

# Protecting community lands and resources

Evidence from Uganda



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Community members discuss a map indicating encroachments into the communal grazing land.



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# Executive summary



Community members sign to witness the agreed boundaries of their grazing land.

## Executive summary

In northern Uganda, common grazing lands are central to village life. While nominally used for grazing livestock, communities also depend on their grazing lands to collect basic household necessities such as fuel, water, food, building materials for their homes, and traditional medicines. Yet growing population density, increasing land scarcity, weak rule of law, and the 1998 Land Act's legalization of a land market have created a situation of intense competition for land in northern Uganda. The growing land scarcity has contributed to higher rates of land grabbing, boundary encroachments onto neighbours' lands, intra- and inter-family land disputes, and rampant appropriation of common lands. As a result of these trends, there is a high rate of tenure insecurity in northern Uganda, a prevalence of intra-community land conflict, and a rapid loss of the common grazing lands that community members rely upon for their subsistence and survival.

To understand how to best address these trends, the Land and Equity Movement in Uganda (LEMU) and the International Development Law Organization (IDLO) set out to investigate how best to support communities to successfully follow legal procedures to formally document and protect their customary land claims. This effort, the *Community Land Protection Initiative*, was carried out in Oyam District in northern Uganda from 2009 to 2011.

The first study of its kind worldwide, the intervention's goal was to better understand 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 women and other vulnerable groups.<sup>1</sup> The intervention's primary objectives were to:

- Understand how to best and most efficiently support communities to protect their lands by following legally-established land documentation processes;
- Facilitate the protection of customarily-held lands by seeking formal documentation of community land claims;
- Devise and pilot strategies to guard against intra-community injustice and protect the land rights of vulnerable groups during community land documentation processes;

<sup>1</sup> The study was simultaneously undertaken in Liberia and Mozambique to allow for cross-national comparison. For further information on the cross-national study and results, see "Protecting Community Lands and Resources: Evidence from Liberia, Mozambique, and Uganda" at <http://namati.org/work/community-land-protection/Phase-One-Findings-and-Reports>.

- Craft country-specific recommendations for the improvement of land documentation laws and policies to improve fairness and make titling procedures easier for both communities and land administrators to follow.

To undertake these objectives, LEMU conducted a randomized controlled trial in Oyam District in northern Uganda. As per the study's design, LEMU randomly selected 20 communities that actively expressed a desire to seek documentation for their community land rights and then randomly assigned these communities to one of four different "legal services" treatment groups: (1) full legal and technical support; (2) paralegal support and monthly legal education; (3) monthly legal education only; and (4) control/minimal information dissemination. As it provided these supports, LEMU observed and recorded each community's progress through the requisite steps of the Communal Land Association formation and land documentation processes, as set out in Uganda's Land Act of 1998 (Ch. 227). These steps include:

1. **Community land documentation process introduction**, including: legal education and awareness raising; and creating an "intermediary group" to coordinate community process.
2. **Mapping, boundary harmonization, and demarcation** including: mapping the boundaries of the communal lands; negotiating the boundaries of the communal lands; resolving land conflicts; and planting boundary trees along the land's agreed limits.
3. **Drafting a Communal Land Association constitution and land management plan**, including: cataloguing all existing community rules, norms, and practices for local land and natural resource management; debating, discussing, and amending these rules to align them with current realities; ensuring that the agreed community rules do not contravene Ugandan law; and adopting a final Communal Land Association constitution and land management plan to govern the lands being documented.
4. **Filing an application to become a Communal Land Association and electing officers**, including: submitting an application for the formation of a Communal Land Association with the District Registrar; and convening a community meeting attended by the Registrar, at which time the community formally agrees to incorporate as an association and elects three to nine Communal Land Association officers.
5. **Formally documenting community lands**, including: surveying or taking GPS measurements of the community land; and submitting an application for either a Certificate of Customary Ownership (CCO) or a Freehold Title.

As it supported communities to complete these processes, LEMU noted all obstacles confronted, 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 600 individuals and more than 100 structured focus group discussions supplemented LEMU's observations and allowed for quantitative analysis of all short-term impacts.

