



Community Guide

Getting a Fair Deal from Companies and Investors

The Sustainable Development Institute (SDI) & Namati

2013 Liberia



Community Guide: Getting a Fair Deal from Companies and Investors

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Introduction

The purpose of this guide is to help your community decide if you want to share your community lands and natural resources with outside companies or investors. Some companies or investors may want your community's lands or forests to grow oil palm or rubber, or to do logging. This means deciding not only if a company or investor should operate in your community, but how and where they should operate and what your community should receive in return. **It is important you take time, hold many meetings, and consult your whole community and a trusted NGO before you sign any paper.**

This guide can help your community if:

- Your community has not been contacted by a company or investor but, you want to prepare before you are approached;
- Your community has been approached by a company or investor who wants to use your lands to grow oil palm or rubber, or forests to do logging;
- Your community is already in discussions with a company or investor;
- Your community has already signed an agreement with a company or investor and you feel like you are not being treated fairly.

This guide is intended to support your community make an informed and participatory decision about whether or not you want to share your community lands and resources with companies or investors. It is meant to help make sure that your community thinks carefully about if you want to share your lands and resources, and if yes, how to make sure that your community will get a fair deal in return. This guide will help foster peace between your community and the company or investor through open and honest discussions.

In this guide you will find:

- What your community can do before a company or investor approaches you;
- Questions your community should ask yourselves before you have discussions with a company or investor;
- Questions your community should ask the company or investor;
- A list of steps your community can take to help decide whether you want to sign an agreement with a company or investor;
- If your community does decide to share your lands and resources, suggestions on how to think about what benefits your community wants in return;
- If your community has already signed an agreement with a company or investor and think you are being treated unfairly, steps your community can take.

Following this guide can help make sure your community grows in a way that brings real development **AND** protects your lands and resources. If you work with investors in a way that makes sure your rights and the rights of future generations are protected, you can make sure that your community benefits, the country improves, and all of Liberia's citizens enjoy her rich natural resource wealth!

On the following page is a list of important ideas to remember, which can help you better understand the process of deciding how your community wants to sit down, talk and work with a company or investor.

Remember: This guide is to help your community interact and negotiate with anyone who has interest in your land, forests or other natural resources. This may include a company, investor, your honorable Representative, Senator or Superintendent, a Minister or their friends, or someone from your community living in Monrovia or abroad who may want your community's land or forests to grow oil palm or rubber, or to do logging.

For legal or other assistance you can call:

1 Important ideas to remember



1

Important ideas to remember

Remember: You have the right to tell a company, an investor, your Honorables, and leaders what they can and cannot do in your community.

The bigger picture

In Liberia today, companies and investors are talking to government and local communities to make money from communities' lands, forests, and other resources. Some Liberians with money, power or connections are also talking to community leaders to get land, forests, and other resources from local communities. Many believe if companies and investors, or Liberians with money, power and connections, come to the county they will be able to help the county and the country grow and develop. Sometimes this happens in a way where communities receive benefits from companies that help them grow and develop. Other times communities receive very little and only a few individuals benefit.

Around half of Liberia's land has been given to outside companies. This means that the amount of available land is becoming smaller. It is therefore important you make the right decisions for your community today and for your children's children tomorrow.

Development is good

Using your community land and natural resources to help your community develop is a good thing. But making sure that development happens in the way you want is an important part of this process.

If investment is done well, your community can benefit by:

- Making sure the company respects your rights as owners of the land;
- Getting money (for example, land rental fees) for community development;
- Improving local infrastructure like clinics, hospitals, schools, roads, and bridges.

If investment is done in a bad way, your community may:

- Lose the land, water, and resources you use to farm, hunt, and fish;
- Lose your sacred bushes and areas where you carry out your cultural practices;
- Have your forests and other natural resources used up so they will not be around for your children's children in the future.

Companies and investors

People may come to your community to ask you to share your lands with them for logging, pit sawing, or to plant oil palm or rubber. They may:

- Represent a big company;
- Come with government officials or other big people;
- Be an elected official, local leader, or one person looking for land;
- Be a member of your community who lives in Monrovia or abroad;
- Promise to help your community develop by building roads, schools, and clinics.

