary, violent nature of the relocation process also meant human life

was at risk. In addition, once relocated, some community members lost livestock when they failed to adjust to the new environment. Some of the relocated community members also lost livelihoods as they had been primarily engaged in farming on lands that they now could not access.



Community leader in Marange describes the negative impacts of diamond mining and forced evictions that his community has experienced. © ZELA

ZELA'S INVOLVEMENT

ZELA's approach to supporting Marange was largely informed by ZELA's overall engagement strategies of research, training and capacity building, advocacy and litigation. ZELA began working with Marange as part of its legislative support project. Through this project, ZELA works with Members of Parliament from resource rich areas to strengthen their capacity to represent the rights and interest of their constituencies with respect to resource governance. The project also aims at strengthening the legislative and oversight roles of legislators in the natural resources sector. Project activities include creating platforms for legislators to interact and interface with local communities. One of the legislators who received ZELA's support under this project was the Honourable Shuah Mudiwa of Mutare West Constituency, the same area of the Marange diamond mine project. Through this connection, ZELA began work in Marange and expanded its programme of support in the area.



ZELA tailors its strategies based on community members' knowledge of their rights, the urgency of the situation, and the level of engagement by government and companies involved. ZELA began its work in Marange by conducting a rapid assessment of community members' knowledge of their rights. This was done in the community facing the relocation by holding focus group discussions and administering questionnaires. It is important to note that the community area was not easily accessible as it had been declared a Protected Area under the Protected Places and Areas Act of Zimbabwe. This meant that movement in and out of the community was regulated by the police and required official permission to travel. To gain access to the community, ZELA went as part of the Member of Parliament's entourage.

Simultaneous to the rapid assessment, ZELA also carried out informal enquiries and research to determine the government and mining companies' plans for the relocation. It was during this period that ZELA established that the relocation process was being done irregularly and with reckless abandon. There was no communication with the local community and announcements about scheduled move dates were inadequate. Some trucks showed up at homesteads and demanded that community members move immediately. In some cases notice was given but it was woefully inadequate. In addition, ZELA established that the community had not organised into a cohesive voice.

ZELA then began holding rights training workshops focusing on the communities' environmental, economic, social and cultural rights, particularly those violated by the relocation process and diamond mining activities in Marange. The idea was to build community confidence and overcome the environment of pervasive fear. At the same time, ZELA began generating media awareness around the situation in Marange in an effort to alert the Zimbabwean public about the situation and shame the mining companies and government. Generating media interest was an important and strategic role for ZELA to take because the unfolding situation in Marange was essentially shut off from the media due to Marange being rural and cordoned off as a Protected Area. In addition, media stories were important for catching the attention of the Kimberly Process Certification Scheme, the body charged with oversight over the sale of rough diamonds globally, of which Zimbabwe is a member. This was important insofar as it resulted in the KPCS intervening to stop the sale of Marange diamonds until various security issues were addressed.

ZELA impressed upon the community members of Marange the importance of self-organising and self-mobilisation. Armed with this information, the community members decided to establish a community based organisation (CBO), the Chiadzwa Community Development Trust (CCDT).⁴ This CBO was established with the support of ZELA and soon grew to be an incredible local force for resisting relocation. Community members began to coalesce around the Trust which in turn grew in voice and influence.

4 Chapter 5 includes a case study from CCDT concerning its efforts to protect women's rights and interests in the context of the diamond mining developments in Marange.

ZELA supported CCDT to take the government and some of the mining companies (Mbada Diamonds, Canadile Mining and the Zimbabwe Mining Development Corporation) to court. ZELA assisted the CCDT to file an urgent High Court application against the mining companies and various government departments. The goal was an official order to stop the Zimbabwe Mining Development Corporation, Canadile Mining, Mbada Mining, the Minister of Mines and Mining Development and the Minister of Local Government, Urban and Rural Development from carrying out relocations until there was clarity and agreement in terms of compensation for the displaced. It is important to note that while undertaking litigation, ZELA also pursued aggressive advocacy. The organisation engaged Parliamentarians to raise awareness on the situation in Marange and built up the resolve of the community to resist the relocation.

The urgent court application was dismissed by the High Court on the grounds that it was not urgent, since diamond mining had been ongoing in the area two years before the matter was brought to court. However, immediately following the case, the government and the mining companies increased communication with affected communities and began evaluating properties in Marange in order to provide compensation. There was also a stop to the rushed displacements that had preceded the court case and advocacy efforts of ZELA. In addition to the immediate response measures, Government and the mining companies began infrastructure development at Arda Transau. The mining companies have since built houses, schools, roads and other amenities at the relocation site. Some few people, particularly local business people, have also been given compensation. Even though the legal case was thrown out, it was successful insofar as it raised the situation in Marange to national prominence and forced government to respond.

REFLECTIONS AND LESSONS LEARNED

ZELA's support of Marange was successful because they used various strategies simultaneously. The organization used awareness raising, community mobilization, advocacy and litigation as part of its strategy arsenal. It is likely that pursuing one strategy would have failed to achieve the same results. It was combined pressure on a number of levels that forced government and mining companies to take notice of the issues experienced by the Marange community and those relocated to Arda Transau.

At the same time, another reason for ZELA's success is that ZELA worked closely with the local community members throughout. The organization worked to ensure its own obsolescence in the community by supporting the establishment of CCDT, the community's CBO, capacitating it and ensuring that it took lead in the litigation process. This also ensured that the community would build up self-confidence to challenge unjust systems, practices and laws in the future.



ZELA's multi-pronged strategy worked because the organization was fearless and creative in pursuing justice for the local communities. The situation in Marange was and remains highly political. There are many vested interests involved and Marange diamond mining is a politically contested terrain. The effect is that the environment is not one that is easy to work in. ZELA, however, was resolute in challenging government and the mining companies directly including through use of litigation.

While ZELA counts this case as a success, the organization recognizes that justice for the relocated community members has still not been fully realized. The schools that were built in the relocation area do not fully accommodate all children and most of the relocated families have yet to receive compensation. ZELA has therefore learnt the importance of sustaining its advocacy and litigation efforts to ensure the full protection and realization of community rights in the face of corporate and state projects.



ZELA staff members listen to Marange communities on a tour of the negative impacts their community has experienced from diamond mining on their lands. © ZELA

RECOMMENDATIONS

In a highly political environment (like Marange), it is necessary for any intervening NGO to gather factual data. This enhances the integrity of the organization and ensures that its intervention is above reproach. Where there is no evidence, there is a high likelihood that any claims of rights violations would be dismissed as sensationalistic.

It is also important to find sympathetic ears within government or institutions such as Parliament. These institutions are not monolithic. In the case of Zimbabwe, legislators within Parliamentary Portfolio on Mines and Energy became key allies in trying to expose the rights violations in Marange. This is despite the legislators coming from different political parties including the ruling party.

Pursuing various strategies is also important when faced with a case of continued rights violations. Litigation, in countries like Zimbabwe is costly and may take time. Communities are, therefore, likely to get disillusioned. It is therefore important to use multiple strategies while being wary of spreading the organization thin. A key strategy in this case may be leveraging local networks and alliances. ZELA worked with organizations such as Zimbabwe Lawyers for Human Rights in conducting some of the first rights training meetings in Marange. It was effective for the organizations to pool resources.

It is also important to ensure that the work is grounded in the local community. Research, advocacy and litigation efforts that are totally divorced from the actual community members do not galvanize the community and are not sustainable. In Marange, ZELA worked towards its own obsolescence by building up a cadre of community activists who took the lead on resisting relocation and holding the government to account.



Marange community members and ZELA present concerns about diamond mining activities and relocations to the government. © ZELA

CASE STUDY

4.2



TRANSFORMING CONSERVATION FOR LOCALLY-DRIVEN DEVELOPMENT & BIO-CULTURAL RESTORATION IN NAMIBIA

BY FIDI ALPERS,

INTEGRATED RURAL DEVELOPMENT & NATURE CONSERVATION (IRDNC)

Integrated Rural Development and Nature Conservation (IRDNC) works to support the Khwe San community in Bwabwata National Park (BNP), Namibia to protect their access to and benefits from the natural resources on their ancestral lands. Bwabwata was only recently transformed into a national park in 2007; as a result, there are high-level political and economic incentives that prevent the Khwe community from accessing their customary ownership rights to the lands themselves. Therefore, instead of asserting land rights as a strategy, the focus has been on empowering the community through a government-driven, community-based natural resource management programme (CBNRM). IRDNC uses a multilevel methodology to facilitate this process:

- » Engaging with communities through their traditional authorities and elders, gaining a better understanding of their roles, building trust and working with existing community processes;
- » Engaging with government through consistent, participatory approaches. IRDNC acknowledges its role as an NGO is to contribute regularly to policy and law-making, partly through discussions with government officials.
- » Engaging with community institutions and community-based organizations, to develop the leadership skills and potential of select individuals within the community who have a natural ability to lead and advance their community forward.

IRDNC is based on the ground and has been working with the same communities for many years, which has been key to building trust with both governmental and traditional authorities. When engaging with traditional authorities and communities, it is important that IRDNC's work is not imposed externally. Gaining legitimacy for IRDNC's projects while promoting respect for traditional authorities is essential, and this is achieved both by tapping into existing knowledge systems and drawing traditional authorities and elders into every project. Honoring the support of traditional authorities demonstrates to the community that their elders are valued and respected rather than irrelevant, which strengthens the traditional leadership structure and cultural core of the community.

WWW.IRDNC.ORG.NA

CONTEXT: INDIGENOUS KNOWLEDGE SYSTEMS OF THE KHWE SAN AND RESOURCE RIGHTS WITHIN BWABWATA NATIONAL PARK

The approximately 5,500 Khwe San residents of the Bwabwata National Park in Namibia have a rich cultural knowledge that has enabled them to subsist in the region's dry deciduous woodlands for centuries via hunting and gathering. In fact, an estimated 75% of their nutritional requirements are still secured from gathering wild resources. Traditionally, women were responsible for collecting wild foods and supplies such as reeds, grasses and wood, while the men hunted. Khwe elders can still recall chasing large wildlife species to the point of collapse from exhaustion, then returning home laden with kudu, eland or sable antelope meat for their families. However, in 1963 the area was proclaimed the West Caprivi Nature Park and several years later hunting was banned. This policy had a tremendously negative effect on the Khwe San community, as they simultaneously lost both the capacity to subsist independently on their ancestral homelands as well as a core element of their cultural identity.

For most indigenous peoples, traditional knowledge is a critical factor in the community's collective welfare and survival. Khwe San indigenous knowledge systems are based upon a traditional hunting and gathering lifestyle and ethos, and include expert knowledge about biodiversity and natural resource management. Various academics report that San trackers and hunters demonstrate a complex skill set, including an advanced ability to observe, qualify, and assemble facts about human and animal behaviour and the natural environment in a manner that surpasses the capacity of many professionals in western society.

However, most Khwe youth see indigenous knowledge as belonging to the previous generation and as having limited practical application in the modern world. The formal education system plays a central role in furthering this trend. First, because the Khwe San reside in remote locations, their children often must attend boarding schools in urban centers far from home. Separated for long periods of time from their families and the ways in which traditional knowledge is communicated, Khwe children are taught foreign systems of knowledge in a language other than their own. There is a gaping disjuncture between Khwe knowledge systems, teaching styles, and supporting social values and those associated with mainstream Namibian society and the formal education system. The end result is that San children feel alienated in Namibian schools and drop out prematurely, with their sense of self-confidence diminished and without the qualifications they need to get jobs in the formal sector. They often return to their rural settlements with a negative outlook on their own culture and value system.



A TEKOA guide from the Khwe San community leads a trek through Bwabwata National Park. © IRDNC

SUPPORTING ACCESS AND BENEFITS SHARING BETWEEN THE KHWE AND THE NATIONAL PARK

From 2005-2009, IRDNC had a formal mandate within Bwabwata National Park to help residents to establish a representative legal association and an integrated national park management program between the resident community and the Namibian Ministry of Environment & Tourism (MET). However, successful implementation of this shared governance institution has been a serious challenge. In the absence of a functioning co-management relationship, IRDNC has supported the Khwe community to advocate for, and receive, access and benefits on the land. The organisation and the community are strategically focusing on these rights as a first step, as there are high-level and political incentives and historical land issues that prevent the Khwe community from accessing their land rights.

Within Bwabwata National Park, poverty has fuelled some overharvesting of natural resources. To address this, IRDNC worked with and counselled traditional authorities (and thereby their communities) on this overuse. The community subsequently chose resource monitors to monitor sustainable use. Parallel to these community discussions, IRDNC also met with key government officials about the Khwe community in Bwabwata, discussing the need for community benefit-sharing as a method of sustainable conservation of the National Park. It became important for the community to prove and justify to the government that

wildlife and natural resources such as high value plants were being protected. The community's monitoring system became one way to provide evidence to the government that resources were well-kept and that monitoring of the use of these resources was actually taking place. The government, over time, came to recognize local efforts and has supported periodic game counts to provide further evidence of the positive impact of the Khwe community's sustainable natural resources management.

Community-driven documentation and monitoring of natural resources has been enhanced by using tools and methods to visually indicate on maps key features of natural resource use, such as access points and natural resource locations. Participatory resource mapping and zoning helps to generate discussion within and between communities. IRDNC has assisted communities to produce digital maps and share these with government. In the coming years, IRDNC and the community will present scientific maps on plant species and other resources and organize a harvesting trip with government to encourage government recognition of access to other resources.

IRDNC has also supported Khwe communities to negotiate for more equitable, empowered community-investor partnerships through liaising with government officials regarding the allocation of high value tourist concessions within Bwabwata National Park. Kyaramacan, a Khwe community-based organization within Bwabwata, has been awarded a high value tourist concession within the park that they wish to develop into a lodge. IRDNC is assisting Kyaramacan in ongoing negotiations between the government, investors and the community and in managing its contracts. This has included negotiation of three concession contracts between the government and Kyaramacan.

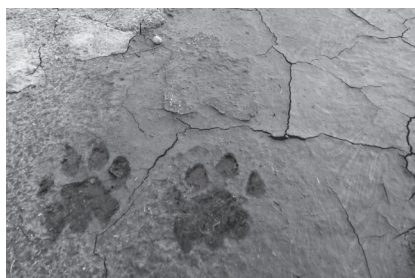
Overall, IRDNC has been successful in supporting communities to assert and use resource rights within the National Park. Five years ago, there was no legislation or policy allowing communities to benefit from natural resources within the park. With pressure on governments for communities to benefit from wildlife (through hunting, tourism etc.), and advocating for legislative change, the Khwe have piloted a system for community-based use and management of these natural resources. Community monitoring has created the data to prove that community resource use was not causing harm, which supported a legislative change and contract with the government to allocate hunting concessions within the park. This has led to an increase in the number of wildlife that can be sustainably hunted by community members, resulting in more meat and benefits for the community. There has been a direct correlation between better protection of wildlife (through monitoring and management) and better benefits for the community.



DEVELOPMENT OF THE TEKOA TRAINING PROGRAMME

During interactions with community members out in the bush, it became clear to the TEKOA founders that the real talents, passions and interests of the Khwe involved “walking and talking,” wherein elders lead community youth on walking trips into the wilderness while orally sharing, coaching and training them on Khwe cultural knowledge and values. Listening to the elders’ lessons during these trips revealed their heart-felt concern that as older members of the community passed away, rich cultural knowledge was being lost forever. After discussions with the community, support was provided to Khwe elder Sonner Gereia to attend workshops and to develop a community-led Traditional Environmental Knowledge training project in which elders could teach traditional knowledge to local youth in their own time, language, curriculum and setting. Tracking was chosen as the preliminary focus because it is one of the skills that is rapidly disappearing amongst Khwe community members due to lack of use, and also one that youth can leverage for financial gain.

After the proposal was accepted and initial funding granted, the next step was to identify elders in the community who still had wildlife tracking knowledge despite the forty-year ban on hunting in the area. Sonner Gereia and the TEKOA founding team ventured into the Khwe San villages within Bwabwata National Park, and found many people who talked about hunting and remembered particular events, but only five individuals who still possessed deep traditional tracking knowledge. The TEKOA founders recruited these elders as traditional knowledge teachers, then asked village headmen to put forward the names of eligible young community members who might be interested in attending the training sessions.



Left: TEKOA guides in training learn how to track wildlife in Bwabwata National Park. © IRDNC

Above: Lion tracks in Bwabwata National Park. © IRDNC

In 2008, the Khwe officially launched their *Traditional Environmental Knowledge & Outreach Academy (TEKOA)* training programme in Bwabwata National Park. Through the TEKOA program, Khwe elders train their school-going (and school-leaving) youth in various aspects of their rich heritage, including tracking, ethno-botany, traditional leadership, conflict management strategies, history, and Khwe San language skills. The programme supports community elders and youth to spend time together which in turn builds relationships, restores dignity, and hones youth's skills in ecological management applied science, including wildlife tracking and sign interpretation skills in the bush. An intermittent programme at first, the mobile training team now operates for approximately 4 days per month, creating a regular space for community members to learn from one another and breathe new life into their traditional skills.

In Bwabwata National Park there are few opportunities for formal employment. Locally available economic opportunities are largely informal, and many of these are exploitative and under-paid. The *Traditional Environmental Knowledge Outreach Academy (TEKOA)* Training Programme aims to turn this situation around. By exposing the youth to their natural heritage of traditional Khwe knowledge, the program both hopes to increase their confidence and sense of self-worth, and to equip them to become the future holders of knowledge in a community that is rapidly transitioning from its hunter-gatherer existence. The curriculum also aims to provide life skills and coping strategies for the modern world, and, perhaps most importantly, to support youth to develop vision and hope for their futures.