Unfortunately, due to various obstacles, most significantly the lack of a District Registrar for Oyam District, none of the study communities have yet received a freehold title or CCO for their customary lands. Phase II of the Initiative, to be carried out jointly by LEMU and Namati as part of Namati's *Community Land Protection Program*, will continue to support the study communities until their lands have been formally documented and protected.<sup>2</sup>

This report details the study communities' experiences undertaking the land documentation activities and summarizes the initial impacts of these efforts under the following subject headings: *conflict resolution and prevention* (describing the boundary harmonization and demarcation process); *intra-community governance* (describing the Communal Land Association constitution drafting process); and *conservation and sustainable natural resource management* (describing the land and natural resource management plan drafting process). It then briefly reviews the *obstacles confronted* and describes conclusions relative to the *optimal level of legal intervention* necessary to support communities' successful completion of community land documentation efforts. The report next details findings concerning how best to *facilitate intra-community protections for the rights of women and other vulnerable groups* during the land documentation process.

The report concludes by setting forth *findings and recommendations* intended to inform policy dialogue and support the widespread implementation of Uganda's Land Act 1998. The findings are offered with the understanding that continued research is necessary to determine the long-term social and economic impacts of documenting community land claims, and that continued community engagement is required to understand how to best ensure that documented community lands are fully protected over the long-term.

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2 For more information about the Community Land Protection Program, see <http://www.namati.org/work/community-land-protection/>.



## Main findings

### 1. Community land protection efforts should combine the *technical* task of mapping and documenting community lands, the *peace-building* work of land conflict resolution, and the *governance* work of strengthening local land and natural resource management.

LEMU's experiences implementing the Communal Land Association formation components of the Land Act 1998 indicate that when these efforts are joined, community land documentation activities present an exceptional and rare opportunity to create positive change that extends beyond documentation of customary land claims. The findings indicate that when well facilitated, community land protection efforts may help to:

- Resolve long-standing land disputes and reduce future land conflict;
- Improve local governance and establish local mechanisms to enhance community leaders' downward accountability;
- Strengthen protections for the rights of women and other vulnerable groups;
- Stimulate communities to conserve and sustainably manage natural resources;
- Align community norms and practices with national law; and
- Promote legal empowerment and build community capacity to take active steps to protect their lands and resources.

To achieve and sustain such impacts, implementation efforts should be backed by strong political will and the allocation of sufficient resources.

### 2. Community land protection processes are just as much conflict resolution processes as land registration processes, and should be treated as such.

The process of harmonizing the boundaries of the communal grazing lands unearthed latent, unresolved land conflicts – long dormant or festering for years – and ignited new boundary disputes that flared up in response to the impending documentation efforts. At times, the process resulted in serious intra- and inter-community conflict, even in communities that previously reported no boundary disputes and generally peaceful relations with their neighbours.

However, while the potential for conflict was significant, communities' desire to document their grazing lands created a strong impetus for them to peacefully resolve long-running boundary disputes. Compelled by the goal of protecting their land claims, the study communities worked to negotiate compromises and resolve land disputes that had endured for years.

Facilitating agencies should proactively prepare for land conflict resolution to be a central component of the documentation process and should craft curricula and trainings designed to support open, non-violent communication during boundary negotiation and a range of creative compromise strategies and dispute resolution tactics. Facilitating agencies should also stand ready to support resolution of particularly intractable land conflicts. Most importantly, communities will require state support for the enforcement of agreed boundaries over time. Government officials' assistance will be essential to communities' efforts to deal justly with encroachers and maintain all agreed, documented boundaries.

### **3. Community land protection efforts have the potential to galvanize communities to improve intra-community governance and hold local leaders accountable.**

The aim of a community land documentation process should not only be to obtain formal recognition of community land claims, but also to stimulate important intra-community changes in local land and natural resource governance. Such processes are critical: while documentation of community land rights provides protection against land usurpation by outsiders, it alone can do little to either protect against intra-community threats to common lands or to ensure that communities protect, conserve, and steward their land and natural resources. To permit a community to apply for land documentation without creating and implementing systems for transparent, just, and equitable administration of that land is an invitation for mismanagement, corruption, and local elite capture.

