

# Protecting Community Lands and Resources

Evidence from Liberia,  
Mozambique and Uganda



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By Rachael Knight, Judy Adoko, Ailas Siakor, Alda Salomao, Teresa Auma,  
Ali Kaba and Issufo Tankar

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ISBN: 978-0-9858151-0-3

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## Partnerships

**International Development Law Organization (IDLO)** is an intergovernmental organization that offers legal expertise, resources, tools and professional support to governments, multilateral partners, and civil society organizations. It carries out research and advocacy at national and international levels. Bringing together a range of diverse local, national and international stakeholders and working in an enabling rather than directive or prescriptive way, IDLO acts as a catalyst for significant social change. IDLO's work reflects the interdependence between the rule of law, human security and economic development. It enhances respect for human rights; encourages economic activity by providing a legal framework for business, trade and investment; and strengthens good governance through transparency and accountability of institutions.

Among its activities, IDLO conducts timely, focused and comprehensive research in areas related to sustainable development in the legal, regulatory, and justice sectors. Through such research, IDLO seeks to contribute to existing practice and scholarship on priority legal issues, and to serve as a conduit for the global exchange of ideas, best practices and lessons learned. IDLO produces a variety of professional legal tools covering interdisciplinary thematic and regional issues; these include book series, country studies, research reports, policy papers, training handbooks, glossaries and benchbooks. Research for these publications is conducted independently with the support of its country offices and in cooperation with international and national partner organizations.

**Namati** ([www.namati.org](http://www.namati.org)) is a new international organization dedicated to legal empowerment. Legal empowerment is about strengthening the capacity of all people to exercise their rights and to participate in the process of governing. Namati implements innovative legal empowerment interventions in partnership with governments and civil society organizations in several countries. Each intervention expands legal empowerment into an area in which the approach is not yet well proven, and addresses an issue of pressing global significance. Namati researches and evaluates each intervention rigorously, with the goal that the learning from these experiments can inform practice worldwide. Namati also cultivates a global community of practitioners to foster dialogue and tool-sharing. Through Namati's website and regional workshops, members of the Global Legal Empowerment Network can share resources and experiences, including research, training materials, monitoring and evaluation tools, case management forms, and advocacy strategies. Finally, Namati advocates with and provides technical assistance to policy-makers and civil society organizations to support wise investments in legal empowerment.

**The Land and Equity Movement in Uganda (LEMU)** ([www.land-in-uganda.org](http://www.land-in-uganda.org)) is a nonprofit organization that works to unite the efforts of local people, government, civil society organizations, students, elders, volunteers, and others to improve the land rights and tenure security of the poor. LEMU works to ensure that policies, laws and structures are put in place to allow all Ugandans to have fair and profitable access to land. To this end, LEMU undertakes research, policy analysis, and grassroots legal advocacy. LEMU serves as a link between government and communities: it educates rural communities about their rights, roles, and responsibilities under Uganda's Land Act, while simultaneously working to help government and policy makers understand rural communities' experiences of land tenure insecurity.

**The Sustainable Development Institute (SDI)** ([www.sdiliberia.org](http://www.sdiliberia.org)) works to transform decision-making processes in relation to natural resources and to promote equity in the sharing of benefits derived from natural resource management in Liberia. The organization's vision is a Liberia in which natural resource management is guided by the principles of sustainability and good governance and benefits all Liberians. Its activities cover a range of crosscutting issues including governance and management, environment, state and corporate social responsibility, economic and social justice for rural populations and the democratic participation of ordinary people in government management of natural resources. The organization received the Goldman Environmental Prize (the world's largest prize honoring grassroots environmentalists for outstanding environmental achievements) in 2006.

**Centro Terra Viva (CTV)** ([www.centroterraviva.org.mz](http://www.centroterraviva.org.mz)) is a Mozambican NGO whose vision is of a national natural resource management policy and practice that is environmentally sound, scientifically-based, economically viable and institutionally responsible. CTV's mission is to contribute to improved national policies and legislation and to increase the capacity of civil society to participate in environmental management through informed and relevant contributions.



## Donor Support

This publication is based on research funded by the Bill & Melinda Gates Foundation as part of the *IDLO Legal Empowerment Research Program*. The findings and conclusions contained within are those of the authors and do not necessarily reflect positions or policies of the Bill & Melinda Gates Foundation. This report was also supported by the Open Society Foundations, the Australian Agency for International Development (AusAID), and by UK Department for International Development.



## Acknowledgments

The authors would first of all like to thank and acknowledge the various in-country field teams, support staff and advisors, without whose hard work, dedication, determination and sacrifice this project and all related research findings would not have been possible. Along with the authors, the management and services teams included: Rowena Geddeh, Titus Zeogar, Jesse Cole, Jacob Hilton and Mike Taye in Liberia; Dilaria Marenjo, Nelson Alfredo, Antonio Consul, Carlos Serra and Dime-trio Manjate in Mozambique; and Simon Levine, Martin Okello, James Muruli, Emmanuel Egaru, Phillip Adonga, Deborah Atalar, and Bonny Etti in Uganda. These individuals often faced great hardship to accomplish this work, at times leaving their families for long periods and enduring other personal sacrifices. Words do not suffice to express our appreciation.

The authors would particularly like to thank Dr. Erica Harper and Thomas McInerney of IDLO for making this work possible, and for their wholehearted support every step of the way.

We would also like to thank the study communities for enthusiastically taking part in this research, and for dedicating so much time and energy to the community land documentation process; we gratefully acknowledge: the people of Arec/Adokoboi, Bar Aryono, Bar Lonyo, Okeng, Apala/Eduka, Cuke, Akwic, Doz Elizabeth, TeAduru, Wilyec, Okere, Atop/Atur, Awangi, Ogwal Ejem, Olam Adek, Akot, Mantwon, Wigweng, and Aberabwot in Uganda; the people of Boewein, Hwolojohn, Sawpue, Siahn, Teekpeh, Dorbor, Dowien, Kebbeh, Wheasein, Zarque, Boehtarr, Gbarsaw, Goenotarr, Khanwhen, Ziadu, Bar, Central Morweh, Duah, Jo-wein, and Tobo in Liberia; and the people of Chinjinguire, Inhamangu, Jogou, Madeula, Marriucua, Guikunela-Lifugu, Macavane, Mahundza, Marrengo, Painsane, Coge-Sandi, Ligogo, Mathi, Nhambundo, Petane, Furvela, Inhamussua, Magumbo, Mahangue and Inharumbo in Mozambique.

The authors are grateful for the assistance, encouragement, time and attention of the governments of Liberia, Uganda and Mozambique, in particular: the staff of the Ministry of Lands, Housing and Urban Development in Uganda; the *Direcção Nacional de Terras e Florestas* and the staff and technicians of the *Serviços Provinciais de Geografia e Cadastro* of Inhambane province in Mozambique; and the Land Commission, the Governance Commission, and the Ministry of Internal Affairs in Liberia. We are particularly grateful for the on-going support of the local statutory and customary authorities of: Rivercess County, Liberia; Inhambane Province, Mozambique; and Oyam District, Uganda.

Much gratitude also goes to the members of the Community Land Titling Initiative's Advisory Council, who guided, advised and assisted with this work from its inception onward: Martin Adams, Liz Alden Wily, John Bruce, Benjamin Cousins, Lorenzo Cotula, Klaus Deininger, Stephen Golub, Paolo Groppo, Tim Hanstad, Simon Keith, Jonathan Lindsay, Harold Liversage, Vivek Maru, Paul Mathieu, Patrick McAuslan, Nicolas Menzies, Hubert Ouedraogo, Robin Palmer, Ivon Pires, Christopher Tanner, and Margret Vidar. We are particularly grateful to the international experts who very generously peer reviewed earlier versions of this report and the national reports: Liz Alden Wily, John Bruce, Margret Vidar, Martin Adams, Varun Gauri, Christopher Tanner, Lorenzo Cotula, Eddie Gayiya, Simon Levine, Eduardo Chiziane and Vivek Maru. The authors would also like to acknowledge the hard work of Micah Perlin, Tai Young Taft, Christopher Morris, Bilal Siddiqi, Ilaria Bottigliero, Maria Gehring and Laura Goodwin.

Finally, we would like to thank our families and friends for their unwavering support and care both throughout this initiative and in our lives.

## Introduction from the Directors

Land gives life, and land — for many people around the world — is worth dying for. Especially for rural inhabitants, land is the greatest asset: the source of food and water, the site of history and culture. More than ever, rural land is in demand. The pace of large-scale land sales surged when food prices spiked in 2007-2008 and, though food prices slowed, the land rush has continued.

In 2009 alone, transactions covering at least 56.6 million hectares were concluded or under negotiation, more than thirteen times the average amount of land opened to cultivation annually between 1961 and 2007. Most of the 2009 deals were in Africa, where 39.7 million hectares changed hands—more than the cultivated areas of Belgium, Denmark, France, Germany, the Netherlands, and Switzerland combined.<sup>1</sup>

In principle, these transactions have the potential to increase agricultural productivity and stimulate economic growth. But when the land rights of existing owners are insecure, there is great risk of exploitation and of land use decisions that are not in a nation's long-term interest. Indeed, recent evidence suggests a race to the bottom: the large-scale acquisitions and concessions are disproportionately concentrated in countries where land rights are weakest.<sup>2</sup>

This report is about a potential solution. Most efforts to strengthen land rights involve the titling of individual, household plots. We chose instead to focus on community land claims, in three countries where this was allowed by law: Mozambique, Uganda, and Liberia. By starting with the outer boundary of the community, it is possible to protect more land faster, and at a lower cost per hectare. Community land claims also include common resources like forests and water bodies, which are particularly vulnerable to exploitation and yet are left out if one pays exclusive attention to individual holdings.

We report here evidence from a two-year, multi-country, randomized experiment. **Our most important finding is that community land protection should combine three processes: the *technical* task of mapping and titling community lands, the *peace-building* task of land conflict resolution, and the *political* task of strengthening local systems for land governance.**

When those efforts are joined, as is required by the land law in Uganda and the memorandum of understanding we reached with the Land Commission in Liberia, we found remarkable changes. Communities wrote down their rules for land use, revised those rules to ensure compliance with their national constitutions, and developed plans for managing their natural resources. In the process, they established new mechanisms for holding their leaders accountable and for protecting the rights

1 Rabah Arezki, Klaus Deininger, and Harris Selod, "Global Land Rush," Finance and Development, March 2012, Vol. 49, No. 1.

2 Id.

of women. They revived old conservation rules that had lapsed—restrictions on felling trees in reserve forests, for example—and created new ones.

The experiment tested three models for facilitating community land protection: a full legal services approach, in which communities had direct assistance from lawyers; a pared-down rights education approach, where information was provided and little else; and a middle-path community paralegal model, in which a community representative was trained and supported to drive the process forward. We found that of these three, the community paralegal model was most effective. Communities receiving full legal services tended to place their hopes with the outside professionals, while communities with paralegals tended to take greater ownership over the process. Paralegals also proved most capable in mediating contentious border disputes, which can otherwise sideline protection efforts.

The International Development Law Organization worked with Sustainable Development Institute in Liberia, the Land and Equity Movement in Uganda, and Centro Terra Viva in Mozambique to implement this initiative between 2009-2011. Namati is collaborating with the same three partners to take these efforts forward. We are continuing work with all the communities in the initial study. We are also expanding our efforts to reach more communities within these three countries and to engage partners in other countries where there are laws that recognize community land claims. We are undertaking a longitudinal study to determine whether this process has a lasting impact on the ability of communities to manage their lands, and to negotiate effectively with outsiders.

The owners and inhabitants of rural land have the right to determine how their land is used, whether it is used by others, and on what terms. Justice demands that we respect those rights. Evidence also suggests that respecting local ownership rights leads to land use decisions that are more environmentally sound.<sup>3</sup>

This report describes a method for making land rights real: a three-track process of documenting community land claims, resolving land disputes, and strengthening community land governance. We encourage civil society organizations and rural communities to actively pursue a process like this, and we appeal to governments to incorporate such a process into their land laws. This is a way for communities to protect land on earth, which is limited, precious, and under threat.

**Vivek Maru**  
*Chief Executive Officer*  
*Namati: Innovations in Legal Empowerment*

**Thomas McInerney**  
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*International Development Law Organization*

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<sup>3</sup> See for example Elinor Ostrom, "A General Framework for Analyzing Sustainability of Social-Ecological Systems," *Science* vol. 325, p. 422, July 2009; Persha, Fischer, Chhatre, Agrawal, and Benson, "Biodiversity conservation and livelihoods in human-dominated landscapes: Forest commons in South Asia," *Biological Conservation*, vol. 143, issue 12, p. 2918, December 2010.

# 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;<sup>4</sup>

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<sup>4</sup> 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,<sup>5</sup> 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-

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<sup>5</sup> 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 result-

ing 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 communities 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 costly<sup>6</sup> — 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.

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6 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.

The data and statistical analysis also show that **paralegal support is likely the minimum 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 instances 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.<sup>7</sup> 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.<sup>8</sup>

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 tenurial 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.

<sup>7</sup> In Uganda, these figures have not yet been calculated.

<sup>8</sup> 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.<sup>9</sup>

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.

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<sup>9</sup> 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/>.



Liberian children welcoming field staff to an MOU-signing ceremony.

