

# Lessons from the Field

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NAMATI PARTNER: LAND AND EQUITY MOVEMENT IN UGANDA (LEMU)



## How to Determine Appropriate Responses to Encroachment on Communal Lands

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Community land protection efforts must often confront cases of encroachment, where individuals have claimed part of community land as their own private property. Namati and the Land and Equity Movement in Uganda (LEMU) have witnessed this in many communities in northern Uganda, where encroachment disputes often threaten to undermine or stall community land protection efforts. Over the past five years, LEMU has developed ways to assess these conflicts and respond appropriately. This Lessons from the Field elaborates on LEMU's approach to encroachment conflicts and reflects on the effectiveness of this approach to date.

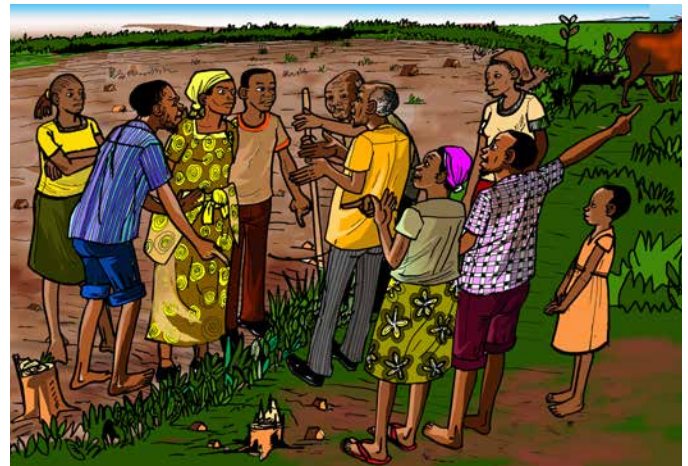


Illustration of an encroachment dispute © 2014 Isaac Okwir

Since 2009, LEMU's research and fieldwork have found that most community common lands in the Lango sub-region of northern Uganda are the site of at least one land dispute—and often many more. Most disputes are not a result of accidental encroachment; rather, the most common encroachment disputes feature community members or local elites who knowingly and willfully occupy or claim land belonging to the whole community as their own private property. While some encroachments are minor and easily resolved, it is not uncommon for more serious conflicts to undermine or even prevent efforts to protect community lands.

LEMU's ultimate goal is to empower communities to protect their communal lands themselves. This includes communities building strong local governance and capacity to mediate and resolve land disputes, either internally or by appealing to appropriate authorities if needed. However, because it takes time to build sustainable, resilient local land management structures, a serious conflict can easily derail these efforts at any point along the process. LEMU's ongoing approach to encroachment disputes has been to downplay the conflicts during the early stages of the process, until the community has stronger by-laws and management structures in place in order to

deal with the disputes themselves. However, in cases where a pressing encroachment dispute threatens a community's ability to make progress through the land protection process, a more direct intervention may be necessary, even if community land governance structures are not yet fully formed.

This Lessons from the Field describes how LEMU assesses and monitors the activities of encroachers throughout the community land protection process. We take stock of how community members are responding to LEMU's 'strategic deferral' of encroachment conflicts and the apparent effectiveness of this approach to date. By sharing our new strategies and insights from our field experiences, we hope to shed light on ways that LEMU and other community land protection practitioners can effectively balance the need to build strong community governance while at the same time identifying and resolving pressing disputes that threaten communities' stability and success for protecting their land.

## Different Types of Encroachers

LEMU has developed a framework to categorize land encroachers frequently encountered in communities in northern Uganda into three different types:

**1. Deliberate (Elites):** These individuals use their power or influence to grab land from the community by any means, fully aware they have no rights to personalize communal land. These perpetrators are obstinate and determined. They rarely respect local authorities or customary leaders (or may themselves be local or district authorities) and are typically the first to rush to court when challenged to leave the common lands they have appropriated in bad faith, knowing they can use their money and

influence to defeat the community in court.