Members of all study communities reported that the land documentation process provided the opportunity to publicly discuss and evaluate community rules and norms for the first time in living memory. Throughout the exercise, community members argued against rules they felt to be arbitrary and discriminatory, and advocated 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. The findings indicate that the process:

- Created an opportunity for communities to strengthen and enforce customary rules for land and natural resource management;
- Enabled community members to directly participate in governance 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 and improve leadership; and

- Helped to align local custom and practice with national law; after learning about national laws relevant to community land and natural resource administration, community members took steps to change local rules so that they no longer contravened national law.

#### **4. The community land documentation process may foster sustainable land and natural resource management and conservation.**

The process of discussing and amending their rules for land and natural resource management fostered two main shifts in community members' ideas about natural resource management. First, communities' rules reflect a clear concern with conservation and the sustainable use of natural resources. During the constitution drafting process, communities both crafted new rules to conserve their resources as well as "remembered" and reinforced old rules that promote sustainable natural resource use. The resulting plans include rules that promote and enforce conservation of key resources like firewood and building materials, sustainable animal husbandry, and other protections.

Second, communities created rules that more closely control and monitor non-residents' use of community lands and natural resources. These rules reflect communities' increasing dedication to monitoring and enforcing limits on outsiders' extraction of community resources. The new community rules do not generally impede outsiders' use of community natural resources, but rather to allow communities to better control, monitor, and tax such activities to ensure sustainable use and community profit.

#### **5. If well facilitated, community land documentation processes strengthen the land rights of women and other vulnerable groups, and support communities to establish mechanisms for rights enforcement.**

The process of drafting a Communal Land Association constitution can create a space for women to question practices that disadvantage them and to advocate for rules that protect their interests and strengthen their land tenure security. Women's active involvement in the Communal Land Association constitution-drafting debates appears to have strengthened women's procedural and substantive rights within their communities.

Procedurally, the process appears to have shifted community members' perceptions that land is "men's business." As a result, the study communities' constitutions include provisions that women and youth must have elected representatives on the permanent governing bodies responsible for community land and natural resource management.

Substantively, the constitution-drafting process provided an opportunity for women to actively challenge discriminatory customary norms and practices and to argue for the inclusion of stronger protections for women's land and inheritance rights. These efforts resulted in:

- The strengthening and/or actualization of existing women's rights;
- The maintenance of women's rights that might have been lost in the transition from oral to written rules (as a result of women's advocacy efforts, community rules explicitly protect women's daily natural resource use);
- The rejuvenation of customary norms that had existed in the past to protect women's land claims but had recently eroded or been abused; and
- The alignment of local rules both with Ugandan laws that protect women's land rights as well as the customary rights written out in the Lango Cultural Foundation's Principles, Practices, Rights and Responsibilities (PPRR).

Critically, most communities' first drafts of their constitutions included provisions that directly contravened national protections for women's land rights. As such, the process of cataloguing, discussing, and amending customary norms is fundamental to the adoption of intra-community mechanisms to protect women's rights. In rural areas where access to the formal justice system is difficult, equitable Communal Land Association constitutions may, if implemented and enforced, lead to greater land tenure security and access to natural resources for women than individual land titling.

## **6. Paralegal support proved to be the optimal level of assistance necessary for successful completion of community land documentation processes.**

Cross-national statistical analysis of the treatment groups' progress found that the level of service had a statistically significant impact on the communities' successful completion of the various steps of the land documentation process. In this analysis, the full-service treatment group communities performed more poorly than both the education-only and paralegal treatment group communities across a range of indicators.

In Uganda, LEMU observed that that when communities were given the responsibility to complete most land documentation activities on their own, they were motivated to take the work more seriously, thoroughly integrate and internalize the legal education, proactively address intra-community obstacles, and claim greater "ownership" over the land documentation process than when LEMU's legal and technical team completed this work on the community's behalf.

The strength of paralegals may also 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. While LEMU generally observed that the higher the level of support provided, the more easily and quickly communities were able to complete the processes, this was not true for communities with a high degree of internal dysfunction. Rather than helping to resolve intra-community conflicts, the provision of outside legal and technical support at times entrenched or inflamed intra-community conflict: in some communities, opposing factions manipulated the field team's support to further their agendas. In contrast, when the bulk of the community land documentation work or responsibility fell on the community itself, there was less opportunity for such manipulation to occur.