# BACKGROUND<sup>10</sup>

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<sup>10</sup> For a complete description of the context and background for this initiative, please see the Inception paper, [http://www.idlo.int/Publications/Land\\_InceptionPaper.pdf](http://www.idlo.int/Publications/Land_InceptionPaper.pdf)

**T**HE ISSUE OF HOW BEST TO PROTECT THE LAND HOLDINGS OF RURAL COMMUNITIES has been brought to the fore in recent years by sharp increases in African governments' grants of vast land concessions to investors for agro-industrial enterprise and resource extraction.<sup>11</sup> Often, governments grant concessions with the goal of stimulating development and strengthening the national economy. Yet such concessions are further exacerbating trends of growing land scarcity and weakening the land tenure security of rural communities.<sup>12</sup> Communities often have little power to contest such land grants, particularly where they operate under customary law and do not have formal legal title to their lands. Even when communities welcome private investment, they may not be consulted about the terms of the investment, properly compensated for their losses, or given a say in land management after the investment is launched. Alternatively, such investments may be undertaken in ways that lead to environmental degradation, human rights violations, loss of livelihoods, and inequity.<sup>13</sup>

Mozambique and Liberia currently have some of the highest rates of land concessions in Africa.<sup>14</sup> In Mozambique, between 2004 and 2009 alone, the government granted 405 large-scale investment projects more than 2.7 million hectares of land — a full 7% of the nation's arable land.<sup>15</sup> In Liberia, during the same time period, the government either granted or re-negotiated land concessions totaling 1.7 million hectares — over 15% of the total national land area.<sup>16</sup> Analyzing these concessions, a World Bank report found that “Even where concession boundaries are mapped (in Liberia and Mozambique, for example), little ground-checking for potential overlaps with other land uses, including community lands, is done,” and that “Land allocated without prior consultation [with local communities] or agreement on the amount and type of compensation and a lack of local involvement in the concession led to significant tension that affected project operations in Liberia.”<sup>17</sup>

**In the coming years, as investments across Africa are realized and further concessions are granted, the amount of land still held and managed by rural Africans may significantly decrease.** The potential negative impacts may include displacement and dispossession, environmental damage, increased competition for

11 See further Lorenzo Cotula, Sonja Vermeulen, Rebeca Leonard, and James Keeley, *Land Grab or Development Opportunity? Agricultural Investment and International Land Deals In Africa*, (London: IIED/FAO/IFAD, 2009).

12 Many of these large land concessions are time-limited (for periods of up to 100 years, with the possibility of extension). During this time, concessions often preclude or limit local communities from accessing or using these contracted lands and all of their natural resources located therein.

13 World Bank Group, *Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits?* (Washington, DC: World Bank, 2011), 62, [http://siteresources.worldbank.org/INTARD/Resources/ESW\\_Sept7\\_final\\_final.pdf](http://siteresources.worldbank.org/INTARD/Resources/ESW_Sept7_final_final.pdf); The Oakland Institute, *Understanding Land Investment Deals in Africa: Country Report Mozambique* (Oakland, CA: The Oakland Institute, 2011), [http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI\\_country\\_report\\_mozambique\\_0.pdf](http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_country_report_mozambique_0.pdf).

14 World Bank Group, *Rising Interest in Farmland*.

15 *Ibid.*, 62. The Oakland Institute, *Understanding Land Investment*.

16 World Bank Group, *Rising Interest in Farmland*, 62. The report notes that of this land, only 7% went to domestic investors; 93% went to foreign investment.

17 *Ibid.*, 67.

land, and an associated increase in land conflict, which may have more wide-ranging destabilizing effects. Indeed, research has found that investors have damaged non-renewable natural resources (such as water sources), created significantly fewer jobs than were promised,<sup>18</sup> and transgressed the agreed boundaries of their concessions, displacing communities' access to their farms and grazing lands.<sup>19</sup>

These trends also have negative intra-community impacts. Studies show that increased land scarcity, competition, and resulting commoditization of land tend to precipitate a breakdown of the customary rules that generally govern the equitable use of common resources — rules that in the past functioned to protect the land rights of vulnerable groups and support sustainable management of local ecosystems.<sup>20</sup> While scholars disagree over the relative strength of women's land claims under customary systems, the consensus is that as land becomes scarcer, existing customary safeguards of women's rights to land are eroded.<sup>21</sup> Evidence has emerged that when land is scarce, customary leaders and families move away from more flexible systems of land holding (which take into consideration a woman's need to support herself and her children) to more rigid interpretations of women's land claims. In some contexts, families are reinterpreting and rediscovering customary rules that undermine women's (particularly widows') land rights. In short, despite the strength and inherent negotiability of kinship-based land claims, in the context of land commoditization, women often lose their bargaining power among both their husbands' kin and within their own families. As explained by Woodhouse, "When competition for land intensifies, the inclusive flexibility offered by customary rights

18 For example, World Bank research found that although one biofuels project in Mozambique had promised to hire 2,650 workers, by the time of this study only 35–40 people were employed full-time, as well as 30 seasonal workers. Moreover, the wages provided were insufficient to compensate for the loss of livelihood resulting from loss of farmland and access to natural resources. *Ibid.*, 69.

19 *Ibid.*, 65. The Oakland Institute, *Understanding Land Investment*.

20 Ann Whitehead and Dzodzi Tsikata, "Policy Discourses on Women's Land Rights in Sub-Saharan Africa: The Implications of the Re-turn to the Customary," *Journal of Agrarian Change* 3, no. 1-2 (2003): 91; Paulene E. Peters, "Inequality and Social Conflict Over Land in Africa," *Journal of Agrarian Change* 4, no. 3 (2004): 269-314; Ingrid Yngstrom, "Women, Wives, and Land Rights in Africa: Situating Gender Beyond the Household in the Debate Over Land Policy and Changing Tenure Systems," *Oxford Development Studies* 30, no. 1 (2002): 21-40. During standard customary land transactions, there is a shift towards making reference to market values, evident in the "increasing weight placed upon cash, relative to symbolic elements of exchange, and an increasing precision in the 'seller's' expectation of what they should receive." Admos Chimhowu and Phil Woodhouse, "Customary vs Private Property Rights? Dynamics and Trajectories of Vernacular Land Markets in Sub-Saharan Africa," *Journal of Agrarian Change* 6, no. 3 (2006): 359.

21 Many scholars argue vehemently that customary paradigms disempower women. A second analysis is that the strength of women's land rights varies widely depending on each woman's own particular family situation. Because women's land claims are negotiated through kin under custom, their land entitlements are based on the fulfillment of a range of social obligations to family members. Thus, the more connected and respected a woman, the stronger her claims to land. Other scholars argue a third position: women's land rights under customary law are actually much stronger than originally imagined. Quan cites Yngstrom's finding that women can be considered to hold primary land use rights because of the recognition of the centrality of women's roles in production and social reproduction; women's land use rights are secured by husbands' social obligations to ensure that their wives are able to feed themselves and their children. Similarly, according to Yngstrom, these use rights are not allocated and safeguarded by the husband alone, but by the entire extended family network that the woman has married into (Julian Quan, "Changes in Intra-Family Land Relations," in *Changes in "Customary" Land Tenure Systems in Africa*, ed. Lorenzo Cotula (London: IIED, 2007): 55; Yngstrom, "Women, Wives and Land Rights."). The authors conclude that "women's claims to land are not justified solely through the recognition of their obligations in food production, but that local land-management fora make moral and material evaluations of inputs and behaviour between male and female household members over a very wide spectrum when adjudicating land claims" (Whitehead and Tsikata, "Policy Discourses," 77-78). See also Lorenzo Cotula, Camilla Toulmin and Julian Quan, *Better Land Access for the Rural Poor, Lessons From Experience and Challenges Ahead* (London and Rome: IIED/FAO, 2006); Aili Mari Tripp, "Women's Movements, Customary Law, and Land Rights in Africa: The Case of Uganda," *African Studies Quarterly* 7, no. 4 (2004).

can quickly become an uncharted terrain on which the least powerful are vulnerable to exclusion as a result of the manipulation of ambiguity by the powerful.”<sup>22</sup> In Uganda, evidence of such trends is particularly widespread.

In this context, strong legal protections for community lands and natural resources and the expedient implementation of clear, simple and easy-to-follow legal processes for the documentation of customary land rights are urgently necessary. In particular, efforts to protect common areas are critical, as community lands not currently under cultivation are often the first to be allocated to investors, claimed by elites, and appropriated for state development projects.

One potential method of protecting the full range of customary land rights is to allow communities to register their common lands as a whole and to then empower communities to manage and administer community land and natural resources. This method has the potential to facilitate the recognition of communal, overlapping and secondary land rights and can safeguard all shared lands and natural resources at once. Devolving land ownership, administration and management to the community may also help to foster local economic growth and promote sustainable natural resource management.<sup>23</sup>

In several nations, laws make it possible for rural communities to register their lands as a whole according to customary boundaries (referred to herein as “community land titling or “community land documentation”) and formalize communities’ land administration and management practices. In this way, the process simultaneously protects the land tenure security of the meta-unit (the community) as well as all family and household units within it.<sup>24</sup>

However, in many instances legislation facilitating community land documentation has not been well or widely implemented.<sup>25</sup> The limited implementation of community land documentation processes is due to various factors. First, legislative and procedural requirements may prescribe complex processes that are difficult to navigate or that require evidence that customary rights holders cannot provide. Robust

22 Philip Woodhouse, “African Enclosures: A Default Mode of Development,” *World Development* 31, no. 10 (2003): 1715.

23 Liz Alden Wily, “The Commons and Customary Law in Modern Times: Rethinking the Orthodoxies” (Presentation to a Conference Hosted by UNDP on *Land Rights for African Development: From Knowledge to Action: A Collaborative Program Development Process*, 2005, draft).

24 Under these laws, communities may control, regulate, receive and distribute benefits related to the common lands. In some nations, land laws designate the community as the lowest unit of local government, both downwardly accountable to community members and upwardly accountable to district government. In other nations, the legislation may require communities to establish themselves as either a private legal entity capable of holding collective land rights (similar to a condominium association) or a body corporate that holds resource rights on trust for the members of their community and can transact with outsiders.

25 In Uganda, since the passage of the *Land Act 1998* (Chapter 227), not one community has to date submitted a successful application to create a Community Land Association and seek joint title to common lands. In Liberia, no rural community has secured a deed to their lands under the Public Lands Law 1972-1973 (Title 34 of the Liberian Codes Revised) since 1988 (and a moratorium on this process is now in place). In Mozambique, although many communities have undergone the legally mandated land delimitation process, the resulting formal ‘right of land use and benefit’ has not provided sufficient protection against land appropriation by elite investors.

implementation of community land titling legislation may also be undermined by corruption, rent-seeking or political patronage, lack of state resources, low staff capacity (understaffing and lack of training), and systemic failures, such as excessive centralization of administrative processes or overlapping ministerial jurisdictions. Lack of political will is also a significant impediment; government administrators frequently resist implementation of community land documentation laws, as such laws often transfer control over valuable land and natural resources from state officials to rural villagers. Describing this phenomenon, Ouédraogo writes: “Nor should we overlook the lack of political will shown by the administrative authorities in implementing legislation favourable to local land rights. Either no practical steps are taken to implement the law or, worse still, the administrative — and even judicial — authorities ... are sometimes persuaded to take decisions which fly in the face of the law.”<sup>26</sup> Similarly, in Mozambique, Negrao observed that successful implementation of the *Lei de Terras 1997* was obstructed by “resistance from employees in the title deeds offices to accept the new law ... [because] they would no longer have the monopoly in the decision-making regarding land adjudications.”<sup>27</sup>

Wide-scale, proactive documentation of community lands must be undertaken to create evidentiary proof of existing customary land claims. Such documentation may help to protect rural communities’ land claims, livelihoods, and way of life, reduce conflict and instability in the long term, and foster endogenously-driven community development. To investigate how to support communities to follow national laws to gain formal documentation for their customary lands, the International Development Law Organization and local partner organizations undertook a two-year study in Liberia, Uganda and Mozambique. The design and structure of this intervention is described below.

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26 H.M.G. Ouédraogo, *Legal Conditions for the Recognition of Local Land Rights and Local Land Tenure Practices*, cited in IIED, *Making Land Rights More Secure — International Workshop for Policy Makers* (2002).

27 Jose Negrao, *Land In Africa — An Indispensable Element Towards Increasing the Wealth of the Poor*, Oficina dos Centro de Estudos Sociais 179 (Maputo, Mozambique: Universidade de Coimbra, 2002): 19.



# **PROJECT DESIGN AND METHODOLOGY**

**T**O INVESTIGATE HOW TO BEST SUPPORT COMMUNITIES to successfully complete their nation's formal land documentation procedures and protect their community lands, from 2009 to 2011 the International Development Law Organization (IDLO) launched a randomized controlled trial entitled the "Community Land Protection Initiative."<sup>28</sup> The investigation was carried out in Oyam District, Uganda, by the Land and Equity Movement in Uganda (LEMU), in Inhambane Province, Mozambique, by Centro Terra Viva (CTV), and in Rivercess County, Liberia, by the Sustainable Development Institute (SDI).

The study's objectives were to:

- ▶ Facilitate the documentation and protection of customarily held community lands through legally established community land titling processes.
- ▶ Understand how to best and most efficiently support communities to successfully protect their lands through legally established land titling processes.
- ▶ Identify procedural obstacles to fast, inexpensive and streamlined community land titling.
- ▶ Devise and pilot strategies to guard against intra-community injustice and discrimination during community land titling scheme and protect the land interests of vulnerable groups.
- ▶ Craft country-specific recommendations for the improvement of community titling laws and regulations in order to improve fairness and make titling procedures easier for both communities and land administrators to follow.

The project therefore investigated the following two central questions:

1. What type and level of support do communities require to successfully complete community land titling processes?
2. How best to leverage the community land documentation process to facilitate intra-community protections for the land rights of women and other vulnerable groups?

To undertake the objectives and investigate the central questions, the initiative randomly selected<sup>29</sup> 60 communities that actively expressed an interest in seeking documentation for community lands and that were not currently engaged in a protracted

<sup>28</sup> Intervention studies are used to determine the effectiveness of an intervention. The primary goal of conducting a randomized controlled trial (RCT) is to test whether an intervention works by comparing it to a control condition, usually either no intervention or an alternative intervention. RCTs are considered to be the gold standard of intervention studies, as RCTs are the most reliable form of testing the effectiveness of programs and policies and the only known way to avoid selection and confounding biases; random assignment and the use of a control group ensure that any extraneous variation not due to the intervention is either controlled experimentally or randomized, allowing for causal attribution. If properly designed and conducted, RCTs are likely able to determine even small and moderate impacts of an intervention, something that is difficult to reliably establish in observational studies. For these reasons, the Community Land Titling Initiative was designed to be a randomized controlled trial.