For example, one individual named Olek in Barapworocero Community (Kole District) has continuously threatened community members with violence to discourage them from using their common land. The community has defeated Peter in three different Local Council courts, but he has refused to honor the rulings and leave his encroachments. The case has since been pending in Lira Magistrates Court for the last three years, and Olek's advocate regularly has the case adjourned. As well, LEMU has documented instances of the community's case file "disappearing" in the court registry, a worrying sign of Olek's influence over the court staff.

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



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

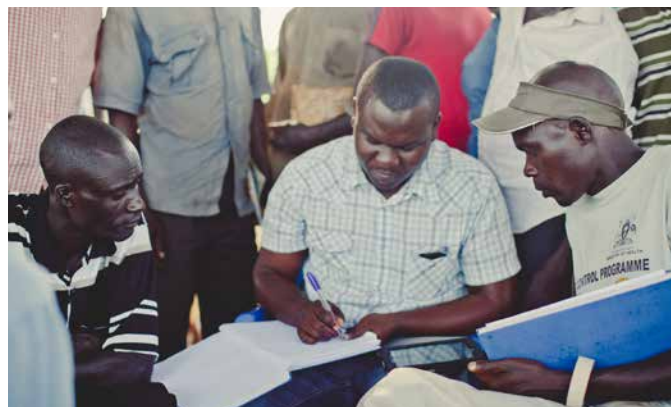
<sup>1</sup>In the past, when LEMU tried to resolve all land conflicts first, communities became so entangled in the complex internal disputes that they could not move past conflict resolution to address the greater objective of working collaboratively to secure and protect their customary land rights (see Volume 1 Issue 1).

Such is the case in Agudu Community (Lira District). One woman that LEMU interviewed stated that she entered the land when she saw that other people were freely using it. Other members who are encroaching upon the land have told LEMU that they will only leave the land once a well-known “ringleader” leaves.

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

### From “Direct Confrontation” to “Strategic Deferral”

As discussed in LEMU’s previous Lessons from the Field (Volume 1 Issue 1), LEMU used to begin its community land protection work in a community with efforts to address all existing conflicts over the community land. However, we soon found that this was a dangerous approach that sparked immediate disagreement and conflict by dividing community members into ‘encroachers’ and ‘non-encroachers.’ This strategy not only disorganized communities’ efforts to protect their common lands, but also led to threats of violence against



LEMU staff members collect details about community land uses

LEMU staff. By trying to resolve conflicts directly, rather than building the capacity of existing legitimate authorities to intervene, LEMU’s field team became the target of any efforts to sabotage the land conflict resolution process. For example, in 2013 in Bar Kitwe Community (Amolatar District), LEMU staff were threatened with witchcraft when a ringleader encroacher collected their footprints in the mud as they were identifying the boundaries. The same individual has continued threats to harm staff—most recently in August 2014, when the Adwong Bar (chairperson of the community grazing land) warned a LEMU staff that his life was in danger from this individual.

Upon analysis, LEMU realized that even if we were to successfully help a community evict an encroacher today, there is no guarantee that years later, when LEMU is gone, other people will not again try to claim common lands as their own in bad faith. We concluded that rampant encroachment is a symptom of a deeper problem: the lack of effective, respected community land governance.

LEMU therefore changed its strategy slightly and adopted an approach of assessing conflicts and strategically deferring them wherever possible until strong intra-community governance structures are in place that can handle the conflict resolution.

**Rampant encroachment is a symptom of a deeper problem: the lack of effective, respected community land governance.**



LEMU reordered the steps of its Community Land Protection process and introduced steps to build internal governance and “cooperation momentum” before tackling more contentious aspects. The process steps are now:

- 1) Community visioning for the future;
- 2) Legal education and formation of a Working Group;
- 3) Drafting community by-laws and natural resources management plans to govern intra-community land administration;
- 4) Election of a diverse, representative “Executive Committee” responsible for managing community land and natural resources (featuring customary leaders as well as women, youth and other stakeholders);
- 5) Mapping and agreeing on shared boundaries with neighbors;
- 6) Completion of necessary administrative steps for formal documentation, including surveying/geo-referencing; and
- 7) Community planning for the future, including rural planning, livelihoods development, and other community-driven efforts to ensure future prosperity and endogenously-defined development.



