



**Corruption and large-scale land acquisitions: an analysis of the role high level corruption plays in enabling elite capture of land**

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### Abstract

The global surge in large-scale land investments is increasingly linked to significant risks of negative impacts on access to and control over natural resources, food security, human rights, and the environment. These investments have been plagued by secrecy, with associated deals often made without the knowledge or consent of affected communities, who are thus unable to hold governments or investors to account. This fosters an environment where corruption and state capture becomes the norm, especially in countries where rule of law is weak, and the manifestation of deteriorating governance previously experienced as the resource curse in oil, gas and mining sectors. However, international responses have yet to adequately understand such processes or develop adequate policy and regulatory responses.

This paper presents research on the role high level corruption between business and political elites and subsequent governance failures, plays in the most damaging investment projects. It provides case studies which further understanding of how corruption undermines transparency and accountability during the allocation of land and natural resources for investment purposes, particularly the role of local elites. It analyses how grievance and accountability mechanisms are being corrupted by local elites, further preventing victims of land grabbing from gaining redress. Finally, it concludes with recommendations for how this corruption and its consequences can be tackled.

### 1) Defining “corruption” in “large scale land grabbing”

Corruption is defined as “the abuse of entrusted power for private gain”.<sup>1</sup> This means that the subject of corruption being a problem in large-scale acquisitions of land for investment purposes is not just relating to bribery (giving or receiving something of value to influence a transaction). It also includes a broader range of misuses of power, including: fraud; extortion; money laundering; embezzlement; collusion; conflicts of interest; revolving doors (when an individual exploits their repeated changes in jobs between public office and private companies), violence and other forms of intimidation.<sup>2</sup>

The relationship between corruption and mismanagement of oil, gas and mineral resources has been well described within the broad literature on the “resource curse”.<sup>3</sup> The relationship between corruption and the phenomenon of “land grabbing” however, is less well understood and its secretive nature limits estimations of corruption’s extension and characteristics.<sup>4</sup>

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<sup>1</sup> For further information see: [http://www.transparency.org/cpi2011/in\\_detail](http://www.transparency.org/cpi2011/in_detail) (last accessed 3rd October 2012).

<sup>2</sup> For more in-depth descriptions of corruption definitions, see: [http://www.transparency.org/cpi2011/in\\_detail](http://www.transparency.org/cpi2011/in_detail) (last accessed 3rd October 2012) and <http://www.sfo.gov.uk/bribery--corruption/bribery--corruption.aspx> (last accessed 3rd October 2012).

<sup>3</sup> For definitions and explanation of the “resource curse” phenomena, see: Ross, M. (1999) The Political Economy of the Resource Curse. *World Politics*, 51 (297-322), available for download at: [http://academics.eckerd.edu/moodle\\_support/ecUser/EPFiles.php/moodle\\_20101/653/Ross\\_The\\_Political\\_Economy\\_of\\_the\\_Resource\\_Curse.pdf](http://academics.eckerd.edu/moodle_support/ecUser/EPFiles.php/moodle_20101/653/Ross_The_Political_Economy_of_the_Resource_Curse.pdf) (last accessed 8th October 2012); William Ascher (1999), *Why Governments Waste Natural Resources: Policy Failures in Developing Countries*, John Hopkins University Press, Baltimore; and Le Billon, P. (2012) *Wars of Plunder*. London: Hurst & Co.

<sup>4</sup> Transparency International’s 2011 Working Paper #4 entitled “Corruption in the Land Sector” contains a good analysis of the role corruption plays in inequitable land distribution, available for download here: <http://www.fao.org/docrep/014/am943e/am943e00.pdf> (last accessed 8th October 2012). However, as this paper

This paper provides a typology of this relationship, using two case studies as examples of how corruption can be both a cause, and an effect, of bad decisions being made about land. Because of the need to protect these communities, who are still fighting to have their land returned, all identifiable information has been removed; which is indicative of the severity of threats and violence that victims of land grabbing face on a daily basis.