<sup>29</sup> See Appendix A for details concerning community selection, randomization and sampling methodology.

land conflict. National field teams then supported 20 communities in Mozambique and 18 communities in Uganda<sup>30</sup> to follow the processes set out in the *Lei de Terras* (1997) and the *Land Act* (Ch. 227) (1998), respectively. 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) (Title 34 of the Liberian Codes Revised)), the 20 study communities followed the skeletal process set out in a Memorandum of Understanding (MOU) signed between IDLO, SDI and the Land Commission of Liberia.

## Treatment groups

The study communities were randomly assigned to one of four different treatment groups, each of which received a different level of legal services provision.<sup>31</sup> The four legal services treatments were as follows:

- ▶ **Monthly legal education and training (Education-only):** These communities received one three-hour training session each month for 14 months. Project field teams, composed of legal and technical professionals, conducted the training sessions. The national partner organizations developed country-specific training methodologies to ensure that the field teams delivered the necessary legal and technical information in a culturally appropriate manner, taking into account literacy levels and the time and resource constraints of community members. The field teams invited all community members to take part in these sessions and adopted specific measures to ensure the participation of women.<sup>32</sup> These training sessions taught communities about their land rights under national law, and included education and capacity-building concerning:
  - The community land documentation procedures as set out in national laws and regulations;
  - Customary land tenure rights;
  - Relevant national law, including relevant sections of the national constitution, national inheritance law, natural resource and conservation law;

30 In Uganda, from the initial group of 20 selected sites, the project began to lose communities almost immediately. Foreseeing that the integrity of the research design would be compromised, LEMU quickly identified and added 14 more sites, for a total of 34 communities that initially agreed to take part in the Community Land Protection Initiative. Yet, by the project's end, just 12 communities remained, only seven of which had successfully completed Communal Land Association constitutions. Only five of these seven applied for Communal Land Association incorporation. Four of the remaining 12 communities are control communities. The other 22 communities rejected the project. The most common cause for community rejection of the project was one or more elite or powerful individuals who, fearing loss of lands they had already grabbed, took steps to demobilize their community. Their standard method of demobilization was to convince fellow villagers that LEMU's underlying motive was to steal the community's land, and thus accepting LEMU's legal support was dangerous. In a few instances, the 'demobilizers' were actually vulnerable individuals: internally displaced persons (IDPs) from the recent Lords Resistance Army conflict who had relocated to the community from refugee camps. In some areas, IDPs settled in large groups on the grazing lands of a community to which they did not historically belong, and fearing that a strong, united community with documented claims to their grazing lands would expel them from their new homes, worked hard to impede community land protection efforts. They threatened witchcraft, spread malicious rumors and used other aggressive tactics to intimidate community members into rejecting the initiative.

31 See Appendix A for details concerning community selection, randomization and sampling methodology.

32 Measures included the scheduling of meetings in places and at times that women could more easily attend; sending community leaders and the community mobilizer door-to-door throughout the village specifically requesting that women attend; and holding meetings for women only in order to focus on addressing women's concerns and supporting women to bring these issues to the community.

- The position of customary law within the statutory legal framework;
- The practical skills required to document community lands, mediate and resolve land conflicts, and harmonize boundaries;
- Strategies for discussing intra-community land administration and governance rules;
- The location and role of all relevant government agencies; and
- Instructions for accessing and completing government forms and creating required documentary proof; and all other necessary skills and information.

The communities also received copies of relevant national laws as well as “how to” guides detailing each stage of the national community land documentation process.<sup>33</sup> After each month’s training, the field teams gave these communities “homework” assignments to complete before the following month’s meeting; the assignments included the completion of whatever steps of the process that the community was working on at the time.

- ▶ **Paralegal support<sup>34</sup> and monthly legal education and training (Paralegal):** These communities received the monthly legal training and materials described above, as well as the support of two community-based and community-elected<sup>35</sup> paralegals. These individuals were not certified paralegals, but rather trained and supervised community members. At the start of the project, the paralegals received two intensive two-day trainings covering the topics detailed above. The paralegals thereafter attended monthly meetings with the field teams, during which they were rigorously trained, reported on progress made and challenges faced, and had the opportunity to ask the field teams technical and legal questions.
- ▶ **Full legal support and monthly legal education and training (Full-service):** These communities received the monthly legal training described above, as well as the full support of the project field teams. The field teams directly supported these communities throughout the land documentation process, providing all relevant legal assistance requested. This assistance included mediation support during conflict resolution and boundary harmonization efforts; help drafting and

33 See the three “how-to” guides at <http://namati.org/work/community-land-protection/Phase-One-Findings-and-Reports>.

34 The term “paralegal” refers to a non-lawyer trained in basic legal literacy and rights who “has basic knowledge of the law, the legal system and its procedures, and has basic legal skills; is a member of the community or part of an organization that works in the community and has basic knowledge of the ways community members access justice services (including through traditional or informal justice mechanisms); has skills and knowledge on alternative dispute resolution mechanisms, including mediation, conflict resolution, and negotiation; is able to communicate ideas and information to community members using interactive teaching methods; can have working relationships with local authorities and service delivery agencies; [and] has community organizing skills that can be used to empower communities to address systematic problems on their own in the future.” *Community-based paralegals: A practitioner’s guide*. Open Society Foundations (2010) at p. 16. [http://www.soros.org/initiatives/justice/articles\\_publications/publications/paralegals-manual-20101208/paralegal-guide-20101208.pdf](http://www.soros.org/initiatives/justice/articles_publications/publications/paralegals-manual-20101208/paralegal-guide-20101208.pdf) Because these community members were not professionally trained, board certified “paralegals,” these individuals were given other titles: in Uganda, the paralegals were termed ‘Community Support Persons’; in Mozambique, they were called ‘Community Mobilizers’; and in Liberia they were called ‘Community Animators.’ However, for the purposes of this report, the term ‘paralegal’ will be used. Please note that throughout this report, when the phrase “legal and technical professionals” is used, it does not include these “paralegals” as legal professionals, as they were trained community members and not certified members of the legal profession..

35 The field teams left the selection process in the hands of the communities, but did stipulate a few selection criteria: the paralegals needed to be literate; to have a high degree of integrity and honesty; and be well-respected by community members. Field teams also recommended that communities choose one male and one female paralegal.

revising community by-laws/constitutions and land and natural resources management plans; support in the preparation of required forms and documentation to state authorities; support during all interactions with government agencies; and all other necessary legal and technical support.

- ▶ **Control/Minimal informational dissemination (Control):** Although these communities were the “control” group, they were not “pure” controls: the communities attended one project introduction meeting, at which time they received copies of the national land laws and regulations as well as the detailed “how-to” guides written to help support the study communities’ progress. The idea behind this group was to observe how much of the community land documentation process a community could accomplish on its own, given that it both 1) knew that the process existed/was aware of what actions to take and 2) actively sought community land documentation and was indeed working to accomplish the necessary tasks. At the project introduction meeting, the field teams encouraged these communities to do their best to follow the process on their own. To distinguish financial obstacles from procedural obstacles, the initiative promised communities in this group financial support for all surveying and application costs.

Project researchers then tracked each community’s progress through the community land documentation 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<sup>36</sup> supplemented these observations.<sup>37</sup>

The following section outlines the national legal frameworks that defined the Initiative’s structure and directed the course of all project activities.

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36 The focus group discussions held in each community taking part in the initiative involved: (a) seven women (including roughly 50% widows); (b) seven community leaders; and (c) a random grouping of seven community members, mainly youth (for a total of 36 focus group discussions during the baseline and 30 focus group discussions during the post-survey). The research team visited the village a few days before the focus group meetings and informed the leaders to randomly select and invite seven to ten members of the different groups. In those instances where some of the invited individuals did not arrive, they were replaced by other community members who joined uninvited.

37 Methodology and design challenges. The scope and content of the project were ambitious, given the budget, the experimental design, the low quality of regional infrastructure and the project timeframe. Various factors created obstacles from the start. These included:

- **Insufficient time, finances, and an extremely intense workload:** The two-year timeframe allocated for the project was too short to successfully accomplish all of the project activities. Moreover, the volume of work necessary to successfully support 15 non-control communities to seek documentation in each country was exceptionally high, particularly in light of the fact that the funding allotted for salaries only allowed for a three-to-four person field team. The high workload was exacerbated by the long distances between the study communities and the project field offices.
- **Overambitious research design:** According to the project design, each month it was mandatory to hold 15 three-to-four hour community meetings (one in every non-control community), at least five additional meetings on an as-requested basis in the full service communities, and one supplementary paralegal training meeting, for a total of 21 monthly meetings. In some months, it was necessary to schedule separate meetings to mediate land disputes and to update government officials on the project’s progress.
- **Frequent community cancellation of meetings:** Exacerbating these time and resource difficulties was the high rate at which communities cancelled meetings the night before or the morning of a meeting, or simply did not arrive for scheduled meetings. As a result, the project team essentially lost a day of field work. Often, the cancellations were due to unexpected funerals or marriage ceremonies; at other times, during planting or harvest season, community members could not take time away from their fields.

## Defining “Community”

Defining “community” is an exceptionally complex and difficult endeavor. The process differed in each study nation according to the cultural, political and geo-spatial realities on the ground and the preferences of local leadership. In the study regions, difficulties related to community self-definition were rooted in overlapping definitions of authority, territory and identity. Specifically, the process was often complicated by: 1) the nested quality of rural social organization in the study regions; 2) historical fractioning and division of social units; 3) common areas fully shared between villages/towns that identified as separate entities; 4) differences between customary and administrative/state-drawn boundaries; 5) historical migration patterns, ecological changes, and infrastructure development; and 6) competition over valuable natural resources. The process of community self-definition was further complicated by the initiative’s randomized controlled trial design; the freedom for each community to choose its composition was compromised by the need for the study communities to be similar and comparable.

The process of community self-definition was made even more difficult due to the initiative’s randomized control trial design; the freedom for each community to choose its composition was compromised by the need for the study communities to be similar and comparable.

In Liberia, the project’s definition of ‘community’ was determined with local officials and leaders based on the structure of local governance in Rivercess County. Rural social and political organization in Rivercess is composed of a series of nested units, with anywhere from 10 to 22 towns making up a clan, and two to three clans making up a chiefdom. To determine the optimal community unit, SDI held a series of consultative meetings with customary and state leaders from across Rivercess County. The drawbacks and benefits of working at the chiefdom, clan, or town level were debated, and community leaders decided that the project should work at the clan level.<sup>38</sup>

In Mozambique, the *Lei de Terras* expressly permits a community to define itself in whatever grouping it deems best for its interests.<sup>39</sup> The project’s definition of “community” was therefore a careful choice made with local officials, leaders, and community members.

38 Various factors were weighed, including the logistics of the project work (the distances to be traveled) and the average population densities and amount of land held at each level. For example, working at the level of the chiefdom would have documented and protected the largest amount of land, but would not have allowed for a high percentage of community participation; working with towns would have ensured high levels of engagement and participation, but the limited amounts of town land would not have protected the larger common areas nor secured the land rights of a significant number of families. Clans were deemed the optimal compromise option: full and meaningful participation of the majority of community members with a fair amount of land and common area protected.

39 *Land Law (Lei de Terras)*, Act No. 19/97 of 1 October, 1997, The Republic of Mozambique.

The social and political organization of rural Inhambane is a series of nested units with various *zonas* making up a *povoado*, and three or four *povoados* making up a *regulado*. Past community land delimitation efforts have worked at the *regulado* level. However, the vast regions being delimited in this manner caused some consternation within the Mozambican Government; as a result, changes were made to the *Lei de Terras*' Regulations Article 35 that create obstacles for delimitation applications for areas larger than 1,000 hectares.<sup>40</sup> Furthermore, delimiting community lands at the level of the *regulado* often involves up to two thousand households. The project deemed that full community participation would not be feasible at that scale. Weighing these factors in consultation with the field team and local leaders, all but one of project communities elected to delimit themselves at the level of the *povoado*. Interestingly, the one community that chose to seek documentation at the *regulado* level was not able to complete the project activities.

In Uganda, the initiative worked to document common grazing lands, which in northern Uganda are generally shared by members of one to five separate villages. Some of these villages have direct ownership rights, while others have permanent or seasonal use and access rights. In many cases, there is no strong "community" sentiment between these various villages. Yet, for the purposes of documenting and protecting their jointly owned communal grazing lands, these villages were necessarily grouped as "one community." This situation created immediate community cohesion and solidarity challenges: even if a majority of the villages had a strong desire to take part in the initiative, when one village adamantly refused to take part or changed its mind mid-process, it was not possible to proceed with the land documentation activities. Furthermore, due to local politics, LEMU found it difficult to properly identify which villages had genuine ownership claims to the common area and which villages only had use rights. At times, communities intentionally excluded villages in order to claim more land for themselves. In other instances, communities with use rights were unintentionally excluded from project meetings due to the field team's lack of correct information. As the realities of who actually owned and used the common lands came to light, the field team had to continually configure and reconfigure the villages involved in the study.

40 Under Mozambican law, even though under the law communities' customary land rights exist regardless of formal registration processes (as delimitations do not create land rights but only document existing ones) the 2007 changes to Regulations Article 35 have been construed by state officials as signifying that recognition of community rights claims is subject to state authorization. In essence, by issuing the Article 35 Decree, state officials have given themselves the power to decide whether a community land delimitation application should be granted. The decree also implicitly limits the size of community lands: Provincial Governors may now only authorize the allocation of community land rights up to 1000 hectares in size, although higher-level authorities can approve larger areas.



Men's focus group in Uganda.