Community meetings may be the first time disputes have been discussed with the whole community present

The theory behind LEMU’s new strategy is that by the time boundary conflict flares, disputes over the community land will no longer be between the perpetrators and LEMU, but rather between the perpetrators and the community’s own elected management committee—together with clan authorities—acting in the community’s interests.

However, this sequence of steps assumes that all disputes over community land can be left unaddressed until after the drafting of by-laws and election of a management committee without the conflicts flaring up and derailing the process. It also requires LEMU to postpone communities’ requests for conflict resolution until later in the process.

This new approach requires a careful balancing act. LEMU must balance the goal of deferring conflict resolution until the community can lead it internally with the threat posed by encroachment conflicts that could derail the process. To find the right balance, LEMU has been closely monitoring outcomes of this new approach and developing tools to determine when and how to intervene if an encroachment conflict threatens the process.

## LEMU’s Learning and Reflection

Although LEMU is only a few months into implementing our ‘strategic deferral’ approach, we have seen encroachers respond to the community visioning and land and natural resource rule-making efforts in several ways, some positive and others negative:

**Promising to leave:** Once aware of how encroachment harms the community and prevents the community from realizing its shared vision, some encroachers voluntarily and publicly declare that they have acted wrongly and vow to leave their activities on the community land. So far, ten people from three communities have stood up in community meetings to make such a declaration. Three people from Agudu Community (Lira District) have reportedly acted on their promises and left

the land; LEMU plans to verify this information on the ground.

**Attending meetings:** LEMU's initial approach of confronting encroachment conflicts directly, in which LEMU asked targeted questions about encroachments and the identity of perpetrators, created an 'us' (the community) against 'them' (the encroachers) division within the community. With LEMU's new approach, however, no names are mentioned and the communal land is not even visited until rules are respected, effective leaders are put into place. This has allowed encroachers to attend project meetings without feeling as though they are being publically blamed and ostracized.

For example, one of the individuals identified as encroaching on the land of Burlobo Community (Lira District) came to LEMU's office to inquire about the activities in the community and expressed interest in attending if the community is not hostile towards him. To date, this individual's father attends community meetings on his behalf. While many may be attending to find out how to protect their personal interests (as in Barapworocero Community which has an ongoing court case), LEMU still takes their attendance as a positive development as it creates the opportunity for dialogue and learning.

**Demobilizing:** Other perpetrators, realizing that effective community land protection efforts are dependent on well-attended, participatory community meetings, have taken to spreading lies about LEMU and the Community Land Protection Program in order to discourage meeting attendance. This strategy is highly effective at undermining a community's progress towards successful land protection.

These saboteurs often circulate rumors that LEMU has come to steal their land, and that the entire community land protection process is an elaborate ruse to legally register the community's land as LEMU's. Some even misinform other community members about meeting dates and times to seed



Discussion can get heated at meetings about land disputes

confusion and ensure decreased attendance. These are usually the followers or agents of the lead perpetrator. For instance, the last meeting attempt in Agudu Community (Lira District) failed because the agents of a powerful encroacher spread false 'announcements' that the meeting had been cancelled.

### **Intimidating community members and/or**

**LEMU:** Powerful, "ringleader" encroachers who have the ability to compromise local leaders and the police have at times used their power not only to illegally claim community lands, but also to threaten violence to anyone who might challenge their actions. Their threats—made directly or through messengers—extend to community members, leaders, and even LEMU staff.

These individuals often rally youth who they bribe with alcohol to disorganize meetings or even physically chase LEMU field teams from a community. For instance, nearly one hundred youth aggressively surrounded LEMU staff and demanded they leave and never return to Burlobo Community (Lira District) or they would face death. The people of Barapworocero Community (Kole District) have also reported that a powerful encroacher has threatened to harm LEMU staff or "set the LEMU vehicle on fire."



