

Protecting Community Lands and Resources

Evidence from Liberia,
Mozambique and Uganda



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ISBN: 978-0-9858151-0-3

Published by:

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Executive Summary

Background

In recent years, governments across Africa, Asia and Latin America have been granting vast land concessions to foreign and domestic investors for agro-industrial enterprises and resource extraction. Often, governments make concessions with a view to furthering development and strengthening the national economy. Yet in many cases, these land concessions dispossess rural communities and deprive them of access to natural resources vital to their livelihoods and economic survival. Even when communities welcome private investment, projects are often undertaken in ways that lead to environmental degradation, human rights violations, loss of access to livelihoods, and inequity.

Communities generally have little power to contest such land grants or advocate for terms more favorable to local prosperity, particularly where they operate under customary law and do not have formal legal title to their lands. In this context, communities need strong legal protections for their lands and natural resources, as well as expedient government implementation of clear, simple, and easy-to-follow legal procedures for the documentation of customary land rights.

Various nations have passed laws that make it possible for rural communities to register their lands as a single legal entity and act as decentralized land administration and management bodies (referred to herein as “community land titling” or “community land documentation”). These laws have the power to protect community lands according to customary paradigms and boundaries — including all family land, forests, grazing lands, water bodies, and other common areas critical to community survival. However, due to various political, financial and capacity constraints, these laws are often not widely or successfully implemented.

Research design and methodology

To investigate how to best support implementation of such laws, the International Development Law Organization (IDLO) launched a randomized controlled trial in Liberia, Uganda and Mozambique from 2009 to 2011, entitled the “Community Land Titing Initiative.” Together with the Sustainable Development Institute (SDI) in Liberia, the Land and Equity Movement in Uganda (LEMU) in Uganda, and Centro Terra Viva (CTV) in Mozambique, IDLO supported communities to follow their nation’s community land registration laws, taking note of the challenges and successes that transpired in the course of these efforts. The first study of its kind worldwide, the intervention’s goal was to better understand both the type and level of support that communities require to successfully complete community land documentation processes as well as how to best facilitate intra-community protections for the land rights of vulnerable groups.

The study's primary objectives were to:

1. Facilitate the documentation and protection of customarily held community lands through legally established community land titling processes;
2. Understand how to best and most efficiently support communities to successfully protect their lands and determine the types and level of support required to support communities in these processes; and
3. Devise and pilot strategies to guard against intra-community injustice and discrimination during community land titling processes, and to protect the land interests of vulnerable groups.

To undertake the objectives, 20 communities in Mozambique worked to complete the community land delimitation process set out in Mozambique's *Lei de Terras (1997)*, and 18 communities in Uganda worked to form Communal Land Associations and then seek a freehold title or Certificate of Customary Ownership (CCO) for their lands according to the procedures set out in the *Land Act (1998)* (Ch 227). In Liberia, due to the President's moratorium on public land sale and the suspension of all public land sale processes (as set out in the *Public Lands Act 1972-1973*), the 20 study communities followed a skeletal process set out in a Memorandum of Understanding signed between IDLO, SDI and the Land Commission of Liberia.

The field teams randomly assigned these communities to one of four groups, each of which received a different level of legal services support. The various levels of support provided were:

- ▶ Monthly legal education;
- ▶ Monthly legal education and paralegal support;
- ▶ Direct assistance of lawyers and technical professionals; and
- ▶ A control group that received only manuals and copies of relevant legislation.

While the three nations' legal and administrative procedures differed significantly, the study communities followed community land documentation processes that included the following six general steps:

- ▶ Creation and election of a coordinating committee;
- ▶ Boundary harmonization with neighbors (to define the limits of the land being documented) and the physical demarcation of those boundaries;¹

1 In Liberia and Mozambique, the communities worked to document the perimeter of the entire community (the meta-unit), including within it both privately held family lands as well as all communal lands, water sources and forests. In Uganda however, the project was working to document and protect only communities' large common grazing lands.