# LEGAL CONTEXT

Uganda's *Land Act* (1998)  
(Ch. 227) 40

Mozambique's *Lei de  
Terras* (1997) 45

Liberia's Land Legislation  
and MOU with the Land  
Commission 51

**T HIS SECTION BRIEFLY DETAILS RELEVANT SECTIONS** of the legal frameworks governing community land documentation in Uganda, Mozambique and Liberia.<sup>41</sup> **It is important to state at the outset that these legal provisions are very rarely implemented:** in Uganda, since the passage of the *Land Act* in 1998, not one community has submitted a successful application to create a Community Land Association and seek formal documentation of its customary lands.<sup>42</sup> In Liberia, no rural community has secured a deed to their lands under the *Public Lands Law 1972-1973* (Title 34 of the Liberian Codes Revised) since 1988.<sup>43</sup> Meanwhile, in Mozambique, as a result of more than ten years of inadequate funding and the absence of other necessary resources, out of an estimated 3,000 communities in Mozambique, only 323 communities, covering 7,993.8 km<sup>2</sup> (less than 10% of the area of Mozambique), have had their lands delimited.<sup>44</sup> As a result, customary community land rights in the study nations remain invisible on official maps and vulnerable to expropriation and elite capture.<sup>45</sup>

## Uganda's *Land Act 1998* (Ch.227)

Ugandans have some of the most extensive legal protections for their land claims in all of Africa. Unlike many countries in Africa, where the state holds land in trust for its people, the *Constitution of the Republic of Uganda 1995* and *Land Act (1998)* (Ch.227) give nationals the right to *own* their land, including land held by individuals and communities under customary law.<sup>46</sup> Under the *Land Act*, customary rights do not need to be titled or registered to be considered valid; the law recognizes customary rights of ownership regardless of whether the owners have a formal title or document.

## Forming a Communal Land Association

If documentary proof of individual, family or group ownership is desired, land owned according to customary law may be formally registered to obtain a Certificate of Customary Ownership<sup>47</sup> (CCO) or Freehold Title.<sup>48</sup> To document customary common lands, communities may form Communal Land Associations, apply

41 For a complete summary of the relevant laws of Uganda, Mozambique and Liberia, see IDLO's Legal Framework Memo, prepared for the Community Land Titling Initiative, and available at: [http://www.idlo.int/Publications/Land\\_LFM.pdf](http://www.idlo.int/Publications/Land_LFM.pdf).

42 See further: Rachael Knight, *The Relevant Legal Frameworks of Mozambique, Uganda and Liberia*, IDLO Best Practices in Community Land Titling Legal Framework Memorandum (2009).

43 Liz Alden Wily, *So Who Owns the Forests?: An Investigation into Forest Ownership and Customary Land Rights in Liberia*, (Sustainable Development Institute and FERN, 2007).

44 *Direcção Nacional de Terras e Florestas*, Government of Mozambique, *Relatório Nacional sobre Delimitação de Terras Comunitárias* (2010).

45 Simon Norfolk and Christopher Tanner, *Improving Tenure Security for the Rural Poor: Mozambique Country Case Study*, Legal Empowerment of the Poor Working Paper 5 (FAO, 2007): 7, <ftp://ftp.fao.org/docrep/fao/010/k0786e/k0786e00.pdf>.

46 Uganda's Constitution provides for four different kinds of land tenure systems: customary, *mailo* (a type of tenure specific to Uganda that permits a separation of land ownership from ownership of developments on that land made by a lawful or bona fide occupant), freehold and leasehold. In the northern Uganda, where the Community Land Protection Initiative was implemented, customary tenure prevails.

47 *Land Act 1998* (Ch 227), Act 16/1998, Republic of Uganda, Section 4(1).

48 *Ibid.*, Section 10(1).

for a CCO or Freehold Title, and then administer and manage those lands according to local community rules agreed by the group. Communities may create a Communal Land Association by successfully completing the following process:

## Formation of a Communal Land Association

1. **Mapping and Boundary Harmonization.** The community maps the boundaries of the land to be titled, agrees on these boundaries with neighbors, draws a sketch map of the land, and plants boundary trees or other agreed markers of the limits of the land.
2. **Application to become a Communal Land Association.** The community then lodges an application for formation of a Communal Land Association with the District Registrar. The Registrar convenes a meeting at which the community formally agrees to incorporate as an association.<sup>49</sup> 60% of the group must agree to incorporate and then elect three to nine officers, a third of whom must be women.<sup>50</sup>
3. **Creation of the Communal Land Association's constitution and land management plan.** Led by the elected officers, the community then drafts a constitution and a communal land management plan to govern their jointly owned land.<sup>51</sup> The Land Act and accompanying Regulations set out what the constitution and management plan must include.<sup>52</sup> The District Registrar must certify that the finalized constitution provides for transparent and democratic management procedures and does not contradict the National Constitution.<sup>53</sup> The community then makes all necessary changes suggested by the Registrar and votes to formally adopt the constitution as its governing framework. The constitution comes into effect and is binding upon members after a majority affirmative vote.<sup>54</sup>
4. **Incorporation of the Communal Land Association.** After the election of officers and the adoption of a constitution, the Communal Land Association can apply to the District Registrar for a certificate of incorporation, subject to any conditions and limitations as may be prescribed. The Communal Land Association then becomes a corporate legal body; it can sue and be sued and enter into binding contracts.<sup>55</sup> The officers are considered to hold the land of the Association in trust for the community and must exercise their powers on behalf of all Association

49 Ibid., Section 17(2).

50 Ibid., Section 17(4)(5).

51 Ibid., Section 18.

52 *Third Schedule, Land Act, Cap 227, the Land Regulations, 2004*, Republic of Uganda, Contents of a Model Constitution of a Communal Land Association; Land Act, Section 26.

53 *Land Act*, Section 18(1)(2)(3). If the Registrar finds that the constitution does not adequately provide for democratic and transparent procedures, it must return the constitution to the Association within 30 days with an explanation of why it was rejected, and the Association must be given a chance to revise and resubmit it.

54 Ibid., Section 15(4)(5).

55 Ibid., Section 19(1).

members. Importantly, the officers' personal names are included in the application for incorporation, rather than the community's name.<sup>56</sup> To transact land, the officers must convene the Association and obtain approval from a majority of members. Any land transactions that have not duly been approved by the Communal Land Association are considered null and void.<sup>57</sup>

**5. Application for documentation of land claims.** Once incorporated, a Communal Land Association may then apply for either a CCO or a Freehold Title to its lands.

## Applying for a Certificate of Customary Ownership or Freehold Title

**Applying for a CCO:** Article 4 of the *Land Act* prescribes that “Any person, family or community holding land under customary tenure on former public land may acquire a certificate of customary ownership in respect of that land in accordance with this Act.” The process of applying for a Certificate of Customary Ownership (CCO) is intended to be relatively simple and low-cost; a formal land survey is not required. The application includes only a sketch drawing of the land and a description of neighboring and third party land claims. CCOs are issued by the District Land Board after an adjudication process undertaken by a local Area Land Committee.<sup>58</sup> Once issued, a CCO is conclusive evidence of customary ownership, and the land continues to be regulated according to customary laws.<sup>59</sup> The *Land Act* provides that financial institutions and authorities must recognize CCOs as a valid certificate of ownership and evidence of title.<sup>60</sup> However, lacking metes and bounds, a CCO does not protect against future boundary disputes that concern the exact location of boundary lines between properties.

**Applying for a Freehold Title:** Individuals, families or communities may choose to apply for a Freehold Title for their lands.<sup>61</sup> To apply, the community must submit the necessary forms and associated fees to their Area Land Committee and follow the same investigation procedures as the CCO process.<sup>62</sup> The titling process is different in two ways, however. First, the Area Land Committee must consider whether the individual or group requesting the Freehold Title is *prima facie* entitled to convert their customary tenure to freehold tenure.<sup>63</sup> Second, a technical survey of the land must be conducted after the District Land Board receives the Area Land Committee's report. Once the survey has been completed, the District Land Board approves

56 Ibid., Section 91(2).

57 Ibid., Section 91(3).

58 Ibid., Sections 5-8.

59 Ibid., Section 9(1).

60 Ibid., Section 9(7).

61 Ibid., Sections 10 and 11.

62 Ibid., Section 7; Section 13(1). If a group or individual already has a CCO, the process begins where the CCO process leaves off—with the professional survey.

63 Ibid., Section 11(2)(3). The Act does not make clear, however, the basis on which this decision must be made.

or denies the application.<sup>64</sup> If approved, the Registrar issues a Certificate of Freehold Title. Any third party rights must be duly noted on the title.<sup>65</sup>

## Managing communally-owned lands

Under a CCO or Freehold Title, a Communal Land Association may choose to set aside areas of land for common use by all members.<sup>66</sup> Under the Land Act, common areas must be managed according to a common land management scheme agreed upon by Communal Land Association members.<sup>67</sup> The Land Act suggests that the following items be included in a common land management scheme:

### Contents of a Common Land Management Scheme

- “A description of the area of common land to which it applies;
- A description of the management activities to be undertaken by the communal land association;
- The basic rights and duties of the members of the community using the common land to which the scheme applies;
- The numbers and type of livestock which each member of the community may graze on the common land;
- The locations within the common land where livestock may be grazed and the times when they may be used for grazing;
- The routes to and from the common land which livestock are required to use;
- The terms and conditions for which hunting may take place;
- The amount of wood fuel, building materials and other natural resources which any member of the community may gather for the use of his/her homestead and his/her family;
- The terms and conditions for which wood fuel and other natural produce may be gathered for sale;
- General rules concerning access to and use of common land by members of the community and by other persons;
- Any fees that may be charged to those using the common land;
- Penalties that may be imposed on those violating the terms of the scheme;
- Grounds for excluding any person from using the common land;
- Any other matters as the members of the Communal Land Association may think fit to include.”<sup>68</sup>

<sup>64</sup> Ibid., Section 13(1).

<sup>65</sup> Ibid., Section 14(3).

<sup>66</sup> Ibid., Section 23(3).

<sup>67</sup> Ibid., Section 24(1)(2)(3)(5).

<sup>68</sup> Ibid., Section 26.

## The land rights of vulnerable groups

While falling short of giving women the rights to co-own land with their husbands, the *Land Act* does allow women to own land in their own right.<sup>69</sup> The law also explicitly protects against discriminatory customary practices: it provides that customary decisions or actions that deny women, children or disabled individuals access to, ownership, occupation or use of land — or which otherwise violate the Ugandan Constitution — shall be null and void.

The law also establishes restrictions on the transfer of land by family members without the full, informed and explicit approval of other rights holders who may be affected by the transfer. The law forbids the sale, exchange, pledge, mortgage, lease, contract or *inter vivos* transfer of any land upon which the family resides without the full, prior written consent of the spouse(s).<sup>70</sup> Should the seller/lessor fail to secure the required approval and consent, the matter may be referred to the District Land Tribunal.<sup>71</sup>

## Implementation of Uganda's *Land Act* (1998)

While the *Land Act* should theoretically support high levels of tenure security, the situation in Uganda is currently one of acute and growing land insecurity. Uganda's land market is characterized by intense competition, boundary disputes and other land-related legal contests. Moreover, 14 years after the *Land Act* was passed, not one community in Uganda has followed the legal procedures to successfully form a Communal Land Association and obtain a community Freehold Title or Certificate of Customary Ownership for their common lands. This has been due to a variety of factors. Most notably, the state not only lacks secure sites to house land titles, but also has not hired and established the necessary land officials to approve Communal Land Association applications. The critical land officials not yet in place in northern Uganda include District Registrars of Title, Land Recorders, Land Officers and surveyors. The lack of these officials has significantly held up the Ugandan government's capacity to issue documentation of community land claims.

Other obstacles to full implementation include: rural villagers' lack of knowledge of the process for acquiring community land documentation; overly complex and bureaucratic procedures; forms that do not facilitate or accommodate community land

69 Women's ability to own land in their own right may be inferred by the use of the gender-neutral language of the Land Act 1998.

70 *Land Act*, Section 39. To ensure that these rights are given practical force, the *Land Act* also requires that all land administration and management bodies have female representatives among their members.

71 To ensure that these rights are given practical force, the *Land Act* also requires that all land administration and management bodies have female representatives among their members. The composition of each District Land Board must be at least one-third women; Area Land Committees must include at least one third women among their five members; and the Uganda Land Commission must include at least one woman among its five members. In addition, at least one-third of Communal Land Association officers must be women. Section 57(3); Section 65(2); Section 47(4).

documentation; and the Ugandan government's emphasis on registering individual land claims, which has resulted in a lack of government resources to facilitate community land protection. Furthermore, although the application fees are quite low, hiring a surveyor (necessary for obtaining a Freehold Title) is extremely expensive. Taken together, these factors make community land documentation essentially unfeasible for rural villagers.

## Mozambique's *Lei de Terras* (1997)

Mozambique's innovative and ambitious land legislation, the *Lei de Terras* (1997) aims to integrate not only customary and statutory laws but also customary and capitalist systems. The *Lei de Terras* creates new systems of land management and sharing designed to foster integrated rural investment and development and bring prosperity to rural communities. Most importantly, the Land Law elevates custom and all customary land claims up into formal law at a stroke, giving weight and legal validity to the land claims of the rural and urban poor without the need for formal documentation. Indeed, the *Lei de Terras* (1997), automatically grants *de jure* land title to individuals and communities living on land according to customary claims,<sup>72</sup> as well as to individuals and groups living on land in good faith for ten years or more.<sup>73</sup> These customary rights are secure, heritable, and can be transferred to third parties either within or outside of the community. While such rights do not need to be formally registered, if communities choose to do so, the law sets out mechanisms through which customary claims can be mapped and entered into the national cadastre. Under the *Lei de Terras*, this process is called community land "delimitation." There are no limitations on who can hold rights to land: according to the law, "men and women, as well as local communities, may be holders of the right of land use and benefit"<sup>74</sup> and may obtain this right either "individually or jointly with other individuals and corporate persons by way of joint delimitation."<sup>75</sup>

## Documenting community lands

Communities that occupy land according to customary practices automatically acquire a single legal "right of land use and benefit" over such land.<sup>76</sup> The law defines

72 The Mozambican Constitution also affirms that "the use and enjoyment of land shall be the right of all the Mozambican people" (Constitution of the Republic of Mozambique, 1990: Article 46(3); 2004: Article 109(3)), and moreover, that this right can be granted to individuals or to groups/corporate persons (1990: Article 47(2); 2004: Article 110(2)). Importantly, the Constitution also mandates that in awarding land use titles, the State should respect existing "rights acquired through inheritance or occupation" (1990: Article 48; 2004: Article 111) although the 2004 version adds the caveat, "unless there is a legal reservation or the land has been lawfully granted to another person or entity."