Successes of the TEKOA training programme include:

- » As youth increasingly come to appreciate the wealth of environmental knowledge that their elders possess, the community is developing a newfound respect for community elders and the natural system. This not only helps to foster an attitude of environmental conservationism amongst youth, but also restores pride and cohesion within the community at large.
- » Elders and youth in the program have worked hard to achieve formal endorsements of their knowledge through internationally recognised "CyberTracker" certificates. At the most recent CyberTracker evaluation in April 2014, three community members successfully identified 100% of the very challenging wildlife tracks they were tested on and trailed a pride of lions for 11 hours over two days through the bush.
- » Approximately 10 community members have found employment as a direct result of the TEKOA training programme. They have been employed as community game guards in the Bwabwata National Park, rangers on private farms, and as tourist guides who can offer special tracking experiences.
- » Through this program, the community is developing the skills and confidence to establish a more ambitious cultural restoration project. Plans are now underway to build a permanent



centre for traditional environmental knowledge training and scientific research within the Park, in order to preserve indigenous skills and share them with a wider audience. The vision is to employ a professional cadre of local TEK experts (many of whom will have been through the TEKOA training programme) and run courses for government rangers, ecological monitors and researchers, community game guards, conservation staff from the wider region, and other guides, scientists and tourists from across Namibia and beyond.

STRATEGIES FOR SUCCESS

The process followed to get the TEKOA training programme up and running was critical to its success. The following are reflections on the key “process elements” that contributed to TEKOA’s success:

1. “Build a fire from community sparks”: Paying attention to the true passions and concerns of the Khwe community was vital to the development of the project. Although the core of IRDNC’s mandate in the Bwabwata National Park was to train community members to follow formal management procedures within their association, the TEKOA founders found that the community’s passion for traditional ecological knowledge was a spark that could light a real fire of success within the community. Because this was what Khwe elders wanted to do and did well without any prompting, the TEKOA founders decided that the community’s vision for the TEKOA programme merited time and investment. The success of the programme has since validated that decision.

2. “Hand over the pen to get passion on paper”: Sonner Gereia is a Khwe San resident of Bwabwata and current Chair of the community’s Khwe Custodian Committee that engages, involves and promotes Khwe cultural values within the Bwabwata National Park community. In 2007 he was asked by IPACC to prepare a project plan for an initiative in Bwabwata National Park. Having never written a formal project plan before, Sonner requested technical assistance from IRDNC. Knowing that the project needed to be locally-driven to be a success, and that the proposal stood a better chance of securing funding if Sonner’s personal passion for it was conveyed on paper, IRDNC did not accept this request. Instead Sonner was encouraged by the TEKOA founders to write down his thoughts in whatever manner he felt comfortable. He made rough notes on paper, and though imperfect in form, this draft proposal was later selected to become the first step in making the community’s dream come true.

3. “Respect community wisdom and decision making”: At every stage of the programme, the village headmen have been the ones to decide who should be evaluated and trained. Although there have been some misjudgements along the way, with some of the selected individuals failing to show serious interest in beginning stages, the community has found its most committed learners over time. If IRDNC had taken these decisions into its own hands and run the selection process for elders and learners, it is likely that the programme would have been delegitimised by accusations of favouritism and ultimately would have failed.

4. “Link every small initiative to a bigger dream”: The TEKOA training programme has never been narrowly envisioned as a way for people to simply practice identifying wildlife spoor. Instead, programme participants describe it as a major effort for them to keep core elements of their hunter-gatherer society’s culture alive. In addition, almost since its inception, the TEKOA training programme has been visualized as the first step towards establishing a more ambitious indigenous knowledge academy in the Park. The vision from the TEKOA founders of one day having an “indigenous university,” through which community members can teach each other and outsiders traditional knowledge such as medicinal plant usage has added greater meaning and significance to each training session. Some of the trainees hope to be professors within this academy and others envisage tourism related spin-off enterprises. All of them describe the future institution with pride. In addition to providing added motivation for local learners, this larger vision has elicited interest and support from outside institutions and international visitors. In June 2014, for example, thirteen German travel agents visited Bwabwata National Park to help develop a tourist package based on Traditional Ecological Knowledge that they can market to clients in 2015. This type of outside interest and commitment further motivates Khwe youth to keep up the effort with their learning!

5. “Remember that hunger trumps culture”: Although the programme has been successful, community elders and supporting NGOs cannot rest on their laurels. There are many participants in the programme who are involved for the sake of preserving their culture, but their commitment could be shaken if traditional skills cannot also help them ward off hunger. Cultural, social and environmental restoration has given the community an important sense of pride, but it must also enhance their chances of securing a successful livelihood. This is why the TEKOA programme is now also encouraging young Khwe TEK learners to develop tourist-handling skills and set up micro-enterprises through which they can share their cultural knowledge and earn a fair living.

LOOKING TO THE FUTURE

TEKOA is planning to support the community to realize their larger cultural restoration dreams, and is currently involved in early-stage communications with the Namibian Government regarding the establishment of a permanent training academy in the Park. It is envisaged that, following initial start-up donor funding, this academy could run as a financially sustainable entity through which fees from external participants would sponsor the learning of Khwe youth – creating a secure future for knowledge sharing. This programme will also provide a model and inspiration for other San communities in Namibia who are in a position to build upon traditional skills.

CASE STUDY

4.3

ALAPA

Association for Law and Advocacy for Pastoralists

COUNTERING THE DISPLACEMENT OF COMMUNITIES FOR TROPHY HUNTING IN TANZANIA

BY ONESMO B KIVUYO,

ASSOCIATION FOR LAW & ADVOCACY FOR PASTORALISTS (ALAPA)

The Association for Law and Advocacy for Pastoralists (ALAPA) is a national non-governmental organization in Tanzania that provides legal assistance and promotes the human rights of traditional cattle herders and hunter-gatherers, a population estimated to number more than 200,000 in the country. ALAPA was formed to influence regional and international development processes in the areas of human rights, the environment, and pastoralists' livelihoods. ALAPA uses public interest litigation, advocacy for legal and policy reforms, and community empowerment to fulfill its main objective – to use law as a tool for regulating economic development processes, particularly those affecting pastoralists such as conservation and investment. ALAPA believes that protection and promotion of land rights, political rights, gender rights, and children's rights enable individuals and the pastoralist community as a whole to effectively be part of, participate in, and benefit from development processes and projects.

ALAPA also works to create a forum in which critical legal aspects of the development processes affecting pastoralists can be debated by pastoralists, scholars, practitioners, and all those concerned with policy-making across the country. These debates contribute to the development of shared knowledge, economic development in conformity with human rights, implementation of democracy, and adherence to good governance practices.

ALAPA uses collaborative processes such as community sensitization and awareness rising to implement best practices and resist bad ones. As an example, the government of Tanzania enacted the Village Land Act, no. 5 of 1999, which empowers villages to own land. To support this, ALAPA engages in community mobilization and awareness raising and conducts various trainings on land rights and use. ALAPA also actively supports the formation of conflict resolution bodies at the village and ward levels. The government, NGOs and communities carry out land demarcation, and once village land registries have been built and land certificates issued, ALAPA monitors adherence to laws by all stakeholders and can represent a community in court should the need arise.

WWW.ALAPA.ORG.TZ

THE NATIONAL CONTEXT FOR TANZANIAN PASTORALISTS

Tanzanian pastoralists have encountered multiple challenges in recent years. These include land grabbing, violation of land-related rights, eviction processes exacerbated by massive investments in pastoral areas, lack of free prior and informed consent (FPIC), and population influx into pastoralist areas related to climate change and variability. This has placed indigenous peoples at great risk of losing their land-related natural resources, leaving them increasingly vulnerable and marginalized. It has also resulted in conflict over land in areas where there have been population influxes into pastoralist areas. In addition, several climate change-related projects in Tanzania have focused on investments in large areas of pastoral land, which were developed without pastoralists' consent and are not in conformity with pastoralists' own development agenda. A good example is the REDD+ pilot mitigation projects in Masito Ugala, Kigoma, which demanded eviction of pastoralists from their ancestral lands.

EVICTION IN THE NAME OF WILDLIFE: THE CASE OF LOLIONDO

In March 2013, Tanzania's Ministry of Natural Resources issued an eviction notice to dispossess Maasai pastoralist residents of Loliondo, in the Ngorongoro District of Arusha Region in Northern Tanzania. The Maasai are traditional cattle herders who have lived in harmony with their land and natural resources for countless generations in three of East Africa's most iconic landscapes: Serengeti National Park, Ngorogoro Conservation Area, and Maasai Mara National Park. The 2012 census reports that 130,000 Maasai live in the Loliondo Game Controlled Area, which borders all three of these parks.

At the time, the Ministry claimed that the eviction was to conserve wildlife breeding grounds, migratory routes, and water catchment areas. However, the community alleged that private interests wanted these lands cleared of indigenous populations in order to convert them into a reserve for big game trophy hunters. There was a clear conflict in land use, and at stake were the Maasai community's lives, livelihoods, properties, human rights, cultural values, and identity. The evictions also threatened fragile relations between the government and Maasai community and exacerbated existing land-use conflicts.

The Tanzanian President dismissed rumours that Loliondo residents would be evicted from their traditionally owned land. However, these assurances were not supported by any formal retractions of previous sentiments by the government on future plans for the territory. Uncertainty about the community's land tenure security in Loliondo has the potential to continue patterns of conflict of land.



ALAPA'S RESPONSE

ALAPA's mode of operation is first and foremost to identify a need for intervention in consultation with members of the community. Secondly, ALAPA empowers the community through trainings focusing on potential avenues of intervention. The purpose of this stage is to provide communities with informed opinions when making a choice for an appropriate intervention. Lastly, ALAPA assists the community in collaboration with other like-minded NGOs among its partners. The intended outcome is to have an indigenous community informed of their rights to access, control and own land for their own merited activities.

In this instance, following the Maasai community's request for assistance, ALAPA played a pivotal advocacy role, in collaboration with like-minded national and international partners. ALAPA had previously engaged with the Maasai community in Loliondo through training on various land policies and laws in Tanzania, including the ground-breaking conference "Half a century struggles by pastoralists for land rights: achievements, challenges and the way forward" in 2011. Out of this conference, co-organised by ALAPA, was the creation of Katiba Initiative (KAI). KAI is a coalition of more than twenty NGOs that successfully advocated for recognition of pastoralists and hunter-gatherers and inclusion of the groups' rights in the proposed new Constitution of Tanzania. Based on the close, long-standing relationships between the community and ALAPA, the Maasai pastoralists consulted ALAPA and other relevant stakeholders in their respective districts on possible strategies to deal with the potential evictions. ALAPA is also well-placed to analyse complex government policies, strategies and laws.

The initial steps involved several consultations and meetings between community members and like-minded organizations in Tanzania, for the purpose of charting out available options for resisting the illegal land dispossession. During these meetings, ALAPA staff provided legal advice and responded to questions. Other interested stakeholders sat together and decided that a coalition of NGOs and the Maasai community would work together to achieve a lasting resolution to the eviction threats, drawing on each stakeholder's interests and areas of expertise. Various strategies were developed, including: the formation of coalitions between community members and stakeholders, such as local and international organisations working on land-related matters; strengthening communication strategies with prominent people (such as key experts on indigenous peoples' rights); and using the media to generate support for pastoralists' initiatives and beliefs.

These strategies were implemented through meetings, seminars, and panel discussions, and later through formation of various networks in support of the Maasai. The support of NGOs was necessary for the community, as the Tanzanian government has denied the existence of self-identified indigenous peoples in Tanzania, despite their recognition by regional and international fora and by regional and international legal frameworks such as the African Charter on Human and Peoples' Rights, the work of the African Commission's Working Group on Indigenous Populations/Communities, and the United Nations Declaration on the Rights of Indigenous Peoples.

The support from ALAPA and other organizations inspired a concerted, vehement opposition to the eviction, led by the Maasai community. This included the production of an open letter to the Ministry of Land, later made public, setting out the implications of eviction for the Masaai community. The letter stated: “we have lived in this land with our livestock and wild animals for generations, and it would be illegal and a contravention of human rights to evict us for the purpose of facilitating trophy hunting.”

It was as a result of these public campaigns and mobilisation efforts, and a concerted effort to increase information sharing between the government, community members, NGOs, and prominent people, that the Ministries of Land and Natural Resources and Tourism changed their perception in favour of the Maasai. In May 2013, the government withdrew the eviction notice and it was decided that the land in Loliondo should be retained by the indigenous community members as shown in existing maps and writings in accordance with laws governing land use in Tanzania.

Parallel to these mobilisation efforts, NGOs and experts such as land law specialists, environmental lawyers from within and outside Tanzania advocated for amendment of certain laws and regulations relating to land access, control, and ownership, including advocacy during the country's constitutional reform process.

ANALYSIS AND LESSONS LEARNED

Team work, spirit, and community mobilization played pivotal roles in making sure that the Maasai were organized and well-prepared to confidently engage decision-makers and influential people about this land conflict without using any corruption or bribery. Community members were trained in advocacy skills and how to prepare and promote evidence-based submissions.

Effective community engagement and mobilization requires a bottom-up approach. This should be done in addition to well-researched information, networking and collaborations among like-minded organizations and stakeholders. The use of evidence-based submissions proved to be a reliable and supportive tool to influence decisions made by the authorities threatening people's livelihoods. The information gathered was obtained from key informants from the community, in addition to responsible government authorities such as the Ministry of Land and the Arusha Regional Commissioner's office (specifically for land demarcation and mapping efforts). This approach was so influential because organisations trained and built community members' capacities and empowered them to use effective advocacy strategies.



ALAPA was also proud to impart knowledge to community members to defend their rights, through analysis of government decisions, laws and policies in a form that both community members and their advocates could understand. Awareness creation, education, and capacity building made the community members more confident and accountable in their resource management. People's social movements, solidarity, and media engagement at the local and international levels played pivotal roles in influencing decisions. ALAPA was able to support these efforts through its connections to different media sources and organizations working on indigenous peoples' affairs. On numerous occasions, staff of ALAPA wrote articles in local newspapers aimed at clarifying legal positions on the conflict aimed at policy makers and other development partners interested in the welfare of pastoralists. In addition, through exchange of information and news alerts with its international partners, ALAPA helped the Maasai to build and leverage international connections, in particular with the International Working Group for Indigenous Affairs (IWGIA), the Environmental Law Alliance World Wide (ELAW) and the South African NGO Natural Justice.

After years of experience, ALAPA has learnt many lessons in how to best support communities to engage in peaceful land conflict resolution. First, ALAPA has found that capacity building for people at all levels of understanding is imperative to support communities to speak out for themselves. It also helps to shift ill-conceived ideas that NGOs are the authentic voice of the 'voiceless.' ALAPA has also found that it is very important to form strong and informed networks (at the national and international levels) of like-minded organizations around such issues. This energizes efforts, encourages the sharing of experiences, and solicits best practice strategies for influencing policy and decision makers.

One tension that ALAPA has grappled with in its work has been a matter of strategy – when to use court processes and when to use political channels. For instance, while using political channels to support change can take less time, this method of advocacy has no legal force and future government officials or politicians can violate prior promises at will. However, whilst court decisions are binding, pastoralists' have little confidence in the outcome of cases involving their land rights. This is because they have lost many cases in the past for technical reasons, without consideration of the merits of the cases. In addition, pastoralists believe that the laws that judges use are generally not favourable towards their communities. In light of these considerations, ALAPA correctly advised the Loliondo Maasai that political channels was likely to be the most effective strategy, as community efforts could be complimented by international pressure. A court case can still be filed at a later stage if a need to do so arises.

CASE STUDY

4.4



SUPPORTING DIVERSE COMMUNITIES TO RESPOND TO LAPSSSET WITH ONE VOICE IN KENYA

BY MOHAMED ATHMAN & HADIJA ERNST,
SAVE LAMU

Save Lamu is based in Mkomani ward within Lamu town, located in the Lamu Archipelago off Kenya's north coast. Save Lamu was created out of a community initiative to unite local groups and individual residents of Lamu County in a campaign to save the Lamu Archipelago. Registered as a community based organization since 2011, it consists of representatives from community-based organizations from indigenous communities who are or will be affected by the proposed infrastructure development referred to as the Lamu Port South Sudan-Ethiopia-Transport (LAPSSSET) project. The Save Lamu coalition represents over thirty member organizations who work together on human and environmental rights issues in light of LAPSSSET and other extractive projects, to document community concerns about these developments, to discuss and explore possible impacts and opportunities, and to find ways to mitigate negative impacts.

Save Lamu's overall aim is to advocate for the rights of local communities to participate in decision making in development projects affecting their environment, lives, and livelihoods. They advocate to the government for information, transparency, and participation in activities relating to LAPSSSET and coal, gas, and oil industries in the County. Save Lamu works with communities to build their capacity to know and realize their rights under the Kenyan Constitution and other international treaties signed by the government of Kenya. One of its objectives is to preserve the cultural integrity embedded in the lives of communities in Lamu County.

WWW.SAVELAMU.ORG



CONTEXT IN LAMU COUNTY

Since Kenya's independence, land in Lamu County has been categorized as belonging to the Kenyan Government. Land allocations to local individuals, like those done in other parts of the country, never took place. Because of this situation, the indigenous communities of the county are unjustly considered squatters on land held by the government. In the 1970s, former President Kenyatta created settlement schemes and brought landless people from Kenya's interior to settle on the coast in Lamu County. These settler communities were allocated farmland with title deeds, while the indigenous populations remained land-insecure. Under Kenya's new Constitution, former Government land is to be re-categorized as Public land (under the trusteeship of the County Government) or Community land under the National Land Commission, a new entity whose mandate is to issue titles and investigate illegal or questionable land allocations. This process has been stalled by the central government and there appears to be little political will to make it viable. It is within this challenging context that Save Lamu works.