Before we begin, the term land grabbing also needs to be defined. This paper follows the Tirana Declaration's<sup>5</sup> definition of large-scale land grabbing as "*acquisitions or concessions that are one or more of the following:*

- i. *in violation of human rights, particularly the equal rights of women;*
- ii. *not based on free, prior and informed consent of the affected land-users;*
- iii. *not based on a thorough assessment, or are in disregard of social, economic and environmental impacts, including the way they are gendered;*
- iv. *not based on transparent contracts that specify clear and binding commitments about activities, employment and benefits sharing, and;*
- v. *not based on effective democratic planning, independent oversight and meaningful participation."*

The increasing commercial pressure on land since 2008 has been well documented by national and international policy makers and the media.<sup>6</sup> Between 2000 and 2010, deals totalling 203 million hectares of land were reported as under consideration or approved; an area equivalent to eight times the size of the UK.<sup>7</sup> Key drivers include: increasing demand for food, fuel (biofuels), fibre and other raw materials; as well as speculation and international investors diversifying shareholdings away from stock markets since the 2008 economic crisis. As competition increases to control and exploit land, and the natural resources on and below it, the potential for corruption also increases. The way in which such demand for land is manifesting in acquisitions or concessions which include one or more of the risks above, and therefore fuelling "land grabs", has been thoroughly analysed through the lens of rights violations, food security, land reform processes, environmental risks and transparency. However, in the newest of frontier markets in Africa, Asia and Latin America, failures of governance as a facilitator of bad land deals is not well understood.

Of these governance failures, corruption (in its broadest definition) is both a critical cause and an impact. Government officials and companies acting corruptly enable land grabbing when they ignore legal and regulatory safeguards, collude to capture the state and its natural resource wealth or act with impunity. Once land is grabbed, however, it provides revenues to the business and political elite (this can be on-budget, but is frequently illicit) which strengthens their hold on influence and power, subsequently increasing the likelihood of future corruption. Whilst the corrupt behaviours and actors themselves may be similar for both processes, the dimensions, impacts and potential solutions differ, therefore both are analysed separately in the next section.

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discusses, the inter-play between corruption and land grabbing is considerably more complex and needs further research and analysis.

<sup>5</sup> For the full text of the Tirana Declaration and its background, please see: <http://www.landcoalition.org/about-us/aom2011/tirana-declaration> (last accessed 3rd October 2012)

<sup>6</sup> Including W., L. Alden Wily, L. Cotula, and M. Taylor (2012) Land Rights and the Rush to Land: Findings of the Global Commercial Pressures on Land Research Project. International Land Coalition, Rome, available for download at: [http://www.landcoalition.org/sites/default/files/publication/1205/ILC%20GSR%20report\\_ENG.pdf](http://www.landcoalition.org/sites/default/files/publication/1205/ILC%20GSR%20report_ENG.pdf) (last accessed 8th October 2012); Global Witness (2012) Dealing with Disclosure: improving transparency in decision-making over large-scale land acquisitions and investments. Available for download at: <http://www.globalwitness.org/library/dealing-disclosure> (last accessed 8th October 2012); Deininger, K. and D. Byerlee (2011) Rising Global Interest in Farmland: Can it Yield Sustainable Results. Washington, DC: World Bank. Available for download at:

[http://siteresources.worldbank.org/INTARD/Resources/ESW\\_Sept7\\_final\\_final.pdf](http://siteresources.worldbank.org/INTARD/Resources/ESW_Sept7_final_final.pdf) (last accessed 8th October 2012).

<sup>7</sup> For further details see Anseeuw, W., L. Alden Wily, L. Cotula, and M. Taylor (2012) Land Rights and the Rush to Land: Findings of the Global Commercial Pressures on Land Research Project. International Land Coalition, Rome. Available for download at [http://www.landcoalition.org/sites/default/files/publication/1205/ILC%20GSR%20report\\_ENG.pdf](http://www.landcoalition.org/sites/default/files/publication/1205/ILC%20GSR%20report_ENG.pdf) (last accessed 8th October 2012).

## 2) Land grabbing and the Shadow State

### *a) Corruption enabling the wrong decision to be made about who gets to use which land, and for what purpose*

Corruption facilitates land grabbing in a number of ways. Fundamentally, it is a manifestation of the vested interests and abuse of power involved when government officials at a national and / or local level, and companies interested in leasing or acquiring land (both public and private), act with disregard for the rule of law or the negative social, environmental and governance impacts.