Investment in your community can be a good thing, but before you sign any paper you should make sure that you understand what you will have to give up, and what you will gain in return. Make sure you understand everything that is on the paper your community is being asked to sign. It is important to understand exactly what you are signing, because you will have to respect and follow the papers you sign. It is good to ask an NGO with legal knowledge for help. They can help:

- Explain any agreement you are being asked to sign;
- Facilitate community discussions about what the community wants;
- Support the community to protect themselves and their lands and resources.

Wait to sign agreements

Whoever the investor may be, it is better to take time and hold many meetings as a community, and with the investor, before you agree to let an outsider use your community lands.

- Ask to keep a copy of any papers you are asked to sign;
- Carefully read through any agreement, MOU or contract you are being asked to sign. **Do not sign an agreement when you are seeing it for the first time;**
- **It is better to consult the whole community, a trusted NGO, and a legal expert before you sign any papers, and get their advice before you sign any agreement.** Every time a company or investor negotiates with your community, they consult their lawyer. **Your community can benefit by also getting legal support.**



Your rights to the land and resources





Your rights to the land and resources

The Government of Liberia is in the process of drafting new land laws that gives people ownership rights over their community lands with or without a formal deed.

The **National Land Rights Policy** says:

- Communities own their customary lands with or without a deed;
- **Customary land rights are equal in every way to private land rights;**
- Each community will “self-identify” and define its own membership which must represent all community members, including women, youth, and minorities;
- Communities will be issued a deed for their customary lands in the name of the community;
- Communities will define their own boundaries with their neighbors through the active participation of elders, youth, women, minorities and local authorities;
- Ownership of customary land includes ownership of forests and water, but not minerals;
- Communities will create their own land governance and management systems. Management of customary land will be under the control of community members who will represent the entire community, including women, youth, and minorities.

The **Community Rights Law (CRL)** says:

- The CRL establishes **the rights of communities to own their community forest lands;**
- **Communities own the forest resources on their customary lands.** “Forested or partially-forested land that communities claim as theirs is recognized by the law as actually *owned by communities;*”
- Communities have **the right to manage and make decisions** about their forest resources;
- Communities **must set up ways to govern** their forest resources;
- Anyone who is harmed by a violation of the CRL has the right to take the person who harmed them to court;
- Any decision, agreement, or activity that affects community forest resources cannot happen without the free, prior, informed consent of the community. That means community must give their approval for someone to use their forests;
- Communities have the right to enter into small-scale commercial contracts for timber and non-timber products and the right to negotiate and enter into social contracts with companies operating concessions;
- Communities have the right to at least 55% of all money made from large-scale timber contracts on their lands.

The **Constitution of Liberia** says:

- The government has ownership over the mineral resources beneath and on the ground (iron ore, diamonds, gold, etc.).
- If the government wants to take your land, it must have a good reason “in the public interest” to do so and must give you fair payment for your land. This is called eminent domain. This is true even if you don’t have a deed.

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What your community can do before a company or investor arrives





What your community can do before a company or investor arrives

You do not have to wait for a company or investor to arrive before your community comes up with a plan on how you will make decisions about managing your land and natural resources. It is best to be prepared and already know:

- Whether your community will be willing to lease your land? (Some communities may decide they will never sell their land and only lease it.)
- For how long will you be willing to lease it for?
- What land will you be willing to allow companies and investors to use? What land will you not be willing to allow companies and investors to use?
- How will you make decisions about allowing companies or investors use your land? Will you have a vote or will everyone have to agree?
- Who will represent your community when meeting with companies and investors? Will you set up a community negotiating team to talk to companies and investors? How will you make sure everyone's interests are represented?
- What can the community negotiating team decide on their own and what must they bring back to the entire community to decide together?

Your community can agree on and write out rules based on these questions, which will help guide your decisions about sharing your lands and natural resources. When writing out community rules about land and natural resources, remember:

1. **Involve everyone.** Your community rules should be agreed by the entire community, not just a small group of people. All meetings should involve and be open to all community members, including women, youth, elders, traditional leaders and strangers.
2. **Publicly announce every meeting** in every town, section, or area in your community.

3. **Decide on how you will agree on your rules.** Before you start to talk about your community rules, decide: how you will deal with disagreements, how you will talk about all your rules, and how you will agree – by voting or agreement from everyone?

4. **Allow for discussion.** Make sure each town, section, or area is represented at community meetings. It may help to break the meeting into groups of youth, women, and elders, and have each group discuss each question and come up with suggested rules. Then, each group can present their ideas for rules to the larger meeting. See what everyone can easily agree to. Continue to discuss the rules that people disagree with until you have reached a community-wide agreement.

