



# Oral to Written: Practical Processes to Documenting Community Land Rules

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

Community land is often adjacent to wetlands which wetlands were not for human settlement but for serving the whole community with uses ranging from grazing to collection of building materials, to gathering of wild foods. Community land by definition is a piece of land that is used and shared by more than one family, or one to several villages. In the past, these lands had an individual or a set of elders that managed the land and guided people on usage through oral rules. However, a combination of cattle raids that left the land vacant; a twenty year insurgency which forced people into Internally Displaced People's camp and dominance of formal state law which stripped traditional leaders of the powers to adjudicate and enforce decisions, weakened the traditional system. These left the land redundant as well as a management vacuum which gave opportunities for encroachments and land grabbing of these community lands. As a result, majority of community lands in Lango region are being grabbed or encroached on and thousands of users are being denied access to these resources.

LEMU has learned over the years that majority of the encroachment is by the elites who wield some form of power in the community. Many attempts by customary leaders to resolve the conflicts are futile because the powerful choose not to subscribe to their leadership. Several

communities attempted to enforce the past oral rules but most found themselves subject of ridicule of the stronger land grabbers. Worst case scenario is arrest of leaders who have asserted themselves on the issue of land. It is common to find that an individual has declined to attend a mediation called for by clan leaders but they often prefer to go to police and court to report community members attempting to stop them from encroaching. Even in instances where an encroacher has successfully been removed from the land; the traditional governance system cannot prevent future encroachment, without state support.

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

As oral land governance for community land now has many challenges, documenting traditional governance and rules for community land was deemed necessary by some community land owners in Lango region, assisted by Land and Equity Movement in Uganda (LEMU), funded by International Development Law Organization, NAMATI and USAID SAFE Project. The rules writing approach of LEMU is informed by the principle that documenting community land rules and governance for community land protection is really the process of communities agreeing on what community land rights are and agreeing duties for each owner/user of the shared resources. In the implementation of community land protection process, the following stages were followed and the following lessons learnt:

## 1. (a) Laying the foundation

Before starting the process of writing rules, there needs to be an agreement or a general consensus on what constitutes a community. In Lango region, the members have often distinguished between owners and access users. Traditionally, the villages which surround the community land have referred to themselves as owners while those from the neighboring villages are referred to as seasonal/access users because they are allowed access during dry seasons. The community needs to determine who they are and how many villages own the land. The facilitator should determine the number of people they may be working with, the number of villages involved, the clans and the local leaders who are instrumental both in mobilization for the rules meetings and also as catalysts in the discussions. It is also important at this stage for the facilitator to find out if there are any rules in place (oral or written) and what challenges they are facing in their implementation. Understanding enforcement challenges will enable the facilitator guide the community to propose ways on how best they could realistically enforce their rules at a later stage.

### 1. (b) Visioning

At this first meeting, it is advisable for the facilitator of the community to conduct a visioning exercise to help the members reflect on what the situation was in the past; at present and to form a common vision for the future of their community upon which the rules shall be based.

## 2. Rules Writing

### 2(a) Leaders Orientation

LEMU starts a rules writing process with

training of leaders and selected Community Support Persons (CSPs) and this is because of the credibility that leaders bring to the process. LEMU has learned that when leaders are on board with a particular process, the buy in from the community is greater and the reverse has also been proven true. The leaders are trained on the structure the rules writing process is going to take, the different steps and their roles throughout the process.

### 2 (b) Shout Outs

The first meeting with the community is the shout-out stage of rules. This involves bringing together community land owners to mention all pre-existing oral or written rules. The purpose of documenting pre-existing rules is to build on what is already in existence. Secondly, laws do not apply in retrospect; therefore if the community hopes to enforce their laws on existing encroachers, then their laws should be those that have already existed as opposed to new ones. For large communities with more than one village, LEMU found it best to conduct village by village shout outs in order to reach majority of the population for maximum participation. Therefore, if a community identifies as having 8 villages, each of the eight villages shall have a shout out session.

