

Lessons from the Field

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Oral to Written: Practical Processes in Documenting Community Land Rules

By Priscilla Aling, Judy Adoko, Suzane Irau

As encroachment onto community lands increases in the Lango region of Uganda, communities are organizing to revitalize their traditional land governance systems. Central to these efforts is a process of recording and debating previously undocumented community land management rules. In this Lesson from the Field, LEMU shares insights into how staff facilitate and support the community-driven rules-writing process.



Mobilizers record discussion of community land rules in Aboti, Lango.

The Land and Equity Movement in Uganda (LEMU) is a non-profit organization that works to link effort from all stakeholders mandated to protect land for better tenure security. Land in Northern Uganda where LEMU operates is predominantly held under customary tenure; a system where most land is untitled and is governed by traditional norms and practices. In the past, the ancestors of the Lango people divided land into two categories; family land for settlement and cultivation; and community land for grazing and collection of resources.

Community land is often adjacent to wetlands which wetlands were not for human settlement but for serving the whole community with uses ranging from grazing to collection of building materials, to gathering of wild foods. Community

land by definition is a piece of land that is used and shared by more than one family, or one to several villages. In the past, these lands had an individual or a set of elders that managed the land and guided people on usage through oral rules.

However, the traditional system has been weakened by a combination of cattle raids that left the land vacant; a twenty year insurgency which forced people into Internally Displaced People's camp; and dominance of formal state law which stripped traditional leaders of the powers to adjudicate and enforce decisions. These left the land redundant as well as a management vacuum which gave opportunities for encroachments and land grabbing of these community lands. As a result, majority of community lands in Lango region are



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being grabbed or encroached on and thousands of users are being denied access to these resources.

LEMU has learned over the years that majority of the encroachment is by the elites who wield some form of power in the community. Many attempts by customary leaders to resolve the conflicts are futile because the powerful choose not to subscribe to their leadership. Several communities attempted to enforce the past oral rules but most found themselves subject of ridicule of the stronger land grabbers. Worst case scenario is arrest of leaders who have asserted themselves on the issue of land. It is common to find that an individual has declined to attend a mediation called for by clan leaders because they prefer to go to police and court to report community members attempting to stop them from encroaching. Even in instances where an encroacher has successfully been removed from the land, the traditional governance system struggles to prevent future encroachment without state support.

Under the state system, any Association that involves more than one person requires some registration which in turn requires some guidelines and rules of engagement. For there to be harmonious co-existence and orderly usage of the resources, the users need to enter some kind of contract among themselves on how they will sustainably use the resources, what rights and responsibilities they have; and how each person can benefit as equitably as possible.

Due to the challenges now facing land governance systems based on oral transmission of customary rules, documenting traditional governance and rules for community land was deemed necessary by some community land owners in Lango region, assisted by Land and Equity Movement in Uganda (LEMU), funded by International Development Law Organization, NAMATI and USAID SAFE Project.

¹The stages of the community land protection process are described in detail in the Community Land Protection Facilitator's Guide, available at namati.org/communityland

Strengthening Traditional Rules

The rules writing approach of LEMU is informed by the principle that documenting community land rules and governance for community land protection is really the process of communities agreeing on what community land rights are and agreeing duties for each owner/user of the shared resources. Over years of working with communities, LEMU has developed practical strategies to prepare and support communities through the rules-writing process, presented below according to the corresponding stage of the community land protection process.¹

Laying the Foundation

Before starting the process of writing rules, there needs to be an agreement or a general consensus on what constitutes a community. In Lango region, the members have often distinguished between owners and access users. Traditionally, the villages which surround the community land have referred to themselves as owners while those from the neighboring villages are referred to as seasonal/access users because they are allowed access during dry seasons. The community needs to determine who they are and how many villages own the land. The facilitator should determine the number of people they may be working with, the number of villages involved, the clans and the local leaders who are instrumental both in mobilization for the rules meetings and also as catalysts in the discussions.

It is also important at this stage for the facilitator to find out if there are any rules in place (oral or written) and what challenges they are facing in their implementation. Understanding enforcement challenges will enable the facilitator guide the community to propose ways on how best they could realistically enforce their rules at a later stage.

Leaders Orientation

LEMU starts a rules writing process with training of leaders and selected Community Support Persons (CSPs). LEMU has learned that the support of leaders greatly improves the credibility of the process for community members and increases their participation. Leaders are trained on the structure of the rules-writing process, the different steps, and their roles throughout the process.