5. **Keep records of all meetings.** Write down the names of everyone who attends each meeting, what was discussed, and what decisions were made.

Take your time when you are going through the process of writing out community rules about how to share your lands and natural resources. Your community should hold many meetings to make sure everyone agrees. If you cannot come to an agreement in one meeting do not force a decision. Leave the discussion for the day, give people time to think, and come back to it in the next meeting.

Remember: Make sure that the whole community is involved in this process and that everyone agrees with the rules being made. Include women, youth, elders, different groups in the community, and every town, section, or area in the community when you are making any rules.

4

Steps your community can take when a company or investor comes



Remember: To **sell** your community's land means that you may lose the land and access to the resources on the land for ever. To **lease** your community's land means that your rights to the land and resources will be restricted until the lease expires.

4

Steps your community can take when a company or investor comes

1. Discuss the company/investor's request as a group.

The entire community, including community leaders, elders, women, youth, and the Land Governance Council, should meet together many times to discuss the company/investor's plans.

2. As a community ask yourselves important questions.

Take time to hear what everyone thinks. Make sure you hear from everyone in the community, including youth, elders, women, hunters, miners, fisher-people, businesswomen, and people who cut palm.

Questions your community should discuss

- Where are companies allowed and not allowed to go in your community?
- Which forests can companies use and which forests do you want to keep as reserve?
- How will you decide if a company or investor is allowed in your community – by voting or by consensus (everyone agrees)?
- Which group of people will represent your community when meeting with a company or investor? Will you include youth, women, and elders?
- Can your community sell or lease land? Will you sell or lease land? How long will you be willing to lease your land for?
- Will you want the agreement or contract to say the community and company will revisit the agreement after a certain amount of time? For example, after one year or two years?
- What infrastructure will you ask the company or investor help build? How much land rent will you charge? Will you ask that your community own a share of the investment? See the next chapter for more information on benefits.

3. **Ask the company/investor important questions about their plans and activities.** Where does the company/investor want to operate? For how long? What are they promising to do for your community in return?

4. **Your community should think carefully about what will be gained and lost by letting a company into your community.** Who will be affected by the investment?

5. **Contact a trusted NGO and lawyer for support, advice or clarity.** Companies and investors get help from lawyers to write contracts and agreements. Getting information from people who have ideas on legal issues can also help your community.

Questions your community should ask the company or investor

- What are the company's plans and activities? How will they affect the way you live?
 - Will people lose their houses?
 - Will hunters lose their places to hunt?
 - Will fishers lose the places they fish?
 - Will local building materials (thatch, rattan, sticks, etc.) become less?
 - Will wood be harder to collect?
 - Will medicinal plants be destroyed?
 - Will people be able to farm the same way?
 - Will your water sources (rivers, streams, and creeks) be polluted?
- What is the value of the company/investor's investment in your community?
- What is the company or investor promising to you in return for your land and resources?
- Is the company legally operating in Liberia and in your community?

6. **Check to make sure the company/investor has met government standards.** Before the community signs any papers, the community should ask relevant government officials (District Commissioners, Superintendents, Representatives, FDA, Ministry of Agriculture, etc.) if the company is legally operating in Liberia and in your community. Get help from a trusted NGO to do this.

7. **Talk to your neighbors who already have investors operating in their community.** Ask your neighbors how things have changed in their community since the investor came. Have things gotten better or worse? Also talk to a trusted NGO that has information about the type of investment coming to your community.

8. **Look at the rules you already have in your community.**

- Where are investors allowed to do their business? Where are they not allowed to go? How much land are you willing to give out?
- How has your community decided to make decisions about investors? Make sure you follow the rules you have already agreed on.