After the shout outs, LEMU staff compile all the shout-out rules from all the villages to consolidate them into one rules document for the community. LEMU also rearranges the rules into sub headings such as Natural Resources, Governance and Social rules, etc. This is a good practice to solicit more specific rules. At this point, the rules are not altered so as to maintain the cultural value as well as for the purpose of studying how the rules evolve with the different drafts. Where there is active land conflict over the community land, it is important for the facilitator to guard against discussions regarding the conflict, and only concentrate on generating the rules. The facilitator should be very



Careful about how they respond to allegations by community members as this could cost the entire community land protection process if not cleverly handled. The facilitator should constantly redirect the community members to the shout outs and in extreme situations, ask questions such as “what do you want to do about that?” By doing this, they will begin to suggest solutions to their current problems and the facilitator should then inform them that this will be discussed at a later stage and that they should keep their proposals in mind. This in a way will prompt them to attend the community wide meetings at an identified central location.

### 2 (c) Rules Conferences

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

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

By the time the members re-converge to the big group, each group returns with something to contribute. Each group picks one person to report on their discussions and recommendations. This

way, the youth and women can have audience to explain some of the issues that are more sensitive to them without fear of being interrupted or ignored.

A compilation of what is collected at the shout-outs and later modified at the Rules Conferences is what is called the first draft of the rules

### 2 (d) Second Draft of the Rules

The Ugandan land legislation provides guidelines on what to consider when writing rules and it is important that the community rules are realigned to match these guidelines. These guidelines are in question form, asking for details such as the name and address of the community, the governance, meetings, et cetera. The guidelines are reproduced in Table 1 below. The law in this case envisions the creation of a constitution which is to be submitted for registration with the Government District Registrar. LEMU pays regard to these provisions by creating a template based on those questions which then informs the basis for the second draft. The second draft meeting is a community wide meeting where LEMU staff facilitate the community members to decide the answers to those questions for them to determine what they would like to have in their rules. It is also at this point that the community members are probed to consider rules that help determine their collective future such as; how to deal with investors; what happens in case minerals are discovered on the land; powers of leaders in dealing with the land; the possibility of collecting membership fees and charging for resources in the future.

**Table 1 – Extract of the Guidelines for community land rules from the Land Act**

*Regulation 81*

**THIRD SCHEDULE  
LAND ACT, CAP 227  
THE LAND REGULATIONS, 2004  
CONTENTS OF MODEL CONSTITUTION  
OF A COMMUNAL LAND ASSOCIATION**

**Matters to be contained in a Constitution of an association**

**1).** Name of the association; **2).** Address of the association; **3).** Objects of the association, including the identity of the community covered by the association; **4).** Land to be held or owned by the association; **5).** Names of intended members of the association; **6).** Qualifications for membership of the association, including: **(i)** principles for the identification of other persons entitled to be members of the association: and **(ii)** a procedure for resolving disputes regarding the rights of other persons to be members of the association; **7).** Classes of membership (if any) and the rights of members of the different classes; **8).** Rights of members to use property of the association; **9).** Whether membership is based on individuals or families and if based on families, how the family is to be represented in the decision-making process of the association; **10).** The grounds and procedure for terminating membership and what happens to the rights and property of the member concerned; **11)** The purpose for which the land may be used and the procedure to be followed in connection with the physical division of the land into individually owned plots; **12)** Whether members may undertake transactions with their rights and to whom; **13).** What happens to a member's rights on death; **14).** Procedure for election of officers, their terms of office, their powers, the powers of members in relation to decisions made by the officers, the power of members to remove all or any of the officers and the payment (if any) to the officers; **15).** How and when the Annual General Meeting (AGM) is to be called; its quorum or procedure of representation at an AGM; **16).** How and when general and other meetings are to be called; their quorum or procedure of representation at such meetings; **17)** The powers of the association and any limitations on them; **18)** Responsibility for keeping minutes of meetings and access to the minutes by members; **19)** Financial matters: how monies of the association will be dealt with and by whom; how and by whom will financial records be kept; independent audit and other scrutiny; access to financial information by members; **20)** Procedure on change of the Constitution; **21)** Procedure on dissolution and what happens to the land and other assets of the association; **22)** How corruption, theft of association property, nepotism and breach of officers duties to members will be dealt with, and **23).** Procedure of dispute resolution.