In addition to the political and historical complexities, Save Lamu faces several challenges within the communities that it supports, particularly with local elites who have benefitted from previous land laws or those who have grabbed land in Lamu County. For example, powerful individuals have attempted to tarnish Save Lamu's reputation in government circles, making it difficult for Save Lamu to engage effectively with government. Additionally, many provincial administrators have taken advantage of the marginalization of indigenous communities to grab land for themselves over the decades. This has enabled a cadre of people, both local and official, to continue to engage in corrupt practices in the County. They are not pleased to see people speaking out, organizing communities, providing legal capacity training or sharing information that exposes the blatant corruption of land allocation in Lamu County. In addition, since the introduction of the LAPSET project, the price of land in the County has multiplied, which has escalated the situation and intensified the efforts of those who want to deface Save Lamu and others working to defend communities' land rights.

THE LAPSET PROJECT

As currently envisaged, the LAPSET project will be the largest transport corridor in Kenya. It is estimated that it will cost US\$26 billion and consists of a number of "sub projects" including: a 32-berth Port at Manda Bay, in Lamu; inter-regional crude oil and petroleum pipelines; the development of resort cities in Lamu, Isiolo and Turkana; an international airport in Lamu; and the establishment of a railway line and inter-regional highways. In addition, in recent months, plans have arisen to construct a coal-powered generating plant in Lamu County, which would be the largest single electricity producing plant in the country. Communities in Save Lamu are concerned about the impacts of coal on the environment, health and livelihoods in the county and are keen to explore alternatives to coal such as wind

and solar power. The LAPSET project is expected to support the national economy, create jobs, and strengthen Kenya's oil and gas industries, based in Turkana and the Lamu Basin.

Advocating for community rights in these circumstances draws much negative attention to Save Lamu's work. Save Lamu is often described as anti-development, which in this context has connotations of being anti-government. Indeed, only after the promulgation of the new Constitution and its devolved system of governance which established the county system of government, was Save Lamu able to engage in meaningful dialogue with local government officials. The new county government acknowledges Save Lamu and has legitimized its work to defend community rights, county rights, and land rights as being not contrary to development. The county government's position has always been that consultation and free prior and informed consent should be engaged in with all communities hosting development projects.



Save Lamu with community members protesting about the port development in 2011. © SAVE LAMU



SUPPORTING DIVERSE COMMUNITIES TO RESPOND TO LAPSSET WITH ONE VOICE

Lamu's population is over 100,000 people and includes a variety of different indigenous and ethnic groups as well as settlers who have migrated to Lamu over the years. Save Lamu works with various indigenous and traditional communities within the county, including:

- » The Bajun, who are traditionally fisher folk, farmers, boat builders, tour guides and mangrove harvesters;
- » The Aweer, who are traditionally hunter and gatherers but currently practice subsistence farming;
- » The Sanye, the smallest and most marginalized ethnic group in the county numbering less than 500, whose traditional practices of hunting and gathering have been impeded by a lack of recognized territory;
- » The Orma, a pastoralist community whose rangeland includes the County's western area where the Tana Delta is located; and
- » The Swahili, who hail from the historic urban areas of the County including the towns of Lamu, Shela, Pate and Siu, where they are merchants and farmers and more recently involved in the tourism sector.

All these communities are affected directly or indirectly by the LAPSSET project. The majority of these communities have co-existed peacefully in Lamu County. Peaceful interaction among the different traditional communities in Lamu County is also embedded in the shared religious beliefs of Islam. Islam provides a cross-cutting value system that forges links among the different ethnic groups in the county.

Lamu County's traditional communities also share historical experiences of economic marginalization since Kenya's independence and ongoing external threats to their territorial rights. A common narrative among these groups is the loss of traditional lands since independence, caused by settlement schemes, land grabbing by national and local elites, and the growth of the oil and gas sector which has attracted an influx of immigrants to the county and has intensified land grabbing by elites.

Government settlement schemes initiated in the 1970s by President Kenyatta, Kenya's first president, benefited immigrant communities, predominantly Christian farmers from Kenya's interior who came to Lamu hoping for a better life. They lived peacefully in farming enclaves on the mainland of the county and in urban areas selling fresh produce. However in June and July 2014, violence was unleashed in the county, pointedly against these populations in Mpeketoni on Lamu's mainland. While it was predicted that this would happen if grievances around land and natural resource rights were not addressed, particularly among coastal communities, the intensity of the violence took Lamu County by surprise. There is a great need

to begin a dialogue process to address not only historical injustices but also new injustices that are taking place because of the LAPSET project and other industrial activities. The violence in Mpeketoni further highlighted the need to document the community's history, including defining the communities that have historically shared Lamu County and acknowledge the ways that they have interacted together peacefully with their shared natural resources.

Save Lamu's basic approach to working with communities has been the development of a Biocultural Community Protocol (BCP) in Lamu County. To create the Biocultural Community Protocol, Save Lamu engaged in the very ambitious process of uniting 45 villages encompassing various cultural and ethnic backgrounds to create one, all-encompassing advocacy document that aimed to represent all of their interests. The aim of the Lamu community's Biocultural Community Protocol is to articulate the needs of the overarching Lamu community in light of LAPSET, including advocating for community rights to: access to sufficient information; adequate community consultation and, where relevant, consent; and an independent environmental, social and cultural impact assessment. It has also been a very successful tool to bring different populations in Lamu together to celebrate their similarities and their common aims, instead of focussing on their differences.

The Biocultural Community Protocol concept was introduced to Save Lamu by Natural Justice - Lawyers for the Community and Environment, an NGO based in South Africa. The concept was discussed with members of the community in 2010 as a tool to address the needs of different traditional groups, to document conservation and livelihood practices and the challenges they face, and to collect the community's own ideas of development. The communities involved in the BCP process included the Sanye and Aweer, the Orma, the Bajun, and the Swahili. Despite the differences between traditional communities in Lamu, there are many ties that bind them together. These commonalities were articulated and strengthened through the BCP process. The Lamu BCP identifies the numerous individual communities that co-exist within Lamu County and sets out the traditional knowledge and practices that each community has used to conserve the natural environment upon which they depend.

The BCP process began in 2010 and the final draft was completed in 2014. Over this time, Save Lamu met with thousands of community members from over 45 villages across Lamu County, spanning Lamu East and surrounding islands, and Lamu West, including the mainland. The BCP process enabled the community to document a number of oral histories from different communities. These oral histories provide narratives of who they are, where they come from, and help to document their traditional territories. This information is essential for understanding what resources needed to be protected and how, so as to see the continuation of community customs. The Lamu BCP process also included a number of trainings on human and environmental rights that empowered community members to: increase their awareness of their rights (under Kenyan law and regional and international legal frameworks); assert and protect their land and natural resource rights; and pursue sustainable development in Lamu County.



It was important to draft one unified BCP document that set out the unified visions and demands of the various traditional communities across the county and identified each of the different communities and their characteristics. This unity was essential because while each traditional community originally existed in particular parts of the county, now all live and co-exist peacefully together, depending on each other in many respects and often sharing livelihoods. Indeed, during large community meetings to write the BCP, representatives spent time in livelihood groups rather than ethnic groups. Instead of asking people to document their hopes and visions as the Bajun, Orma, Sanye, Aweer, and Swahili, they divided into groups of fisher folk, farmers, pastoralists, hunter-gatherers, and nature-based livelihoods to set out their hopes and visions for the future of their lives in Lamu.

The BCP is a tool to unify visions for the future. Separate BCPs for each community would only have served to highlight their differences, rather than celebrate their co-existence and their unified visions and demands. The Lamu BCP therefore sets out both broad, generalized information across the County as well as the uniqueness of individual communities within it.

The BCP process included:

- » Articulation of community-identified issues;
- » Preparation of a questionnaire to elicit required information and training of community members to engage in the participatory action research;
- » Facilitation of focus group discussions to elicit specific livelihood and historical information;
- » Creation of multi-stakeholder processes to better engage with external parties (and internal issues);
- » Community visioning;
- » Mapping of marine resources;
- » Participatory video creation with community members;
- » Legal training;
- » Drafting of the BCP; and
- » Presentation of the draft BCP to all communities for their feedback and further sensitisation of the issues.

All these steps were essential for engaging with traditional communities who have felt marginalized and without a voice. The process revealed common challenges that solidified the community's collective identity. The process has allowed for individual communities to remember, re-engage and reassert their traditional customs and practices, including decision-making structures and practices. Rather than isolating themselves, increasing

their susceptibility to the “divide and conquer” tactics often engaged in by government and companies during megaprojects, the BCP process allowed communities to relate and unite around shared livelihoods likely to be impacted by the Port project and the coal plant.

In 2012, while Save Lamu was supporting the communities to draft their BCP, the leaders of Kenya, South Sudan and Ethiopia officially launched the LAPSSET project at the proposed site of the Lamu Port. Some communities were immediately evicted without consultation or compensation, despite official promises to ensure proper process. Construction began prior to provision of an Environmental Impact Assessment (EIA) or a licence from the National Environmental Management Authority (NEMA). Very little information was made publicly available to the community of Lamu County, despite laws and national institutions that require civic engagement in infrastructure developments.

In March 2013, Save Lamu discovered that an EIA had been submitted to NEMA for public feedback with days remaining before the end of the comment period. With only two days before the expiry of the public comment period, Save Lamu launched an online campaign to extend the time available for comment on the EIA. During this campaign (including local and international petitions) hundreds of signatures were collected and complaints were lodged to a number of government departments and members of Parliament. As a result, the period to comment on the EIA was extended.

Save Lamu used the extended 30 day period to support communities to review and comment on the EIA. What community members discovered in the EIA was disappointing. The EIA only reflected an assessment of the impacts of 3 of 23 proposed berths in the port development and the report did not provide adequate mitigation measures for the environmental and social impacts of the port. The report did include a section on relocation and compensation, including a Relocation Action Plan (RAP) but its contents were not made public. The community collated their concerns and shared the EIA with interested parties locally, regionally, and internationally. This process, while time consuming, supported a robust, unified response to the EIA, particularly where technical aspects of the assessment were difficult to understand. Save Lamu and allies also insisted that a Strategic Environment Assessment Report (SEA) be developed for the whole LAPSSET project (as opposed to a small EIA on one segment of the project in Lamu) in order to understand the effects of each component and their correlated effects as a whole on all concerned communities.

OUTCOMES

Developing the Lamu County BCP provided Save Lamu a means of meeting with - and building the capacity of - communities all around the County. The BCP process allowed Save Lamu the opportunity to inform the community about LAPSSET and ensure that as much of the community as possible had the same information (despite challenges in accessing information about the project and resistance from government officers to provide such



information). Save Lamu found that generally community members were not aware of what the LAPSET project entails, what developments are planned, where it will be located, how much land it will consume, and what community benefits, if any, will be provided.

The BCP process also allowed Save Lamu to consult with the various communities on the project and receive feedback, including discussions of desired benefits of and concerns about LAPSET and related projects. Throughout the BCP process, issues surrounding rights and claims to land and resources were discussed and complaints and injustices as far back as Kenya's independence in 1963 were vibrantly documented.

Save Lamu used the BCP process to build the capacity of local communities by increasing their knowledge about environmental and human rights laws that protect their rights to cultural and natural resources. The communities now provide grassroots information that helps Save Lamu monitor development throughout Lamu County. Communities develop evidence about human and environmental rights abuses, which Save Lamu uses to register concerns with available complaint mechanisms, particularly those of international corporations and monetary institutions involved in the LAPSET project.

Despite Save Lamu's heroic reclaiming of the EIA process and holding the Kenyan government to account, to date the government has not sufficiently addressed the concerns set out in the community's response to the EIA. Despite Save Lamu's attempts to halt the development of the Lamu Port until a sufficient EIA, mitigation plan, and community consultation process are completed, the government has implemented the initial phases of the project, although at a much slower rate than originally planned. Save Lamu and the Lamu community are continuing their multi-dimensional strategy, including advocacy, meetings, demonstrations, media campaigns, networking, and continuing to build the capacity of the Lamu community to participate in land use decisions affecting their territory.

STRATEGIC ANALYSIS OF SAVE LAMU'S APPROACH

On many levels, Save Lamu's work has been reactive – responding to information as it becomes available. For example, when the Lamu Port began development without an Environmental Impact Assessment, Save Lamu responded with a legal fight to demand an assessment and public comment period. Often these reactive strategies feel desperate and place Save Lamu constantly on the defensive. In contrast, the BCP process was not only an excellent method of working with affected communities, it has also allowed Save Lamu to meet with communities and gather information in a way that is positive and less threatening to the Kenyan government. As opposed to simply reacting, the acts of sensitisation, collating information, and preparing the Lamu BCP have been a proactive methodology for the community to deal with the impending port development. When published, the BCP will be a document for and by the people of Lamu County, a tool for advocating that private contractors, external actors and the Kenya Government adhere to local laws and

international treaties. Even in draft form, it has already been a useful tool when engaging with expert consultants from UNESCO who are investigating the likely impacts of the port on Lamu town, which is a World Heritage Site.

One disadvantage of the BCP as a proactive tool, however, is that it can be delayed or set aside while more immediate, urgent needs are addressed. With any large-scale infrastructure project, communities are often dealing with a barrage of threats at any given time, which can distract from or delay more pre-emptive advocacy techniques like the BCP. For example, the BCP's finalization – and various associated activities, including mapping processes – stalled after the recent massacres in Mpeketoni. The instability led to prohibitive curfews in the County, restricting movement of Lamu citizens. This has had an impact on the BCP process as well as other advocacy activities.

Another challenge has been a lack of complete inclusivity. The Lamu County BCP documents five traditional communities (the Bajun, Aweer, Sanye, Orma and Swahili), but there are other small traditional communities exist within the county, such as the Somali and Giriama, who are not included in the BCP. However, the BCP is a living document, which can be added to and changed over time, enabling more communities to be included and for the BCP to keep pace with development.

Lamu County's BCP is now in its final draft. The list of demands in the final BCP included demands for information, consultation, consent and an adequate environmental impact assessment. These were general demands that citizens across Lamu County were also asking for. Save Lamu is hopeful that this document will strengthen the communities' identity and ability to engage in dialogue with local, national and international development stakeholders. The BCP speaks of ways of life that Kenya's Constitution protects and emphasises that there must be dialogue with the community if development efforts are to succeed.



Left: Save Lamu volunteer, Is-haq Khatib, volunteering at a demonstration about the LAPSSET port development. © SAVE LAMU

Above: Lamu community members at a protest demanding fair access to information, consultation, mitigation, and compensation in the port development process. © SAVE LAMU



RECOMMENDATIONS AND CONCLUSION

Many lessons have been learned throughout the BCP process in Lamu. A number of recommendations can be made as a result.

First, the BCP process aimed to be as participatory as possible, hence the incorporation of data and views from 45 different communities across the county. However, the enormous amount of information that was captured (which was essential on the one hand, but on the other hand very overwhelming) meant that a large amount of time was required to compile the collated information into a format that is digestible for outsiders and for the communities themselves.

Second, the Lamu BCP has been a time-intensive process and many changes have occurred in the community during this time. The BCP process has evolved to include some changes but not others. There have been delays, on occasion, due to the need to engage in more urgent and direct advocacy strategies, such as formal legal petitions, online petitions, direct dialogue with government officials and representatives from international organisations. As described above, a BCP is not a panacea, and is one of several advocacy strategies that Save Lamu have been using to deal with the issues of LAPSET and oil and gas development. It is recommended that the BCP process be considered one very necessary tool in a toolbox of others that a community may wish to use where such external threats are taking place.

Third, because Save Lamu is working with not only one indigenous community or livelihood group, but several cross-cutting communities, the BCP has sections that document, as best as possible, these diverse groups' customs, links with natural resources and the impacts of LAPSET and other developments. As a consequence, the BCP is a kaleidoscope of useful and interesting information designed for people to dip into and out of, depending which sections are of most use to them. It is useful to note that the information collected within it, directly from affected communities, has been used to inform dialogues and engagements (and strategies) with external actors, highlighting the usefulness of the BCP process generally.

Finally, throughout the BCP process and the EIA advocacy efforts, Save Lamu has learned that success does not and possibly will never mean a clear "victory." Rather, "success" must be nuanced, achieved through dialogue and compromise based on respect for the constitutional laws that protect individual and community rights.

CHAPTER

5



EMPOWERING COMMUNITIES TO ADDRESS LARGE-SCALE LAND CONCESSIONS & INVESTMENTS

“To strengthen a community’s position in negotiations with investors, it is important for the community to mobilize itself, decide on a united stance, and develop a strong and clear vision for the future.” – CIKOD, GHANA

Globally, investors and companies are actively seeking and acquiring large areas of land for logging, mining, and agribusiness ventures. Many of the regions that they target are the territories of rural, indigenous, pastoralist, nomadic, and/or forest-dwelling communities. Large-scale land acquisitions are also disproportionately concentrated in countries with weak legal protections for customary or indigenous rights to land and natural resources.¹ In response, national and international advocacy organizations are stepping forward to provide support to communities in negotiations with investors, often with a focus on ensuring adherence to international laws and human rights principles such as the right to free, prior, informed consent (FPIC).²

African advocates who are supporting communities in negotiations or land transactions with investors have highlighted the following five major challenges:

1. Failure of the national legal system to recognize community ownership of traditional lands and natural resources. Often community lands and resources are considered to be owned by the State and can be disposed of by the State without the community’s knowledge or free, prior, and informed consent. Communities must often fight for investors and government officials to recognize their rights to their lands and resources. In some contexts, particularly in nations where community lands are technically “owned” by the state, or in instances of mineral extraction (where the rights to sub-surface minerals are held by the State), investors and governments may fail to consult communities, seek their consent to the investment, or engage them in the investment negotiation process. As a result, the rights, interests, and concerns of affected communities are often disregarded.