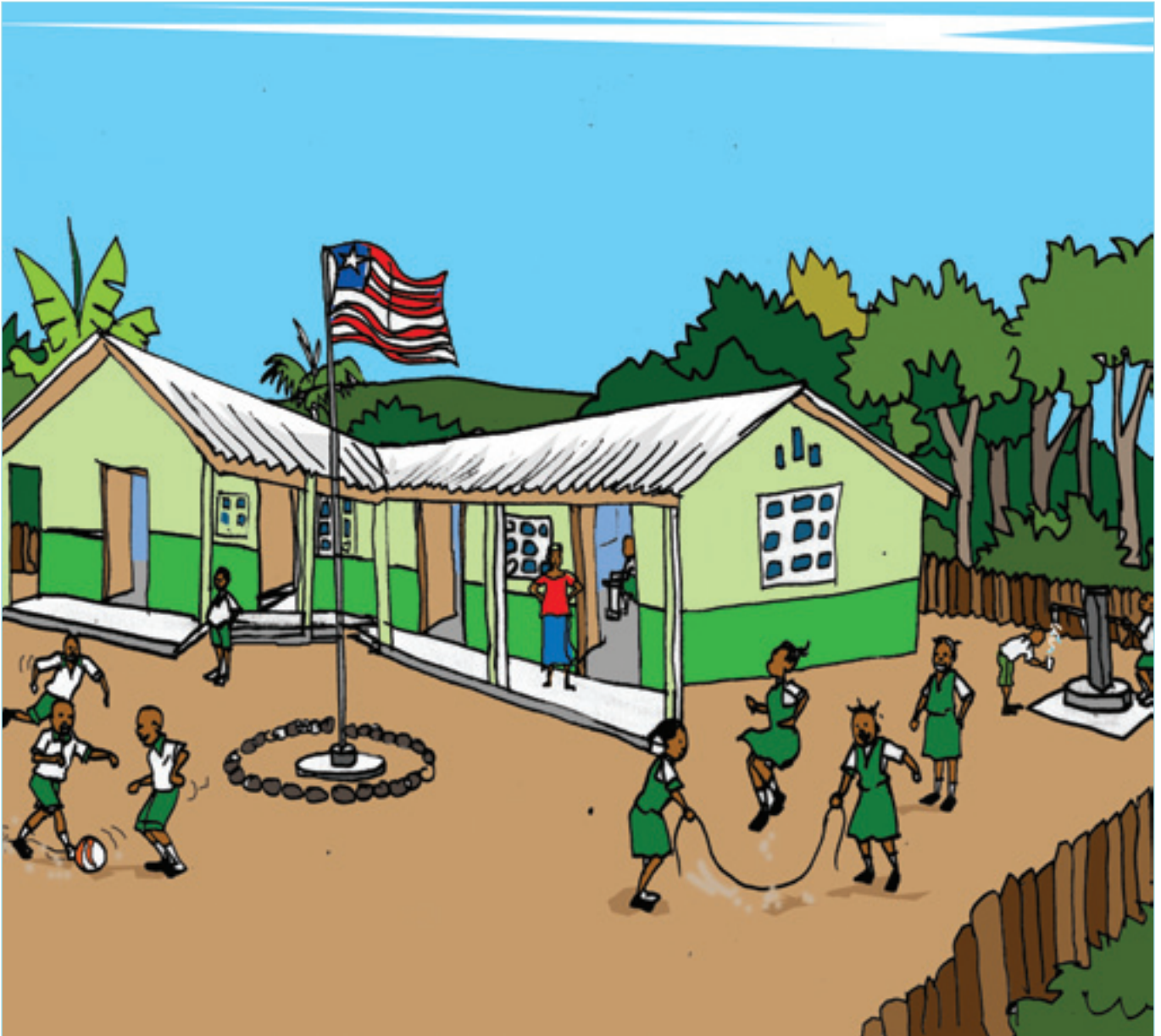
After going through these steps, if your community decides to allow a company or investor to use your land and natural resources:

9. **Be ready to ask and negotiate for what you want.** Think about what you want in the long run. See the next chapter on ways your community can get a fair deal for your land and resources.

10. **Get all agreements in writing!** After you have talked and agreed with the investors, get a legal contract signed and witnessed. Do not try to do this on your own. Get help from a NGO you trust, and ask them to bring a lawyer.

5

Benefits from companies and investors



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Benefits from companies and investors

Once your community has discussed all of the important questions you have, your community may decide to allow the company or investor into your area. **Remember to take time to look over the agreement as a community and with a trusted NGO and lawyer.** If you are ready to sign a contract, MOU, or social agreement, here are some points to keep in mind when deciding what you want in return.