**Showing no concern:** Perpetrators may also continue with “business as usual”, as if the community was not taking steps to document and protect their common lands, by continuing to use and/or degrade the community’s land on a daily basis. Samuel<sup>2</sup> of Bar Kitwe Community (Amolatar District) has continued to cultivate the community land and nearby wetland unbothered. In Agudu and Barapwororcero, ringleader encroachers have also continued to degrade the land just as before.

LEMU’s learning to date, therefore, is that the “strategic deferral” approach has mixed results, depending on the different category of encroacher. With **vulnerable, impoverished** individuals, strategic avoidance works well because these persons typically mean no harm and are apologetic when they realize the impacts of their actions on the community’s interests. These encroachers promise to leave and many have followed through on their promises, for example, the three people from Agudu Community (Lira District).



Community member speaking at a community land meeting

However, **opportunistic** and **deliberate** encroachers are typically acting in bad faith and defying community rules. As such, they are likely to reject processes to build community unity



Facilitators must read many emotions in a community meeting

(collective visioning) and draft community rules (by-laws drafting). These two types of encroachers are typically already aware of - and yet unconcerned about - damage they are causing to the lands and their community. Thus, we have observed that they are usually uninterested in community dialogue, or consider themselves ‘above’ the need for communal action to promote local prosperity.

In such cases, the ‘strategic avoidance’ approach does not appear to work well. These types of encroachments require more powerful law enforcement actors to take direct action to address the encroachment. Without strong government intervention, these encroachers actively continue to attend or demobilize meetings to frustrate progress, intimidate community members or LEMU staff, or show no concern while they continue to degrade the community’s land and natural resources.

Although LEMU’s approach of deferring land conflict resolution processes until after strong local governance mechanisms are in place has yielded some promising results, experiences to date show that conflict resolution efforts cannot always be postponed. Instead, the nature of the encroachment should dictate the approach - and sequence of land protection activities - that is most appropriate.

<sup>2</sup>A false name is used due to the sensitivity of this case.

## Encroachment Conflict Assessment Tools and Recommendations

As a result of these experiences in the field, LEMU has developed a process and tools to analyze encroachment conflicts when one is encountered during the early stages of the community land protection process. LEMU staff undertake the following analysis steps and use that information to determine appropriate next steps.<sup>3</sup>

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

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

- a) The Land Rights Tree (and how its conclusion is accepted by the encroacher) (See next page);
- b) The history of the dispute;
- c) Whether the perpetrator shows any 'warning signs' of intent to defraud or abuse the land rights of the community (for example, demobilizing or refusing to attend community meetings, threats of violence, uprooting of boundary trees, refusal to honor agreements made, or the use of abusive language when challenged);
- d) Statements from elders and community members about the encroachment; and



Community elders may know the history of the community land

- e) Whether there is any perceived "power" which the perpetrator is using to make the community vulnerable and unable to defend itself against encroachment, and the source of that power.

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

### 2.A. If the encroacher is vulnerable/impoverished or opportunistic, continue the 'strategic deferral' approach.

In this instance the clans, Community Support Persons<sup>4</sup>, and Local Councilors should support their communities to vision for the future of their community land, draft rules for administration and management of common areas, and elect a land and natural resource management committee. The management committee can then facilitate mediation/conflict resolution sessions using the community-agreed rules.

Once an agreement is reached, the parties should sign an MOU attesting to the agreed boundaries, plant boundary trees, and draw a sketch map of the disputed land.

If this approach fails to resolve the conflict or if the conflict worsens, LEMU begins to treat the case as if the encroachers are 'deliberate.'

### 2.B. If deliberate, investigate where the encroacher's power comes from and counter it.

Confront any remaining (or future) encroacher's power with legitimate power, built quickly so as to not allow time for extensive demobilization

<sup>3</sup> For more on this "Layered Approach to Land Dispute Resolution", see J. Akin (2014), *"Power & vulnerability in land dispute resolution: Evaluating responses to domestic land grabbing in northern Uganda"*. A publication of the Northern Uganda Land Platform, pg. 115-116.