1 Arezki, Rabah, Deininger, Klaus and Selod, Harris. 2012. “Global Land Rush.” *Finance and Development* 49: 46–49.

2 United National Declaration of the Rights of Indigenous Peoples (UNDRIP) articles 10, 11, 19, 29, 30 and 32.



2. A lack of genuine engagement between investors, government and communities.

Often community-investor engagements are located in meeting rooms far from the affected communities, obscured with legal and technical processes, and limited to the scope of what the investor seeks to discuss. Such lack of engagement is often due to: lack of investor will, condoned implicitly or explicitly by governments; lack of investors' experience and expertise in fulfilling consultation and consent obligations; language barriers; the use of illegal or inadequate methods to obtain "community" consent or fulfil consultation obligations; disrespect of communities' internal decision-making processes; and a lack of sufficient national standards for what constitutes 'good' relations between investors and communities or fair and equitable agreements.

3. Power and information asymmetries. Power asymmetries between communities and investors impact every aspect of engagements. Communities are rarely informed of the investment's projected profits or levels of investment, the potential environmental impacts of the project, or the company's track record in other communities and other nations. Indeed, communities who agree to share their land with investors are often not adequately informed about the market value of their customary lands, the total size of their territory, or exactly what lands they are agreeing to cede. Lawyers and other advocates are rarely present to represent the community's interests and ensure that communities have been consulted and that terms of agreement are fair. As a result, communities may consent to investment projects that vastly undervalue the amount of rent the community will receive for the use of their lands, or that will have significant negative environmental and health impacts and undermine local livelihoods. Indeed, investors frequently secure land concession contracts that include little to no rental payments, minimal environmental protection measures, and do not address the impacted communities' livelihood and health concerns.

4. Investors often seek only the consent of leaders rather than the actual community itself, avoiding full and authentic community consultation. In other cases, leaders or a small group of community members may feel intimidated or forced into signing agreements without the broad participation of all community members. Secretive negotiations between investors and community leaders create opportunities for bribery and corruption. Investors or their agents may try to manipulate or intimidate community leaders with threats or by presenting their proposal as the 'only way' that the community will develop economically, putting pressure on leaders to 'do what's best' for their community without creating an opportunity for community members to actually participate in the decision.

5. Backlash against advocates as "anti-development." Community members or organizations that seek transparent dealings and community-investor dialogue - or who oppose investment projects - are often labelled as "anti-development" and persecuted or threatened on the basis that they are impeding the "national interest."

The case studies in this chapter illustrate advocates' and communities' courage and creativity when facing these and other challenges that come from large-scale land concessions, as well as strategies that can help to overcome imbalances of power and information. In Ethiopia, *MELCA* successfully supported communities whose customary forest lands were threatened by a large-scale agricultural investment by making the remaining forest a UNESCO Heritage Site. In Ghana, *The Centre for Indigenous Knowledge and Organisational Development* supported the Tanchara community to successfully prevent gold mining companies from prospecting for gold on community lands. In Sierra Leone, *Namati* supported the community of Masethele to amend a 24,700 acre agricultural lease, signed and consented to by regional chiefs without community consultation, limiting the land allocation to a small percentage of the original agreement. And in Zimbabwe, the *Chiadzwa Community Development Trust* helped women and their families in Marange community to ensure that the women's interests and livelihoods were taken into consideration during all community advocacy efforts with diamond mining companies and the Zimbabwean government.

Emerging from these case studies are a number of strategies, tool and techniques that advocates may leverage when supporting communities facing large- and medium-scale investments on their lands. These strategies demonstrate the complexity of community-investor power relations, as efforts intended to address an investor often require advocacy strategies also aimed toward government actors and agencies.

AT THE LOCAL LEVEL:

- » Before investors arrive, build communities' capacities to successfully and effectively engage with investors by raising awareness of free, prior, and informed consent (FPIC), documenting community lands and resource uses, and developing clear community rules for land and natural resource management.
- » Create forums in which community members can discuss and revive their cultural values, then articulate and pursue development paths appropriate to their culture. As part of this effort, support communities to create a united vision for the future and empower them to articulate that vision and the way that they wish to engage with external stakeholders.
- » Establish "early warning systems" to report investor interest or violations of human rights or environmental protections. Encourage communities to monitor investor activity and plan for engagements proactively. Create simple, accessible ways for communities to report violations of human and environmental rights to NGOs, lawyers and other organisations supporting communities who can then act quickly.



- » Support communities to form or strengthen local land and natural resource governance institutions that can act on the community's behalf when advocating with company or government representatives.
- » Conduct research on the socio-economic returns of conserving community forests and natural resources compared with allocating it to investors for agricultural investment, including grassroots valuation of current community uses of lands and natural resources, and then use the information in negotiations or in evidence-based advocacy.
- » Continually monitor the progress of projects, including impacts on the environment and other impacts (such as health impacts, improvements or degradation of the quality of life, population impacts etc.). Produce community-led Environmental Impact Assessments and Social Impact Assessments, or seek neutral external experts to undertake impact assessments that authentically reflect potential impacts.
- » Support community women to identify and document the impacts of the proposed or existing investment on their health, wellness and livelihoods, as well as creating an intervention strategy. Actively empower women to participate in decisions that affect their lives and well-being.
- » Build direct connections with community members, not only leaders. Make sure to speak with and include representatives from every group and household, so as to have a full understanding of the concerns and needs of all community members and to ensure that advocates receive frequent and more representative updates on a community's situation. Check regularly with a variety of diverse community contacts for updates on what is happening in in the community.

AT THE NATIONAL LEVEL:

- » Develop guidelines for how investors should consult/work with communities, then encourage government to adopt these for any proposed investments across the country.
- » Leverage existing national laws that protect community land rights laws, including the Constitution. If such rights do not yet exist, advocate for national laws that make community consultation mandatory before the government can grant concessions. Support the capacity of law enforcement and justice organisations to follow laws on communal land and natural resources. Consider using (or threatening) litigation if national laws have been violated.
- » Use networks with government officials, other organizations, or internal staff skills and resources to collect information on the proposed project, such as project plans, mining, water or other project licences. Put pressure on governments for transparency and engagement. Encourage government to follow international initiatives supporting these principles such as Extractive Industries Transparency Initiative.

- » Identify supporters in government and actively encourage their advocacy efforts on behalf of community rights and interests. Empowering or creating awareness in the local community is not sufficient – it is necessary to engage with investors and government officials to identify, prevent or mitigate potential damages that may result from proposed projects.
- » Seek allies in other local and national organizations that have used existing laws successfully to protect community rights to land and natural resources.

AT THE INTERNATIONAL LEVEL:

- » Identify and leverage relevant rights and standards in regional and international law and guidelines. Rights to consent, consultation, land and natural resource rights may be found in a range of regional and international legal frameworks. Advocates may leverage mechanisms that can issue binding judgements on national governments. Explore opportunities for remedy and advocacy such as the African Commission Working Group on Extractive Industries.
- » Hold the government of the company's home country accountable to international obligations. This may be done by drafting statements and letters to the company/investor, government, or, where possible and safe to do so, to the media to highlight alleged violations of rights. Some legal frameworks provide an opportunity to lodge a complaint, a process which may be used as leverage to pressure the company to engage. Some avenues for advocacy or complaint include: the UN Guiding Principles, UN Human Rights and Transnational Corporations, UN Declaration on the Rights of Indigenous Peoples, and UN Special Rapporteur on Human Rights Defenders.
- » Check whether the company or investor is registered in an OECD member country, has signed up to the Equator Principles or is funded by the World Bank Group or other international or regional banks. These organizations have standards and guidelines that contain references to meaningful consultation and consent. Many international mechanisms include non-judicial remedies that can be used to complain if rights, standards or guidelines have been violated.
- » Engage with other NGOs and communities around the world facing similar issues or struggles with the same company to share information, coordinate strategy, and build a coalition. Identify and connect with NGOs, law firms or government bodies that are interested in challenging the legal violations of international companies. For example, OECD Watch is interested in receiving information on alleged violations of the OECD Guidelines on Multinational Enterprises.



WITH COMPANIES:

- » Shift the power dynamics of the relationship by setting the terms of community-investor engagement. Be proactive and explain to external actors how they are expected to engage with the community. Terms could include reliance on customary law rather than state law, or assertion that the full community must be convened and consulted. Some communities have used their community by-laws and/or Biocultural Community Protocol to put external actors on notice as to correct community entry and consultation procedures, as well as the appropriate time needed for the community to research any investment proposal before making a decision.
- » Investigate who invests in the company, where it is registered and whether the company must adhere to additional standards or guidelines. Leverage companies' desire to look good to shareholders, or in global rankings - research and document the impacts of the company's activities on community health, wellness and the environment, and publish these impacts to the company, its board, and shareholders.
- » Obtain copies of contracts and challenge any unfair clauses. Investigate a company's own 'Community Engagement Standards' or Corporate Social Responsibility policies and leverage these to encourage company adherence - be prepared to quote their standards back to them.
- » Support communities to secure binding agreements with investors so that legal action can be taken if they are not respected.

CASE STUDY

5.1



EMPOWERING COMMUNITIES TO RECOVER THEIR RIGHTS OVER LAND & NATURAL RESOURCES IN ETHIOPIA

BY MERSHA YILMA,
MELCA-ETHIOPIA

MELCA-Ethiopia is a non-governmental, non-profit organization established in 2005 under the initiative of lawyers, environmentalists, botanists, and other professionals concerned with the rapid degradation of the culture and environment in Ethiopia. MELCA is currently working in three regions of the country: Oromiya national regional state; Southern Nations, Nationalities and Peoples region; and Gambella national regional state. MELCA works in these regions with the overall objective of supporting local communities in the revival of their cultural values that have a strong connection with conservation of nature and building a resilient community.

WWW.MELCAETHIOPIA.ORG



Sheka community leaders assemble for a capacity-building meeting with MELCA. © MELCA ETHIOPIA



THE NATIONAL CONTEXT IN ETHIOPIA

Ethiopia is one of the world's most biodiverse countries, with ecosystems ranging from humid forest and extensive wetlands to the desert of the Afar depression. The variation in climate, topography and vegetation has contributed to a rich diversity of both flora and fauna, including valuable reserves of crop genetic diversity. In particular, the extensive and unique conditions in the highlands of the country have contributed to the presence of a large number of endemic species.

Local communities in rural Ethiopia have a culture and practice of living in harmony with nature. The immense traditional ecological knowledge and governance systems in the rural community have been crucial in conserving the country's biodiversity for generations. However in recent years, long-standing cultural values and traditional rural practices that are crucial to conserving biodiversity have started to erode with the advent and expansion of modern (Western) education, introduction of new religious beliefs, population growth, and changes in government policies and ideologies. These changes in the social and political situation of the country started to result in loss of biodiversity and deterioration of the environment at an alarming rate.

Nationalization of land since 1974 and then the expansion of large-scale agricultural investments since the current Ethiopian Peoples Revolutionary Democratic Front (EPRDF) came into power in 1991 aggravated the situation. The constitutions during both these regimes confer the right to ownership of land to government. Citizens only have "use rights" over any land they hold and can be removed at any time if the government deems the land is needed for national development.

AGRIBUSINESS THREATENS FORESTS AND LIVELIHOODS SOUTHWEST ETHIOPIA

In 2000, a flow of foreign investments and large-scale agricultural projects started to threaten communities in the south-western part of Ethiopia. The land in the area is one of the few remaining fertile areas containing Afromontane natural forests and local communities are highly dependent on the forest for their livelihoods.

The Sheka Zone is an area in the south-western part of Ethiopia in the Southern Nations, Nationalities and Peoples Region (SNNPR). The Sheka Forest has long been the major source of livelihood and spiritual practices in the area and supports diverse wildlife populations. For centuries the natural resources in this area have been successfully managed by traditional protection systems under which strong cultural taboos regulate the use and development of forest resources. The communities earn most of their cash income from honey and spices produced in dense forest. The strong links between communities (the Shekacho, Sheko and Mezenger ethnic groups) and forests, coupled with the large degree of biological and cultural diversity found throughout the area, makes the Sheka Zone an inherently valuable site.

In 2006, MELCA learned of the threats to the forest and livelihoods of the communities in the Sheka Zone. Erosion of culture and traditional governance systems of the local communities meant that the communities were ill-prepared to deal with the threat of expansion of large-scale agricultural investments. In particular, a group called “East African Agribusiness” had been given forestland in Sheka for agricultural investment and had begun clearing the forest for tea plantations.

MELCA-ETHIOPIA’S APPROACH

MELCA-Ethiopia partnered with “Organization for Social Justice Ethiopia” and “Forum for Environment” to form the “Sheka Forest Alliance” to support the communities of Sheka speak out and claim the rights over the forest that they have conserved for generations. The Alliance, later joined by other social and environmental NGOs, agreed on a three-pronged strategy: empowering the local community, improving law enforcement, and working at policy level to save the forest as the resource base for the lives of the communities in the area.

As a preliminary step, MELCA was tasked with conducting more detailed research on the ecological, social, and economic values of Sheka Forest and the impacts of changes in land use and land cover in the area. The initial research produced four main findings:

1. The net annual rate of **deforestation has increased dramatically** since the 1990’s. This trend is attributed to increased concessions of forestlands for investments for monoculture plantations (such as coffee and tea), cultural changes within the local communities, and changes in government policies and laws.
2. The communities in the area have strong relations with their environment, and hence have developed their own conception of resource management. For the Sheka people, the forest is everything they need: the source of several Non-Timber Forest Products (NTFPs); a habitat for wild animals that are hunted for food; the location of graveyards and religious sites where they worship; and property to be inherited by descendants. The research found that the local communities had very **high dependency on the forest** as a source of NTFPs - including several species of plants for food, fodder, local construction materials, medicine, spices, honey, farm implements, household furniture and fuel wood. Honey is the major NTFP for income generation.
3. Conversion of forests to other land uses has significantly **reduced the diversity of plants**. Monoculture tea, coffee, and eucalyptus plantations appear to be the worst offenders, as native trees are replaced by exotic species.
4. Plantation practices have a **significant impact on the existence of the forest**, which is the resource base for most of the Sheka community.



Following this study, MELCA opened a project office in Sheka to work closely with communities in starting a movement to save their land and natural resources. MELCA then pursued three initiatives: participatory mapping; legal workshops and trainings to increase awareness of community forest rights; and supporting the community to reinstate their customary practices and traditional governance systems in relation to their land and natural resources. MELCA chose these methodologies because of their effectiveness for achieving the goal of conservation of bio-cultural resources of the community and supporting development from within. The three strategies are detailed below.

Initiative #1: Participatory Mapping. MELCA identified participatory mapping as an ideal instrument to map and document the cultural and natural resources of the Sheka forest. There are several types of participatory mapping, including sketch mapping, eco-cultural mapping, eco-cultural calendars, and participatory three-dimensional modelling (P3DM). Each can be useful depending on the purpose to be achieved. In sketch mapping for example, the community creates three kinds of maps: a map of the past that shows the natural and cultural features of the environment 30-40 years ago; a map of the present that shows current natural and cultural features of the environment; and a map of the future that shows a plan of the community's desired future environment. Thus, sketch mapping is useful for considering the temporal nature of lands and their resources and how these change over time and because they are based on community perceptions of the landscape they do not require a consistent scale. Eco-cultural maps and calendar are similar to sketch-mapping. Another form of mapping is P3DM modelling which integrates spatial knowledge with elevation data. 3-D map models are to scale and the resulting maps can be geo-referenced. Different types of mapping (sketch mapping, eco-cultural mapping, P3DM and eco-calendars) were facilitated with the community.

In Sheka, MELCA facilitated P3DM processes with over 150 community representatives from Masha and Anderacha Woredas and over 50 students from two schools. In this process the Sheka community members mapped their cultural and natural resources on the 3-D model of their landscape, depicting sacred sites, wetlands, forest areas, rivers, waterfalls, burial places, etc. The modelling revealed that there are over 100 sacred sites in the Sheka forest, including *Gudas* and *Dedos* (sacred places where the community conduct worship and prayers to their God to protect the people and the forest from natural calamities), *Bashos* (fenced and no-go places where community members conduct rituals) and *Ceeecos* (wetlands).

The modelling process raised the awareness of community members of the state of their forest compared to the past. One participant remarked:

[A]s a clan leader I know the culture and traditional practices that we have inherited from our fathers. We are aware of the fact that those cultures and beliefs are being eroded. They are not being respected as they used to be. Our fathers used cultural beliefs like Gudo to protect the forest. The forest is the life of Sheka. And our fathers knew this very well. We are also aware that the forest is decreasing along with the decreasing respect for culture. This fact can clearly be seen from the model we are doing. We surely know that our forest coverage was far greater than it is now just a few years ago. I think the model will be of great help to make the current and the future generation think of what is going on and what it should do [...]

Hence the processes enabled the community to see and realize what they currently had, and what they have lost in cultural and natural resources as well as traditional ecological knowledge. Realizing the situation inspired them to take measures to curb the adverse situation that they or their children are going to face.



Community members make a 3-D map of their territory in the Sheka forest. © MELCA ETHIOPIA



Initiative #2: Workshops and Trainings. MELCA also held a series of legal workshops and trainings to increase awareness of community rights and build local capacity. The presumption was that although laws favourable to community rights do exist, the community, law enforcement, and government administrative organs are not aware of the laws or choose to ignore or misinterpret them. Therefore, LEMCA organized legal workshops focusing on national and international environmental laws and community rights for justice organs, administrative staff, and law enforcement bodies like police and militia. Similarly, MELCA also organized awareness raising and capacity-building workshops for local community members including youth, women and clan leaders. These workshops focused on general human rights law as well as environmental law and community rights.

These workshops also shared the findings of earlier research done on the social, ecological and economic values of Sheka forest. The trainees from these workshops were then able to lead monthly workshops to teach their local communities about these findings, as well as collective rights, the Ethiopian Constitution, and other laws.