73 Lawmakers adopted a pre-colonial model of land holding; they started from the premise that all land was already claimed by indigenous African communities according to historical tribal boundaries. The outcome was that the law considers all land to be held a priori by a community, regardless of whether a Portuguese settler farm or plantation, international investor, or state cooperative had once occupied it.

74 Land Law, Article 10(1).

75 *Ibid.*, Article 10(2).

76 *Lei de Terras Regulations*, Decree 66/98 of 8 December (1998), Article 9(1).

a local community as “a grouping of families and individuals, living in a territorial area that is at the level of a locality or smaller, which seeks to safeguard their common interests.”<sup>77</sup> Under this wide definition, a community may be a traditional unit based on clans or chieftainships, extended families, or simply a group of neighbors. Community interests in land may include “areas for habitation or agriculture, whether cultivated or lying fallow, forests, places of cultural importance, pastures, water sources and areas for expansion.”<sup>78</sup> While the law holds that “the absence of registration does not prejudice the right of land use and benefit acquired through [good faith or customary] occupancy... provided that it has been duly proved,”<sup>79</sup> communities may elect to undertake a formal registration and delimitation process.<sup>80</sup> Although delimitation and registration of community land claims do not create any new rights, communities may choose to pursue this option to secure documentary evidence of community lands.<sup>81</sup>

The process for seeing a formal delimitation certificate for community lands is as follows:

## Community land delimitation process<sup>82</sup>

### Step 1: Sensitization, education, awareness-raising and election of community representatives

The first step before entering the land delimitation process includes informing the community about the national land policy and the *Lei de Terras*. A working group is established to convene meetings and communicate important information about the delimitation process to community members. These meetings culminate in the election of community representatives — a “coordinating committee” — who will be directly involved in the delimitation process.

### Step 2: Participatory appraisal and map-making

The law defines participatory appraisal as “information given by a local community regarding:

- Its history; culture and social organization;

77 Land Law, Article 1(1).

78 Ibid.

79 Ibid., Article 14(2).

80 *Lei de Terras Regulations*, Article 9(3).

81 Titling and registration may be perceived as important for several reasons. In the event of a land conflict, or in circumstances where a community stands to lose some of its land or natural resource claims, it is sometimes necessary to document and provide proof of the community's land claims. Further, after being formally delimited and registered, the community is a private legal entity, capable of entering into contracts with outside investors.

82 Technical Annex, Article 5: “The delimitation of areas occupied by local communities comprises the following: a) Information and dissemination; b) Participatory appraisal; c) The sketch and descriptive report; d) Feedback; e) Entry into the National Land Cadastre.”

- The use of the land and other natural resources and the mechanisms for its management;
- Spatial occupation;
- Population dynamics; and
- Possible land conflicts and the mechanisms for their resolution.”

From the participatory appraisal, members draw “participatory maps.” Separate community sub-groups (usually one male and one female) make each map. The law defines participatory maps as: “Drawings designed by an interest group of the community, namely men, women, young people, elders and others, which shows in an initial and relative way, not to scale, the permanent natural or man-made landmarks used as boundaries, the identification and location of natural resources, reference points where conflicts regarding natural resources take place, or any other boundaries or relevant features.” Neighboring communities must verify the accuracy of the maps and contribute to a descriptive report of neighboring lands.

### **Step 3: Boundary definition, sketch and descriptive reports**

Once all stakeholders agree, boundaries are formally marked on all participatory maps. Where there are no natural or man-made boundaries, communities may reference “other physical markers, such as trees or piles of stones, which indicate the boundaries of the area” the community occupies. (In such instances, communities and their neighbors may plant hedges, trees or shrubs to clearly define the agreed boundaries.) The Provincial Geographic and Cadastral Services (SPGC) technical staff then compile the maps into one computer-generated cartogram, draft a technical report, and transcribe the participatory maps into a geo-referenced “sketch plan” that can be located on cadastral maps. Meanwhile, the community writes a descriptive report that it derives from the findings of the participatory appraisal.

### **Step 4: Feedback**

The sketch map, technical report and descriptive report are presented to the community and all neighboring communities for verification and approval. Such verification is critical, given the high incidence and complex nature of border disputes. All community members should be present during the verification process, including elders, women and youth.

### **Step 5: Entry into the National Cadastre**

Once approved, the documents are entered into the national cadastre. Within 60 days, the cadastral service must issue a Certificate of Delimitation in the name of the community. This certificate provides formal evidence that a delimitation exercise was carried out in accordance with the *Lei de Terras* and certifies the existence and boundaries of a community.



Mozambican community members and their neighbors discuss the boundaries of their lands.

## Community Land Management

Under the law, substantive decisions concerning the rules governing land and natural resources management rest with the communities themselves. The *Lei de Terras* does not define how communities should determine these rules;<sup>83</sup> it merely provides that as long as *customary norms and practices do not contravene the Mozambican Constitution*, they are one legitimate method of managing and administering land.<sup>84</sup> Similarly, the *Lei de Terras* does not explicitly define the process for resolving land conflicts: it mandates only that “Conflicts over land shall be resolved in a Mozambican forum”<sup>85</sup> and that in rural areas, communities are responsible for conflict resolution.<sup>86</sup> The law does outline a few specific responsibilities, such as protecting customary rights of way; rights holders must allow neighbors to cross through land to access necessary water sources, natural resources or infrastructure.<sup>87</sup>

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83 Land Law, Article 24(2).

84 These principles are reaffirmed in the *Forest and Wildlife Law 1999* (Law 10/99, of 7 July 1999). The *Forest and Wildlife Law 1999* provides some additional guidance. It guarantees community access and use of natural resources for subsistence, subject to certain conditions, including prohibitions on the hunting of protected species, the use of certain weapons and traps, illegal burning of forests, and the cutting of young trees. (*Forest and Wildlife Law 1999*, Article 3(e)).

85 *Lei de Terras Regulations*, Articles 13, section 1(b) and 14(b). Rights holders must also respect servitudes that have been created and registered “in respect of public and community ways of access and access for livestock, which have been established by customary practice” (*Land Law 1997 Regulations*, article 14(c), *Land Law 1997 Regulations*, Article 17, section 2).

86 Land Law, Article 32(2).

87 *Ibid.*, Article 24(1(b)).

## Integrated Development Model

The *Lei de Terras* establishes an innovative model for integrated development and rural investment designed to protect communities' customary land rights: investors may only lease lands for periods of 50 to 100 years, and must request the permission of the communities whose land they seek to use. During these community "consultations," communities are granted legal personality and may negotiate with investors for "mutual benefits" in exchange for investors' use of their lands.<sup>88</sup> In this way, the *Lei de Terras* is structured to both allow for investment as well as to protect rural livelihoods and contribute to community prosperity. Importantly, if a community chooses to temporarily share its land rights with an investor, its rights over such land are not extinguished.<sup>89</sup>

## Women's Land Rights

The *Lei de Terras* explicitly recognizes women's right to own land; women have equal rights to hold, access and derive benefits from land independent of any male relatives.<sup>90</sup> The inheritance rights of women are also specifically protected; the *Lei de Terras* provides that "The right of land use and benefit may be transferred by inheritance, without distinction by gender."<sup>91</sup> Importantly, the *Lei de Terras* mandates that customary processes will be invalidated or ruled null and void if they contravene the Mozambican Constitution. (Relative to women's rights, the Constitution sets out that "men and women shall be equal before the law in all spheres of political, economic, social and cultural life."<sup>92</sup>) However, the *Lei de Terras* does not establish any intra-community mechanisms or safeguards for preventing or resolving community-level gender discrimination or violations of women's land rights. While instances of intra-community gender discrimination may be appealed to the district courts, women may face difficulty accessing such fora.

To ensure women's involvement in decisions about community land, the Technical Annex to the *Lei de Terras* requires that women actively participate in and are present during community delimitation exercises. For example, the Technical Annex provides that: the representative coordinating committee include "men and women with different socio-economic and age groups within local communities;"<sup>93</sup> and that the forms completed during the delimitation process be signed by no less than three and no more than nine "men and women from the communities, chosen at a public meeting."<sup>94</sup>

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88 *Ibid.*, Article 24, 25, inferred.

89 *Ibid.*, Article 18(1(c)).

90 *Ibid.*, Article 10(1). "National individual and corporate persons, men and women, as well as local communities may be holders of the right of land use and benefit."

91 *Ibid.*, Article 16(1).

92 Constitution of Mozambique, Article 36.

93 Technical Annex Article 5, section 2.

94 Technical Annex Article 6, section 3. See further: Technical Annex Forms 1 and 3.

## Implementation of Mozambique's *Lei de Terras* (1997)

Despite widespread education and sensitization efforts by civil society organizations and the *Centro de Formacao Juridica e Judiciaria* (CFJJ),<sup>95</sup> 15 years after the law was passed, implementation remains weak. This is largely due to the fact that the Mozambican Government has not allocated adequate funding, training, or personnel to regional land administration bodies, and has instead focused primarily on promoting private investment.<sup>96</sup> As a result, land rights acquired by custom and occupation remain unmarked on cadastral maps.<sup>97</sup>

Meanwhile, over a decade after the *Lei de Terras* was passed, despite a widespread campaign to publicize the *Lei de Terras*, it appears that rural Mozambicans have little awareness of their land rights under the law; even in those instances where people do know that they have land rights, they often have little idea of how to claim their rights in practice or defend their rights during interactions with investors, state officials, or other powerful outside interests.<sup>98</sup>

Furthermore, the *Lei de Terras* fails to deal with certain key issues. Specifically: there are no state oversight mechanisms to ensure against intra-community injustices; no penalties for discriminatory intra-community practices; and no rules to protect the poor and other vulnerable groups from unconscionable land transactions. Mozambique's *Lei de Terras* also does not create any measures to establish downward accountability for community leaders. There are no oversight mechanisms to ensure that intra-community land management norms do not violate constitutional principles or that local leaders are managing community lands in good faith. Communities can bring the matter to court, but this process is expensive and bureaucratic and difficult for rural villagers to navigate.

In combination with other factors, these lacunae in the law have meant that women's and other vulnerable groups' land rights have not been adequately protected and en-

95 *The Centre for Legal and Juridical Training*, a legal training institution under the aegis of the Mozambican Ministry of Justice.

96 Direção Nacional de Terras e Florestas (DNTEF), Government of Mozambique, *Relatorio Nacional sobre Delimitacao de Terras Comunitarias* (2010).

97 Given the definition of 'community' in the *Lei de Terras* (1997) and the resulting implication that all land in Mozambique is already and always has been held according to custom by communities, according to the law's precepts, if communities had been delimited, cadastral maps would now show most, if not all, of Mozambique already occupied and with secure community-held title, leaving little if any 'free' land.

98 Carlos Serra Jr. and Christopher Tanner, "Legal Empowerment to Secure and Use Land and Resource Rights in Mozambique," in *Legal Empowerment in Practice: Using Legal Tools to Secure Land Rights in Africa*, ed. Lorenzo Cotula and Paul Mathieu (London: IIED, 2008), 61-70. After the Land Law was passed, civil society undertook an immense effort to educate Mozambicans about their new rights under the 1997 Land Law. The NGO umbrella group *Campanha Terra* launched an extensive educational campaign to publicize the new law throughout the nation. Towards this end, *Campanha Terra* created and disseminated thousands of comic strips, audio-cassettes, posters, tee-shirts and low literacy manuals depicting the central themes of the law and how to solve land disputes within the law's parameters. All materials were produced both in Portuguese and in over 20 local dialects. This material was used in seminars, meetings and theatrical displays in the capital city, municipalities across the nation, and in hundreds of rural villages throughout the provinces. The audio dramatizations of the comic strips were broadcast by Radio Mozambique as well as by three regional stations of the Catholic Church.

forced.<sup>99</sup> Despite the many provisions in the *Lei de Terras* that affirmatively assert and protect women's rights, research has shown that women's land rights remain vulnerable. According to one report:

*Very often the 'customary norms and practices' recognized by the Land Law do in fact go against Constitutional principles. This is especially the case today with increasing numbers of cases where women are widowed at a younger age than usual. Traditional mechanisms to provide security for [older] widows then do not come into play. Their rights are then vulnerable to capture by male community members who use customary systems to take over land ...*<sup>100</sup>

Similarly, there are no mechanisms (short of filing a lawsuit) to ensure that investors fulfill negotiated benefit-sharing agreements. The agreements are generally not recorded as formal contracts. As a result, an investor may arrive in a community, make significant promises of employment or infrastructure development, and then fail to fulfill these promises without facing legal repercussions.<sup>101</sup>

## Liberia's land legislation and MOU with the Land Commission

### Liberian Land Law

Between 1821 and the mid-1900s, the liberated slaves from the United States of America ('Americo-Liberians') who founded the modern nation-state of Liberia largely confined their rule and activities to the coast (the 'littoral'), leaving indigenous Liberians to inhabit and administer the inland areas (the 'hinterland') according to customary principles and leadership structures. As the Americo-Liberians

99 Should local leaders fail to stop a family from dispossessing a widow from her lands, the widow would have to take the matter out of the village to *localidade* or district officials, or to the lowest functioning level of the state justice system, located at the district headquarters. This is a difficult step for widows and other vulnerable community members to take, as they often do not have either the knowledge of or the resources to challenge land-grabbing within the formal legal system.