- ▶ Drafting and adoption of community by-laws/constitutions to govern intra-community land administration;
- ▶ Drafting and adoption of community land and natural resources management/zoning plans;
- ▶ Election of a “governing council” responsible for the administration and management of community land and natural resources; and
- ▶ Administrative steps, including formal surveying or geo-referencing and completion of application forms, etc.

Project researchers tracked each community’s progress through the process, observing and recording: all obstacles confronted and their resolutions; all intra- and inter-community land conflicts and their resolutions; and all internal community debates and discussions. A pre- and post-service survey of over 2,225 randomly selected individuals and more than 250 structured focus group discussions supplemented these observations.

Unfortunately, due to the length of time it takes to facilitate community land documentation processes as well as various political, administrative and resource-related obstacles, none of the study communities has yet received a document for their customary lands. Phase II of the Initiative, to be carried out as a component of Namati’s Community Land Protection Program,² will continue to support the study communities (including the control group) until they have all successfully attained documentation for their customary lands.

Findings and recommendations

This report details the communities’ various experiences undertaking the land documentation activities and summarizes the initial impacts of these efforts under the following subject headings: **conflict resolution and prevention** (encompassing boundary harmonization and demarcation); **intra-community governance** (encompassing by-laws/constitution drafting); and **conservation and sustainable natural resources management** (encompassing land and natural resource management plan drafting). It then briefly reviews the **obstacles confronted** relative to the administrative components of the process.

The report next outlines findings relative to the optimal level of legal intervention necessary to support communities’ successful completion of community land documentation processes as well as what endogenous factors may impact a community’s success. The report then details findings concerning how best to facilitate intra-community protections for the rights of women and other vulnerable groups during the land documenta-

2 For further detail, see <http://namati.org/work/community-land-protection/>.

tion process. It concludes by setting forth findings and recommendations intended to inform policy dialogue, help nations to refine and improve the implementation of existing community land documentation processes, and provide useful insights for countries seeking to develop laws and policies for community land documentation.

One central finding is that the community land documentation process is a valuable opportunity to resolve local land conflicts. Governments and civil society actors should leverage the process to support communities to address inter- and intra-community land disputes, which may undermine perceived tenure security and foster local or regional unrest.

A second central finding is that while the data and observations from Liberia and Uganda indicate significant changes in the study communities resulting from community land documentation efforts, in Mozambique very little change was noted. The primary difference between the processes followed was the inclusion in Liberia and Uganda of extended, iterative, and participatory processes of cataloguing, debating and adopting community by-laws/constitutions and plans for natural resources management. The research indicates that the community by-laws/constitution-drafting process was likely the primary driver of many of these impacts. Under this analysis, it becomes clear that **governments and civil society actors should structure community land documentation processes to proactively address intra-community governance**, with special emphasis on leveraging the process to:

- ▶ Improve community land administration and management;
- ▶ Create mechanisms to hold leaders downwardly accountable to their constituents;
- ▶ Strengthen and protect the rights of women and other vulnerable groups;
- ▶ Foster conservation and sustainable natural resources use;
- ▶ Align community norms and practices with national law; and
- ▶ Promote local-level democracy.

The report also concludes that **community land documentation may be a more efficient method of land protection than individual and family titling, and should be prioritized in the short term.**

Conflict resolution and prevention: Boundary harmonization and demarcation

The boundary harmonization process comprised the following activities: community mapping; boundary negotiation and conflict resolution with neighbors; and boundary demarcation (tree planting, GPS mapping, and MOU-signing ceremonies). Taken together, the communities' boundary harmonization experiences yield three important lessons:

1. While the potential for conflict was significant, communities' desire to obtain documentation for their lands created a strong impetus for them to peacefully resolve long-running boundary disputes. To this end, communities adopted a wide range of conflict-resolution and compromise strategies, sometimes settling decades-old land conflicts.
2. As reported by post-service focus groups and survey respondents, the resolution of long-standing land conflicts both within and between communities appears to be having an overall positive impact on land tenure security and intra-community conflict.
3. The boundary demarcation exercises underline that community land documentation is a conflict-resolution exercise, and should be treated as such. Facilitating agencies should proactively prepare for land conflict resolution to be a central component of the process and should craft trainings to support open, non-violent communication during boundary negotiation, a range of creative compromise strategies, and mediation/dispute resolution tactics. Facilitating agencies should also stand ready to support resolution of particularly intractable land conflicts.