First Draft Shout Outs

The first step of rules-drafting is a 'shout-out' of existing rules. This involves bringing together community members to collect all pre-existing oral or written rules. The purpose of documenting pre-existing rules is to build on what is already in existence. Secondly, laws do not apply in retrospect; therefore if the community hopes to enforce their laws on existing encroachers, then their laws should be those that have already existed as opposed to new ones. For large communities with more than one village, LEMU conducts shout-out sessions in each village in order to maximize participation.

LEMU staff compile the shout-out rules from all the villages to consolidate them into one rules document for the community. LEMU also rearranges the rules into sub-headings such as Natural Resources, Governance, and Social rules, etc. This is a good practice to solicit more specific rules. At this point, the rules are not altered so as to maintain the cultural value as well as for the purpose of studying how the rules evolve with the different drafts.

Where there is active land conflict over the community land, it is important for the facilitator to guard against discussions regarding the conflict, and only concentrate on generating the rules. The facilitator should be very careful about how they respond to allegations by community members as this could derail the entire community land protection process. The facilitator should constantly

redirect the community members to the shout outs and in extreme situations, ask questions such as "what do you want to do about that?" By doing this, they will begin to suggest solutions to their current problems and the facilitator should ask them to bring their ideas to discussions at a later stage. This encourages sustained participation.



Women laughing during the shout-out of rules in Aboti, Lango

First Draft Rules Conferences

LEMU then conducts Rules Conference meetings where men, women and youth meet in separate meetings to review the consolidated rules in their own social groups. A typical Rules Conference meeting starts with a big meeting where the consolidated rules are read out after which the three groups each meet separately to critique the "shout out rules" in light of their specific social issues. In this instance, a shout out rule such as "The community land is for grazing only" might be revised to include other uses for women such as collecting firewood and herbs and other uses for youths such as "playing ground."

The Rules Conference is also an opportunity for each group to discuss the sensitive issues such as membership, leadership, and roles. This is also a good opportunity to solicit the views of the groups as far as the women's rights are concerned. Women in communities come with different labels such as widows, unmarried girls, divorcees etc. and each of them have different rights to land at the family and community level.

Table 1 – Extract of the Guidelines for Community Land Rules from the Land Act

Regulation 81 - THIRD SCHEDULE, LAND ACT, CAP 227, THE LAND REGULATIONS, 2004

CONTENTS OF MODEL CONSTITUTION OF A COMMUNAL LAND ASSOCIATION

Matters to be contained in a Constitution of an association

- 1).Name of the association;
- 2).Address of the association;
- 3).Objects of the association, including the identity of the community covered by the association;
- 4).Land to be held or owned by the association;
- 5).Names of intended members of the association;
- 6).Qualifications for membership of the association, including: (i) principles for the identification of other persons entitled to be members of the association: and (ii) a procedure for resolving disputes regarding the rights of other persons to be members of the association;
- 7).Classes of membership (if any) and the rights of members of the different classes;
- 8).Rights of members to use property of the association;
- 9).Whether membership is based on individuals or families and if based on families, how the family is to be represented in the decision-making process of the association;
- 10).The grounds and procedure for terminating membership and what happens to the rights and property of the member concerned;
- 11).The purpose for which the land may be used and the procedure to be followed in connection with the physical division of the land into individually owned plots;
- 12).Whether members may undertake

- transactions with their rights and to whom;
- 13).What happens to a member's rights on death;
- 14).Procedure for election of officers, their terms of office, their powers, the powers of members in relation to decisions made by the officers, the power of members to remove all or any of the officers and the payment (if any) to the officers;
- 15).How and when the Annual General Meeting (AGM) is to be called; its quorum or procedure of representation at an AGM;
- 16).How and when general and other meetings are to be called; their quorum or procedure of representation at such meetings;
- 17).The powers of the association and any limitations on them;
- 18).Responsibility for keeping minutes of meetings and access to the minutes by members;
- 19).Financial matters: how monies of the association will be dealt with and by whom; how and by whom will financial records be kept; independent audit and other scrutiny; access to financial information by members;
- 20).Procedure on change of the Constitution;
- 21).Procedure on dissolution and what happens to the land and other assets of the association;
- 22).How corruption, theft of association property, nepotism and breach of officers duties to members will be dealt with; and
- 23).Procedure of dispute resolution.