100 Seuane (2005) cited in Norfolk and Tanner, *Improving Tenure Security*, 13-14

101 Research indicates that almost every application by an investor for a right of land use and benefit does indeed include a community consultation. The extent to which the aims of community consultations have been achieved in practice is somewhat mixed, however. A review of 260 community consultations found that communities were not provided with a genuine opportunity to negotiate and bargain with investors for mutual benefits, payments or the provision of amenities in exchange for their land. Christopher Tanner and Sergio Baleira, *Mozambique's Legal Framework for Access to Natural Resources: The Impact of New Legal Rights and Community Consultations on Local Livelihoods*, Livelihood Support Program Working Paper 28 (Rome: FAO, 2006). In the vast majority of consultations, there was only one meeting, lasting only a few hours, with no time allowed for the community to discuss the matter among themselves. The borders of the land being requested were rarely physically verified. Calengo et al. find that such brief community consultations merely served to give the "whole process a veneer of legitimacy." A.J. Calengo, J.O. Monteiro, and C. Tanner, *Mozambique Land and Natural Resources Policy Assessment, Final Report* (Maputo, Mozambique: Centre for Juridical and Judicial Training, Ministry of Justice: 2007), 13-14. The research concluded that both investors and government officials tended to view consultations not as a mechanism to promote community development and partnership, but rather as an administrative hurdle to 'check off' before an application for a right of land use and benefit can be granted. Likewise, anecdotal evidence collected by Calengo et al. indicate that during community consultations government officials often appear to be aligned with investor interests rather than focused on protecting community interests, promoting partnership ventures, or ensuring that communities are appropriately compensated. Tanner suggests that because consultations "are rushed, do not allow for adequate internal consultation, and are rarely accompanied by detailed agreements that allow for systematic follow up and monitoring," communities 'participate' in consultations from an inherently defensive position. (Tanner, 2005, at 17) As a result, communities have been losing access to their land without gaining real benefits in return.

slowly expanded their domain inland, they did not declare all land and resources to be the property of the state, as was common colonial practice. Instead, in 1923, they agreed to recognize tribes' ownership of their land according to customary boundaries and allow local land administration and management to be ruled according to customary paradigms. The *Hinterland Act (1949) (An Act Approving the Revised Laws and Administrative Regulations for Governing the Hinterland)* legalized this arrangement and allowed chiefs to formalize tribal land claims by applying for a deed in fee simple.<sup>102</sup> Thirteen chiefdoms seized this opportunity and their combined 2.3 million acres (930,798 hectares) remain registered today in the name of these chiefdoms.<sup>103</sup>

In 1956, the Liberian Government changed its policy and, under the *Aborigines Law (1956) (Title 1: Aborigines Law, Liberian Code of Laws)*, claimed all lands as property of the state. As a result, with the exception of those thirteen chiefdoms that had acquired deeds, tribes no longer owned their lands, but rather became 'holders' and 'users' of state land.<sup>104</sup> It is not clear which of these laws remains in force today. Critically, the full text of the Aborigines Law (1956) was omitted from the Liberian Code of Law (1956) upon its revision in the mid-1970s.<sup>105</sup> If this omission was accidental, as some research suggests, the Aborigines Law remains operative. If the omission was intentional, however, this may imply that the Aborigines Law was repealed and that the Hinterland Act remains valid, making rural Liberians the legal owners of their lands.

The *Public Lands Act (1972–1973)* (Title 34 of the Liberian Codes revised) adds to this confusion. Under the *Public Lands Act*, chiefdoms are allowed to purchase their lands from the state for 50 cents an acre and attain private ownership. Between 1956 and 1986, 19 chiefdoms successfully secured 2.5 million acres (1,011,736 ha) under public land sale deeds held collectively by community members.<sup>106</sup> Since 1988, however, no chiefdom has secured title to their lands through this process.

Yet the *Public Lands Act* not only fails to define "public lands," but also contains important contradictions. On the one hand, by requiring that applicants purchase

102 *The Hinterlands Law (1949)* established that tribes were eligible to apply for deeds to establish documentary proof of their formal ownership over their lands. The full text of article 66, entitled 'Lands' is as follows: "Title to the territory of the Republic of Liberia vests in the sovereign State. The right and title of the respective tribes to lands of an adequate area for farming and other enterprises essential to the necessities of the tribe remain inherent in the tribe to be utilized by them for these purposes; and whether or not they have procured deeds from Government delimitating by metes and bounds such reserves, their rights and interest in and to such areas are a perfect reserve and give them title to the land against any person or persons whosoever." By providing indigenous persons with full ownership (not simply a right of use and benefit) and regardless of whether a formal deed had been issued, this law offered wider protection to community land holdings than any other African country at any time in history.

103 Alden Wily, *So Who Owns the Forests?*, 117.

104 Article 270, *Aborigines Law 1956* (Title 1: Aborigines Law, Liberian Code of Laws). The full text of articles 270– 272 reads: "Extent of Tribal Rights in Lands: Each tribe is entitled to the use of as much of the public land in the area inhabited by it as is required for farming and other enterprises essential to tribal necessities. It shall have the right of possession of such land as against any person whomsoever. The President is authorized upon application of any Tribal Authority to have set out by metes and bounds or otherwise defined and described the territory of the tribe thus applying. A plot or map of such survey or description shall be filed for reference in the archives of the Department of State within six months after the completion of such survey. The omission of the tribe to have its territory so delimited shall not affect in any way its right to the use of the land."

105 Alden Wily, *So Who Owns the Forests?*

106 *Ibid.*, 128.



Community meeting in Liberia.

such land from the state, the law implies that the state is the owner of public lands, and in this capacity may sell it to communities. On the other hand, the application process requires that tribal authorities consent to the sale of land and that the County Land Commissioner<sup>107</sup> be satisfied that the land in question is not a portion of the Tribal Reserve — an implication that tribes remain the owners of such land.<sup>108</sup> Such ambiguities in the legal framework governing land in Liberia have been compounded by corrupt and disorganized state land and natural resources management. Much of this has hinged on the fact that the Public Lands Act authorizes the President to lease any portion of public lands “not appropriated for other purposes” to any “foreign individual, corporation, or company for engaging in agricultural, mercantile, or mining operations in Liberia”<sup>109</sup> to any “foreign individual, corporation, or company for engaging in agricultural, mercantile, or mining operations in Liberia”<sup>110</sup> for a period of up to 50 years, with a possible 50-year extension.<sup>111</sup> Under the *Aborigines Law and the Public Lands Act* the Liberian government granted at least

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107 The *Public Lands Law 1972–1973* established the basic structure of land administration in the counties; this structure is still in force today. The two main government officials responsible for local land administration are the County Land Commissioner and the County Land Surveyor. The County Land Commissioner is responsible for shepherding the Public Land Sale process, addressing land conflicts and addressing other land-related matters in the county. The Land Commissioner must also keep “an accurate chart of the plots and parcels of public land in the county,” keep note of all of the land that has been converted into private land under the public land sale process, and send quarterly reports to the Department of Justice concerning all transfers of title to public land in the county.

108 Chapter 3, section 32. It should be noted that in 1974, the Land Registration Law was incorporated into Chapter 8 of the *Property Law 1972–1973* (Liberian Codes Revised, Title 29). According to Alden Wily, section 8.52(d) of this law is relevant to customary land rights, and describes customary land rights as an encumbrance on public lands that must be recorded and protected as ‘tribal reserves’ or ‘communal holdings’ in the event of systematic land registration (Alden Wily, *So Who Owns the Forests?*, 139).

109 Chapter 5, section 70.

110 Chapter 5, section 70.

111 All leases must be approved and ratified by the Legislature.

47 communities deeds to their land, which in combination appear to cover a total of 6.8 million acres (2,751,922 ha) or 29% of Liberia's total land area.<sup>112</sup> However, even this documentary evidence of community land ownership has not impeded the government from granting investors long-term mining and forestry concessions over lands owned by communities.

## The Community Rights Act (2009)

After the end of the civil war, to address United Nations sanctions against Liberian timber, the Johnson Sirleaf Government cancelled all existing forestry concessions and passed the *National Forestry Reform Law (2006)* (NFRL). Under the NFRL, communities holding deeds have the right to receive a portion of the profits accrued by the corporations granted logging concessions within their lands<sup>113</sup>. The NFRL also mandates that local communities be fully engaged in the sustainable management of the forests of Liberia.<sup>114</sup> To this end, the Forest Development Authority<sup>115</sup> issued regulations designed to grant user and management rights to local communities, transfer control over forest use to communities, and build local communities' capacity for sustainable forest management.<sup>116</sup> The resulting *Community Rights Act (2009)* (*An Act to Establish the Community Rights Law of 2009 with Respect to Forest Land*) defines communities' rights and responsibilities concerning the management, use and benefits arising from income-generating activities undertaken on community forest lands. Although it lacks clarity in some areas, it emphasizes protecting the rights and interests of communities. To this end, it provides that:

- ▶ All forest resources on community forest lands are owned by local communities.<sup>117</sup>
- ▶ Communities have the right to manage and administer the forest resources located on their customary lands.<sup>118</sup>
- ▶ Communities must set up a governance framework for the management of their forest resources.<sup>119</sup>
- ▶ Any decision, agreement or activity affecting the status of community forest resources shall not proceed without the prior, free, informed consent of the owner community or communities.<sup>120</sup>

112 Alden Wily, *So Who Owns the Forests?*, 117, 128, 145. Alden Wily notes that while conducting fieldwork she uncovered evidence to support these figures, neither she nor other researchers have been able to confirm this information in official Liberian records. (Personal communication)

113 However, the majority of communities in Liberia have not yet received such payments.

114 Chapter 10, section 10 1(a).

115 The Forest Development Authority (FDA) is the government body responsible for administration and management of Liberia's forests and timber resources.

116 Chapter 10, section 10.1.

117 *Community Rights Act 2009*, section 2.2(a).

118 *Community Rights Act 2009*, section 3.

119 *Community Rights Act 2009*, section 4.

120 *Community Rights Act 2009*, section 2.2(c).

- ▶ Anyone harmed by a violation of the Community Rights Act 2009 has the right to seek redress in a court of law.<sup>121</sup>

Importantly, the *Community Rights Act 2009* defines customary land as *owned* by the communities living on it — whether or not there is any formal documentation. The Act’s definition of ‘customary land’ is “Land, including forest land, *owned by individuals, groups, families or communities through longstanding rules recognized by the community.* To be recognized as customary land, it is not necessary for the land to have been registered under statutory entitlements.<sup>122</sup> Accordingly, the *Community Rights Act (2009)* appears to establish that all communities currently holding land according to customary rights *already own* their land (whether they have a document or not) and moreover have a degree of control and jurisdiction over these lands. It remains to be seen whether this pronouncement — made only in the ‘Definitions’ section of the *Community Rights Act (2009)* — clarifies the status of communities’ customary land rights in Liberia.<sup>123</sup>

To address the resulting legal ambiguities, in 2009 the National Legislature established a Liberian Land Commission. The Land commission is tasked with researching the current state of land affairs in Liberia and initiating the process of drafting a new Liberian land policy. The Land Commission’s purpose is to “propose, advocate and coordinate reforms of land policy, laws and programs in Liberia.”<sup>124</sup>

With the appointment of the Land Commission, Liberia’s current policies, laws and regulations are now undergoing a review. Importantly, the Liberian Government recognizes that the protection of rural community land rights is a critical component of this transition. In this vein, the Land Commission’s first action was to ask President Johnson Sirleaf to place a temporary moratorium on the sale of public land. This moratorium came into effect on March 10, 2010. In April 2011, an Interim Public Land Sale Process was unveiled. The moratorium continues to remain in place, however, “until a thorough review of the full processes, including verifying the issue of existing tribal certificates” is complete.”<sup>125</sup>

121 *Community Rights Act 2009*, section 7.

122 *Community Rights Act 2009*, section 1.3, emphasis added.

123 As subsidiary legislation to the *National Forestry Reform Law 2006*, the *Community Rights Act (2009)* does not set out a clear administrative process for formalizing land claims. The only administrative processes outlined fall under a section called ‘Community Forest Management’ and are to be overseen by the Forest Development Authority. The *Community Rights Act (2009)* states that to formally claim management responsibility for its forests, a community must follow these procedures:

1. Establish a Community Assembly (supervised by an Executive Committee), which “shall be the highest decision-making body of the Community with respect to community forestry matters.” (*Community Rights Act 2009*, section 4.1(a))
2. The Community Assembly must then “adopt a vision of community forest management” and “approve a set of Constitutions and By-laws to govern community forestry operations” that are “consistent with the Constitution and laws of Liberia as well as regulations by the [Forest Development] Authority.” (*Community Rights Act 2009*, section 4.1(j))
3. The community must also develop a Community Forest Management Plan approved by “the Executive Committee, the Community Assembly and the [Forest Development] Authority.” (*Community Rights Act 2009*, section 6.4(d))

124 Land Commission of Liberia, *Annual Report: January-December 2010*, <http://www.lc.gov.lr/doc/AnnuaReport2010.p>

125 Personal interview with members of the Land Commission.

## The MOU with the Liberian Land Commission

The Community Land Titling Initiative was originally designed to determine exactly what level of support communities need in order to successfully navigate the administrative procedures detailed in Liberia's *Public Lands Act 1972-1973* and secure deeds to their communities' lands. However, after President Johnson Sirleaf temporarily placed a moratorium on the issuance of public land sale deeds in March 2010, the project worked with the Land Commission to sign a Memorandum of Understanding (MOU) that contained an alternative procedure for the project to follow, loosely based on the *Community Rights Act (2009)*. This agreement established a working relationship between the Community Land Titling Initiative and the Land Commission, the spirit of which recognized and validated the study communities' efforts at documenting and formalizing their customary land. The central tenets of this MOU are set out below.