This occurs in a number of dimensions. Firstly, when government officials accept “bribes” from a company in exchange for ignoring or perverting laws, for facilitating swift transactions, giving preferential treatment, being able to act with impunity, and perverting justice. “Bribes” include payments in cash and / or kind, as well as other preferential promises and commitments. These range from government officials acting individually while their colleagues turning a blind eye, to situations where such behaviour has been institutionalised across government and regulatory agencies. To some extent such corruption, especially at the local level, can be due to lack of capacity and oversight from central levels of government.

Secondly, it can also occur when the vested interests are endemic to the point that government officials, politicians and their family members are themselves directly owning or involved in companies which are being given rights to land through leases and acquisitions. In these cases, a physical bribe may not have actually been given or received, but the ownership or connections between the government official and the company means that the official in question personally benefits from the deal, with the relationship kept deliberately secret. Again, this enables companies to receive special treatment, pervert regulations and justice, and ignore negative social, environmental and governance impacts with impunity, as well as promoting nepotism.

Both forms of corruption can occur at the local level as well as the national level. Although local government officials receiving bribes from companies involved in large-scale land investments is a more common understanding of corruption, national level corruption (sometimes called “grand corruption”<sup>8</sup>) which is institutionalised across government agencies can sometimes be the more significant problem. When this occurs, policies and central functions of the state are distorted and leaders benefit at the expense of the public good. As a result, government decision-making about who gets to own and use what land, for which purpose is not based on recognition of local rights, food security objectives, environmental sustainability or even economic growth. Rather, land and natural resources (which frequently already have a number of users dependent on them) are allocated to which ever company is best connected and willing to pay the highest price. When such corruption is present, and especially if it reaches the highest executive level, then it can become almost impossible for any level of government department or international donor agency to implement reforms aimed at improving governance and domestic resource mobilization. It also means that government officials, who have a duty of responsibility to the public, instead owe their allegiance to companies, patrons and others, thereby subverting fundamental democratic processes.

Examples of how this corruption in decision-making over land ownership and use occurs include:

- Companies being able to ignore laws, regulations and safeguards with impunity (for example requirements to undertake environmental and social impact assessments, and resettlement and compensation procedures) or the hiring of armed state forces as security guards for their capital assets;
- Land concession lease contracts being agreed to which are not in accordance with maximum limits of size, length, use, or which release companies from paying taxes and royalties;
- Fraudulent land titles being created as evidence of false land ownership claims, either to gain rights to land leases or to make fraudulent claims for compensation once the land is leased;

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<sup>8</sup> For further information, see: [http://www.transparency.org/whowere/organisation/faqs\\_on\\_corruption](http://www.transparency.org/whowere/organisation/faqs_on_corruption) (last accessed 8th October 2012).

- Senior government officials and politicians either being able to acquire lease rights to large areas of land for companies they themselves own (frequently this beneficial ownership is not registered and remains secret), or close relatives of officials gaining such rights.

*b) How judicial and accountability mechanisms can be corrupted*

In addition to corruption distorting legal procedure and due process when the decision-making around the acquisition and allocation of rights to large-scale land investments is being taken at the beginning of a project's life-cycle, corruption also occurs and has impacts throughout project implementation. The most problematic way this occurs from the perspective of victims of land grabbing is when accountability, regulatory or judicial mechanisms responsible for ensuring land investment projects are following the law or not violating human rights, are corrupted. This can occur for example when attempts by communities who have lost land to file complaints with the courts or non-judicial mechanisms are thwarted by officials paid not to cooperate. Another way in which this occurs is when companies are well-connected enough to employ police, military and the courts to silence or block community activism through threats, wrongful arrest and detention, trumped-up charges and other tactics.

A separate impact during the implementation phase is when corruption prevents independent monitoring and evaluation of ongoing projects, enabling the company to ignore regulations and safeguards, operate outside of contractual terms and conditions, and prevent regulatory authorities from enforcing sanctions or annulling contracts.