A paralegal-driven process may also be less costly and more scale-able than the full-service approach, as the model allows a few professionals to supervise multiple community-based paralegals.

## **7. While motivated communities can perform much of the work on their own, they need targeted legal assistance to successfully complete community land documentation efforts.**

The research suggests that a highly motivated community may be left to perform much of the community land documentation work alone, according to its own timing needs, local knowledge, problem-solving abilities, and inherent understanding of its particular context. However, due to the technicality of the legal process outlined in the Land Act 1998 and its Regulations, LEMU found that communities unquestionably need legal and technical support at specific points in the community land documentation process, including:

- Introduction of the land documentation process, provision of legal education concerning the community's legal rights to their land and the necessary procedures for formal documentation of those rights, and capacity building to ensure the community's successful completion of these procedures;
- Mediation and conflict-resolution support during significant land conflicts or boundary disputes that communities are not able to resolve on their own;
- Provision of legal support and technical assistance during the completion of a community's second and third drafts of its Communal Land Association constitution;



- Creation and implementation of a women's empowerment/participation strategy, in particular the convening of special women-only meetings to ensure women's full participation in all community land documentation activities; and
- Provision of legal support during all of the administrative components of the community land documentation process, including: liaising with government agencies, contracting professional land surveyors, and completing all relevant application forms.

## **8. Community land documentation processes should be prioritized for communities facing external threats to their land.**

LEMU found that communities facing external threats to their land will work diligently to complete the community land documentation activities, regardless of the degree of legal support provided. Yet when the threat to a community's land is coming from inside the community itself, hardworking paralegals and even the full support of a legal and technical team may not be enough to address intra-community challenges. Indeed, LEMU's observations illustrate that irrespective of how much support they are offered, communities that struggle with elite sabotage, intractable boundary disputes that cannot be resolved through intensive mediation, internal discord, and weak leadership may not be able to successfully complete community land documentation processes. 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.

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 begin land documentation efforts.

In those instances where weaker community members initiate land documentation efforts in order to protect their land from being grabbed by local elites, active government support is necessary. Such government support should include the prosecution of elite encroachers, mediation interventions for intra-community conflicts, and the immediate provision of executive or judicial assistance to communities struggling to protect their land claims. In such cases, despite internal conflict, these communities should not be rejected as appropriate candidates for community land documentation support. Rather, civil society and government advocates should first address and resolve the underlying conflict at issue, and then begin the community land documentation process.

## Recommendations for policy-makers

Based on LEMU's experiences supporting communities to undertake the Communal Land Association incorporation elements of Uganda's Land Act 1998, LEMU and Namati respectfully suggest the following policy and regulatory changes:

### **1. Make the formation of Communal Land Associations and community land documentation possible for communities throughout Uganda by:**

- **Recruiting and installing District Registrars of Title in every district or authorizing a regional Registrar of Title to travel to surrounding districts to certify Communal Land Associations.** Across Uganda, the majority of districts are currently lacking a Registrar; this must be immediately remedied to ensure that community land documentation processes can be completed. Alternatively, the Communal Land Association process could be overseen and completed at the sub-county level or by the District Recorder, which would make the process both more cost-effective and more easily accessible for rural communities.
- **Training and remunerating local land officials, particularly district-level administrators and Area Land Committee members,** as they are key actors necessary to the Land Act's proper implementation. Annual training sessions for all district land officials should be immediately instituted, and Area Land Committee (ALC) members should be paid for their work, as they perform an important role in various administrative processes set out in the Land Act.

- **Simplifying the Communal Land Association constitution framework and allowing it to be merged with the Common Land Management Scheme.** The suggested contents of Communal Land Association constitutions are too complex for rural communities to successfully complete without the support of trained legal professionals. Moreover, the study communities' pre-existing local rules more closely mirrored the Land Act's suggested content for the Communal Land Association's Common Land Management Scheme.<sup>3</sup> To make it easier for communities to transcribe existing customary rules into a formal legal document, communities should be allowed to merge their Communal Land Association constitutions and Common Land Management Scheme into one document with more loosely defined sections.
- **Allowing for the use of Global Positioning System (GPS) devices to map and document community land claims.** Due to Uganda's extremely low numbers of licensed surveyors, the cost of surveying land is exceptionally high. As a result, the financial burden of hiring a licensed surveyor essentially prohibits poor rural villages from seeking a freehold title for their common areas. To remedy this, the regulations should be immediately changed to eliminate the requirement of a technical survey and allow for the use of GPS technology by trained district officials.
- **Providing and allowing for simultaneous community land titling and wetland licensing.** LEMU found that almost all grazing lands in Oyam District are either adjacent to wetlands or have wetlands contained within their boundaries. The process of documenting rights to community lands should therefore allow Communal Land Associations to jointly seek a title or CCO for their grazing lands as well as a license for all adjacent or internal wetlands. Such efforts will necessarily include the involvement of Uganda's National Environment Management Authority (NEMA).