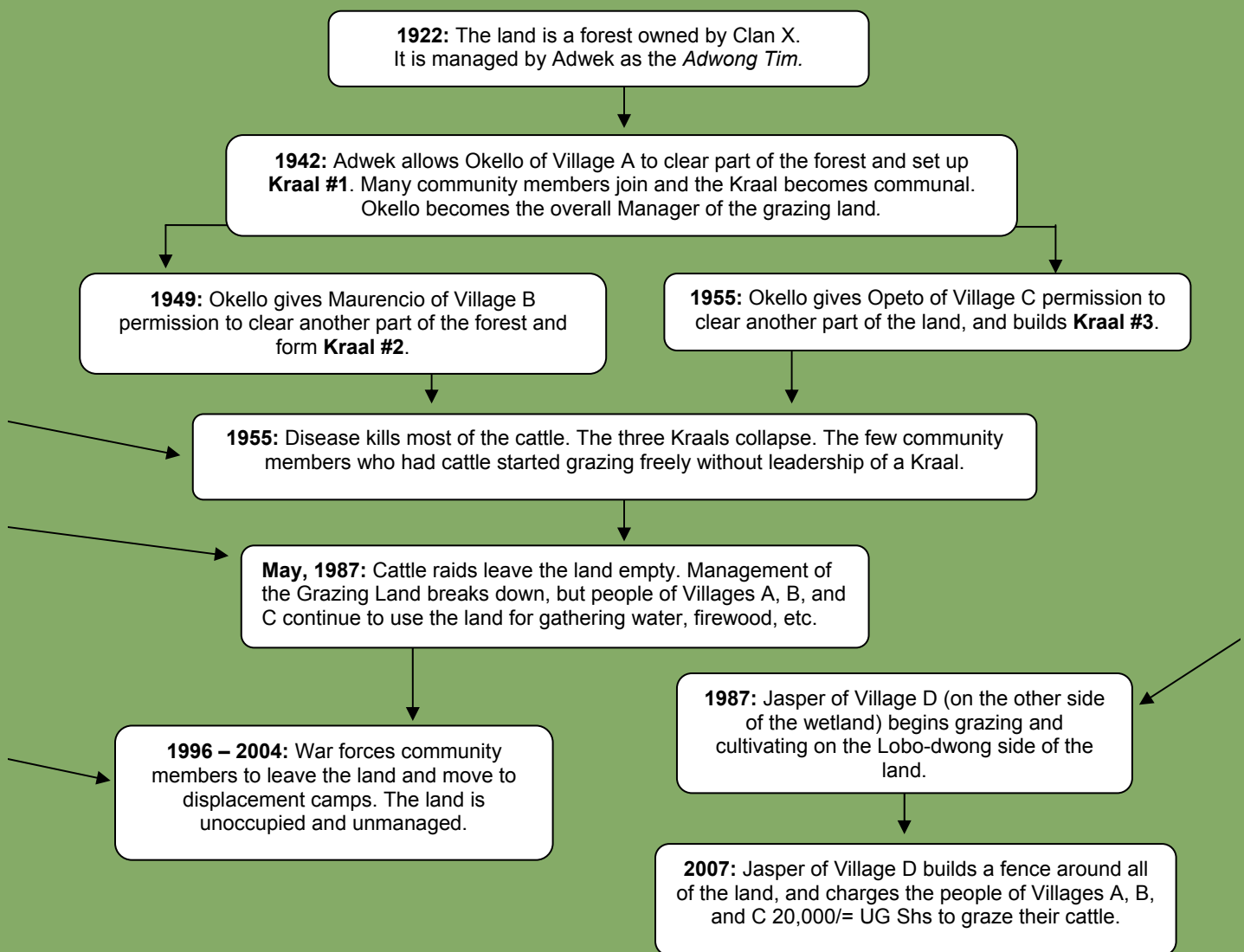
<sup>4</sup> Community Support Persons are trained community members who function like grassroots paralegals to help their community navigate the Community Land Protection process and motivate them to complete each stage.