The experience of being displaced from ancestral land and losing their ability to sustain themselves can worsen community-level disenfranchisement and consequently further undermine existing accountability mechanisms. The impoverishment which comes from losing land and food security, for example, can marginalise households and create barriers against them participating equally in local level decision-making. In many countries however, identity and recognition as a national citizen is closely tied to ownership of property. Once land is lost therefore, so may be the ability to register as a citizen, to vote or be recorded in censuses or other demographic data, or have access to judicial and non-judicial forms of redress. In other situations, households who have lost land have no choice but to be employed as labourers for the plantation company which took their land, thereby losing the last vestige of their right to denounce the company's operations.

*c) Expansion of the "resource curse" from extractive industries to large-scale land investments*

For a number of years, Global Witness has documented the way in which many countries rich in oil, gas and other minerals are nonetheless mired in poverty due to the so-called "resource curse" (also known as the paradox of plenty). According to economist Jeffrey D Sachs, this curse can be attributed to three phenomena: when resource-related capital inflows inflate currency values and crowd-out unrelated industries; the volatility of commodity prices; and the negative impacts of resource abundance on fragile political institutions.<sup>9</sup> It is this third phenomenon on which Global Witness has traditionally focused; in particular the need for the international community to recognise its potential role in further undermining governance in fragile states, the devastating impact this can have on local communities and the environment, and the necessity therefore of proactively leveraging reforms.

Countries such as Angola, Cambodia and Liberia are examples where natural resource abundance combined with poor governance, inadequate rule of law and land and resource tenure insecurity has enabled political and business elites to capture the state and its natural resource assets for personal profit.<sup>10</sup> It is this failure of governance which means that citizens of these countries have paid the costs of resource extraction but received very few of the benefits, and have no means to hold either the government or companies to account for decisions or actions which negatively affect them. In some of these countries, the gap between

<sup>9</sup> For further information, see: [http://www.wilsoncenter.org/sites/default/files/ECSPReport13\\_Brown.pdf](http://www.wilsoncenter.org/sites/default/files/ECSPReport13_Brown.pdf) (last accessed 8th October 2012) as well as the additional references given in footnote three.

<sup>10</sup> Please see Global Witness reports for further details: for Cambodia - Cambodia's Family Trees (2007) and Country for Sale (2009); for Liberia - The Usual Suspects (2003) and Curse or Cure (2011); and for Angola - Time for Transparency (2004). All are available for download at: [www.globalwitness.org](http://www.globalwitness.org)

rich and poor, the powerful and the powerless has increased as a result; further cementing interests within this elite to maintain the status quo and further disabling ordinary citizens from demanding changes of policy and practice.<sup>11</sup>

Traditionally, this cycle of corrupt resource extraction deals facilitating increased capture of the state by a business and political elite, which consequently strengthens the vested interests against governance reforms, has primarily occurred within the extractive industries: oil, gas and minerals. Although allocation of these extraction rights did lead to local land rights being ignored in some cases, governance reforms nonetheless focused on the management of sub-surface resources.

Since 2008 however, commercial pressure on the land itself has increased to the point that similar risks are now associated with large-scale land acquisitions and transfers. Again, this is particularly a problem in “frontier markets” where political and regulatory institutions are fragile, where dubious investors rush in and where governments appear to be prioritizing investor interests over legislative safeguards. Of the total 203m ha of land reported to have been given to investors since 2000, 66% of the land was in Africa, 21% in Asia and the remainder was mainly in Latin America.<sup>12</sup> More than twenty percent of all deals were given in forests<sup>13</sup>; frequently areas on which local livelihoods depend and which are under special protection for environmental purposes (on paper). Globally, countries most affected by these deals are significantly poorer than average, struggle with significant agricultural yield gaps,<sup>14</sup> and most concerning is that lower recognition of land rights appears to increase a country’s attractiveness for acquisition from investors.<sup>15</sup>

#### *d) Worsening corruption as an outcome of land grabs*

According to the World Bank, large-scale transfers of land for commercial investment theoretically have a number of potential macro and micro economic benefits; including generating employment and revenue streams, improving food security, and fostering technological transfer.<sup>16</sup> However, the reality on the ground in many countries is that the types of investments defined as land grabs are fundamentally failing to meet these economic targets and are in fact increasing poverty, partly because of corruption.