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3 *Land Act 1998, Section 25.*

- **Changing the Certificate of Customary Ownership (CCO) and Freehold Title application forms to allow for incorporated Communal Land Associations to complete them more easily.**<sup>4</sup> These forms should be changed to allow for and require the name of the Communal Land Association to be registered on a CCO or freehold title for community lands, and eliminate the listing of the individual names of elected Communal Land Association officers. This revision is urgently necessary for two reasons: first, because the officers are elected, non-permanent managers, the title or CCO document will become inaccurate after every election cycle and require a costly and time-consuming change of title; second, allowing a few individuals' names to appear on the title may more easily facilitate corruption and illegal sale of community land. The Communal Land Association's chosen name for itself should be put on any subsequent titles or CCOs, and all individual names eliminated.

## **2. Change the incorporation of Communal Land Associations to ensure that the process is fully inclusive and representative of all landowners' involvement and consent.**

- **The law should ensure that Communal Land Associations are formed after consensus by all common land owners.** The Land Act 1998 currently allows that only 60% of the landowners of a common area must approve incorporation into a Communal Land Association.<sup>5</sup> Even if a full 40% of the community does not want to form a Communal Land Association, the process may still move forward, potentially marginalizing those dissenting owners and weakening their ownership interests. The Act should be amended to stipulate that all landowners must approve the Communal Land Association formation and have their families' names included on the list of association members. In the instance that encroachers and those seeking to appropriate community land in bad faith are impeding Communal Land Association formation, the Act should provide for immediate and swift appeal to approved mediators.

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<sup>4</sup> Land Act 1998, Regulations First Schedule, Forms 1, 4.

<sup>5</sup> Land Act 1998, Section 16.

- **The Land Act 1998 should require that community constitutions are written by the whole Association (not only the officers) and adopted by a process other than simple majority vote.** Currently, the Land Act gives the Communal Land Association's elected officers responsibility for drafting the constitution and permits the constitution to be adopted by a simple majority vote. This has the potential to marginalize members of minority or more vulnerable groups, and may foster inequity. Instead, constitutions should be drafted by the community as a whole and adopted by supermajority vote, consensus, or other methods best suited to the community's composition and structure.
- **Establish more stringent safeguards for transactions of a Communal Land Association's communal lands.** Section 19 of the Land Act currently establishes that a Communal Land Association's managing committee may not transact community land "unless a majority convened for the purpose approve the specific transactions which are the subject of the meeting." The vagueness of this provision may allow for the management committee to convene any configuration of Communal Land Association members (i.e. not 100% of community rights holders or Communal Land Association members) and seek the approval of only a simple majority (50%) of this select group. Such vagueness may create the opportunity for corruption and bad faith land transactions by Communal Land Association officers. To remedy this, the Land Act should mandate that *all* community residents with rights to the communal lands to be transacted are convened, and that a supermajority (at least 66%) of all rights holders must approve the transaction. If the meeting was improperly called, or a supermajority of all rights holders did not vote in favor of the transaction, it should be found null and void on its face. In addition, transactions of Communal Land Association lands should be verified by government officials to ensue that they were approved by all rights holders, and, if not, should be deemed null and void.
- **Establish a mandatory check by the District Registrar to ensure that all neighbouring communities' authentic rights of use and access have been properly enshrined in a community's Communal Land Association constitution.** Such a check is particularly important in those regions where pastoralist groups' land claims overlap with farming communities.