### **Relevant sections of the Memorandum of Understanding (MOU) between the Sustainable Development Institute (SDI), the International Development Law Organization (IDLO) and the Land Commission of Liberia**

Now, therefore, the Land Commission, IDLO and SDI, in consideration of the mutual covenants and conditions set forth in this MOU, enter into an agreement concerning the legal procedures that the Project will follow from July 1, 2010 until December 30, 2010 or the end of the project, if extended:

1. From March 2010 until the President ends the moratorium on the use of the Public Land Sale Deed Act or until the Land Commission's completion of the Act's review and revision, SDI and IDLO will work with the study communities to undertake the following processes, commencing with the process described in Section 4 of the CRA 2009:
  - a. Establishing Executive Committees to lead their communities through the foregoing processes;
  - b. Meeting with their neighbors and peacefully harmonizing boundaries; marking these agreed boundaries by brushing, planting soap trees or establishing other customary markers; and documenting their agreements with their neighbors attesting to the agreed boundaries;
  - c. Drafting and adopting by-laws within the framework of the Community Rights Law to govern intra-community land and natural resource administration;
  - d. Drafting and adopting intra-community land and natural resources management plans.
  
2. Once the Government establishes and adopts a revised "Interim" public land sale/land titling process ("The Revised Process"), which should be completed by the end of

August, 2010, SDI will work to help the communities to follow this Revised Process to the communities' successful and complete land documentation or titling application.

3. During the period of the interim public land sale process, the Land Commission will work with SDI and IDLO to assist the local communities in the study to begin identifying their borders and to obtain an official, government-issued title or deed.
4. This Memorandum of Understanding marks the beginning of an understanding that the parties are henceforth committed to working together on issues of land policy in Liberia. It is the parties' hope and expectation that the data gathered from the study communities' piloting of this interim process will support the Commission's work going forward.
5. IDLO and SDI will report quarterly to the Land Commission to ensure that it stays abreast of all evolving project developments. To facilitate this and to ensure that the project's findings can immediately inform the Commission's work, SDI and IDLO will meet quarterly with the Land Commission and present all findings and analysis collected to date.

This MOU, signed by SDI, IDLO and the Land Commission in June 2010, established an extra-legal but officially sanctioned process that was used to direct community activities. The study communities were cognizant of this agreement with the Land Commission; SDI ensured that the study communities were aware that, due to the moratorium on public land sale, they were engaging in an experimental procedure. However, based on the agreements set out in the MOU, SDI also assured the communities that their efforts would eventually result in deeds or titles for their lands. This assurance further strengthened communities' efforts, as it provided a formal agreement that they would be beneficiaries of the new (or amended) land policies.

The following section details the study communities' experiences following these legal processes, and summarizes some of the initial impacts of the community land documentation activities.



Community meeting in Uganda

# PROJECT IMPLEMENTATION AND FINDINGS

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**W**HILE THE THREE NATIONS' LEGAL and administrative procedures differed significantly, the community land documentation processes followed by the study communities included some version of the following six general steps:

1. Creation and election of a coordinating or “interim” committee;
2. Boundary harmonization with neighbors (to define the limits of the land being documented) and physical demarcation of those boundaries;
3. Drafting and adoption of community rules/by-laws/constitutions to govern community land administration;<sup>126</sup>
4. Drafting and adoption of community land and natural resources management plans;
5. Election of a “Governing Council” responsible for the administration and management of community land and natural resources; and
6. Administrative steps, including formal surveying or government geo-referencing and completion of application forms.<sup>127</sup>

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

It should be made clear at the outset that although many of the study communities fulfilled their obligations under the national documentation processes, due to various political and state resource barriers not one of the communities has yet received a document for its customary lands.<sup>128</sup>

The communities' experiences and all findings relative to these processes are briefly described below, under the following subject headings: 1) Conflict resolution and prevention (encompassing boundary harmonization and demarcation); 2) Intra-com-

126 Although this was not a required component of Mozambique's delimitation process, to ensure parity it was added to the activities the Mozambican communities were required to complete.

127 For further details of the communities' experiences carrying out each step of the process and all of the field team's relevant observations, please see the series of project reports, available at: <http://namati.org/work/community-land-protection/Phase-One-Findings-and-Reports>.

128 In Liberia, due to the President's moratorium on public land sale, it was not possible to assess Liberia's current legal and administrative community land documentation procedures. Rather, the procedures were set out in SDI's MOU with the Land Commission and did not require filling out forms or pursuing administrative processes. Accordingly, after the election of governing councils, the process stalled, as the communities had carried out all of the steps outlined in the MOU. In Uganda, by the time of publication, five of the original 14 project communities had applied to be incorporated as a Communal Land Association and were ready to have their lands surveyed by a certified Land Surveyor. However, the process has also stalled, due to the lack of a District Registrar. While waiting for the District Registrar to be appointed, LEMU identified an appropriate government surveyor and drew up a preliminary contract agreement to survey these five communities. In Mozambique, the communities are now awaiting only the final step of the community land delimitation process: community-wide verification of the technical file produced by the Provincial Geographic and Cadastral Services (SPGC). Once approved, the file is registered into the national cadastre and a delimitation certificate is issued. See the above section on the legal process for further details.

munity governance (encompassing by-laws/constitution drafting and the election of governing councils); 3) Conservation and sustainable natural resources management (encompassing land and natural resource management plan drafting) and 4) Administrative procedures.

The report then outlines the findings relative to the two central questions: 1) What type and level of support do communities require to successfully complete community land documentation processes? and 2) How best to leverage the community land documentation process to facilitate intra-community protections for the land rights of women and other vulnerable groups? The report concludes by setting out the main findings and making recommendations for policy and practice.

## 1. CONFLICT RESOLUTION AND PREVENTION: BOUNDARY HARMONIZATION

The community land documentation process is an important opportunity to address local land disputes, harmonize contested boundaries, and resolve intra- and inter- community land conflicts. Because boundary harmonization efforts necessarily expose all existing land conflicts and may instigate new disputes, facilitators should provide conflict-resolution training and mediation support throughout.

After spending months introducing the community land documentation process and supporting communities to elect intermediary groups and paralegals (as necessary according to treatment group), the work turned to the complex process of boundary harmonization. The boundary harmonization process comprised the following activities, each of which is briefly explained below: community mapping; boundary negotiation and conflict resolution with neighbors; and boundary demarcation (tree planting, GPS mapping, and MOU-signing ceremonies).

The community land documentation process is an important opportunity to address local land disputes, harmonize contested boundaries, and resolve intra- and inter- community land conflicts. However, because boundary harmonization efforts expose all existing land conflicts and tend to instigate new disputes, facilitators should provide conflict-resolution training and mediation support throughout.

## Community mapping

Before beginning boundary harmonization negotiations with their neighbors, each community completed a series of mapping exercises to ensure that there was internal clarity and agreement about community boundaries. In order to create the most comprehensive maps possible, the field teams advised communities to complete the mapping exercises in a fully participatory manner. To this end, they facilitated each community to divide into groups of women, youth and elders, each of which drew a map of their community identifying:

- ▶ All borders and landmarks defining those borders (such as roads, rivers, hills, trees);
- ▶ All neighboring communities;
- ▶ All towns and major roads;
- ▶ All man-made infrastructure, such as schools, clinics and churches;



Communities discussing participatory maps, Liberia.





In Liberia, SDI observed that by facilitating information exchange between towns, the mapping exercises helped community members to gain an overall view of the entire clan territory (rather than only of the town in which they resided) and become conscious of the limits of natural resource availability. The map-making also served to clarify the location of historical and cultural sites that were not known to the broader community; this clarification required the active participation of traditional authorities, called *Zoes*.<sup>130</sup> Interestingly, rather than seeking to obscure the locations of sacred sites so as to hide them from outsiders, the *Zoes* felt that by including the sacred sites clearly on all maps, the sites would be protected and respected in the future. In contrast, communities hesitated to map the location of valuable natural resources, as they were concerned that indicating the presence and locations of such natural resources on maps would potentially expose these resources to appropriation or usurpation by outside speculators.<sup>131</sup>

Interestingly, SDI observed that women tended to map more thoroughly than the men. In particular, women tended to include resources — such as water sources — pertinent to their livelihoods and household roles. SDI noted that when the women shared their maps, the men repeatedly said, “Oh, we forgot about that!” For example, while women usually mapped both the “men’s bush” and the “women’s bush”<sup>132</sup> in their communities, the men routinely forgot to include the women’s bush.

In Uganda, LEMU observed that efforts to map communities’ grazing lands aroused suspicions and insecurity, fostering community fears that LEMU was scheming to grab their grazing lands. Because the first maps were made at the inception of project activities before full community trust had been established, community members grew suspicious of LEMU’s stated intentions. In many communities, the leaders who drew the maps were later threatened for allegedly “conniving with LEMU” to sell the community’s land. However, subsequent mapping exercises undertaken by the community in a participatory fashion drew wide approval. Participants described how simply seeing their common lands land represented on paper was helpful and increased their sense of tenure security: “[The maps] helped us to know the boundary of our land which we used not to know.” Similarly, a group of the elders in one community explained, “We learned that a map helps to protect our land from outsiders.”

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130 In Liberia and Mozambique, the field teams noted that being sought out for their knowledge made the customary leaders feel included and valued. The mapping both honored their knowledge and gave them the space to take action to ensure protection of traditional religious sites. They began to feel that they were important contributors to the community work, which strengthened their commitment to the process.

131 The mapping exercises also made it clear that people were not fully aware of the boundaries of the concession areas in their communities and whether these areas could be included on their community maps; the deeper query was whether the concession areas still ‘belonged to’ the communities and if communities had any control over the long-term management of that land.

132 Sites of traditional cultural practice.

## Boundary harmonization: Negotiation and conflict resolution

The boundary harmonization process was the most challenging part of the community land documentation process for all communities. **The process not only unearthed every latent, unresolved land conflict — long dormant or festering for years — but also created new boundary disputes that flared up in response to the impending documentation efforts.**<sup>133</sup> The very exercise of drawing definite boundaries created a situation in which people were jockeying to claim as much land for their families as they could before the boundaries were finalized. As intra-community conflicts arose, community cohesion and cooperation often weakened, and rumors and accusations emerged. Parties to a conflict who knew that they were in the wrong often worked to undermine support for documentation efforts, seeking to keep land that they had acquired in bad faith. Inter-community land disputes revived memories of past conflict, reinvigorated divisions between families and clans, and at times aroused intense anger.

As such, boundary harmonization was the beginning of serious intra- and inter-community conflict, even in communities that previously reported no boundary disputes and generally peaceful relations with their neighbors. Land conflict resolution was therefore a critical component of the community land documentation process, and a significant part of the field teams' work. Anticipating the work involved in proactively addressing longstanding boundary disputes, the field teams rigorously trained community members on mediation and dispute resolution techniques before the start of boundary harmonization efforts. These techniques included strategies for mediation and compromise when discussing and agreeing on the boundaries of their communal areas. After the conflict resolution trainings, unless asked to intervene, the field teams left all but the full-service communities to negotiate boundaries with their neighbors on their own.

The boundary harmonization process generally took between two and ten months; communities reported holding up to a dozen separate meetings with their neighbors to arrive at workable compromises.<sup>134</sup> In Mozambique, 19 major conflicts arose during boundary harmonization; in Liberia, 37 major conflicts emerged. In Uganda, where the lands to be documented were the communal grazing lands — into which various community members had encroached, planting farms and building homes — LEMU counted roughly 423 intra-community boundary conflicts and 27 inter-community boundary conflicts among the 22 communities that LEMU originally

<sup>133</sup> The new conflicts were generally more easily resolved than the long-standing conflicts, as community members recognized these conflicts were the result of bad faith efforts to claim land before the technical survey.

<sup>134</sup> For a full description of the boundary harmonization process, see the full report at <http://namati.org/work/community-land-protection/Phase-One-Findings-and-Reports>.

began working with.<sup>135</sup> As a result of mediation efforts, communities successfully resolved many of these on-going land conflicts, some of which had been percolating under the surface of communities for decades. By the conclusion of the project, only nine land conflicts remained unresolved in Liberia, four in Mozambique, and eleven in Uganda.<sup>136</sup> Further analysis is necessary to understand why resolutions cannot be found in these instances and what interventions may successfully address the underlying roots of these conflicts.<sup>137</sup>

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### The boundary harmonization process

In Liberia and Mozambique, communities formed “boundary harmonization teams” (delegations of trusted community members) responsible for negotiating boundaries with representatives of neighboring communities. In both nations, these teams were characterized by an almost complete lack of women and youth, as general community sentiment appeared to support the idea that these discussions were solely the domain of community leaders and male elders.

Once a community had reached internal agreement concerning the boundaries of its lands, the harmonization team then met with representatives of the neighboring communities. These discussions were often protracted negotiations necessitating multiple meetings and lasting for months. In Liberia, SDI observed that a community’s successful boundary harmonization was primarily related to four main factors.

- ▶ *The composition of the boundary team.* SDI observed that coalitions including both elders and youth proved to be the most effective in negotiating boundaries, as they had complimentary negotiation tactics and viewpoints: the youth tended to see land as a tradable and negotiable commodity (“something a house is built on”) while elders tended to define land as “what our forefathers left us” or

135 Analyzed another way, in Uganda, there were an average of 1.2 external conflicts and average of 19 internal conflicts per community, while in Liberia there were an average of 0.95 external conflicts and 0.9 internal conflicts per community. In Mozambique, because the project worked at the level of the *Povoado* rather than the *Regulado*, there were fewer boundary conflicts — an average of 0.75 external conflicts and 0.2 internal conflicts per community.

136 Analysis should include questions such as: Does the conflict run deeper than the land at issue? Are there people in the communities who have an interest in the conflict remaining unresolved? If so, what steps must be taken to resolve these issues first so that the parties can yield their positions and compromise during negotiation?