Payments by companies for acquiring concession or property rights may be considered by local officials as bribes and as a result only a small percentage of such payments (if any) enter the national budget. Land concessions can generate corruption at local levels, where it didn’t previously exist, which can subsequently erode local government structures and processes.

National budgets can miss out on revenues because companies use their influence to negotiate favourable tax and royalty terms. Corruption also prevents corporate taxes and royalties which are generated from these deals from trickling down to local levels. When land leases are speculative, if the company does not have the technical experience, or if their financial backing is not secured, then local employment opportunities and other expected economic benefits do not occur. In some cases, even when the land is used productively, many local communities (often those who have lost significant areas of land to the company) are not offered employment opportunities as the company has brought in labour from other areas. In some cases, locally affected communities refuse to have anything to do with the company (such as accept work and salaries) because of their anger at losing their land. As a result, not only are such land

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<sup>11</sup> For Cambodia’s increasing inequality see: <http://www.unescap.org/stat/data/syb2011/I-People/Income-poverty-and-inequality.asp> (last accessed 8th October 2012), and for Angola, see: <http://www.irinnews.org/Report/61395/ANGOLA-Poor-marks-for-progress-on-MDG> (last accessed 8th October 2012).

<sup>12</sup> Anseeuw, W., L. Alden Wily, L. Cotula, and M. Taylor (2012) Land Rights and the Rush to Land: Findings of the Global Commercial Pressures on Land Research Project. International Land Coalition, Rome. Available for download at [http://www.landcoalition.org/sites/default/files/publication/1205/ILC%20GSR%20report\\_ENG.pdf](http://www.landcoalition.org/sites/default/files/publication/1205/ILC%20GSR%20report_ENG.pdf) (last accessed 8th October 2012).

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Deininger, K. and D. Byerlee (2011) Rising Global Interest in Farmland: Can it Yield Sustainable Results. Washington, DC: World Bank, pages 96 and 102. Available for download at: [http://siteresources.worldbank.org/INTARD/Resources/ESW\\_Sept7\\_final\\_final.pdf](http://siteresources.worldbank.org/INTARD/Resources/ESW_Sept7_final_final.pdf) (last accessed 8th October 2012).

<sup>16</sup> Ibid, page xliii.

grabs devastating to local livelihoods, food security, cultural well-being and the environment, they are also frequently not achieving their most fundamental theoretical economic objectives.

This situation can then further compound corruption and undermine governance reforms in a number of ways. If a government fails to generate taxes and other revenues from, for example land leases, a deficit is created in the national budget which means it cannot afford to pay civil servants adequate salaries, fostering a demand for alternative incomes; namely bribes. If the benefits and vested interests resulting from corruption become institutionalised, this creates a “Shadow State”.<sup>17</sup> Shadow State rulers are described as “manipulate[ing] external actors’ access to both formal and clandestine markets, by relying on the global recognition of sovereignty, and are thereby able to undermine formal government institutions.” Such rulers undermine formal government institutions by weakening bureaucratic structures and manipulating markets in order to “enrich themselves and control others”; political power and private commercial operations therefore become indistinguishable.

Such Shadow States meanwhile isolate, threaten, detain and even kill whistleblowers and activists who criticise government policies and decision-making. In 2012 Global Witness research showed that land and forest activists are facing increasingly deadly responses from governments, companies and the armed forces; in the last decade the rate of killings has been more than one a week and this has doubled since 2009.<sup>18</sup>

A country with a bad ranking on international corruption indices may be decreasingly attractive to foreign investors from jurisdictions where being involved in corruption risks significant sanctions (eg. the US and UK) or for whom reputational risks are high. As a result, only foreign investors who do not consider being associated with corruption to be a risk will be able to continue investing.