Initiative #3: Organization of Local Leaders. MELCA also supported the organization of clan leaders, with the objective to empower them to mobilize their community, amplify their voice in demand of their rights in relation to their land, culture and natural resources. In addition, it was hoped that mobilization would tackle the erosion of cultural/traditional practices and loss of their biodiversity through revitalization of their traditional governance systems. Accordingly, MELCA supported the organization of two clan leaders' associations, involving more than 100 members in two districts of the Sheka Zone. The associations empowered the clan leaders to organize their community; to amplify their voices in demanding rights in relation to their land, culture, and natural resources; and to tackle erosion of cultural/traditional practices and loss of biodiversity through revitalization of traditional governance systems. They started to mobilize their communities to defend their land, natural resources and cultural practices.

OUTCOMES

These three initiatives produced impressive results. First, the clan leaders' associations began mobilizing their respective communities to oppose the government's allocation of their forestland for agricultural investments. In particular, they targeted the "East African Agribusiness", who had been granted 3435 hectares of forestland, 1300 hectares of which the company had already cleared for a tea plantation. After successful petitioning by clan leaders and community members, the local government administration revised the investment agreement to allow no more expansion beyond the 1300 hectares already cleared.

Taking this case as a lesson, the local government administration asked MELCA to commission research and organize consultative meetings with government officials and community representatives to develop a draft land use management plan for Masha, one of the districts in Sheka Zone. At these meetings, the idea of creating a biosphere reserve was raised as a sustainable conservation strategy. Community members and local government authorities formed a taskforce in June 2010, asking MELCA to assist in registering the Sheka Zone as a UNESCO Biosphere Reserve.³ MELCA commissioned professional consultants to develop the nomination document and formed a Management Unit (MU) to lead the nomination process. The MU reviewed and endorsed the nomination document, submitting it to the federal government and UNESCO office in Ethiopia.

On 11 July 2012, UNESCO added the Sheka Forest Biosphere Reserve to its global list of 599 Biosphere Reserves in 117 countries. Now the entire Sheka Zone is divided into a “Core Area,” which consists of dense forest and is totally reserved for conservation; a “Buffer Zone,” which surrounds the core zone and allows certain activities which have no negative effects; and a “Transitional Area,” in which development activities including environmentally friendly investments are allowed. As further support, the SNNPR State has also issued the “Sheka Zone Protected Forest Development, Conservation and Utilization Regulation” for enforcement of the demarcations and principles of UNESCO for Biosphere Reserves.



MELCA and community members lead an environmental education session in the Sheka forest. © MELCA ETHIOPIA

³ United Nations Educational Scientific and Cultural Organization.



ANALYSIS

MELCA's strategies were effective because they focused on empowering and building the capacity of both the community at a grassroots level and government officials at various levels. Empowering or creating awareness in the local community is not sufficient, especially in Ethiopia, unless government decision-makers are convinced of an approach and support the idea. MELCA works in close collaboration with local government administrative organs in all of its approaches and project areas, as the kinds of conflicts concerning land and natural resources are not inter-community conflicts, but rather conflicts between state and community or between investors and the community.

As the government is interested in fostering development even at the cost of the environment and rights of the local communities, MELCA believes the best strategy against this would be getting forestlands adopted as Biosphere Reserves. In biosphere reserves, the demand comes from the community. But it is the government that enters in to a commitment with an international organ, which is UNESCO, to protect the area as biosphere reserve. The government also issues a regulation to legally recognize and protect the reserve under national law. So it would not be easy for the government to violate the commitment it signed with the international organ and the laws issued by itself if it tried to allocate the land for purposes against the interests of the local community. Furthermore the community will have a law that it could invoke against any violation of the measures taken to conserve the forest and maintain the land use.

These experiences taught MELCA that working closely with the government along with empowering local communities through various approaches is crucial, and MELCA is now applying this strategy to all of projects.

However, MELCA'S work was not without challenges. In particular, the preaching and promises of investors interested in taking land from the area often worked against MELCA's interventions. For example, the investors often tried to promote their investments by promising provision of social and other infrastructure such as roads, schools and health facilities. A number of government officials and community members then allowed investors to access and utilize their forests and lands on the basis of these promises.

To tackle this issue, the strategy chosen by MELCA was to commission research on the socio-economic returns of conserving the forest compared to allocating it to investors for agricultural investment, and using the findings to engage in evidence-based advocacy. This strategy actually enabled MELCA to topple the investment promotion and let the community understand the value of conserving their forest and land.

CONCLUSION AND RECOMMENDATIONS

Local communities are at the core of any initiative for conservation of nature. They are the ones who are involved in the actual conservation practices through their cultural and traditional ways and benefit from such practices. Yet they may be deprived of their right to their land and natural resources by external forces seeking hold of their resources. Their traditional conservation practices may also be weakened through time as population increases and results in resource scarcity.

Hence, actors concerned for the conservation of nature for the benefit of all humanity should work towards supporting such vulnerable communities through organizing and empowering them to defend their land and natural resources against external forces. They should also support them to become resilient communities who conserve their culture and traditional practices having value for conservation of nature. Given these experiences, the following is recommended:

- » Use approaches that organize communities and create a forum on which they discuss their cultural values, the changes affecting their wellbeing and come up with their own solutions;
- » Support communities to bring their own development from within and pursue a development path appropriate to their own situation;
- » External actors should have a clear understanding of the inherent relationship between culture and nature of communities and the importance of existence of one for the other.

CASE STUDY

5.2



SUPPORTING EMPOWERMENT COMMUNITY ENGAGEMENT WITH GOLD MINING COMPANIES IN GHANA

BY BERN GURI & DAN BANUOKU, **CENTRE FOR INDIGENOUS KNOWLEDGE & ORGANISATIONAL DEVELOPMENT (CIKOD)**
& STEPHANIE BOOKER, **NATURAL JUSTICE**

The Centre for Indigenous Knowledge and Organisational Development (CIKOD) is a Ghanaian NGO working with communities across Ghana to support traditional authorities and civil society organizations to facilitate sustainable grassroots organizational development. CIKOD's vision is of a society where the rural poor, the marginalised, and women have a voice and contribute proactively to equitable and sustainable community development. Its mission is to strengthen the capacity of traditional authorities and local community institutions to use their local resources – and appropriate external resources – for their own development and for the development of future generations.

The Community Organizational Development approach and techniques developed by CIKOD and its associates support communities to mobilize and use their cultural assets more effectively, and to manage and direct their own affairs without relying upon external agencies or organizations. CIKOD's Community Organizational Development approach includes the following set of tools:

- » Mapping of community institutions and resources
- » Community visioning and action planning
- » Community organizational self-assessment
- » Community institutional strengthening
- » Learning, sharing and assessment
- » Using festival and traditional forums for community dialogue with power bearers.

The core of CIKOD's work is promoting Endogenous Development – a community development approach that empowers and builds on communities' existing indigenous institutions and natural, social and spiritual resources. In this approach, communities use their existing skills and knowledge to secure appropriate external resources for their own development initiatives. To this end, CIKOD has developed tools ensure that traditional authorities and a broad cross-section of the community actively participate, irrespective of age or gender. CIKOD uses a number of tools to support local endogenous development: Community Institutional Resource Mapping, Community Visioning, Community Vision Action Planning, and a Community-driven Health Impact Assessment Tool.

The difference between these tools and their conventional counterparts is that they require facilitators to work with a community's cultural resources – material, social and spiritual – in a way appropriate to their worldviews. The approach is premised on working with and through traditional authorities and indigenous institutions (and their organizational practices and resources), to enhance ownership and inclusion of the whole community in the development process.

WWW.CIKOD.ORG

THE NATIONAL AND REGIONAL CONTEXT

Despite the modern political system in Ghana, the majority of the population, especially in the rural areas, still organize around indigenous institutions to carry out activities important to their development and wellbeing. In rural communities, civil society takes the form of the indigenous organizations such as *Nnobo* groups, *Asafo* groups, *Susu* groups, clan networks, and hometown associations through which poor rural families organize their social, economic and political lives. The resilience of rural people may be largely attributed to these institutions and forms of organization. However, opportunities to engage these institutions for sustainable community mobilization and development have been largely ignored or even undermined by development practitioners.

THE COMMUNITY IN TANCHARA

The Tanchara community is a small local community located in Lawra, in the Upper West Region of Ghana, along the border with Burkina Faso. The Tanchara community consists of approximately 3,800 people governed by intricate traditional governance structures consisting of the Divisional Chief, the Pognaa (the female equivalent), and the Tingandem (spiritual leadership).⁴ The landscape in Tanchara contains fruit and nut trees (including shea), small farms, and sacred groves that are preserved by the community because of cultural and spiritual significance and their abundance of medicinal plants.⁵ The entire region is ecologically fragile, with low rainfall and low soil fertility. Communities are heavily dependent on their land for their livelihoods.

⁴ Tanchara Community Institutional Resource Mapping and Economic Baseline Survey, June, 2007

⁵ Guri Yangmaadome, Bernard, Banuoko Faabelangne, Daniel, Kanchebe Derbile, Emmanuel, Hiemstra, Wim and Verschuuren, Bas (2012), "Sacred groves versus gold mines: biocultural community protocols in Ghana" in *Biodiversity and culture: exploring community protocols, rights and consent* (PLA 65).



When CIKOD began working with the Tanchara community in 2003, the goal of the community and its traditional leaders was to strengthen their capacity to respond to the challenges created by mining activity in the region, and to do so using the community's own internal resources. As in many countries around the world, engagements between mining companies and communities in Ghana are often unequal. Oftentimes mining companies will only engage with government officials, excluding communities and their indigenous institutions. Over the last 11 years, the government of Ghana has continued to allocate foreign mining companies licences to prospect for gold in the Upper West Region of the country without the knowledge of, consultation with, or consent by local communities who have traditionally owned, occupied, and used these lands. The situation in Tanchara was no different: In 2004, the Ghanaian government granted the Australian mining company Azumah Resources Limited (Azumah) rights to prospect for gold in Tanchara, in the Upper West Region of Ghana, without consultation with - or consent by - the communities in the area. The grant of prospecting rights caused an influx of illegal miners into the area, whose activities then resulted in water pollution, partial destruction of some of the community's sacred groves, and the creation of large, uncovered pits that caused deaths in the community.



A CIKOD staff member visits one of many pits created by uncontrolled, artisanal mining in Tanchara's community lands.
© CIKOD

CIKOD'S WORK AND ENGAGEMENT WITH TANCHARA AND AZUMAH RESOURCES LIMITED

CIKOD began working with the Tanchara community in 2003, piloting a number of endogenous development tools aimed at strengthening the capacity of the community to organise and make decisions about its own future development.

Communities are dynamic and diverse, which means that building community capacity takes an extended period of time. In the context of the prospective mining project in Tanchara, CIKOD realised that its role was to support the community to identify and use its own internal resources to protect and conserve its lands and environment. Over several years CIKOD worked with the Tanchara community, using a number of participatory methodologies, to build internal capacity to deal with the mining threat.

CIKOD's Community Organisational Development approach requires staff to undertake an internal, reflective, learning process so as to better understand their and the community's worldviews. Before beginning work in the community, CIKOD staff began by discussing their own views of endogenous development and how to work within the worldviews of each community. After ensuring staff alignment with authentic community-driven action, CIKOD then engaged in a series of meetings with traditional chiefs and elders in Tanchara in order to discuss the impending challenges, the endogenous development approach and, after sharing information, gaining the consent of the chiefs and elders to work in the community.



Chief Yaayin Niber, Naa of Tanchara, & his traditional council, Lawra. © PETER LOWE / CIKOD



With the chiefs and elders' consent, CIKOD began training a community-selected team of representatives. This team conducted an initial mapping of formal and informal institutions, assets, and resources within the community as a way to identify the entry points within the community to propel community development. CIKOD trained the team to use a number of participatory endogenous tools, including focus groups and individual interviews, participant observation, and resource mapping. CIKOD helped team members practice using these tools via role play with cross-sections of the community.

Once trained, the team then engaged in a process of gathering information on the community's institutions and resources, through the Community Institutional Resource Mapping (CIRM) process with members of the larger community, enabling community members to collect the research data for themselves. The CIRM recorded a variety of different but equally important community resources – natural resources as well as cultural, social and spiritual resources. The information was depicted through hand-drawn maps, notes taken during interviews, and video. Once compiled, this information was verified at community meetings. This process gave community members the opportunity to identify their own resources, encouraging a greater appreciation of what they already had (as opposed to a focus on what they lacked) and motivating community members to protect and conserve the assets that make their community unique and strong.

It was during these initial meetings that members of the Tanchara community first raised the issue of foreigners coming into their community and marking trees with red ribbons, searching for gold. This revelation was a surprise to both CIKOD and the rest of the community, and whilst gold mining was not the initial focus of this endogenous development work, the issue of gold mining as an opportunity and a threat was soon propelled to the forefront of community discussions.

With their community resources in mind, the community then engaged in a process of visioning. This process reflected on: where the community was 10 years ago and what resources it used; the community in the present; and a vision for the community in 10 years time. CIKOD facilitators recorded responses and prepared a vision statement based on the discussion. The community then engaged in developing community vision action plans. The planning process included: discussions on the resources needed; identification of key catalysts; and setting out key responsibilities, time frames, and priorities. The process supported the community to direct its efforts towards its own development, using the resources that the community had identified during the CIRM process. The community then drafted a community contract to commit to and remind the community of their plan.⁶ Community by-laws were also developed to further some of the community's goals.

⁶ This summary is an excerpt of a more detailed summary of the steps undertaken as part of the Tanchara community's endogenous development process as set out in Guri et al (2012) pp. 121-130.

Despite Azumah having a license to prospect in Tanchara from 2004, it was not until 2006 that the Tanchara community formally became aware of Azumah's intentions to prospect (through a newsletter sent to the District Assembly in Wa). When Tanchara learned of Azumah's plans, spiritual leaders in the community - equipped with a greater understanding of the community's own skills, resources, and vision for endogenous development and greater information about the influx of illegal miners in the area - articulated their concerns about environmental destruction by mining by releasing a statement that demanded that government "safeguard their sacred groves and sites from both legal and illegal mining."⁷ This first public step from Tanchara's spiritual leaders created momentum within the traditional leadership structures in the community, who then continued to articulate the community's position opposing mining, using the skills and information supported by their work with CIKOD.

In particular, CIKOD and the Tanchara community found it helpful that there were regional and international human and environmental rights obligations with which they could arm themselves to support their position. In particular, the ECOWAS Mining Directive C/DIR.3/05/09 articulates a commitment to the free, prior and informed consent of communities.⁸ The community's bargaining power was also strengthened by their strong, united vision, an awareness of how mining had affected, or was likely to affect, their community, and knowledge of the law that supported their right to say "no".

From 2007 onward, CIKOD supported Tanchara to assess the likely impacts of gold mining on their community health and well-being by using a Community-Driven Health Impact Assessment Tool (CHIAT). The CHIAT process began with community evaluations of the current and likely impacts of mining on all aspects of what the community identified as 'well-being'. Positive and negative tangible impacts on land and infrastructure were assessed, as well as positive and negative intangible impacts on well-being, including spiritual impacts. CIKOD and the Tanchara community later used the findings of their CHIAT to respond to external actors and an environmental impact assessment of mining projects.

Community representatives first directly engaged Azumah at a regional forum on gold mining in 2010. At this forum, community leaders shared their community's concerns about the impact of mining on the community's short, medium and long-term objectives and well-being, based on the outcomes of the CHIAT.⁹ Whilst Azumah heard community concerns, they did not respond.

⁷ Stephanie Booker, Jael E. Makagon, Johanna von Braun, with Daniel Banuoku and Hadija Ernst, "Community Protocols: A Bottom Up Approach to Community Participation" Prepared for the 3rd UNITAR-Yale Conference on Environmental Governance and Democracy, 5-7 September 2014, New Haven, USA, 6.; Guri Yangmaadome, Bernard, Banuoko Faabelangne, Daniel, Kanchebe Derbile, Emmanuel, Hiemstra, Wim and Verschuuren, Bas (2012), "Sacred groves versus gold mines: biocultural community protocols in Ghana" in *Biodiversity and culture: exploring community protocols, rights and consent (PLA 65)*, 124.

⁸ See Article 16(3); Booker et al, p.6.

⁹ Guri et al. 2012, 126.



On another occasion, the results of the community's CHIAT were used to dispute findings in the scoping report of an environmental impact statement (EIS) lodged by Azumah with the Ghanaian Environmental Protection Agency (EPA). The process of disputing the scoping report drew the EPA's attention to the small number of stakeholders that Azumah had proposed to consult with. The Tanchara community's protests resulted in Azumah expanding stakeholder consultations on gold mining to include both CIKOD and the Tanchara community. During these stakeholder consultations with Azumah, the community voiced their opposition to gold mining in the region but again concerns were inadequately addressed.

Given the lack of meaningful dialogue between the community and Tanchara, the community took many opportunities to voice their concern about mining in the region, regardless of whether Azumah representatives were present. On several occasions, CIKOD and the community used the outcomes of the CHIAT tool to inform discussions at community workshops and meetings, attended by local government officials.¹⁰

In 2011, the information collated from the endogenous development tools used by Tanchara informed the development of the Tanchara biocultural community protocol (BCP).¹¹ The Tanchara BCP was developed as a tool to aid dialogue with external actors. It became a document that articulated the community's governance structures and decision-making procedures, the concerns it had with mining, its relationship with natural resources such as its sacred groves, and the national, regional and international laws that supported the protection of the community and its land. It was during this process of putting together the BCP that CIKOD, with an external researcher, supported the community to engage in a number of multi-stakeholder processes. These multi-stakeholder processes sought to examine the usefulness of the BCP as a tool for engagement with external actors such as government officials and Azumah. During this time, the community had meetings with a number of different external actors, including government departments, and various stakeholders within the community. Despite being invited to a number of meetings with community representatives, Azumah failed to attend. Nevertheless, the multi-stakeholder meetings demonstrated that the BCP is a powerful tool for the Tanchara community to present a unified position during negotiations regarding mining projects in their territory.