Intra-community governance: By-laws/constitution drafting

The field teams established a rigorous four-part process for the drafting of by-laws/constitutions:

1. A "shouting out" of all existing laws in an uncensored, community-wide brainstorming session;
2. Analysis of these rules in light of national legal frameworks and evolving community needs;
3. The writing of second and third drafts of these rules (involving debate and discussion concerning the amendment, addition or deletion of rules); and
4. Formal adoption by full community consensus or super-majority vote.

Community members of all study **communities reported that they had never before publicly debated and evaluated community rules, and that the process gave them the opportunity to discuss community rules, norms and practices for the first time.** The field teams observed that throughout the exercise, community members had the opportunity to argue against rules they felt to be arbitrary and discriminatory as well as to advocate for the inclusion of rules that would protect their interests. As a result, the process appears to have made four significant shifts in various facets of local governance in the Liberian and Ugandan study communities. The findings indicate that the process:

- ▶ Involved direct participation by community members in decisions previously taken solely by customary and state authorities;
- ▶ Created the opportunity for community members to institute new mechanisms to hold local leaders downwardly accountable;
- ▶ Allowed communities to establish consistent norms and institute clear, publicly known penalties for infractions; and
- ▶ Helped to align local custom and practice with national law — after learning about national laws relevant to community land and natural resources administration, community members took steps to change local rules so that they no longer contravened national law.

Unfortunately, because the Mozambican communities did not progress past a first draft of their community rules, the Mozambican data does not show similarly positive impacts on intra-community governance. Such findings support the conclusion that **a community land documentation process that does not include mechanisms to improve local governance may at best be described as a lost opportunity to effect powerful intra-community change and at worst may make land dealings more unjust or further bad faith land appropriation.** Taken together, the findings suggest that the aim of a community land claim formalization process should not only be to obtain documentation, but also to stimulate a community-wide, democratic and fully participatory review of how to best manage and govern community lands and natural resources.

Conservation and sustainable natural resources management: drafting land and natural resources administration and management plans

While the Ugandan and Liberian documentation processes included the drafting and adoption of natural resources management plans, both SDI and LEMU observed that communities naturally included rules pertaining to natural resources use and management in their by-laws/constitutions. In doing so, the communities instinctively merged the two drafting processes into one. To ensure clarity and coordination, the field teams suggested that communities adopt the two documents together, with the rules relating to land governance separated out from those relating to land and natural resources management.

The field teams noted that as a result of the process of discussing and amending their rules for land and natural resources management, two main shifts in community members' consciousness of natural resources management occurred:

1. Community members reported a growing sense of conservation and a resulting dedication to sustainable natural resources use, which they attributed to their revival of “old” rules designed to protect community resources; and
2. Communities created rules that function to more closely control and monitor outsiders’ use of community lands and natural resources.

The content of communities’ land and natural resources management plans reflected these shifts. The resulting plans included rules that promote and enforce: conservation of key resources like firewood, thatch and other building materials; forest conservation; water sanitation/maintenance of clean drinking water sites; sustainable hunting and fishing; and other protections.

Evident in the land and natural resources management plans is communities’ receptiveness to outside investment, but within a regulatory and participatory framework that ensures:

1. The community itself is involved in discussing and negotiating all aspects of the investment project;
2. Restrictions are put into place to ensure community health, environmental and cultural protections;
3. Benefits/fair compensation accrue to the community; and
4. A signed contract ensures that all community benefits are paid.

The optimal level of support necessary to support successful completion of community land documentation processes

The level of service had a statistically significant impact on the stage communities attained in the land documentation process:

- ▶ Control group: average completed **19%** of the process.
- ▶ Education-only treatment group: average completed **50%** of the process.
- ▶ Paralegal treatment group: average completed **58%** of the process.
- ▶ Full legal services treatment group: average completed **34%** of the process.