### **3) Case studies of the relationship between corruption and land grabbing<sup>19</sup>**

#### Case A – Benefiting from friends in high places

Case A is a dispute between “Company A” and approximately 100,000 people who have been negatively affected by the company’s long-term lease of several hundred thousand hectares of agricultural and forested land. Company A is said to be one of the country’s most powerful; its owner has very close political and personal relationships with government officials at the highest level, as well as the armed forces, who are routinely hired as guards to protect its commercial assets. Additionally, it has a track record of serious human rights and environmental abuses stretching back nearly two decades. The lease in question is one of a number of holdings it owns which together are equivalent to almost 10% of the country’s arable land, and in total are 30 times more than the maximum legal limit for commercial land leases.

According to the affected communities, they first discovered that Company A had been given lease rights over land they had lived on for generations when the clearing started, a few months after the government signed the contract. There were no local consultations or evidence of environmental, social or human rights impact assessments being undertaken prior to the clearing. The boundaries of the lease area have never been demarcated and to this day, no documentation relating to the lease has been given to the affected households.

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<sup>17</sup> For further details of Shadow States and their operations, see Reno, W. (1999) Warlord Politics and African States. Lynne Rienner Publishers, Colorado, London and Funke N. and H. Solomon (2002) The Shadow State in Africa: A Discussion. Development Management Policy Forum Occasional Paper No. 5, Addis Ababa, October 2002.

<sup>18</sup> Global Witness (2012) “Hidden Crisis: increase in killings as tensions rise over land and forests”, available for download: [http://www.globalwitness.org/sites/default/files/images/A\\_hidden\\_crisis-FINAL%20190612%20v2.pdf](http://www.globalwitness.org/sites/default/files/images/A_hidden_crisis-FINAL%20190612%20v2.pdf) (last accessed on 3<sup>rd</sup> October 2012).

<sup>19</sup> The location and individuals involved in these cases have been removed, in order to protect the communities involved. For further information, please contact: [mail@globalwitness.org](mailto:mail@globalwitness.org)

Company A has indiscriminately cleared agricultural land and forested areas on which more than 100,000 people depended for their livelihoods and has ignored national laws for forest conservation and which protect traditional and customary user rights to such resources. Despite such land leases having the objective of contributing to economic growth, no jobs have been available to these local families who have been made poorer since Company A took their land.

Since Company A first arrived in the area, more than ten years ago, affected communities have continually protested against the grabbing of their land, the destruction of their forests and the impact on their livelihoods. Although these protests led to the temporary suspension of operations, the dispute continues to this day; no land has been returned and the response from Company A and government enforcement agencies (sometimes hired as security by the company) has become increasingly violent. In one incident, a number of community protestors were severely injured in an armed attack, which was never investigated. Meanwhile community leaders and civil society representatives supporting them face regular threats, harassment, detention and violations of their most fundamental human rights.

Throughout this dispute, the government has repeatedly promised to review commercial land leases and sanction those over the legal size limit and non-compliant with contractual arrangements. Company A has until now avoided being reviewed and has never been sanctioned. Since gaining rights to this land Company A and its owner has gone from strength to strength; an expanding portfolio of assets which appear to have strengthened its power and influence. Through this expansion it has become embroiled in a two further controversial land grabs, with impunity, the CEO regularly joins international trade and diplomatic missions with senior government officials and increasingly acts as the local partner in lucrative international joint ventures.

#### Case B – Manipulating accountability mechanisms

Case B is a dispute between “Company B”, whose Director is personally related to senior government officials, and an ethnic minority community. Company B claims it legally purchased freehold rights to a few hundred hectares of land, but the affected communities dispute this claim saying they have lived and worked the area for generations, and that this is a land grab which has resulted in them losing ancestral agricultural land, food and water resources on which their livelihoods depend, as well as family cemeteries.

The community claims the land was purchased fraudulently by Company B, through deception and duress over a period of years, in collusion with government officials. This process included community members (many of whom are illiterate) being forced to sign blank documents which were subsequently turned into land sale agreements, being repeatedly lied to by government and company officials about the purpose of the land acquisition and outright fraud (individuals, including local government officials, who had no legal right to the land signing sales contracts with Company B).