In 2013, Azumah finally met with the community and Tanchara presented the company with the BCP. The Tanchara BCP set out the community's traditional terms of engagement, decision making structures, concerns about mining and the national, regional and international laws that supported the respect of their traditional institutions, customs and their right to say "no". Tanchara community representatives asked the company to respect the terms of engagement provided in the BCP document. Since this time, Azumah has not approached the Tanchara community.

¹⁰ Guri et al. 2012, 126.

¹¹ More information on BCPs can be found in the case study by Save Lamu in Chapter 4.

Over time, CIKOD's work with Tanchara bore fruit. As a result of the community's strong mobilization and advocacy against mining there have been continual postponements of mining activities by Azumah. Indeed, Azumah has not approached the community since those initial stakeholder consultations associated with the Environmental Impact Statement. As of June 2015, Azumah has not started prospecting in the Tanchara community. They are still awaiting licenses for mining and the processes have been significantly delayed for a number of years. The traditional leadership of Tanchara, together with the community, instituted yearly meetings to reflect on their actions plans and to map their progress. The community has continued to present their vision and plans to external agencies, including government officials and development agencies. Members of the community are now far more organized and empowered to respond to the threats imposed by both legal and illegal mining. They are also much more aware of their community's strengths, assets, and resources and have strengthened their commitment to conserve their cultural heritage, sacred groves and community way of life. Other positive outcomes of CIKOD's work with the Tanchara community include:

- » The Tanchara community's Biocultural Community Protocol process allowed the community an opportunity to articulate their governance structures and decision-making procedures to external actors, and to adapt them in the light of emerging threats. This has increased the legitimacy of these traditional structures to represent the community and has also ensured that customary laws regarding engagement are adhered to.
- » The CHIAT process increased community awareness as to the potential positive and negative impacts of mining on the community. It also assisted the community to challenge the findings of an external environmental impact assessment because the process prepared the community to raise issues that were not included in the original impact assessment.
- » The development of a community vision and corresponding action plan strengthened the community's sense of agency in shaping their own future. Sometimes when mining projects are introduced in to communities, community members are given very little choice to stop such activities and so often become passive recipients of such activities. However, having engaged in these participatory development tools beforehand, the Tanchara community strengthened their belief in their own choice to say "no" to projects like mining – or "yes" if they determine that the project will improve their community's well-being and will progress on their own terms.



WHY DID THIS STRATEGY WORK?

Investor and community interactions are usually characterised by a highly-resourced investor on the one side and a poorly-resourced, sometimes divided community on the other. To strengthen a community's position in negotiations with investors, it is important for the community to mobilize itself, decide on a united stance, and develop a strong and clear vision for the future. From this unified and informed foundation, a community can more meaningfully evaluate whether a proposed project fits into their vision for their community's future.

CIKOD's work in Tanchara created spaces for the community to come together and discuss issues impacting them – essential when supporting a community to unify around an opportunity or threat. It also created opportunities for engagement between community stakeholders, traditional authorities and external authorities. Most essential though, CIKOD's work supported the community to prepare themselves for engagements with external actors such as Azumah. The combination of endogenous development tools and the BCP process helped the community to solidify a united vision for the future and empowered them to articulate that vision and the way that they wished to engage with external stakeholders. CIKOD's work with the Tanchara community was critical to the community's ability to mobilise and to articulate and defend their rights.¹²

Given the successful delay of mining activities in Tanchara and the growing threat of prospecting in neighbouring communities in the Upper West region of Ghana, CIKOD has used the momentum gathered through its work to mobilise other communities likely to be affected by mining across the entire region. The establishment of the Upper West Coalition on Mining with other Ghanaian partners has substantially increased the supports available to rural communities advocating against mining projects. The objectives of the Coalition are four-fold: to strengthen local collaboration between local, national and regional civil society networks in Africa engaged in promoting and supporting human and indigenous rights and good governance; to raise public and policy awareness about the rapid expansion of extractive industry activity and the linkage with global development issues; to develop multi-country strategies to protect areas of cultural, spiritual and ecological importance of local communities; and to link African CSO networks with global alliances working on extractive industries. The Coalition plans to work with communities in the Upper West Region to train them on endogenous development tools, community protocols, and share how they have been used successfully by the Tanchara community to advocate their anti-mining position. The building of this regional, grassroots coalition has amplified community concerns on mining and has increased the legitimacy of community complaints. Now, traditional leaders from across the Upper West Region are demanding greater transparency and accountability in the issuance of prospecting and mining licences in the region. This is particularly important at the moment, as 28 licenses for prospecting have been issued across the Upper West Region in the last few years.

¹² Booker et al, p.8.

LESSONS FOR ORGANISATIONS

CIKOD has learned a number of lessons from supporting community mobilisation around gold mining and engaging with companies:

- » Supporting an endogenous community development process as someone external to the community requires humility and deep reflection into one's worldviews. CIKOD staff found it helpful to prepare by discussing their views of endogenous development, their own worldviews and values, and any potential issues or challenges that might arise when working within the worldviews of the community. It is important that practitioners engage in a similarly reflective process, and doing so as a group before, during, and after working with a community can be an effective way to support this.
- » Building on Tanchara's existing internal skills, knowledge, structures, institutions, and resources was an important first step in CIKOD's work with the community around mining. Such efforts helped to create unity – which is necessary to address the diverse views within a community that can cause conflict when natural resources are at stake.
- » Communities are dynamic and ever-changing – so facilitation and support needs to be responsive to the community. Particularly before a project has commenced, views within communities towards mining can differ greatly and are often fluid. A community may not have always had a united stance with regards to gold mining. In Tanchara, conflicts occasionally erupted between sections of the community that required mediation. CIKOD has used ongoing facilitation and mediation of discussions between the community and the traditional leadership to deal with such conflicts. This work has not always been planned. Organisations such as CIKOD must be flexible in how and when they are available to communities so they can respond as needed and need to be equipped to deal with the fluidity and diversity of views and conflicts that may arise as a result.
- » Companies often use 'divide and rule' tactics to weaken communities around mining issues. CIKOD's endogenous development and BCP approach helped to build a critical mass around a common vision towards the issues. This approach then made it difficult for companies to weaken community ties, because the community was united. The approach was also crucial to Tanchara's success at delaying gold mining projects.
- » Communities must be prepared for ongoing engagement with companies. In the Tanchara community, the nature of "engagement" with Azumah has fluctuated. At times the community chose not to engage with the company, for example when invitations to company-initiated meetings were given with very short notice. On these occasions, community representatives have asserted their terms of engagement (as set out in their BCP) instead of scrambling to engage with little preparation. They have also set out the company's obligations under local, regional and international law, including the requirement to engage in genuine and meaningful consultations with



communities and to ask for community consent before a project takes place. At other times, the community tried to initiate engagement with the company only to be rejected. Throughout this relationship, the community, with CIKOD's support, has stood firm on their general demands and the terms upon which they wish to engage. Standing firm has been very important to the success of the Tanchara community in delaying mining activities. Currently, engagements between Azumah and the Tanchara community have reached a deadlock.

- » Supporting the Tanchara community to strengthen its internal representative structures and customs has been crucial to the engagements with external parties. This has also made it easier to effectively mobilise community members to discuss and address issues that arise. Part of CIKOD's work, as a result of its experiences with the Tanchara community and Azumah, has been to expand its work in strengthening community self-representation to build a network of solidarity and support through a community coalition across the Upper West region.
- » CIKOD has learnt, through its experiences, that community visioning, action plans, CHIAT, the BCP and dialogues are best used in conjunction with the media (including social media) and appropriate press engagement. The use of media readily available to those impacted, such as local community radio, has helped to disseminate information. In turn, access to information has resulted in building wider resistance across the region. In addition, widespread resistance to mining has piqued the interest of international agencies such as the International Consortium of Investigative Journalism to investigate and support the community's struggles.
- » CIKOD has used a number of innovative ways to obtain information to help strategize. For example, CIKOD was able to get access to information only accessible to Azumah shareholders through a shareholder contact. This additional information supported CIKOD to strategize. In addition, it is important to be mindful of contacts within government agencies and institutions that can help provide information and support the aims and goals of the Tanchara community and the coalition.
- » Working with communities endogenously is a long-term commitment. At the same time, it is important to be conscious of and avoid creating community dependency on NGOs or external agencies. There is a fine, but important, balance to strike between commitment and dependency. CIKOD's endogenous development work seeks to ensure this balance is reached by empowering community catalysts to lead the work, with CIKOD offering responsive and tailored support as needed.

CASE STUDY

5.3



HOLDING LEADERS ACCOUNTABLE IN NEGOTIATIONS WITH INVESTORS IN SIERRA LEONE

BY SONKITA CONTEH,
NAMATI SIERRA LEONE¹³

Namati is an international organization dedicated to putting the law in people's hands. Namati is building a movement of grassroots legal advocates who help communities exercise their rights. Namati implements innovative interventions in partnership with governments and civil society organizations and provides technical assistance to lawmakers and civil society. Namati works in several countries including Sierra Leone, where work focuses on provision of justice services. Using a model of community-based paralegal offices supported by a small corps of service-minded lawyers, Namati Sierra Leone is dedicated to helping communities protect their rights in daily life and to spreading access to justice to places it previously has not reached. Namati's Sierra Leonean paralegals are increasingly being called to help communities address land disputes and strengthen rural communities' land rights, particularly in situations where communities are negotiating with investors. Namati's goal when working on land issues in Sierra Leone is community empowerment and supporting activities to match a community's goals and interests. In addition, Namati works to ensure participation by an entire community, not only leaders or older men. Namati actively includes all constituents and at all community meetings insists that all men, women, and youth in the community are represented and supported to participate.

WWW.NAMATI.ORG

¹³ Thank you to the community members of Masethele for their continued strength and inspiring unity under pressure. Thank you also to our supporting partner in this case, the Sierra Leone Network on the Right to Food.



THE NATIONAL CONTEXT: COMMUNITY LAND RIGHTS IN SIERRA LEONE

Like many other countries in Africa, Sierra Leone uses a system of customary tenure for the majority of its land, with no formal documentation or governance arrangements for land use decisions. Communities manage their customary lands at a local level, through chiefdom councils, but do not hold secure legal title or documentation of their land rights. These councils are headed by paramount chiefs who are very powerful individuals and elected for life. Often, these chiefs assume 'ownership' rights and enter into land transactions with companies without consulting families or communities concerned. This makes rural communities susceptible to dispossession of their lands by powerful interests, such as mining and large-scale agriculture companies. In 2012, it was reported that almost a million hectares (one seventh of Sierra Leone's land area) had been leased to corporate interests.

Currently, in Sierra Leone there is no law or process for communities to formalize customary land claims. A draft national land policy which is being developed has for the first time proposed the adoption of community land titling for rural lands. Until this happens, Namati's land rights work will focus on supporting communities in their interactions with government and companies, especially during negotiations. Typically, Namati Sierra Leone works with communities that are facing pressure from an outside entity that is seeking to acquire land, or communities that are attempting to challenge an improperly negotiated land deal. When a community contacts Namati to request legal support in these situations, Namati staff visit the community and hold an open community meeting to learn about the community's concerns, goals, and needs. Based on this, Namati staff, community-based paralegals, and community members draft a plan of action tailored to the community's situation. Sometimes Namati provides short-term services, such as interpreting and explaining the legal terms of a proposed lease or in other cases Namati paralegals and lawyers support communities through much longer legal battles, as in the case summarized here.



Left: A mobile irrigation system lines a road running through land in Masethelle cleared by Addax Bioenergy to produce sugarcane and biofuel for export. © NAMATI

Above: Achmed Sesay, a legal empowerment advocate with Namati, addresses a gathering of villagers in Masethelle. © NAMATI

CHALLENGE: HOLDING LEADERS ACCOUNTABLE IN NEGOTIATIONS WITH INVESTORS

One of the challenges that often arise when working with communities on issues of land rights and negotiations with investors is holding local leaders accountable to the community during negotiations. Rural communities in Sierra Leone have deeply-rooted customary governance structures, including elders, family headmen, community leaders, Chiefs, Paramount Chiefs, and Chieftain's councils. Chiefs hold the majority of local authority and these institutions are supported by tradition and statute. In land protection efforts, Namati works closely with community leadership and work to strengthen the accountability of leaders to the wider community, such as reporting back the result of meetings with investors.

Challenges arise when interests of local leaders conflict with their responsibility to protect the interests of their community. In these situations, leaders sometimes agree to land deals that benefit them but have terms that are not beneficial or even harmful to the wider community. In these situations where leadership is compromised, the leaders typically stop working with Namati, and often they are the primary link to the community so Namati's support ends. To avoid this, Namati now works to create a relationship with the whole community and a wide selection of community members, so that services to the community can continue in situations where community members seek to challenge the actions of their leaders. Much of the learning that informs this new approach came out of the case of Masethele, described below.

CASE: MASETHELE VILLAGE AND ADDAX BIOENERGY SIERRA LEONE LTD.

Masethele is a small village located in the Malal Mara chiefdom in the Northern Province of Sierra Leone. It is part of a group of forty-eight villages involved in an agreement with Addax Bioenergy Sierra Leone Ltd., a Sierra Leonean subsidiary of the Swiss energy firm Addax and Oryx Group. In 2009, newspapers reported that Addax was planning a €200 million bioenergy project that would require 24,700 acres of land to cultivate sugar cane for ethanol production. In May 2010, Addax signed 50 year lease agreements with three chiefdom councils - Makari Gbanti, Bombali Sebor and Malal Mara - that covered approximately 58,000 acres of land (more than double the amount first stated). The rent per acre was fixed at \$3.60 USD, half of which would go to landowning families in the area and the other half would be divided between the central government, chiefdom and district councils. A draft of the lease had earlier been criticized by civil society organizations as heavily weighted in favour of Addax but those concerns were not addressed in the final lease. Subsequent to the lease agreements and in a bid to make them more palatable to communities, Addax executed 'acknowledgement agreements' directly with representatives of land-owning families. Under these agreements, Addax paid an additional US\$ 1.40 per acre to land-owners who agreed to acknowledge Addax's lease under the 50 years lease agreements signed with the chiefdom councils.



Under this agreement, the entire land area of Masethele (2,796 acres) was leased out to Addax. Although Addax intended to use only one-fourth to one-third of the village's land, the lease gave them control over all of it in case they wanted to expand, including farmland, common areas, forests, wetlands, water bodies, and even house plots. This threatened to dispossess the whole village of the lands and natural resources central to the villagers' livelihoods and identity. When the villagers learned of the land deal, they refused to acknowledge the lease as they were dissatisfied with both the substance of the lease and the lack of proper consultation. Despite pressure from the chiefdom council, district council and parliamentarians, the community members refused to accept their allotted share of the rent paid by Addax. According to one inhabitant, "The council should have asked us if we wanted to lease our entire village to Addax, but they didn't and we actually don't want to give all our land to Addax." However, Addax insisted on its right to the entire area under the lease agreement. The resistance to renegotiate and Masethele's collective resolve to protect their lands led to an impasse for over 2 years.



Community members participate in a community rights meeting organised by paralegals in the village school.
© NAMATI

NAMATI'S INVOLVEMENT

In late 2012, Namati was contacted by a native of Masethele living in Freetown who had learned of Namati's work supporting communities with legal services. Namati staff met with Masethele's leaders and organized a series of open community meetings to learn about the situation. With support from the Sierra Leone Network on the Right to Food (SiLNoRF), Namati began representing Masethele in negotiations with Addax with the goal of finding an acceptable compromise for both sides.

Namati and the community members of Masethele decided that Namati's role should be to help explain the situation clearly, support communication between community members and leaders, and help the community members and leaders work together in negotiations with Addax in order to find a solution to the stalemate. Namati staff and community paralegals researched the agreement and organized many meetings in the community to explain in detail all the terms of the agreement. Meetings included representatives from the entire community, including women, men, youth, elders, and local chiefs. Most of the community members were illiterate and so had never seen or understood the full extent of the lease terms. When the terms and their practical implications were explained and understood, there was collective horror at the threat that Masethele was facing.

In order to bolster Masethele's position in negotiations with Addax, Namati staff worked with community members to identify and document the potential impacts of the lease. In particular, Namati staff met with youth and women to ensure that every affected constituency had the opportunity to talk about the potential negative impacts on them, such as damage to gardens and farming plots. After a series of community meetings where impacts were discussed, the village agreed that one-fourth of the land could be leased to Addax, but the remaining three-fourths should remain with the village.

But local leaders refused to adopt the community's decision. Four of the community's Chieftains and leaders wanted the increased rent from renting a larger area. When they met with Addax these four said the community had all agreed to lease all their land. Namati staff were monitoring the negotiations and realized that the leaders were not representing their community's decision. Another meeting was organized where Namati staff and paralegals explained what had happened. Without naming any of the four leaders, out of fear of sparking conflict or retribution, Namati explained that some of the community's leaders were not properly representing the community's decision and advocating contrary to the community interests.

In response, the community members rallied together and told their leaders, from a unified stance, that even though they respected their leaders it was essential that the leaders respect the community decision to only lease a quarter of the land. Together, community members announced that if the leaders did not represent this offer to Addax then they would lose their authority, they would not represent the community any longer and would be



replaced in the negotiation meetings. Men, women, and youth from across the community stood to voice their support and insistence upon this position. The leaders were compelled to listen to the community's unified decision and strong stance. Ultimately the leaders did present the community's proposal to Addax. The proposal was accepted and Addax signed an agreement with Masethele that Addax would limit their use of land to 626 acres to cultivate sugar cane and the remaining land would remain under Masethele's title and control. Addax would pay rent and other proceeds only for the land under cultivation. This renegotiation was the first time that Addax had signed an acknowledgement agreement for an area smaller than what was originally leased to them by the chiefdom councils.