These relatively surprising outcomes lead to various conclusions. First, the finding that the full-service treatment group communities performed more poorly than both the education-only and paralegal communities may indicate that **when communi-**

ties have the responsibility to complete most project activities on their own, they are motivated to take the work more seriously, integrate and internalize the legal education more thoroughly, address intra-community obstacles more proactively, and claim greater “ownership” over the community land documentation process than when a legal or technical professional completes all this work on behalf of the community.

Second, it appears that **the particular strength of the paralegals may be related to their ability to help communities navigate through intra-community tensions or obstacles that a full-services team of outside professionals may either inadequately address, fail to perceive, or accidentally exacerbate.** In fact, the statistical analyses indicate that when a community faces one or more intra-community obstacles (elite interference, weak community cohesion, intra-community land conflicts, etc.), offering full legal services makes no statistical difference to that community’s ability to successfully complete the documentation process than offering no services at all.

Third, the relative success of certain education-only and control group communities neighboring the paralegal group communities — as well as the evidence that these education-only and control group communities actively sought out advice from neighboring paralegals — leads to the conclusion that well-trained and rigorously supervised paralegals may not only help their own communities, but may also have spillover impacts throughout the region in which they are based.

Fourth, the findings indicate that while motivated communities can perform much of this work on their own, they need targeted legal and technical assistance to successfully complete community land documentation efforts. The field team’s experiences indicate that legal and technical professionals must actively provide the following supports throughout the community land documentation process:

- ▶ Introducing the land documentation process and providing periodic legal education and capacity-building training concerning the community’s legal rights to their land, the legal process to formally document these rights, and how to successfully complete the necessary procedures;
- ▶ Providing mediation and conflict-resolution support during any particularly contentious land conflicts or boundary disputes that communities are unable to resolve on their own;
- ▶ Providing legal support and technical assistance during the completion of the community’s second and third drafts of their by-laws/constitutions;
- ▶ Implementing a women’s empowerment/participation strategy and working to ensure women’s full involvement in all community land documentation activities; and

- ▶ Providing assistance to communities during all administrative components of the land documentation process, including: liaising with government agencies, contracting professional land surveyors, compiling all necessary evidentiary proof of community land claims, and completing all relevant application forms.

Furthermore, the field teams' experiences indicate that a legal and technical team must closely supervise community paralegals' efforts, not only to ensure that their work product is of high quality, but also to step in when necessary to demonstrate to stakeholders that a community's efforts are supported by a team of lawyers who have the capacity to take legal action.

The findings also suggest that a paralegal-driven process may be less costly³ — and more scale-able — than the full-service approach, as the model allows a few professionals to supervise multiple community-based paralegals.

How best to facilitate protections for women and other vulnerable groups' rights during community land documentation efforts

Throughout the community land documentation activities, the field teams adopted specific measures to ensure the participation of women and other marginalized or vulnerable groups during community land documentation activities. After experimentation with various strategies, the field teams found that to ensure that women's voices are heard, it is necessary to proactively take action to promote women's participation in project activities, including:

- ▶ Carrying out community-specific gender analysis and crafting strategies to address gender inequities;
- ▶ Respecting women's responsibilities by scheduling community land documentation meetings at times and locations convenient for women (e.g., after women have completed their house and farm work); and
- ▶ Convening special women-only meetings to identify issues that affect women's rights and participation, and empower women to address these issues during broader community meetings.

The data and statistical analysis also show that **paralegal support is likely the mini-**

3 In Mozambique the costs of supporting community land delimitation were calculated by treatment group. As facilitated by CTV, the total costs of land delimitation per community were at most US\$3,968 — with the provision of full services support by CTV's trained technical team. For communities receiving paralegal support, the total cost was US\$3,563 per community; for communities provided with only monthly legal education, the total cost per community was US\$1,717. These figures include all staff salaries, office rent, petrol, office supplies, per diems for government technicians, lunches for community members during the geo-referencing process, and other costs.

mum support necessary to ensure that women participate meaningfully in community land documentation activities.