### 3. Provide government support to communities throughout customary land documentation processes and beyond.

- **Communities require government support throughout the land documentation process.** This assistance should be request-based, rather than mandatory, as requiring state oversight will likely stall or impede community progress. Local and regional officials should stand ready to:
  - » Provide legal education to improve communities' awareness of their land rights and develop their capacity to complete administrative and judicial procedures to secure their land claims;
  - » Provide mediation and conflict resolution support during boundary harmonization efforts;
  - » Witness tree-planting or other kinds of ceremonies documenting agreed boundaries;
  - » Supervise all GPS/surveying and boundary demarcation activities;
  - » Provide support during Communal Land Association constitution-drafting efforts and help to verify that these documents align with national law; and
  - » Answer community land documentation-related questions and provide technical support on an as-needed basis.
- **Provide active government support to communities in their struggles against elite appropriation of customary lands.** Rural communities in northern Uganda face multiple threats to their customary lands, but receive little support from government agencies when struggling against these threats. State officials should actively protect communities during struggles with local or regional elites who are seeking to either encroach into a community's grazing lands or appropriate large parts of the land for themselves and their families.

- **Provide long-term government support for local land and natural resource management after the community land documentation process is complete.** Such assistance, which could be made available via mobile clinics and other means of bringing state support directly to rural communities, might include:
  - » Supporting implementation and enforcement of Communal Land Association constitutions. Necessary enforcement support will likely be in two main areas: (1) removing encroachers and (2) penalizing illegal resource extraction from the grazing lands. In such situations, communities should be able to seek recourse from the police and through the national court system, as theft and corruption are criminal acts under Ugandan law. In the event that the “land grabber” is a government official or has ties to powerful local government figures, the central state may need to step in to enforce the community’s property rights.
  - » Providing technical support for intra-community land and natural resource management. To help communities sustainably and equitably manage their lands and natural resources, government officials may provide technical support and capacity-building trainings for community leaders, Communal Land Association officers, and community members.
  - » Acting as a check against abuse of power by community leaders and Communal Land Association officers. Communities may need support addressing corruption, mismanagement, and unjust actions taken by local officials. Upon a community’s request, state officials should monitor and supervise community land management bodies to ensure that the elected officers are not in breach of their fiduciary duties and are acting in accordance with constitutional principles.
  - » Enforcing women’s and other vulnerable groups’ land rights, as established by national law and Communal Land Association constitutions. Such enforcement support may include training customary leaders about national laws that guarantee gender equity, working alongside customary leaders to jointly address rights violations, and increasing rural women’s and other vulnerable groups’ access to the national justice system.

## Recommendations for implementation and practice

**1. To maximize resources and ensure community commitment to the land documentation process, community land documentation work should be demand-driven, with support predicated on communities' proactive request for legal and technical help to document their land claims.** Priority should be given to any community facing a clear external threat to its land claims, with immediate provision of support.

**2. Carefully assess whether the community is an appropriate candidate for land documentation.** Once a community has requested support documenting its lands, an assessment should be carried out to determine: existing conflicts and threats; community leaders' strength and capacity; the degree of community cohesion and ability to work together; and whether the community is likely to be easily demobilized or reject the project. All underlying intra-community weaknesses or tensions should be proactively addressed before beginning Communal Land Association formation activities.

**3. Let the community drive the content, pace, and progress of the community land documentation process.** To support community-driven processes, facilitating agencies should:

- **Train selected community members as “paralegals” or “community support persons”** to guide their communities throughout community land documentation processes and liaise between their community and the legal and technical support team.
- **Let communities define themselves.** Defining a “community” is a complex political process with associated socio-cultural implications at the local level. Communities should be supported to define themselves after extensive, highly participatory discussions.
- **Let each community choose how it wants to document its lands.** Facilitators should present communities with various options (freehold title, CCO, or informal map-making and boundary tree planting) and then leave communities to choose the course of action that best suits their needs.
- **Introduce each community land documentation activity, build community members' capacity to complete it, and then leave the community to do the work, guided by the elected community support persons/paralegals.**

**4. Ensure that all community land documentation activities are done publicly and comprehensively, with full community participation and the involvement of all stakeholders.**

Careful and methodical verification of all information about community land ownership and use claims is necessary. At the inception of all community land documentation work, the entire community should be convened to identify trusted leaders to work with, elect a diverse intermediary group, draw maps, take an inventory of on-going land conflicts, and gather other pertinent information. This information should be solicited publicly and crosschecked by all relevant stakeholders, including neighbouring communities. Discrepancies should be publicly ironed out and transparently resolved. If not pressed to do this, leaders and local elites may try to use the documentation process to their advantage or intentionally stall or subvert the process if they perceive it to be against their interests. In addition, civil society and government facilitators should proactively take measures to ensure that women, youth, members of minority clans, and other groups that are generally marginalized from decision-making processes feel comfortable and confident speaking up during community land documentation efforts.