After petitions and public protests by the community to government officials demanding their land be returned went unanswered, the community filed criminal and civil complaints against Company B. Despite it being many years since the lawsuit was filed, the court has yet to decide if it will begin proceedings against the Company. A number of judges have worked on the case and all have refused to investigate it. The community claims this is because of political interference by senior government officials on behalf of Company B and court officials themselves admit to being too scared to work on the case. However in the meantime, Company B has filed separate charges of collusion, defamation and fraud against some of the most prominent community leaders in the courts. Legal action which (the community’s lawyers allege) has been prioritised by court officials over their client’s case.

In the meantime, community members and their supporters face ongoing threats, harassment and intimidation from Company B and government officials. On numerous occasions the community’s lawyers have been prevented from meeting them, money has been repeatedly offered by Company B to individuals to drop the charges, government officials have spread mis-information (such as telling the community their case has been lost and their lawyers arrested) and the lawyers themselves have received threats for

working on this case. Throughout this dispute, Company B has continued to clear the land taken from the ethnic minority villagers and planted crops, despite continued protests from the community and a court order demanding the company cease operations until the case is resolved.

#### Analysis of the relationship between corruption and land grabbing

These two case studies provide examples of the breadth and depth of ways in which corruption inter-relates with land grabbing, specifically in the three areas this paper focuses on: corruption of decision making over the allocation of land; corruption of accountability and legal redress mechanisms available to affected communities; and how land grabs consolidate elite capture of the state. These are summarised below:

- a) Corruption enabling companies to ignore legal safeguards and due process with impunity in order to gain rights to illegal and / or excessive areas of land:
  - Company A being able to retain control of more than 30 times the legal limit of land concession and not be held to account for failing to follow the law (eg. ignoring requirements to consult with potentially affected communities or protect forested areas);
  - Company B being able to purchase ethnic minority land through threats, deception and fraud.
- b) Judicial and accountability mechanisms being corrupted through corporate power and influence:
  - Company A working with government enforcement agencies to issue threats, arrest and detain activists from the affected communities, in order to protect the company's commercial assets;
  - Repeated and institutionalised failure of numerous judges to investigate proceedings brought against Company B by those who lost their land. The judicial system allegedly giving preferential treatment to criminal proceedings brought by Company B against the villagers, despite being filed long after their own lawsuit. Lawyers for the community being threatened by government officials and prevented repeatedly from meeting with their clients.
- c) Land grabs enabling the further consolidation of power, influence and elite capture of the state:
  - Since gaining rights to the land, Company B has gained control of a number of other economically significant development projects, has strengthened his relationship with the most senior levels of government and is increasingly acting as the local partner in lucrative international joint ventures.

#### **4) What needs to change?**

From Global Witness' perspective (based on nearly two decades of experience working on corruption in the natural resources sector), the first step towards tackling corruption in land investments is to understand its dynamics. This paper provides a typology of how corruption and land grabbing interrelate, an analysis of two case studies and recommendations for how this corruption and its consequences can be addressed. This typology and the potential solutions presented should be considered a work in progress, they need to be further tested, updated and improved.

As can be seen from the case studies presented, a number of stakeholders can either facilitate or tackle corrupt land deals. Recommendations are therefore targeted to three stakeholder groups: governments receiving large-scale, commercial land investments; the companies involved in these investments; and international institutions.

There are three key recommendations for **governments receiving large-scale, commercial land investments**. Firstly, they must adopt and enforce anti-corruption legislation, supported by parliamentary

and civil society oversight. This includes adopting the UN Convention on Anti-Corruption (UNCAC)<sup>20</sup> as well as requirements for asset and beneficial ownership disclosure for all politically exposed persons, which is locally accessible, regularly updated and independently verified. Governments must ensure that land administration and management, especially processes for acquiring and allocating large areas of land to commercial investors are explicitly prioritised in these broader anti-corruption measures, and that progress towards their implementation is publicly reported.

Secondly, governments must investigate and prosecute those involved in corrupt land deals, including involvement in intimidation and silencing of community activists, as well as take sanctions against government officials failing to fulfil their public duty.