Finally, the field teams observed that **the by-laws/constitution drafting led to changes in women's substantive and procedural rights.** In Uganda and Liberia, statistical analysis of the communities' by-laws/constitutions found that:

- ▶ The control group communities included an average of **0.8** provisions;
- ▶ The education-only treatment communities included an average of **4.0** provisions;
- ▶ The paralegal treatment communities included an average of **5.5** provisions; and
- ▶ The full legal services treatment communities included an average of **2.8** provisions.

Procedurally, the process appears to have shifted community members' perceptions that land is "men's business." Many communities' by-laws/constitutions include new provisions stating that women and youth must have elected representatives on permanent governing bodies responsible for community land and natural resource management. Meanwhile, women reported feeling as though their community took women's opinions seriously during the by-laws/constitution drafting discussions.

Substantively, the process provided an opportunity for women and other vulnerable groups to actively challenge discriminatory customary norms and practices and argue for the inclusion of stronger protections for their land and inheritance rights. Their efforts resulted in:

- ▶ The strengthening of existing women's rights;
- ▶ The maintenance of women's land and natural resources rights that might have been lost in the transition from oral to written rules;
- ▶ The rejuvenation of customary norms that had existed in the past to protect women's land claims but have recently eroded or been abused; and
- ▶ The alignment of local rules with national laws that protect women's land rights.

Unfortunately, many of the first draft lists of the Mozambican communities' rules for land and natural resources management included rules that undermine women's land rights and directly contravene the Mozambican Constitution. However, due to the lack of intra-community governance procedures in the land delimitation process set out in the *Lei de Terras*, communities did not discuss how to take concrete action to remedy gender-based injustices or establish intra-community mechanisms to protect women's

and other vulnerable groups' land rights. Such findings lead to the conclusion that a process of cataloguing, discussing and amending community rules is central to efforts to protect women's rights during community land documentation activities.

The by-laws/constitution-drafting process also illustrated that custom does not necessarily undermine or weaken women's land rights; rather, a well-facilitated process of reviewing and amending custom to align with national laws opened a space of dialogue in which it was possible to strengthen women's existing land rights within customary legal constructs. To this end, **customary leaders may be important allies in the enforcement of women's land rights**, as the data indicate that community members consider them to be primarily responsible for the protection of women's and widows' land rights.

Obstacles to successful community land documentation efforts

The study communities confronted a wide range of obstacles over the course of the initiative. Analysis of the various administrative and intra-community obstacles faced leads to three main conclusions. First, **administrative or bureaucratic inefficiencies linked to lack of necessary staffing and state resources, lack of political will, and other institutional obstacles were the greatest impediments to successful land documentation faced by the study communities.**

Second, **particularly dysfunctional communities may not be able to successfully complete the complex process of documenting community land claims:** the field teams' observations illustrate that communities that struggle with elite sabotage, intractable boundary disputes, internal discord/weak pre-project cohesion, and weak leadership or power struggles between leaders may not be able to successfully progress through community land documentation processes, irrespective of the degree of legal support provided. Similarly, peri-urban communities and communities with little or no internal cohesion or a highly transient population may not be appropriate for community land documentation initiatives.

Relatedly, **should a dysfunctional community initiate land documentation efforts and not be able to complete them, the process may invigorate tensions and create or exacerbate conflict, leaving the community in a worse situation than before the intervention began.** Before beginning an intervention, facilitating NGOs or government agencies should carry out an analysis to determine whether the community can work together productively and is willing to authentically address and resolve intra- and inter-community land conflicts. Supplemental conflict resolution training, community-building and leadership-enhancement activities may need to be provided before a community can undertake land documentation efforts. **In in-**

stances where weaker community members initiate land documentation efforts in order to protect their land from being grabbed by local elites, facilitating agencies should proactively address intra-community conflicts before launching community land documentation activities.