## Participatory Community Land Rights Trees

A Participatory Community Land Rights Tree is a tool that LEMU uses to collect information about an encroachment and avoid limitations of getting information from only one or two sources. These diagrams show how land within the common area has changed hands over time and came to be community land. By tracing how the land was cleared, given, purchased, inherited, or leased over time, and referencing the various rights associated with each kind of land transaction in the Principles, Practices, Rights, and Responsibilities (PPRR) of land under customary tenure, it is usually possible to clarify the land rights of all parties and discern which of the parties may be providing misleading or incorrect information.

A Community Land Rights Tree should be drawn and discussed in the presence of clan leaders, elders, and as many community members as possible, so that the information provided can be verified as accurate. An analysis of the diagram and the information collected during its production can assist with identifying the type of encroachment situation. This analysis should be shared with all parties and community members. Thereafter, conflict mediation efforts may reference this document and lead to accelerated resolutions. A sample Tree is found below.

### Sample Community Land Rights Tree for Lobo-Dwong Community Land





of community participation in community land protection efforts.

To build this power base, continue to lobby NEMA, District Environment Officers, and the police to intervene in the case. At the community level:

- **Support community members to seek enforcement by state law authorities.** In Uganda, the relevant authorities include the District Environment Officer (for cases involving wetlands), the National Environment Management Authority, and police. With community members and leaders, LEMU staff document and share the facts of the encroachment case with these authorities, and bring their attention to national laws that mandate them to act to protect community lands owned under custom (for example, Section 92 of the Land Act (1998)).
- **Support the community to file a representative suit in court or in a Land Tribunal,** if state law enforcement does not help. This is a last resort option, as litigation takes a great deal of time and money, and there is a risk of judgments going unenforced. To do this, write a Friend of Court brief to the Magistrate, including the Land Rights Tree and an analysis of the conflict, and request that court first refer the case to be heard by the customary authority or Community's Management Committee (if one has been elected). Alternatively, a community may ask to take the case before the Resident District Commissioner (RDC). While this representative of the President does not have legal authority to decide land cases, this appeal to political power may sometimes pressure resistant encroachers to leave "voluntarily" after the RDC gives a warning.
- **Meanwhile, continually seek ways to reconcile the deliberate encroacher or to inspire a change of heart** to ensure



All community members, and especially women, need to feel safe to participate in dispute resolution processes

harmony in the community even after a court or administrative judgment.

### 3. Continue to build 'mass power' from multiple angles.

It is important to confront any remaining (or future) encroachers' power and influence with legitimate power from a unified community. This collective power must be built quickly, so as to prevent demobilization of community efforts in the land protection process.

To do this at the community level, LEMU recommends:

- Conduct visioning exercises at the village level to involve more people and build a broad base of awareness and support (working with clan leaders and Local Councilors).
- Use the radio to publicize cases where individuals voluntarily leave land that they have grabbed in bad faith; celebrate these people and encourage other encroachers to willingly vacate the land. This may increase social pressure on deliberate and opportunistic encroachers, making them stand out from the rest.

**It is important to confront any remaining (or future) encroachers' power and influence with legitimate power from a unified community.**

- Continue to support the community to draft and adopt rules for the administration and management of their common lands and elect a strong land management committee.

Community power should also be strengthened with support from external authorities. To do this, LEMU recommends continuing to lobby the National Environment Management Authority (NEMA), District Environment Officers, and the police to intervene in the case if necessary.

## Conclusion

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

There is no one-size fits all strategy to resolve community land encroachments. Rather, LEMU tailors its response based on our assessment of the situation on the ground. It is particularly important to understand what is motivating encroachers and the strategies they use to protect their interests. LEMU uses a framework of three categories of encroachers ('vulnerable', 'opportunistic', and 'deliberate'). Based on which type of encroacher is involved, LEMU either attempts to defer the conflict resolution process until the community

can address it internally or, if the conflict threatens to seriously undermine the community's land protection efforts, LEMU takes a more involved, proactive approach to addressing the conflict.

LEMU is continuing to test and monitor our encroachment conflict assessment tools and approaches. With further field experiences to inform us, we plan to further refine our responses to encroachment conflicts so as to most effectively foster authentic peace, governance, and protection of community lands and resources.



LEMU Lira staff, with visiting Namati staff

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

[www.namati.org](http://www.namati.org)

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.

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