The outcome of this process of education, impact assessment, and empowerment was that the community members of Masethele came together to define the terms of the land deal in a way that matched their goals and needs. This unity was strong enough that community members were empowered to hold their leaders accountable for accurately representing the community's decision. The impasse was resolved and Masethele protected their rights to their community lands and resources. Addax's lease and sugar cane project is progressing and impacts are being monitored by community members, who also provide Namati with regular updates on the situation in Masethele and the surrounding region. Already many of the other villages across the three chiefdoms have expressed dissatisfaction with Addax's lease terms and local impacts from the development and have called for a review of their provisions. In this case and others across Sierra Leone, Namati is continuing to support communities to protect their land rights and obtain fair terms from investors.

LESSONS FROM MASETHELE

Masethele taught Namati several lessons about successfully supporting communities in their land negotiations with investors, especially when there are differences between leadership and the community as a whole. Namati is now applying these lessons and recommends similar considerations to other organizations working in similar situations.

- » **Build direct connections with community members, not only leaders.** A critical part of the success of Namati's work with Masethele was Namati's direct connection with the community members themselves, not only the leadership. Prior to this case, Namati staff would work most closely with community leaders which meant that in situations where leaders were compromised and no longer representing the interests of their community, Namati had no recourse to continue services to community members if they wanted to challenge their leadership. In the case of Masethele, Namati had ways to continue supporting the community members even when some of their leaders went against the community's interest and the process that Namati had facilitated.

- » **Cultivate agency of community members and work on governance at the community-level.** An important part of Namati's work on land issues is strengthening local governance and making it more representative and accountable. Activities that encouraged and empowered community members to participate in decisions about community land, such as open community meetings and participatory impact assessment, cultivated a sense of agency in community members. This was central to the success in Masethele because when community leaders did not want to support the community's collective decision, it was up to the community members themselves to demand that the leaders listen to the community. The case was successful because the community members stayed strong and unified in their demands for accountable leadership.
- » **Involve everyone in the community to build a united vision.** Related to cultivating agency, it is critical to include the entire community in community land protection efforts and build a united position. Namati staff and paralegals made sure to speak with and include representatives from every group and household in Masethele. This enabled Namati's team to have a full understanding of the concerns and needs of community members, and a comprehensive assessment of the potential impacts of the lease. Building these broad relationships, and including women and youth, meant that all the different perspectives and information held by community members were included in the process. This facilitated a common understanding of the threat posed by the lease terms and a united opposition to them. When a community is united with a common vision then they are empowered to push for the results they want, in this case the protection of most of their land. Namati facilitated this unity building by emphasizing that the lease would affect everyone in the community, with detailed explanations of all the potential impacts. This built collective understanding of the collective dangers of the lease. In the case of Masethele, this was made easier because it was a small village and it was not difficult to bring everyone together for village-wide meetings. In larger communities this will be more challenging, but still there should be an attempt to ensure every household, or at least every stakeholder group, is represented in every large meeting and in important decisions.
- » **Stay in touch with a diversity of community members.** Working with Masethele highlighted the power of regular direct communication with communities. Namati, like many organizations in Sierra Leone, is based in Freetown, which is far from most rural communities. Because of this, Namati staff could not visit Masethele as often as was preferred. Long periods of no communication can create openings for companies to negotiate bad deals with communities or for leaders to make decisions that are not in their community's interest. If advocates have an ongoing relationship with a diversity of community members, including women and youth, it is possible to receive more frequent and more representative updates on a community's situation. While working with Masethele, Namati found that relationships with several youth in the community



were particularly important, as they would call regularly to provide information and updates. Now it is standard practice for Namati staff to give out Namati's phone numbers in community meetings, so any community member can call when issues arise. Namati staff also check-in with community contacts regularly to provide updates on their case and on related things happening in their area and across the country.

» **Work with partner organizations that have relationships with the community.**

Namati works with partner organizations whenever possible, especially in cases focused on land and natural resource issues. This is especially helpful when other organizations have established a relationship with the community in question. When Namati began work with Masethle, it had no prior connection to the community. However, because Namati worked in partnership with the Sierra Leone Network on the Right to Food, which had member organizations that did have a connection with Masethele, Namati staff were able to build trust with the community much faster. Whenever Namati is working with a community for the first time, staff try to identify other trusted organizations who can introduce the team to the community and help build a strong alliance and partnership.

» **Land issues are powerful and can be leveraged to tackle governance issues.**

Masethele was one of the first communities that Namati Sierra Leone has worked with on a community-level land issue, and it has inspired Namati to work with more communities to protect their land rights. Land is a very powerful issue for Sierra Leoneans, especially in rural communities where their livelihoods depend on it. Land is central, and essential, for community survival. When a community's land is threatened, everyone views the situation as very serious. Namati staff were amazed at the level of commitment and effort that the community members of Masethele showed during the work with them. When working on land issues, communities organize themselves and are fully motivated to participate. As well, Masethele was an example of how land issues can be a catalyst for communities to address other issues, such as lack of accountability in leaderships. When land is under threat, community members are more willing to work on these difficult issues, such as when the community members of Masethele stood up to their leaders and powerful elites to demand accountability.

CASE STUDY

5.4



RESISTING THE FEMINIZATION OF THE NEGATIVE IMPACTS OF MINING IN ZIMBABWE

BY MELANIA CHIPONDA,

CHIADZWA COMMUNITY DEVELOPMENT TRUST (CCDT)

Chiadzwa Community Development Trust (CCDT) was formed by Chiadzwa community members in reaction to the impacts of ongoing diamond mining activities in Marange: threatened tenure security; human rights violations; a failure to economically empower the local community; irreversible environmental harm; and violation of the rights of women, children and other vulnerable groups. CCDT was formed with the objectives of: ensuring the protection of human rights, community rights and the environment; safeguarding the economic interests and tenure security of the local community; and protecting the rights and dignity of women. (For more on the situation that led to the formation of CCDT, see ZELA's case study in Chapter 4.)

WWW.FACEBOOK.COM/CHIADZWACOMMUNITYDEVELOPMENTTRUST

THE NATIONAL CONTEXT IN ZIMBABWE

In Zimbabwe, the creation of communal lands dates back to colonial times, where the Land Apportionment Act of 1930 divided land into: land for commercial use (50% of which was meant for colonial settler farmers); Native Purchase Areas under freehold; and communal lands under traditional customary arrangements.¹⁴ Due to financial constraints, women were unable to purchase land within the Native Purchase Areas and were further marginalized on communal lands where land use rights were assumed by men, even though such land was more often than not worked by women to secure the livelihoods of their families.

The Native Land Husbandry Act tried to address the problem of land scarcity (scarcity because the colonial administration had taken over land for commercial agricultural use, industrial development and mining), by individualizing tenure through registration, which it hoped would promote land conversion and reduce land disputes. The Act explicitly defined farmers as “male” despite the fact that women traditionally worked and lived on the land (in comparison with men, who often travelled to urban centres in the search for wage

¹⁴ Gaidzanwa, R. (1994) *Women's Land Rights in Zimbabwe*, A Journal of Opinion, Vol. 22, No. 2.



labour). In colonial Zimbabwe, women were regarded as minors and, as a result, women could not independently own land or any property. Even where women were formally employed, their salaries were less than those of men until the Equal Pay Act was passed 1982. Only when the Legal Age of Majority Act of 1982 was introduced were women given full adult status and permitted to own property in their own right.

Despite the recognition of women as adults in 1982, the Fast Track Land Reform Programme (FTLRP) of 2000 further entrenched the plight of women with respect to land rights in Zimbabwe. Female-headed households who benefited under the Model A1 (peasant farmers) constituted only 18% of the total beneficiaries under this scheme, while the only 12% of beneficiaries under Model A2 (commercial farmers) were female.¹⁵ This was despite the fact that between 70% - 80% of all subsistence farming in Africa is carried out by women and women are responsible for 60% of all harvesting, 70% of all weeding, 90% of all processing, 50% of livestock rearing, and 60% of the marketing of agricultural products.¹⁶ In addition, women's roles in natural resource management include management of water, wood and forests.¹⁷

In Zimbabwe, most mining takes place on communal lands. The Mines and Minerals Act (Chapter 21:05) of Zimbabwe gives precedence to mining over other economic activities that may take place on land. While Part 3 of the Act states that prior consent from private owners is necessary for any prospecting for purposes of mining for privately owned land, the rights of communal land occupiers are limited since all communal land is regarded as state land and as a result the President has the power to consent to prospecting for purposes of mining. The consent of communal land occupiers for a project is often overruled, leaving communities no power to refuse or even raise concerns about mining.

The rapid increase in mining activities in Zimbabwe is reflected in the government's current economic blueprint, *ZimAsset*, which suggests that the economic salvation of Zimbabwe lies in its vast mineral resources. However, this is contrasted by the United Nations Development Program's Working Paper, "The Mining Sector in Zimbabwe and its Potential Contribution to Recovery," which states that compared to global measures, Zimbabwe is not necessarily a mineral-rich economy, despite its mineral deposits of platinum, gold, diamonds, methane gas, asbestos, nickel, coal and chromite.¹⁸

Women are particularly affected by the negative impacts of mining. Mining concessions usually cover land on which rural households carry out their farming activities, the foundation of many women's livelihoods and how they support their families. Given the

15 Utete, C. M. B. (2003) *Report of the Presidential Land Review*, Vol. 1, Government Printers and Publishers, Harare

16 World Bank (1997) *Implementing the Ethiopian National Policy for Women: Institutional and Regulatory Issues*, Africa Region, Washington DC

17 Mwangi, E. (2001) *Not yet Paradise: Gender, Environment and Sustainable Development in Africa*, Indiana University, Indianapolis

18 Hawkins, T. (2009) *The Mining Sector in Zimbabwe and its Potential Contribution to Recovery*, UNDP's Working Paper 1

weakness of women tenure security and land rights, mining further pushes women into the periphery as they are seldom included in consultations and compensation negotiations. The marginalization of women with regards to land rights is one of the major underlying causes of the challenges faced by the women who were affected by diamond mining in Marange, as shall be discussed below.

CHALLENGES FACED BY WOMEN IN MARANGE AND ARDA TRANSAU

Chiadzwa Ward is located in the remote district of Mutare Rural District in Marange Communal Lands under Chief Marange in the eastern province of Manicaland in Zimbabwe. The South African mining company De Beers has been prospecting for diamonds in the community since before independence in 1980, but in 2006 diamond discoveries attracted thousands of people to prospect for diamonds on the community lands. It was at this time that the Marange community faced a number of major challenges related to diamond mining.

When the Government of Zimbabwe announced the discovery of diamonds in Marange in 2006, the community, and women in particular, assumed that the alluvial diamonds were to be mined by the members of the community, given that the government had also announced an initiative to support Indigenization and Economic Empowerment. However, rural land in Marange is classified as state-owned “communal land.” This classification created a huge obstacle for the realization of community rights, including the right to adequate and fair compensation. Community members of Marange were not adequately consulted prior to mining or relocation, nor was there free, prior and informed consent by community. In one instance in 2008, a woman woke up one day to find heavy industrial mining equipment clearing her fields and her homestead. A military zone created around the new mines shut out the community of Marange from compensation discussions and limited local employment in the mines. Any limited benefits with respect to employment in the mines were destroyed by divisions in the community with respect to benefit-sharing, creating conflicts even within the community itself.

As a result of the diamond mining, families’ fields have been taken away, animals have been lost or stolen, and disease has spread due to a lack of boreholes and toilets to cater to the increased population. When Zimbabwean soldiers entered Marange’s community land in 2007, they began a campaign of violence and intimidation, including killings, beatings and cases of torture. It was at that point that anticipated losses became hard realities. Curfews in the area were introduced, and heightened security and militarization created a need to carry identity cards when travelling even within the community. Some families were forced to relocate to Arda Transau, but other families have remained in Marange and are suffering negative impacts on their health and livelihoods as a result of mining pollution to land and water. Community members became scared for their families and children. In addition, the mining activities have brought about changes in the social dynamics between



the remaining families in Marange and the families who relocated to Arda Transau – the families in Marange have accused those in Arda Transau of leaving too easily, even though many of the families were forced to leave during the night at gunpoint. These impacts spurred the beginning of community and human rights advocacy in Marange.

The negative impacts of mining in Marange, like many other places, are not gender neutral. The potential for the community to benefit from diamond mining has been undermined by the government's continued use of exploitative and unfair land laws. These laws are particularly discriminatory against women, and amplify non-participation of women in decision-making and political processes. Men in Marange have been able to access some limited benefits from mining, but women have experienced only negative impacts. Marange women have a close relationship with their natural environment and any disruption of the land and of their natural environment negatively impacts on their lives and well-being. Specifically:

- » Most agricultural activities in Marange are performed by women;
- » Women do most of the gathering and management of forest resources (fruits, edible insects, and small animals) that supplement the diet of Marange residents;
- » Medicinal herbs found in the forests are mostly accessed by women in Marange who hold traditional knowledge;
- » Women gather firewood for fuel and household use; and
- » Women also manage water sources, as they gather water on a daily basis for household use.

Despite their dependence on and management authority over much of the land and natural resources of Marange, the women in Marange were not consulted when mining companies negotiated for access to land, compensation and benefits.

For the women and families who were forced to relocate, there were additional negative impacts. Women in polygamous marriages, single mothers, widows and child-headed families from Marange did not receive their own houses when they were relocated. As a result, sixty-seven female-headed households and five child-headed families became homeless. Even now, these women and children are still homeless and are squatting with relatives.

HOW CCDT SUPPORTED THE COMMUNITY TO ADDRESS THESE CHALLENGES

Chiadzwa community members mobilized to respond to the negative impacts of diamond mining activities in Marange and formed the Chiadzwa Community Development Trust (CCDT) as a community-based organization to lead their collective efforts. The fight for gender equality began within CCDT itself, and then expanded to permeate the projects that CCDT engages in. When CCDT was initially registered, it consisted of a Board of 15 men and

only one woman. Led by the woman who was managing of the affairs of the Trust, women fought to increase the role of women in the organization. This marked the beginning of greater participation by and empowerment of women. Over time, the Board has evolved such that it now consists of 7 female and 8 male board members, and an additional 4 female and 2 male staff members and volunteers.

CCDT's first initiative in the greater Marange community to facilitate the respect of the rights of women was to challenge the marginalization of women in decision-making processes within the community. This was done by organizing community conversations, in groups and between individuals. Women began to mobilize to ensure their voices were adequately heard in community decision-making.

To support women in protecting their rights, CCDT has had success with offering training and education to the community. CCDT offers such training and education on a regular basis, during which it emphasizes the inherent links between women's rights and human rights. To respond to and deal with instances where women have been victims of gender-based violence (often as a result of the anger and frustrations associated with losing land and livelihoods to mining), CCDT carried out a conflict resolution project which supported stakeholders and disputants to effectively and non-violently resolve disputes.

CCDT also provided women in Marange and Arda Transau with training on community-based monitoring of the impacts of mining on their environment, livelihoods, and well-being. Thereafter, women began to document all the negative impacts of mining on their wellbeing and livelihoods. As part of the community monitoring initiative, CCDT was able to provide smart phones and notebooks to community members to record and capture everything they felt was negatively affecting them. The information was passed on to CCDT and used for litigation purposes, evidence based advocacy and for purposes of research. In particular, community monitoring of the adverse impacts of mining activities on women found that:

- » When mines damaged the environment in Marange, it undermined the ability of women to provide food and clean water for their families and significantly increased their workload. For example, the pollution of the Singwizi, Odzi and Save Rivers by three mining companies - Diamond Mining Company, Marange Resources and Anjin - caused women to have to walk a distance of more than 5 km to fetch water for household use.
- » As a result of the increased workload, young women and girls have suffered a decreased ability to attend school. Instead of creating an enabling environment for the emancipation and empowerment of women and girls, mining in Marange continues to push women further into poverty.



- » The lack of land rights for women removed them from the negotiation table when the mining activities began. The men involved in the negotiations had no idea of the experiences of women who work on the land and manage the environment, and the implications of the outcomes of their negotiations processes. For example, the compensation negotiated for businesses in a shopping centre in Marange were paid to men on behalf of their families (even though 5 of the 7 businesses were operated and managed by women), denying women access to those finances. Women were not given alternative land or buildings to continue running their family businesses. Diamond mining companies in Marange do not prioritise the employment of women, despite the impacts of mining on women's livelihoods. One company, Marange Resources, has 23% women in its workforce, whilst another company, Anjin, has a workforce that is only 0.5% female.
- » Diamond mining companies' failure to provide family accommodation for their workforce has resulted in an increase of migrant labour (normally males) in the community. This has contributed to increased alcohol abuse, transactional sex, and violence in the community, all of which negatively impact women's safety.
- » Most Marange women possess skills like basket, mat and hat weaving which they used to earn a living from, using the abundant river reeds found in Marange. Yet mining companies' activities have limited women's access to these reeds. Women's lack of access to traditional craft-making ventures, coupled with the loss of land has led women to feel "useless" as they have to sit most of the time trying to think of other ways of earning a living. This results in low self-esteem and loss of confidence. The women feel that they have been treated unjustly and the authorities fail to understand their issues from their point of view.



Women from Marange and Arda Transau meet with CCDT to develop strategies for increasing women's roles in community decision-making. © CCDT

OUTCOMES OF CCDT'S COMMUNITY MOBILIZATION AND ADVOCACY FOR WOMEN'S RIGHTS

In consultations between companies, governments, and communities there used to be a commonly-held belief that the perspectives and interests of male heads of household were adequate to encompass the perspectives and interests of their families and the entire community. In many cases, human rights were taken to be synonymous with men's rights, without specific consideration of women's rights because it was assumed that if men's rights were protected, women's rights were also automatically protected. Things are gradually changing, thanks in large part to the advocacy efforts of women and increased participation by women in decision-making processes.

CCDT had to work with both women and men to explain how empowering women would benefit the whole community. Community brainstorming sessions created the space to have discussions about cultural practices that are oppressive to women and negatively impact the whole community. All members of the community were quick to realize the link between poverty in the community and marginalization of women, and how women make remarkable contributions to their households. CCDT also encouraged women in the community to demand space in all decision-making platforms. Such efforts took approximately four years of working with the community in order for them to have some understanding of the need for women's participation. This has been a major breakthrough but there is still a lot of work to be done.