By the time the members re-converge to the big group, each group returns with something to contribute. Each group picks one person to report on their discussions and recommendations. This way, the youth and women can have audience to explain some of the issues that are more sensitive to them without fear of being interrupted or ignored.

After initial modifications at the Rules Conferences, the compilation of rules is called the ‘first draft.’

Second Draft of the Rules

Ugandan law provides guidelines on what to consider when writing community land governance rules and it is important that the community rules are aligned with these guidelines. These guidelines are in question form, asking for details such as the name and address of the community, the governance, meetings, etc. The law envisions the creation of a constitution which is to be submitted for registration with the Government District Registrar. The guidelines are reproduced in Table 1.

LEMU pays regard to the provisions by creating a template based on the questions which then informs the basis for a community’s second draft. The second draft meeting is a community-wide meeting where LEMU staff facilitate the community members to decide the answers to the questions. It is also at this point that the community members consider adding new rules to help determine their collective future such as: how to deal with investors; what happens in case minerals are discovered on the land; powers of leaders in dealing with the land; the possibility of collecting membership fees and charging for resources in the future.

Third Draft of the Rules

LEMU then assists communities to structure and rephrase their second draft rules for better comprehension. Rules come in two major types; those that accord a right or a duty and those that are prohibitive. LEMU staff separate those that confer rights, duties, leadership, and the general structure of the association into a ‘constitution’ and



Draft community land rules posted at the center of a meeting in Aboti, Lango

those that are prohibitive and subject to frequent change into ‘by-laws’ which are annexed to the constitution. The reason for creating a two part law is a compromise between following the legal framework while maintaining the simplicity of the rules for its immediate beneficiaries.

A typical community constitution has the major part with the permissive rights which can only be amended under specific guidelines; as well as the by-laws which mostly contain prohibitive rules and are much easier to amend. For example, a rule that previously read as, “The community land is free for everyone to use” becomes an article detailing the conditions for membership and the rights of members. A rule that initially read as “Farming is not allowed” then becomes “There shall be no cultivation of the community land and the adjacent wetland.” The prohibitive rules require penalties to be effective. Penalties are debated by the members and are attached to the by-laws depending on the gravity of the offence committed.

The third draft represents the alignment between community rules and state laws. LEMU and the community then share the draft with sub county and district leaders for feedback and to ensure consistency with state law. Feedback is taken to the community and incorporated, if agreed.

Review of Third Draft Rules

The rules agreed on at the third draft are then translated to the local language. Only professional translators can accurately capture every aspect of

rules which is why the rules are documented in English first and then taken to the Lango Language Board to translate.

Next, a meeting is held to review the translated rules. Staff and community members read the whole document to confirm that nothing is lost in translation. The community also discusses how to prepare for adoption of the rules and election of an association council.

LEMU at first had different options for electing leaders from which the communities chose. The options ranged from electing on individual merit to clans nominating already elected members of their clans. From the experience of clans choosing one option, the option for electing leaders is one where all the clan committees of community land owners meet in their clans and nominate candidates to Constituent Assembly from which the community land leaders are elected. This meeting also serves as a briefing for all these activities and tasking clans to conduct nomination meetings.

Rules Adoption

Local leaders are left with copies of the third draft of the rules to share with and discuss with each household in their respective villages. If the family head assents to the rules, they sign the Adoption/Household Registration Form. The leaders are also trained on how to use the household

registration forms. This way, every household has an opportunity to review and approve the rules.

After distributing household registration forms, LEMU gives the community time to complete the household-level review process. The Ugandan Land Act stipulates that for a set of community rules to be considered adopted, operational and binding on members, at least sixty percent of all the members must consent to it. Therefore, only after sixty percent or more of members consent does adoption proceed.

Election of Leaders and Celebration

Initially, LEMU presented communities with several options for electing leaders, ranging from electing based on individual merit to clans nominating already elected members of their clans. Based on experience, LEMU now recommends a process of having all clan committees meet and nominate candidates to a Constituent Assembly from which the community land leaders are elected. This meeting also serves as a briefing for all these activities and tasking clans to conduct nomination meetings.

When the rules adoption is complete and the election nomination process underway, LEMU and the community organize a large celebration, inviting state, faith, and clan leaders; all community members; neighboring villages; and the media.