Community land documentation may be a more efficient method of land protection than individual and family titling, and should be prioritized

Documenting or registering the community land as the “meta-unit” may be the least costly — and most scale-able — means of protecting rural households’ land claims. The research found that even when providing full legal services support to communities, community land documentation efforts cost only a few thousand dollars per community. Specifically, in Mozambique, as facilitated by CTV with full legal support, the total costs of land delimitation per community were at most US\$3,968. In Liberia, a rough estimate of the costs came out to \$7,700 USD per community.⁴ Although cost estimations vary widely according to the national legal framework and economic context, one multi-country analysis found average costs of first-time individual/household land registration to sometimes be above US\$100 per parcel, with average costs between US\$20 and US\$60 per parcel.⁵

Considering that between 100 and 1000 families live in each of the study communities, community land documentation processes appear to be an economical way to protect large numbers of families’ land claims as it may prove more time efficient than individual titling once governments gain practice issuing community land titles, deeds, or delimitation certificates. As undertaken in this investigation, for a hypothetical community of 500 families and large common areas, registering the tenorial shell would cost less than half of efforts to register individual or family lands. Although the process of community land documentation requires a significant time investment, it may prove more time efficient than individual titling once governments gain practice issuing community land titles, deeds, or delimitation certificates. Once the community as a whole has been protected, the focus may turn to community-driven documentation of family and individual lands.

⁴ In Uganda, these figures have not yet been calculated.

⁵ Tony Burns, Land Administration Reform: Indicators of Success and Future Challenges, Agriculture and Rural Development Discussion Paper 37 The International Bank for Reconstruction and Development/The World Bank. 2007.



The conclusions of the Community Land Titling Initiative's two-year investigation are necessarily preliminary, due to the very short study period and because, as a result of various administrative, state capacity and regulatory obstacles, none of the study communities have yet been issued their titles, deeds or delimitation certificates. Further research is therefore warranted. Additional investigation is also necessary to determine the long-term social and economic impacts of documenting community land rights. It will take time to understand how to best support community efforts to implement newly-adopted by-laws/constitutions and natural resource management plans, and to discern what additional assistance is necessary to ensure that even documented community lands claims are protected over the long-term.⁶

However, the findings clearly illustrate that **community land documentation exercises may result in important impacts that go beyond increased land tenure security**. Communities' desire for documentation and protection for their land claims appear to be prompting them to undertake authentic discussions and make changes that have the potential to promote good governance and downward accountability of leaders, strengthen women's land rights, proactively resolve land conflicts, align local rules with national law, and promote conservation and sustainable natural resources practices. As described by one Liberian man:

I don't care what anyone says, this project is the best thing to happen in our history. Imagine: now we know our borders; we know our resources; we know our rules, and they are written down for everyone to see and know; people are attending clan meetings; and our clan feels stronger together. This has never happened before! Now it is easy for us to organize and ask the government or [foreign investors] for things we want or refuse things we don't want in our community.

Once a community has successfully documented its land claims, the hope is that it may then work hand-in-hand with government agencies and civil society organizations to leverage its lands for locally-driven development, prosperity and human flourishing.

⁶ Phase II of this work will undertake precisely these activities. Phase II will be carried out by Namati, in partnership with SDI, LEMU and CTV, under the aegis of the Community Land Protection Program. For further detail, see <http://namati.org/work/community-land-protection/>.

IN RECENT YEARS, governments across Africa, Asia and Latin America have been granting vast land concessions to investors for agro-industrial enterprises and resource extraction. Often, these concessions dispossess rural communities and limit their access to natural resources vital to their livelihoods and survival. To gather evidence on how to take practical steps to protect community lands, the *Community Land Titling Initiative* supported communities in Uganda, Liberia and Mozambique to follow their nation's community land registration laws, taking note of the challenges and successes that transpired in the course of these efforts. The first study of its kind, the intervention's goal was to better understand both the type and level of support that communities require to successfully complete community land documentation processes as well as how to best facilitate intra-community protections for the land rights of vulnerable groups.

This publication describes these efforts, detailing the communities' experiences, the obstacles faced, and the observed impacts of community land documentation processes. It concludes that community land protection efforts should combine three processes: the *technical* task of mapping and titling community lands, the *peace-building* task of land conflict resolution, and the *governance* task of strengthening local land administration and promoting equity. The report aims to inform policy dialogue, assist nations to improve implementation of existing community land documentation laws, and provide useful insights for countries seeking to develop community land protection legislation.