### 2(e) Third Draft of the rules

The document which is compiled above is usually structured and rephrased for better comprehension. Rules come in two major types; those that accord a right or a duty and those that are prohibitive. LEMU Legal staff separate those that confer rights, duties, leadership and the general structure of the association into a constitution and those that are prohibitive and subject to frequent change are termed byelaws which are annexed to the constitution. The reason for creating a two part law is a compromise between following the legal framework while maintaining the simplicity of the rules for its immediate beneficiaries. Therefore, a typical constitution has the major part with the permissive rights which can only be amended under specific guidelines; as well as the byelaws which mostly contains prohibitive rules and is a lot easier to amend. So rules that previously read as, “The community land is free for everyone to use” becomes an article detailing who the membership includes and what rights come with those while those that may read, “farming is not allowed,” them becomes, “There shall be no cultivation of the community land and the adjacent wetland...”

The prohibitive rules require penalties to be effective. Penalties are debated by the members and are attached to the byelaws depending on the gravity of the offence committed. The third Draft is therefore the point at which the community wishes are aligned with state laws. The practice is that the draft is shared with sub county and district leaders for any feedback and to ensure consistency with state law. The feedback is taken to the community and incorporated in the draft constitution, if agreed.

### 2(f) Third Draft Review of the Rules.

The rules agreed on at the third draft are then taken for translation to the local language after

which a meeting is held to review the translated rules. Only professional translators can accurately capture every aspect of rules which is why the rules are documented in English first and then taken to the Language Board to translate. At the third draft meeting, the staff together with community members read the whole document to confirm that nothing is lost in translation.

This is also a meeting to discuss adoption and election preparation. In order to reach every household to agree to the rules for adoption, local leaders are left with copies of the third reviewed final draft of the rules to share with and discuss with each household in their respective villages. If the family head assents to the rules, they sign the Adoption/Household Registration Form. The leaders are also trained on how to use the household registration forms. This way, each and every household is reached and the final adoption number should be either the sixty percent required by the Land Act or more.

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

### 2(g) Adoption

After distributing household registration forms, LEMU will give the community time to complete the registration. Ugandan Land Act stipulates that for a community set of rules to be considered adopted, operational and binding on members; at least sixty percent of all the members must

consent to it. Therefore, it is only until sixty percent has been reached does adoption proceed, although according to best practice, all owners should consent.

### 2(h) Election of leaders and celebrating rule writing completion

When registration and adoption of rules is complete, LEMU will organize a big celebration in the community which involves state, faith and clan leaders, all community members and their neighboring villages and even the media. An adoption process usually opens with several speeches from leaders after which the rules are read out. The presiding officer, normally a Senior Assistant Secretary, Community Development Officer or a Commissioner for Lands with the apex traditional institution will then be given the floor to confirm if the community identifies with the rules read out. The community members will usually shout in the affirmative and then the rules are declared to be adopted and its application commences then. There is usually an interlude to celebrate the adoption of the rules followed by reading out names of nominees and an election is conducted.

The leaders elected are commissioned there and then and the day ends with a meal prepared at the cost of the community (households usually collect about 0.28 of a dollar to buy or actual foodstuff) while drinks are provided for by LEMU.

Adoption and election is a big celebration because of several reasons:

- Since adoption is the climax of the whole process, more community members attend, so it makes sense to take advantage of the big number for elections. LEMU has seen the number rise to four, six or even eight hundred on adoption day.
- High level leaders being present and

participating in adoption and election is an endorsement of the process, the rules and the leaders. This usually reinforces the respect for the rules and elected leaders.

