

PURSUING LEGAL REGISTRATION OF COMMUNITY LAND CLAIMS



The procedures for formal registration of a community's lands vary greatly between countries. Every nation has its own set of policies and procedures for the registration of land rights and the issuance of titles, deeds, or certificates of land use and management. **Facilitating organizations should carefully research national laws and regulations to understand how to best support communities through the land registration, certification, or titling process.**

Facilitating organizations should also **research the advantages and disadvantages of land rights** documentation, so as to be able to advise and inform communities of their options. Some communities may be skeptical of – or directly opposed to – registering their land claims with the government. It is important to be respectful of these communities' concerns and to find ways to protect their land rights that they are comfortable with. While formal government registration is legally the strongest form of rights documentation, it is not essential: a community's by-laws, maps, and boundary markers can also serve as proof of a community's customary or indigenous land claims.

When pursuing formal government registration of a community's lands claims, facilitators should consider the following factors:

1. Not all countries' land laws include a specific process for community land documentation. In such nations, facilitators will need to find creative legal strategies to support community land documentation. Facilitators may try adapting relevant national laws to allow for co-ownership of community lands. The legal frameworks underlying trust law, laws of association, or corporate law allow for a group of people to hold property together, with a board of trustees, a board of

directors, or an association committee that manages assets on behalf of a larger group of shareholders, trustees, or association members (who are co-owners of the shared resource). Facilitators may need to consult with a trusted lawyer or judge about which legal frameworks would best support community land registration and collective ownership.

In some situations, communities may seek management and jurisdiction over forests and parks that have been designated by the government as public lands or conservation areas. In such cases, facilitators may support communities to seek legal co-management arrangements with government forest and park services. Facilitators should be creative and offer communities a range of legal options so that communities can choose to pursue the path that best supports their goals and interests.

2. Avoid putting the names of specific individuals on any deed, title or certification documents. If national laws allow for registration of community lands, but demand that the names of a few leaders or elected representatives must go on the title/certificate, facilitators should discuss with community members how to fill out the paperwork. Naming only a few individuals on the title/certificate can be dangerous: these individuals might be interpreted to have the legal right to sell or lease the land without informing the rest of the community.

In such instances, if the community is comfortable filling in the form "incorrectly," facilitators might advise the community to simply write the name of the community on the title/certificate application, and not only the names of specific individuals. The by-laws can then be attached, detailing that all decisions relating to the administration and management of the community land must be made by a majority or super-majority of the community as a whole.

If government policy requires that a registration application include a list of all the family names in the community (or a list of all community members or association members/shareholders, etc.), facilitators should address this requirement carefully. A list of “all community members” will immediately become out of date the moment that a community member dies or is born, or whenever anyone moves into the community and becomes a resident with rights to use the community land. To reduce the need to amend the title/certificate, advocate that the government accept an amendment to the “community members list” every 10 years – or every time a national census is completed.

3. Support the community to submit its application for title or registration. Some communities may ask facilitators to submit the application on their behalf, but if the community decides to submit it on its own, then facilitators should:

- Support the community to pay all associated registration fees using community funds. This will ensure that the community feels ownership over the process.
- Teach the community to:
 - Request that government officials stamp its application with the time and date submitted and make copies for the community to keep for its records.
 - If the government refuses to make copies, the community should fill out an additional form for its records, and request that this form is also stamped.
 - Request a receipt for all fee payments.
 - Request written documentation of the date by which the government will approve or reject the community’s application, and how notice will be given to the community of this decision.
- Support the community to keep copies of its stamped application and all receipts. With the community’s permission, facilitators should keep a copy or a clear photograph of the documents for their records as well, should further advocacy on the community’s behalf be necessary.
- Support the community to call or visit the title/deed registry office to check on the status of its application on the date the regulations say the application should be decided (often within 4 weeks of application submission.) If the community does not receive its title/certificate within the time specified,

the community and facilitators should devise a schedule for how they will work together to monitor the progress of the application and ensure that the government issues the title/certificate.

4. Support communities to plan for how they will keep their title/registration certificate safe. It is very dangerous to keep a title certificate or deed in a community without carefully controlling where it is kept, who can access it, and how it is used: a paper title or certificate may allow an unscrupulous leader to more easily sell or lease community land without community approval.

- If the community has access to a bank with safety deposit boxes, the facilitating organization may support the community to put its title/certificate in the bank where no one can access it without following agreed procedures. If using a bank, the community should establish that the bank may only open the safe deposit box/bank vault and provide the title/certificate to a large, predetermined group of community members, but never to a single individual.
- Alternatively, the title/certificate might be kept in a strong box locked with multiple locks, the keys to which are distributed among more than five trusted community members.

Regardless of where the title/certificate is kept, the community should ensure that there are clear, written rules about how the title/certificate can be accessed and used, in case community members need to contest or void any land transactions made by leaders or corrupt elites.