Infrastructure Development

In the agreement you can ask the company to build **roads, bridges, schools, clinics or hospitals** and to bring **jobs and training**. If this is what your community wants, make sure you include all of the details of how, what, when, and where you want these things to be built. For example, if you want a school to be built, it should be clearly written:

- Who will build the school?
- How many schools will be built?
- What kind of materials will the school be made from?
- What level of school – elementary, junior high, high school?
- When will the school be completed?
- Where exactly (which town) will the school be located?

The same goes for roads, bridges (what kind of bridge – iron, log, concrete, when will it be built), town halls, clinics and hospitals. If the company promises jobs and training let it be clearly written what kind of jobs (permanent or short-term contract), how many jobs they will provide, when they will train people, and when they will start employing people.

Shareholder

Your community can ask to be a **shareholder in the company's investment**. This means your community owns a part of the company and can get a part of the money made from the company's activities in your area. It can be written in the agreement that your community will receive a certain **percentage of the value of the resources** the company or investor gets from your area.

Land Rental Fees

In the agreement you can ask the company or investor to pay a certain amount per hectare of land they are using. **The Land Rental Fee is an amount that both the community and company or investor agrees on.** It can be written in the agreement what the Land Rental Fee will be for every hectare used every year.

Remember: The decision to ask what you want in return for sharing your land and resources is for the whole community to make. You should not try to negotiate completely on your own and should get help from a trusted NGO and lawyer.

Once the agreement, MOU, or contract is clear, you will avoid confusion and your community and the company will both benefit!

6

What to remember when negotiating with companies or investors





What to remember when negotiating with companies or investors

When you are negotiating with a company, investor, or anyone else who wants to use your community's lands, forests, or resources, remember:

- Your community can tell companies, investors, government officials, or big people what the community wants and does not want to happen on your community land;
- Choose a negotiation team that represents the entire community, including youth, women, elders, all different groups in your community and every town, section, or area in your community;
- Make sure the negotiating team knows what it can decide on its own and what it must bring back to the entire community to decide together;
- Make sure you have all of your questions and concerns addressed during the negotiation process;
- Make sure the negotiating team respects the community's decision about what benefits they want in return for their lands and resources;
- Be confident in what you have already agreed on as a community;
- Make sure the decision being negotiated is what the whole community has agreed to;
- Get support from a trusted NGO or legal expert during negotiations;
- Do not sign any paper during negotiations;
- Have a trusted NGO or legal expert review any agreement before you sign it;
- Your community has the final say about what can happen on your community land.



7

If your community has already signed an agreement



7

If your community has already signed an agreement

If your community has already signed a contract, MOU, or social agreement with a company or investor and feel like you are not being treated fairly, there are different steps you can take. Get help from a trusted NGO to follow these steps.

Remember: Under the laws of Liberia, communities have rights to their lands and resources.

No matter what type of company or investor you have signed an agreement with, you should first:

- Discuss your concerns as a community together, including women, youth, and elders;
- Seek help and support from local leaders (clan chiefs, paramount chiefs, commissioners, and Superintendents);
- Seek help and support from a trusted NGO to gather information about the company/investor and their plans;
- Request a meeting with the company's leadership.

In addition to these actions, if you have concerns about a **logging** company you could:

- Work with your Community Forestry Development Committee (CFDC) or Community Forestry Management Body (CFMB);
- Organize a meeting with your local FDA representative;
- Organize a meeting with the FDA in Monrovia;
- Make a formal complaint to the FDA's Board of Directors.

If you have concerns about an **oil palm or agricultural** (rubber, cocoa, coffee, rice, etc.) company:

- Ask the Ministry of Agriculture to intervene;
- Organize a meeting with the Agriculture Officer in your county and if you are not satisfied with the result, go to the Ministry of Agriculture in Monrovia;
- For **oil palm** companies: Make a formal complaint to the RSPO (Roundtable on Sustainable Palm Oil).

If you have concerns about a **mining** company:

- Organize a meeting with your local mining agent;
- Ask the Ministry of Lands, Mines, and Energy to intervene;
- Organize a meeting with the Ministry of Lands, Mines, and Energy in Monrovia.

Remember: Write down the minutes from all meetings you hold with your community, NGOs, government agencies, and companies or investors.

Working with Your Local Leaders

Remember if your community is having problems with a company or investor, you can reach out to your elected and local leaders, such as your Representatives and Senators. You can invite your leaders to a meeting in your community and explain your side of the story. You can also ask your leaders to support you in meeting with the company.