An adoption process usually opens with several speeches from leaders after which the rules are read out. The presiding officer, normally a Senior Assistant Secretary, Community Development Officer, or a Commissioner for Lands with the apex traditional institution will then be given the floor to confirm whether the community identifies with the rules as read out. The community members usually shout in the affirmative and then the rules are declared to be adopted and in force.

There is usually an interlude to celebrate the adoption of the rules followed by reading out names



LEMU supports communities to ensure that all members have a say in the process of writing and adopting rules for their community's land.

of nominees and the election. The elected leaders are officially commissioned there and then and the day ends with a meal prepared by the community (households usually contribute a small amount for foodstuffs) and LEMU.

The adoption of rules and election of leaders warrants a large celebration for several reasons:

- The adoption celebration is the climax of the whole process and often has the highest attendance, so it is an excellent time for elections. LEMU has seen Adoption Day meetings surpass eight hundred people.
- The presence and participation of high-level leaders in adoption and election is an endorsement of the process, the rules, and the leaders. This reinforces respect for the rules and elected leaders.
- If a community has a conflict caused by encroachment by local elites, this is usually the point when they witness the mass pressure against them and often agree in writing to leave the land.
- The combination of leaders and the large crowd attracts journalist who then report the events on local radios therefore publicizing community land protection and also sending a message to other community land encroachers.

Next Steps: Boundary Trees, Mapping, and Dispute Resolution

The steps after completion of adoption and election usually requires the most sensitive conflict resolution. These are more likely to be successful at this point because of the community engagement built during the rules writing and adoption process. The pressure shows the encroachers that the community is united and supported by state and traditional leaders.



Low literacy rates can present a challenge during rules-writing.

Challenges and Lessons

Literacy Levels

The danger of changing to rules from oral to written system is that many will not be able to read and internalize them. The few educated in the communities can take advantage of this. Members are advised to continuously discuss the rules and that they should meet annually to review the rules. Rules should remain as simple as possible.

Low Attendance

Rules writing dependd on a long, gradual process of meetings. This demands a lot of time of the communities. If attendance is low then the rules-writing process usually fails. Writing of the rules is a legal process in which due process must be followed so as not to undermine the product. The level of commitment and the task ahead should be spelled out to the community at the point of entry.

Common Rules

Community rules from different communities were found to be very similar. This could be because communities in Lango are all members of the same tribe and have a shared history. Because of this, LEMU together with the Lango Cultural Foundation documented Community Land Principles, Practices, Rights and Responsibilities (CLPPRR) book that lays down all the common rules and provides a framework upon which each

community can tailor their rules. This helps to reduce the time needed to write community rules.

Small Group Meetings

Women and youth will not participate equally and openly as men in mixed sex and age group discussions. It is very important to have meetings of separate groups of only youth, and only women to encourage their participation in rules writing.

Gender and Age Differences

The most visible and remembered use of community land is that it is “for grazing” and yet there are many land uses for community land, especially by women that are more “hidden” For example women use community land, for white ants, mushrooms, clay, grass, mud, vegetables, herbs, etc. Community members have also used the community land rules to emphasize the need for unity and have made provisions against segregation on the basis of gender, religion and clan; and also for the protection of persons living with HIV/AIDs. Skillful facilitation is necessary to bring these uses and hidden facts to the fore.

Rules must be Created by the Communities

Though the law gives guidelines on some aspects of the rules, it is important that the details come from the community. The facilitators role is to inform the communities of other issues they might

not be aware of that affects their rules.

Representation in Large Communities

If community land is owned by many villages, it is often unfeasible to have all adults formally sign approval of the rules and be represented in leadership. Facilitators should help communities think various options to address fair representation and participation in their process and governance structure. In Lango, communities agreed for head of family (defined as a married man, widow, unmarried woman and divorced woman) to represent the household and sign on behalf of the family. In the election process, communities usually chose to have the clans nominate members to a bigger body from which the community elected its land leaders.

Conclusion

For communities that previously relied on oral rules, documenting rules should not be treated as a result but rather as a process. This process should not change people’s rights and governance under customary land tenure system; it should only document them and align them to the state laws, where necessary. Following a community-driven process improves the likelihood that community members will internalize the rules and use them as an integral part of their lives.

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

The Land and Equity Movement in Uganda is a national non-profit, non-governmental organization that works to unite the efforts of local people, government, civil society organizations, students, elders, volunteers, and others to improve the land rights and tenure security of the poor.

Contact:
**communitylandprotection
@namati.org**

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