**5. Ensure that all relevant groups' ownership, use and access rights to the land being documented are protected, and that members of those groups are actively involved in the community land documentation process.**

Before beginning work with a community, it is necessary to carefully assess exactly which groups have ownership rights to a given piece of land and which groups have use and access rights. Communities should acknowledge and preserve any existing reciprocal land use sharing agreements with neighbours. Strong interventions by the field team may be necessary to ensure that representatives of the villages with use and access rights are involved in all project activities, and to guarantee that all pre-existing, good-faith land rights and claims are protected.

**6. Work with the community's trusted leaders and build their capacity.**

LEMU found that communities' capacity to successfully complete land documentation processes was directly related to leaders' integrity, management abilities, commitment, and mobilization skills. Community leaders may need special training and capacity-building to support their roles throughout the community land documentation process. In addition, a unified leadership appears to increase community confidence and further community progress through the land documentation process. It may therefore be necessary for facilitating agencies to proactively address power struggles between community leaders; ensure cooperation and coordination between

and within all local power structures (both customary and state); and foster regional-level support for community land documentation work.

**7. Help communities create balanced, inclusive intermediary groups.** To ensure that the community land documentation process is not fully dominated by existing leaders and community elites, facilitating agencies should support the election of diverse intermediary groups. LEMU found that the intermediary groups worked best when they included both existing managers of community grazing lands as well as a diverse group of strong, competent representatives of all community interest groups – in particular youth, women, and members of all clans. These individuals may then be given the responsibility for:

- Mobilizing members of their stakeholder group to attend community land documentation meetings and take part in all related activities;
- Seeking out the viewpoints of members of these groups and representing their interests during land documentation meetings; and
- Reporting back to members of their stakeholder group on the content of all meeting discussions and community progress through the land documentation process.

**8. Recognize that boundary harmonization and demarcation processes are conflict resolution exercises and conduct them accordingly.** When facilitating boundary harmonization efforts, state and civil society agencies should:

- **Ensure that communities map publicly and comprehensively.** NGO facilitators should be ready to address conflicts that arise as a result of the mapping activities. When mapping, women and men should draw maps in gender-based groups to ensure that all voices are heard, and communities should publicly discuss the maps to ensure that they are fair and accurate.
- **Provide extensive conflict resolution and mediation training before a community begins boundary harmonization efforts.** Facilitators should train and support communities to employ a range of compromise strategies and mediation/dispute resolution tactics. Facilitating agencies should stand ready to support the resolution of particularly intractable land conflicts and to call in local government officials as necessary.
- **Allow communities as much time as they need to arrive at authentic boundary agreements, without rushing into compromise agreements that may later be contested.**



**9. Leverage the community land documentation process to support communities to improve intra-community governance.** To this end, civil society and government facilitators should:

- **Support communities to begin the process of drafting Communal Land Association constitutions at the lowest level of intra-community governance** (the village, or in clan groups) and then merge these rules into an agreed set of community rules through rigorous debate and discussion. Such a two-tiered process may help to ensure a transparent and participatory process and create multiple opportunities for community members to reflect publicly on existing or proposed rules.
- **Ensure full community participation in the constitution and management plan drafting process.** Civil society and government facilitators should actively create the opportunity for women and other vulnerable groups to challenge rules that they feel to be discriminatory, or to argue for the inclusion of rules that protect or promote their interests.
- **Allow communities to base the form and content of their rules on existing custom, norms, and practices.** Facilitating civil society and state agencies should not edit or revise a community's rules to reflect their own prejudices and legal sensibilities; each community should be allowed to include whatever content it feels is necessary for its equitable and efficient functioning. Facilitators should only encourage communities to modify local customs and practices when necessary to ensure that the rules:
  - » Do not contravene the Ugandan Constitution and relevant national law;
  - » Establish inclusive substantive and procedural rights for all community members, including women and members of vulnerable groups;
  - » Protect existing use rights and rights of way;
  - » Include provisions to ensure that leaders are held downwardly-accountable to their community and manage land and natural resources equitably and justly;
  - » Include provisions that particularly important decisions should be made by supermajority vote, rather than by Association officials; and
  - » Have been approved by all households by consensus or super-majority vote.