Thirdly, governments must suspend the allocation of new commercial land leases and review all existing leases until a legislative and regulatory framework is in place which:

- Recognises existing (customary and traditional) rights holders to land and natural resources before allocating concessions, through participatory land use planning, and by undertaking consultations based on the principle of free, prior and informed consent;
- Improves transparency and information disclosure relating to all procedures and decisions involved in the identification, negotiation, contracting, implementation and monitoring of land and natural resource deals. This must include: public disclosure of all land investment related contracts at the local level and in accessible forms during the contracting as well as post-agreement stages; disclosure of beneficial ownership of companies involved in such investments, as well as their subsidiaries; and disclosure of all payments made for land investments, both one-off payments (eg. signature bonuses and deposits) as well as taxes and royalties;
- Publicly discloses land cadastres and other land holdings databases and establishes accountable process management (to prevent changes from being made without a democratic, transparent and inclusive process and legally valid documentation);
- Improves rule of law and legislative frameworks relating to assessing and managing environmental, social and governance impacts;
- Ensures that judicial and non-judicial grievance mechanisms are accessible and affordable for communities affected by land grabs, including the provision of legal aid. Ensures that they operate independently, are clearly separated from executive and administrative powers, and include appeal mechanisms.

**Companies involved in these land investments** (public and private, domestic and international) need to recognise the corporate risks associated with corruption take steps to address it. They must adopt formal internal anti-corruption and anti-bribery policies and procedures which prohibit involvement in corruption, in any of its forms. They need to ensure compliance with such policies through contractually obliging staff to fulfil and report on their implementation, as well as establishing a mechanism for whistle blower protection.

Given the problems associated with secrecy in the sector, companies must improve transparency and accountability throughout their operations. This includes publicly disclosing all details of contracts on a project-by-project basis and publicly reporting on the implementation of these contracts, as well as any payments made to governments (as above, one off payments, taxes and royalties). It includes disclosure of beneficial ownership down to the subsidiary and sub-contractor level. As well as undertaking due diligence during investment feasibility phases to ensure government and / or private sector partners, subsidiaries, subcontractors and affiliates are not alleged to have been involved in corruption, human rights or environmental abuses. Finally, companies must ensure that all operations, and those of subsidiaries and subcontractors, are compliant with national and international legislation. They must strive towards adopting policies and operations which are in line with international standards (such as UNCAC and the

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<sup>20</sup> For further information about UNCAC, see:

[http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf) (last accessed 8th October 2012).

Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGs)<sup>21</sup>).

The **international community** needs to pay greater attention to its potential role in facilitating, or tackling, corruption in land investments. A first step would be to ensure they are fulfilling their own obligations under UNCAC and implementing the recommendations of the G20 Anti-Corruption Working Group and the VGs. It is also essential to recognise and endorse the Tirana Declaration definition of “land grabbing” and the devastating social, environmental and governance impacts such forms of large scale land acquisitions have, as outlined in the work of the Special Rapporteur on the Right to Food as well as the High Level Panel of Experts on Food Security and Nutrition. These frameworks should form the basis of measures to combat corruption within all diplomatic, trade and development assistance relations.

The design of accountability mechanisms promoted by the international community must be strengthened to ensure they are adequately robust to counter “interference” from corruption in Shadow States whilst not relying on overly technocratic “silver-bullet” solutions. One step towards this would be to prioritise and finance tailored anti-corruption and anti-bribery measures, including specific procedures to tackle corruption associated with land grabbing (as outlined above). In addition to this, greater efforts must be made to raise public awareness of and capacity to engage with such mechanisms, ensure independent oversight and connect national level mechanisms with international structures, such as the EITI. Donors must target reforms which separate the executive, administrative and judicial powers and responsibilities within government, therefore reducing the high level capture of the state by vested interests.

Finally, governments must introduce effective legislation (at both national and international levels) which govern the operations of companies overseas, to ensure they act transparently (through disclosing contracts), identify politically exposed persons and beneficial ownership, fulfil their human rights obligations and tackle corruption.

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<sup>21</sup> Available for download at: [http://www.fao.org/fileadmin/user\\_upload/newsroom/docs/VGsennglish.pdf](http://www.fao.org/fileadmin/user_upload/newsroom/docs/VGsennglish.pdf) (last accessed 3rd October 2012).