Free prior and informed consent: 10 Do's for communities entering into negotiations with companies





Free prior and informed consent: 10 Do's for communities entering into negotiations with companies

Free Prior Informed Consent (FPIC) is an internationally recognized standard to support communities and investors enter into fair and transparent agreements.

FPIC means:

- Your community is free to say **YES** or **NO** to the company or investor that has come to ask for land in your community;
- Your community understands how the company or investor's plan will benefit your community or harm your community **before** you decide whether to give away your community's land;
- Your community as a whole (including youth, women, and elders) has had the opportunity to meet many times and discuss the company or investor's plans **before** deciding whether to give away your community's land;
- Your community freely decided to say YES or NO to a company's plans.

Following FPIC does not fully address the threats to your land or fully protect your rights. You will have to take many more steps that are included in this guide to make sure your lands, resources, and rights are protected. Your community should request the company to conduct an independent Environmental (and Social) Impact Assessment (EIA). These recommendations will help your community secure your lands and maximize your benefits **if you decide to lease land to a company or investor.**

Remember do not sign any paper before your community has followed all of these steps.

1. Before you start talking with a company, **ask for free legal advice and/or assistance from an NGO you trust.** Lawyers advise the companies before they say anything to you. Whenever companies or investors negotiate with your community, they go back and talk to their lawyers.
2. **Make sure the company recognizes that you own your customary lands,** and that your community has the right to say yes or no to them. The FPIC process should be used to secure your land and increase the benefits you get from leasing your land.
3. Let the company pay for **participatory land surveys or mapping of your customary lands to know how much land you have.** After the survey, and when you know how much land your community has, your community can then decide if you want to lease some of your land and how much land you are willing to lease.

4. Ask the company to give you all information about their contract with government and their plans for your land when negotiations start. **Share all information with your lawyer or the NGO supporting you,** so that you all know everything you need to know during the negotiation.
5. Establish a committee to negotiate on your behalf. **Make sure that all adult members of your community participate in the process** and that all decisions represent the views of women, youth, elders, and different groups in the community. This will make sure that your community remains united and gets more benefits from your land.
6. Organize meetings for your community to discuss what the company promises or reports coming from the negotiation meetings. **Take your time to think about the company's promises and make decisions together.** The committee can then go back with your community's decision to the company.
7. The committee should first negotiate a meeting plan with the company. The plan should say how many meetings will be held before signing an agreement. This will make it possible for your community to **decide when to meet before your committee meets with the company.**
8. All your meetings should be documented. **Your community should agree on the things you want before your committee takes them to the company. Make sure the things women and youths want are included.** For the final decision to let a company use community land and resources, your community should allow time for the matter to be properly discussed and decided on.
9. Financial and non-financial terms and conditions for use of community land and resources should be documented in an agreement. You can call it a Community Land Lease Agreement. Your **Community Land Lease Agreement with the company should be a legal, binding agreement** NOT MOUs or Social Agreements.
10. **Include a grievance, complaints and redress mechanism in your agreement with the company.** Write out a way your community can formally bring up complaints after the agreement is signed if people are unhappy. This will be used to resolve disagreements that may come up during the company's operations in your area.

Remember: According to the Community Rights Law, you are the owners of your customary land. Forested or partially-forested land that communities claim as theirs is recognized by the CRL as actually *owned by communities*. According to the National Land Rights Policy, your community is the owner of the land you live on.



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 a Liberia in which natural resource management is guided by the 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 (the world's largest prize honouring grassroots environmentalists for outstanding environmental achievements) in 2006.

www.sdiliberia.org



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. In partnership with civil society organizations and governments, Namati develops, implements, and evaluates legal empowerment strategies that address five urgent global challenges: delivering quality legal aid at scale; protecting community land rights; closing the enforcement gap in environmental law; fulfilling the right to citizenship; and ensuring that essential services like healthcare and education are accountable to local communities. Namati's Community Land Protection Program supports communities to follow national land documentation laws to protect their customary and indigenous land claims. The Program promotes an integrated community land documentation model that both supports communities to defend and protect their lands and natural resources as well as to leverage community land documentation processes to galvanize positive intra-community change. To this end, Namati's Community Land Protection Program:

- Works in partnership with national and local CSOs to support community land protection efforts;
- Supports governments to enact and implement legislation promoting community land documentation; and
- Advocates for increased global emphasis on protections for community land and natural resource rights.

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