Within CCDT, there is a strong women's group which has emerged over the years, though they have had their fair share of verbal attacks, being labelled "women of loose morals", "destroyers of marriages" and "traitors of culture and religion." However, over time, these brave women are now being accepted by the community, as they have been working to protect all community members' rights when they have been violated.

CCDT has also led a conflict resolution project in the community, the first initiative in which CCDT engaged with the government and mining companies (during a period of particularly high violence in the community caused in part by clashes over artisanal mining). Through this initiative, CCDT shared the information gathered during the community monitoring initiative with the mining companies and the government. This information proved the prevalence of violence and assisted in bringing an end to the violations and holding some of the perpetrators responsible. The conflict resolution project facilitated dialogue between all stakeholders, and communities were able to express their frustrations resulting from the loss of their land and livelihoods. The mining companies and government also expressed their need to mine so that they could contribute to economic development. Though communities remained unconvinced of the need to continue mining, violence and retaliations from the community stopped.

CCDT has carried out projects to build the capacity of the women in Marange and Arda Transau and develop interventions that meet the women's needs, are community-owned, culturally sensitive while at the same time not undermining the rights of women. CCDT's



most successful women's rights protection initiative in Marange and Arda Transsau has been the creation of opportunities and platforms to:

- » Exchange knowledge, ideas and strategies on issues affecting women;
- » Share risks and responsibilities;
- » Build community consensus on relevant issues;
- » Mobilize diverse talents, resources and strategies; and
- » Engage in collective action.

CCDT ensures women's participation by creating platforms where women-only groups can discuss issues affecting them, while also encouraging women to actively participate in wider community discussions that concern their interests and positions. There is also a deliberate policy of 50% female participation in all CCDT's programmes. This is shared to the communities from the onset of any project, including an explanation as to why the exclusion of women is detrimental to any initiative that aims at empowering the community. In order to encourage participation and acceptance of women's participation, all participants are often requested to identify women's contributions to the well-being of the community and household economy, their roles and responsibilities, and discuss why excluding them would frustrate any development efforts that are meant to uplift the lives of the community.

In addition to its community work, CCDT advocates for women's rights more broadly. For example, CCDT advocates that women's rights to inheritance and ownership of land and property should be recognized and calls for social reforms to end discrimination against women in Zimbabwe. In particular, CCDT calls on the government to take an active role in social reforms by acknowledging women as partners in development by ensuring their involvement in law-making, policy-making and decision-making processes. Finally, CCDT advocates that governments require all investors carry out Gender Impact Assessments (GIAs) before mining commences in order to ensure that gender issues are considered in the planning and implementation of all mining projects and to mitigate the negative impacts of mining on women's lives and well-being.



Women from Marange gather to discuss and document the negative impacts of mining that they have experienced.
© CCDT

ANALYSIS AND RECOMMENDATIONS

In its engagements within Marange and Arda Transau, CCDT uses a participatory approach involving all community members. The community engagement work is designed to break through apathy and develop a critical awareness of the underlying causes of the challenges faced. CCDT's participatory approach ensures the active participation of community members throughout all stages of an intervention, breaks down power barriers, and ensures that every member of the community is actively involved in advocating for issues that affect their lives and well-being. CCDT's strategy largely works because it aims to enable and motivate the women of Marange and Arda Transau to see beyond their current circumstances and to take responsibility for shaping their lives, their community and their environment.

Particularly when working with women, CCDT sees it as crucial to involve women directly in identifying the challenges they are facing, defining those issues, and coming up with an intervention strategy. This empowers women to actively participate in decisions that affect their lives and well-being. Organizations and advocates can support women's efforts to identify and articulate their concerns and ideas by providing equal access to information, training women in participatory research methods, and supporting women to contribute their voices and perspectives directly into community dialogues and any media or other materials that the community or organization produces.



CCDT leads an interactive discussion about women's rights with community members. © CCDT 2015



CONCLUSION

Front-line advocates around the world urgently need to share their community land protection strategies and learn from one another's successes and mistakes.

Rural communities across Africa are facing a variety of threats to their customary and indigenous land and natural resource claims. The drivers of these threats are diverse: increasing foreign investment, national elite speculation, rising population densities, climate change, and national infrastructure mega-projects, to name a few. In most communities, the challenges are multiple and overlapping: the divisive tactics of investors may pit community members against one another; state infrastructure development may claim communal areas and intensify intra-community conflicts over scarce resources; elites seeking land may make back-room deals with leaders, undermining community trust of local leaders. Often, the introduction of one destabilizing influence will set off a cascade of resulting negative changes, including: disintegration of community unity, fragmentation of local culture, increased animosity between youth and elders, degradation of the environment, and the collapse of customary rules that once ensured sustainable natural resource use.

SIMULTANEOUS PURSUIT OF MULTIPLE ADVOCACY STRATEGIES

Land rights advocates and practitioners are frequently called upon to support communities facing a significant land conflict or a specific threat to their land claims. However, when practitioners engage deeply with these communities, it often becomes clear that a multiplicity of factors and trends have weakened the communities' ability to respond effectively to the conflict or threat – therefore requiring use of a variety of simultaneous strategies to ensure a successful outcome.

In other words: communities usually face more than one threat at a time. In the table below, the left-hand column first lists common threats to community land and resource tenure security. These threats lead to, or aggravate, negative trends that further destabilize communities, listed second in the left-hand column. The threats and trends are often directly and cyclically linked, with negative trends exposing communities to increased threats. Using a single strategy is often not enough to address these interlinked challenges effectively. Practitioners and advocates often must employ a wide variety of strategies (listed in the right-hand column) in carefully coordinated unison.

FIGURE 2 THREATS & STRATEGIES FOR COMMUNITY LAND TENURE SECURITY

Threats and Destabilizing Influences

- » State mega-projects
- » Large-scale land concessions
- » Urban/industrial expansion
- » Speculation by local, regional & national elites
- » Land conflicts between communities
- » Poor governance/unaccountable leadership
- » Intra-community discrimination & inequity

Negative Trends

- » Conflict between & within communities
- » Environmental degradation
- » Natural resource scarcity
- » Reduced livelihood resources
- » Breakdown of culture
- » Collapse of customary rule enforcement
- » Corruption of leaders/weakened downward accountability
- » Increased discrimination against women & marginalized groups
- » Food & water insecurity
- » Feelings of disempowerment, grief, anger, anxiety, & apathy



Strategies

- » Creative implementation of land laws & related policies & programs
- » Community empowerment & legal education
- » Paralegals & increased access to justice
- » Strengthening culture & promoting local/indigenous knowledge
- » Community-driven conservation efforts
- » Community-led visioning & planning for endogenously-defined development
- » Policy change & advocacy
- » Creative use of the media
- » Supported negotiation or re-negotiation with investors
- » Strengthening local land & natural resource governance & gender equity, through the creation/expansion of community by-laws or biocultural community protocols
- » Litigation



Meanwhile, many of the threats are further compounded by a significant lack of state actors' political will to recognize community tenure rights. Communities and their advocates must often struggle upstream against government reluctance – or outright resistance – to implement national laws and international guidelines that support respect for and protection of indigenous and community rights. Often, the most egregious violations happen in nations with the weakest rule of law and the highest disparities between the elite power-holders and the citizenry.

The case studies in this book highlight advocates' innovating and enterprising efforts to weave together a variety of strategies to disrupt and remedy the damaging cycle of threats and negative trends that weaken communities. For example:

- » *The Zimbabwe Environmental Law Association (ZELA)* successfully intervened in the Zimbabwean government's attempt to forcefully relocate communities affected by diamond mining without fair compensation or appropriate provision of basic services. To achieve this victory, ZELA:
 - » Held workshops to teach community members' about their environmental, economic, social and cultural rights and build community confidence and empowerment;
 - » Created platforms for legislators to interact with local communities, so as to strengthen parliamentarians' capacity to represent community interests and help build the community's resolve to resist the relocation;
 - » Used media to alert the Zimbabwean public about the situation and shame the mining companies and government; and
 - » Supported the community to file a case against the government and some of the mining companies seeking an official order from the High Court to stop the involuntary displacement.
- » *The Land and Equity Movement in Uganda (LEMU)* achieved a degree of victory in its effort to support a community to recover its lands from an elite who had used intimidation and litigation to steal community grazing lands. To address the situation, LEMU has:
 - » Helped the community map their lands and plant boundary trees to create both paper- and landscape-based evidence of their communal land rights;
 - » Supported the community to draft by-laws to strengthen local governance of common natural resources and create mechanisms to prevent future land grabbers;
 - » Created a future vision for how the community will conserve and manage their common lands into the future, once they are reclaimed;

- » Sought the support of the District Commissioner, District Lands Officer, District Environment Officer and District Police Commander, who swiftly issued a mandate that the land grabber return the stolen lands and are now personally pursuing the case within the justice system.
- » *Integrated Rural Development and Nature Conservation (IRDNC)* has supported the Khwe San community in Namibia to protect their access to and benefits from the natural resources on their ancestral lands when those lands were turned into a national park. The park now has a formalized community benefit-sharing program designed to ensure sustainable, community-led conservation. IRDNC achieved this victory through a multi-faceted strategy that included:
 - » Empowerment of the local communities by working with traditional authorities and elders through customary processes and systems;
 - » Promotion of community mapping, zoning, and scientific cataloguing of the communities' customary lands and natural resources within the park;
 - » Demonstration to government of the community's good management and conservation of the natural resources within the park, supported by the creation of a community-driven resource monitoring system; and
 - » Creation of the *Traditional Environmental Knowledge Outreach Academy* Training Programme, through which Khwe elders train youth in various aspects of their heritage, including tracking, ethno-botany, traditional leadership, conflict management strategies, history, and Khwe San language skills. This training program both ensures inter-generational transmission of traditional knowledge as well as supports Khwe youth to seek jobs within the park as trackers and guides.
- » *The Association for Law and Advocacy for Pastoralists (ALAPA)* and a network of allies successfully supported Maasai pastoralists to defeat the Tanzanian government's efforts to dispossess them from their customary lands. Their various strategies included:
 - » Formation of coalitions between community members, local organizations and international organizations to protest the dispossession and advocate for a relevant amendment of certain laws and regulations relating to land access, control and ownership;
 - » Use of print media, radio and social media to generate national and international support for the cause; and
 - » Provision of community legal education designed to help community members feel more confident when interfacing with the government (and more and accountable in their own local resource management), among other strategies.



These examples illustrate that when working to protect community land claims, no one strategy will be a “silver bullet.” Rather, as the case studies in this publication show, success is often contingent upon often advocates’ ability to leverage of a variety of assets and tactics to address a threat from multiple angles, simultaneously.

HARD-WON, CROSS-CUTTING “LESSONS LEARNED”

An analysis of the experiences recounted in this publication yields valuable lessons for other advocates. Regardless of the threats faced or the strategies employed to protect community land and natural resource rights, the various advocates’ advice is strikingly similar:

1. Involve all community members, recognizing that communities are diverse and that different stakeholder groups may have conflicting interests. Every community, no matter how small, carries with it the tensions of inherent heterogeneity, asymmetry and diverse interests. To successfully address this heterogeneity, always engage the full community in land and natural resource protection efforts and ensure a full understanding of the concerns and needs of all community members. Notably, advocates may need to support the healing and reunification of communities fragmented by conflict or outside interference; it may be necessary to use mediation and conflict resolution to arrive at intra-community agreement before moving forward with land protection efforts.

2. Remember that leaders’ interests may differ from community members’ interests. Community opinions may differ from leaders’ priorities and personal goals. To address this, build direct connections with community members - not only leaders - to ensure that continued community support is possible even when leaders act against community interests. To support this, ensure on-going and frequent contact with a diversity of community members, including women and youth, and make it easy for any community member to contact the organization if issues arise.

3. Build critical mass around a unified community future vision to challenge outsiders’ “divide and conquer” efforts. Companies and other actors seeking land and natural resources often use divisive tactics to weaken communities’ opposition to investment projects. Building a critical mass around a common, community-created vision for the community’s future can strengthen community cohesion, unite community members around common goals, and make it harder for outsiders to weaken community ties.

4. Build on community members’ existing expertise and skills and strengthen community capacity to advocate for their land and natural resource rights. Community members are generally “experts” on their lands, natural resources, and other local factors that influence their lives. When formulating an advocacy strategy with a community, advocates should assess the existing skills, assets, knowledge and resources within the community - and build local resources and expertise into the strategy. Advocates should

support communities to lead their own land protection efforts by investing in community capacity-building. Case studies in this book recommend many types of capacity-building, including skills for: project management, mobilization, fundraising and resource-collection, mapping, data collection, and monitoring and evaluation for assessing progress towards goals. Capacity-building lays the foundation for a community to continue to challenge unjust systems, practices, and laws without relying upon external support.

5. Work closely with government actors to build their understanding and support.

Empowering or creating awareness at the community level alone is not sufficient when tackling land and natural resource justice issues. To ensure authentic, enduring success of a community land and natural resource protection effort, government decision-makers must be convinced of the efforts' value and legitimacy and themselves take tangible action to support the community's efforts. Advocates can often find sympathetic ears within government agencies and institutions: government agencies are not monolithic, and support may be found in surprising places. It may be particularly helpful to find and identify ministers and high-level administrators who can strongly advocate for community rights within the legislature and/or state bureaucracy.

6. Leverage the media and use it to ensure that all voices are heard. Target print, radio and social media to spread advocacy and land protection messages out to the wider region, nation and world. In the process, ensure that *all* stakeholders' voices are included in the media campaign – from affected women to respected academics – as different messages may resonate with different audiences.

7. Use only strictly factual data. To ensure that advocacy claims are taken seriously, use only factual, verified data in all publications and presentations. Carefully checking information, sources and facts will enhance the integrity of the organization and ensure that the intervention is above reproach. Publication of unverified information is fodder for opponents to undermine advocates' professionalism and dismiss rights violation claims as sensationalistic.

8. Link community land protection efforts to wider networks for support, but avoid disorganized overlap and duplication of effort. Advocates often benefit from strong networks of like-minded organizations and actors (at the local, national and international levels). Such networks energize efforts, encourage the sharing of experiences and strategies, and may help in influencing policymakers. However, avoid complicating efforts by collaborating with too many technical partnerships without clear roles; too many players involved in a disorganized advocacy effort may lead to overlap, wasted resources, and conflicting strategies.



9. Leverage community land protection and documentation efforts to strengthen local governance. Land and natural resource-related conflict or tenure insecurity are often symptoms of a lack of effective land governance. Without community-agreed and enforced rules and accountable management structures, community land tenure security is vulnerable to future threats. Drafting and formally adopting community by-laws for good governance and electing a representative, diverse land governing body can significantly strengthen local land and natural resource governance. Such efforts empower community members to participate in rule-making and decisions about community land and natural resources and support community members to demand that community leadership is transparent, accountable, and fair.

10. Link small community-driven initiatives to a “bigger dream.” Community-driven development may be challenging and time-consuming. To help motivate a community towards its future visions and goals, break “big dreams” into smaller tasks and initiatives that can be accomplished with limited resources in shorter periods. When community members agree on goals, create clear action plans for specific projects, assign responsibilities for implementation, and track their efforts - they generally make very significant progress towards these goals. These small victories can help to inspire continued community action and may attract additional outside supports and resources.

11. Ensure that communities understand the benefits and costs of a proposed investment. Investors often try to obtain community permission for their enterprises by promising to provide jobs, schools, clinics, roads, and other urgently-needed infrastructure. To tackle this issue, it may be helpful to support communities to understand the socio-economic returns of conserving their natural resources as compared to the promised financial payoff of selling or leasing their land to outsiders.

12. Be patient, humble, vulnerable, open, and adaptive to community rhythms and timing. Community work is a matter of endurance, patience, and responsiveness to ever-changing realities on the ground. When possible, let go of strict timetables - working authentically with communities means going at their pace. Likewise, supporting endogenously-driven community development requires humility. Advocates should openly share their own worldviews and values with communities and discuss potential challenges they fear may arise over the course of the land protection efforts. It is essential to take time to build strong rapport with the community—much of which involves listening to and incorporating communities’ needs and ideas. Such efforts require sensitivity and adaption to community dynamics.

BUILDING OUR LEARNING AND SUCCESSES TOGETHER

Front-line advocates around the world urgently need to share their community land protection strategies and learn from one another's successes and mistakes. By highlighting the accomplishments of - and challenges faced by - some of the most innovative, effective organizations working on land and natural resources rights around Africa, this book of case studies aims to contribute to formalized exchange across a coordinated network of front-line advocates, supporting one another, offering solutions to challenges, and championing one another's successes.

The struggles and victories of an individual organization or community can at times feel overshadowed by influential opponents and daunting global trends. But when taken together, individual stories of creativity, unity, courage, and solidarity coalesce into their own trend - a stirring, alternative narrative of hope, justice, and the power of collective action.



2013 Symposium participants.
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PROTECTING COMMUNITY LANDS & RESOURCES IN AFRICA

GRASSROOTS ADVOCATES' STRATEGIES & LESSONS

In 2013, a group of 20 expert advocates from across Africa gathered for a three-day symposium to share experiences and practical strategies for effectively supporting communities to protect their lands and natural resources. The symposium illuminated many similarities between the types of threats to communities' land and natural resource claims, as well as underlying factors that drive and exacerbate the threats.

Since the symposium, pressures on community land and natural resource rights have only increased. It is more necessary than ever to share strategies, successes, lessons, and resources across a wide network of local practitioners, legal champions, policy advocates, media allies, and supporters.

This book is a collection of case studies and analysis written by practitioners, for practitioners. Together, they share a variety of ingenious, creative, and practical strategies for proactively confronting the forces that undermine community land and natural resource tenure security in Africa.