- If the conflict in a particular community is caused by encroachment by local elites, this is usually the point when they witness the mass pressure against them and often agree in writing to leave the land.
- The combination of leaders and the large crowd attract journalist who then report the events on local radios therefore publicizing community land protection and also sending a message to community land encroachers.
- Elected leaders thereafter manage the Boundary Tree Planting and sketch map exercises, including resolving any boundary disputes
- 3 (i) Boundary tree planting, Sketch map drawing and dispute resolution.
- LEMU's strategy is to integrate conflict resolution throughout the process; however, the steps after completion of adoption and election are usually the most sensitive part of conflict resolution but are also most likely to be successful because of the mass pressure built in the rules writing and adoption process. This pressure shows the encroachers that the community is united and supported by state and traditional leaders.

### 3. Challenges and Lessons Learnt

1. **Enforcement:** The law requires a community to first be registered with the State in order to acquire the legal status allowing it to sue and be sued. Without some sort of registration, community land owners cannot sue except in representative suits which are

very costly. Conflicts from land conflicts can only be handled now by clans' structure that in Lango are organized around single clans, not many clans and yet community land is owned by many clan members. There is need for the law to declare communities a legal entity without stringent registration processes.

2. **Literacy Levels:** The danger of changing to rules from oral to written system is that many will not be able to read and internalize them. The few educated in the communities can take advantage of this. Members are advised to continuously discuss the rules and that they should meet annually to review the rules. Rules should remain as simple as possible.
3. **Low Attendance:** The life of rules writing is dependent on continuous meeting and yet this process is long, tedious and demands a lot of time of the communities. If attendance is low then the rules writing process in such a community usually fails. Writing of the rules is a legal process in which due process must be followed so as not to undermine the product. The level of commitment and the task ahead should be spelled out to the community at the point of entry.
4. **Community rules from different communities were found to be very similar.** This could be because communities in Lango are all members of the same tribe and a shared history. Because of this, LEMU together with the Lango Cultural Foundation documented Community Land Principles, Practices, Rights and Responsibilities (CLPPRR) book that lays down all the common rules and provides a framework upon which each community can tailor their rules. This should help to reduce the time taken to write community land rules.
5. **Before writing rules,** understanding the context is very important.
6. **Women and youth** will not participate equally and openly as men in mixed sex and age group the discussions. It is therefore very important to have meetings of separate groups of only youth, and only women to encourage their participation in rules writing.
7. **Gender and age differences.** The most visible and remembered use of community land is that it is "for grazing" and yet there are many land uses for community land, especially by women that are more "hidden" For example women use community land, for whiteants, mushrooms, clay, grass, mud, vegetables, herbs, etc. Community members have also used the community land rules to emphasize the need for unity and have made provisions against segregation on the basis of gender, religion and clan; and also for the protection of persons living with HIV/AIDs. Proper and deeper probing facilitation is necessary to bring these uses and hidden facts to the fore.
8. **Rules must be by the communities:** Though the law gives guidelines on some aspects of the rules, it is important that the details come from the community. The facilitators role is to inform the communities of other issues they might not be aware of that affects their rules.
9. **How will large communities be represented in governance:** If community land is owned by many village communities, it is impossible to get all adult individuals to sign to agree to the rules; Think through the structures and recommend options to the communities to decide the best structure and representation framework. In Lango, communities agreed for head of

family (defined as a married man, widow, unmarried woman and divorced woman) to represent the household and sign on behalf of the family and for different clans to nominate their members to a bigger body from which to elect the community land leaders.

#### **4. Conclusion:**

For communities that previously relied on oral rules, documenting rules should not be treated as a result but rather as a process. This process should not change people's rights and governance under customary land tenure system; it should only document them and align them to the state laws, where necessary. The most challenging part perhaps is getting members to internalize the rules and use it as an integral part of their day to day lives.



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