- **Ensure that the constitutions include provisions for annual review and amendment.** To avoid the potential calcification of customary rules that writing them down might imply, Communal Land Association constitutions should set out clear annual review and amendment procedures.
- **Ensure that the Communal Land Association officers are a diverse and representative governing body.** Facilitating NGOs and the District Registrar should take steps to ensure that the elections were participatory, transparent, and fair, and that the positions were not captured by elites. Communities might also be supported to create parallel “watchdog” groups to monitor the officers’ decisions and actions.

**10. Leverage the land documentation process to support sustainable natural resource management.** To support community-led conservation, stewardship, and sustainable management of community natural resources, facilitating civil society and state agencies should:

- Train communities on a wide range of sustainable natural resource management techniques;
- Foster local “remembering” and reinstitution of customary natural resource management practices, and support communities to include both “old” and “new” rules for sustainable natural resources management in their Communal Land Association constitutions;
- Help communities to monitor and control use of their natural resources by community members, neighbours, and “outsiders” alike; and
- Support communities to enforce their rules against poaching, illegal logging, and other unsanctioned extraction efforts, and request police support for such enforcement.

**11. Leverage the community land documentation process to strengthen women’s and other vulnerable groups’ land rights and support communities to establish mechanisms for their enforcement.** To ensure that the community land documentation processes establish intra-community mechanisms that effectively protect and enforce women’s land rights, civil society and government facilitators should:

- Carry out a gender analysis and craft strategies to proactively address gender inequities that have the potential to negatively impact community land documentation activities;
- Plan community land documentation meetings to take place at convenient times and locations, after women have completed their house and farm work;
- Convene special women-only meetings to help women identify and advocate for their interests;
- Support communities to elect female representatives as Communal Land Association officers, as mandated by the Land Act 1998;<sup>6</sup>
- Provide paralegal support; the data indicates that paralegal support may be the “lowest” degree of external intervention necessary to ensure women’s robust participation in community land documentation activities; and
- Recognize that custom need not contradict national laws on women’s rights; in rural contexts where customary leaders are often the central arbiters of justice, their role as protectors and enforcers of women’s land rights is critical. To ensure increased protections for women’s land rights, facilitators should teach men and customary leaders about national laws that guarantee women’s rights; support communities and leaders to remember customary rules that served to protect women’s and other vulnerable groups’ rights; and help men and community leaders to reinvigorate customs that emphasize men’s and leaders’ role in protecting the rights of women and other vulnerable groups.

In conclusion, the data illustrate that well-facilitated community land documentation exercises may result in important impacts that go beyond increased land tenure security. Once a community has successfully documented its land claims, the hope is that it may then work hand-in-hand with government agencies and local organizations to fully leverage its lands for locally driven development, prosperity, and human flourishing.

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6 Land Act 1998, Section 16(4).





Growing population density, increasing land scarcity, weak rule of law, and the 1998 Land Act's legalization of a land market have created a situation of intense competition for land in Uganda. As a result of these trends, there is a high rate of tenure insecurity in northern Uganda, a prevalence of intra-community land conflict, and a rapid loss of the common grazing lands that community members rely upon for their subsistence and survival. To understand how to proactively address these trends, the Land and Equity Movement in Uganda (LEMU) and the International Development Law Organization (IDLO) set out to investigate how best to support communities to successfully follow legal procedures to formally document and protect their customary land claims. This effort, the Community Land Protection Initiative, was carried out in Oyam District in northern Uganda from 2009 to 2011. This publication details the study communities' experiences undertaking community land documentation activities and sets forth findings and recommendations intended to inform policy dialogue and support the widespread protection of communities' customary lands.