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“where our forefathers are buried,” attaching strong emotional, historical and territorial sentiment. Although elders’ opinions were more respected, elders tended to be rigid in negotiations, while the youth tended to be more flexible. SDI also observed that including the Zoes and other traditional leaders in the boundary harmonization efforts helped to make the agreed boundary more legitimate to all. Finally, the paralegal communities were particularly successful at harmonization: four out of the five paralegal communities harmonized all of their boundaries within eight months of the paralegals’ election and training. This outcome was partly due to the close proximity of these paralegal communities, which allowed for collective efforts that fostered strong working relationships and cooperation throughout the boundary harmonization process.

- ▶ *A community’s degree of willingness to compromise.* Communities motivated by a desire to both maintain good relations with their neighbors and document their land claims valued compromise and moved through the process more quickly.
- ▶ *Complex allegiances.* Negotiations tended to be less successful where boundary lines involved towns with split allegiances between clans.
- ▶ *Loss of previously-approved boundary markers.* Communities tended to have difficulty harmonizing boundaries in situations where a pre-existing boundary marker (such as a tree) had been removed or a new division (such as a new road) had been created, challenging previously accepted boundary lines. In response, some communities used pre-existing boundary lines as a framework or starting point, working toward an agreed border that better reflected the current terrain. The team observed that many communities agreed to some form of land ‘swap’ with their neighbors to accommodate the current reality.

The field teams also noted that the boundary harmonization efforts went more smoothly when the boundary harmonization teams physically traveled to the boundary location — where they could see the evidentiary landscape and discuss the matter in practical, tangible terms — rather than when they remained in the village, meeting house, discussing the boundaries theoretically.

## Resolving inter-community boundary conflicts

The field teams observed that inter-community boundary harmonization disagreements often hinged on or were related to:

- ▶ Confusion stemming from the differences between customary and state-drawn boundaries, with each community asserting as valid the boundary system that is most favorable to their own land claims;<sup>138</sup>

<sup>138</sup> In Liberia and Uganda, the government has at times divided communities administratively without properly informing the people living in the area.

- ▶ The suspected or known presence of valuable natural and/or mineral resources located at the boundary line;
- ▶ Individual community members' encroachment over boundaries and subsequent building of homes or planting of crops, which establish a claim to land technically located within another community (Liberia) or within the common grazing lands (Uganda); and
- ▶ The past division of families or clans due to internal power struggles or intra-community disagreements, where one side of the conflict split off and formed a new community. (Such land conflicts tended to be more about power, control, authority, autonomy, and pride than about land — and were the most intractable.)

Furthermore, both LEMU and SDI observed that in some instances, a boundary disagreement was not authentically about a boundary at all, but rather an internal elite's tactic to keep the community focused on external threats while he continued to claim community land as his personal property. Often, these individuals were community members who maintained influence within the power structure of their local communities, despite living in the capital cities of Monrovia or Kampala. LEMU also noted that the inter-community boundary disputes tended to be based on deep and long-standing power struggles related to territory, resources, affiliation and control.

The field teams observed that communities employed a variety of creative and flexible strategies to arrive at a compromise and harmonize their boundaries. The strategies tended to be tailored to the type of boundary conflict, as well as the relationship and history of the communities involved. Specifically, the field teams observed that typical boundary conflict resolution strategies employed included:

- ▶ *Agreeing, more or less, with one community's definition* of the boundary.
- ▶ *Dividing the land in half.* Some communities elected to divide the disputed land equally, each conceding half the land they believed to be theirs.
- ▶ *Allowing disputed towns or households to choose their preference.* In situations where differences between administrative/state and customary boundaries caused conflict and confusion, clans often decided that it was best to allow the towns or families at the center of the boundary dispute to decide — either as a group or individually — where they felt they most belonged.<sup>139</sup>
- ▶ *Locating and compromising on the colonial or administrative boundary.*

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<sup>139</sup> Interestingly, although it was presented to them repeatedly as a compromise solution, communities did not choose to resolve boundary conflicts by sharing the disputed land as a common area, recorded on formal documents as owned by or belonging to both communities with equal rights of use and access.

Positively, most communities were generally able to come to an agreement, although often only after weeks or months of deliberation, mediation, and oftentimes the intervention of regional and district officials. One Mozambican example of a particularly multi-faceted inter-community conflict and its resolution is detailed below.

## **The boundary conflict between Guiconela-Guifugo and Painsane Communities**

The communities of Guiconela-Guifugo and Painsane are located along the coast in the District of Jangamo. They are separated by a common boundary identified by massaleiras trees and concrete markers.

In the past, before Mozambican Independence, the community of Guiconela-Guifugo was led by a man named Thowane who had the habit of forcibly violating the wives of men who had gone to work in the mines in South Africa. One zone of the wider community revolted against this behavior, and banned Thowane from entering the area, threatening immediate assassination. As part of the revolt, the members of this zone seceded from Guiconela-Guifugo to become part of Painsane. Painsane thereafter counted this zone as part of its community, collecting taxes from residents, registering voters, and performing all other administrative duties. Guiconela-Guifugo, however, never accepted the zone's secession, and considered the area to have been "invaded" by Painsane, albeit with the consent of the residents themselves. In the ensuing decades, the communities had tried to resolve the matter, but reported that these negotiations always ended in death threats shouted between leaders.

The zone became a point of conflict during the boundary harmonization exercises. Multiple meetings — some including emotional testimony recounting the trauma that led up to the succession — were necessary to arrive at a mutually-agreed solution. CTV's field team provided mediation support on a number of occasions. After much discussion of the origins of the schism, CTV led the communities to agree that the zone would thereafter be considered part of Painsane. However, while Guiconela-Guifugo argued that the boundary line between the communities was the road linking the city of Jangamo to the sea, Painsane did not agree. Representatives of both communities went to walk the boundary limit. They spent three days progressing along the boundary, stopping to confirm agreed limits and resolve disputed areas.

The final point of contention concerned a large stone in the middle of the Indian Ocean called "Guissimiane." The leaders of Painsane argued that the stone was considered to be part of their community. The leaders of Guiconela-Guifugo maintained that this stone

was a cultural site for their community, where their ancestors had performed traditional ceremonies. After much debate, it was revealed that there was an investor interested in developing a tourism venture along the beach, and so both communities wanted to claim the beach as theirs to reap any potential benefits of the investment. When CTV asked the leaders of Paindane if they were aware of the cultural significance of the rock to Guiconela-Guifugo, they conceded that Guiconela-Guifugo had ownership rights over the rock and the beachfront. With this concession, the boundary conflicts were resolved, and the two communities thereafter held a large celebration to mark the end of what had been a generations-old dispute.

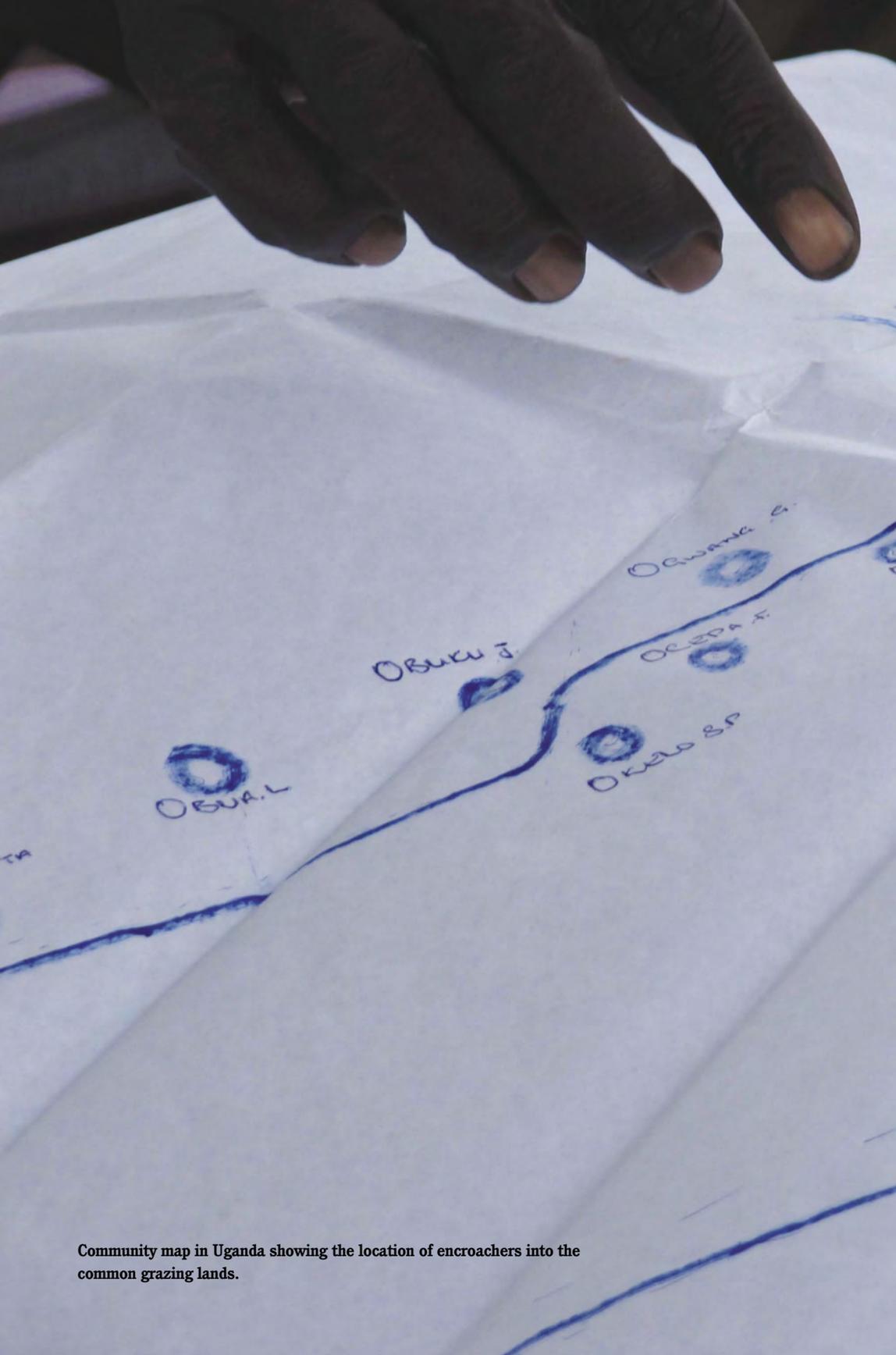
After coming to provisional agreements, the boundary harmonization teams each returned to their community to present the agreed boundaries and seek their community's assent. If either community expressed disagreement with a boundary, the boundary team reconvened with their neighbors to continue negotiations. In a few instances in Mozambique, the border agreement was rejected outright after consultation with ancestors, and the team had to renew discussions on the basis of the ancestors' edicts. Once members of both communities agreed on the negotiated boundary, the communities drew new maps and/or wrote up and signed provisional MOUs to document the agreement until they could undertake more formal demarcation activities.

On various occasions, the field teams were asked to mediate long-standing or particularly virulent land disputes. Most communities only engaged the field teams when their leaders were unable to confront the task, negotiation efforts failed, or a boundary dispute erupted. On these occasions, SDI, CTV and LEMU provided conflict resolution services to non-control treatment groups, as it was deemed dangerous and risky to deny mediation support in the event of a potentially explosive conflict.<sup>140</sup> When the conflict warranted further intervention, the field teams also called in customary and government officials to mediate. As a result of such efforts, the project successfully resolved various ongoing land conflicts in the study communities, some of which had been percolating under the surface for decades.

### Resolving intra-community boundary conflicts

In Uganda, LEMU observed two kinds of intra-community conflicts related to boundary harmonization: 1) conflicts that involved people living at the edges of the grazing land, who had encroached across the border and planted crops; and 2) conflicts that involved people who had moved into the middle of the grazing land and either built a home or cultivated farms.

<sup>140</sup> Although this support adulterated the purity of the group's differences in treatment, SDI and IDLO decided that the need to avert conflict and violence outweighed the sanctity of the experimental design.



Community map in Uganda showing the location of encroachers into the common grazing lands.

100  
AND

MAIN RIVER

100  
AND

OKELLO  
NELSON

SUGAR



LEMU observed that when dealing with bad faith encroachment into the common grazing lands, communities generally arrived at one of three resolutions:

- ▶ Allow the encroachers to stay where they were, conceding a loss of part of the grazing lands;
- ▶ Allow the encroachers to keep part of the land they had grabbed, returning part of the land to the community; or
- ▶ Evict the encroachers and give them a reasonable time period to move off the land.

Boundary conflicts involving those who had encroached at the edges of the grazing lands were usually resolved through mediation. In such situations, both parties to the conflict compromised, each conceding some land to arrive at a resolution. LEMU observed that communities were fair for the most part and did not make decisions that rendered community members landless or dispossessed them of their only lands and home. LEMU also observed that the communities knew exactly where the boundaries of the grazing lands were, and the encroachers knew the rights of the community to eject them.

In those situations involving people who had simply moved into the middle of the grazing lands to claim land in bad faith — encroaching despite owning ample other lands — communities usually gave those families or individuals a deadline of six to twelve months by which they had to move off of the land. In those instances where the individual or family had encroached onto the grazing lands because they had no other land to live on (due to their vulnerable status as widows, etc.) communities usually granted them alternative land at the edge of the grazing lands that could provide for their needs.

LEMU observed that communities often gave away some of what they knew to be community land, prioritizing the goal of resolving their conflicts and moving toward completion of the land documentation process.

## **Boundary demarcation: tree planting, MOU signing, and GPS mapping**

Upon successful harmonization of their boundaries, to support future boundary enforcement the field teams deemed it necessary to formally record communities' negotiated boundaries and create locally valid and recognized proof of the agreements. To this end, the study communities documented the agreed boundaries by planting boundary trees (in all three nations), signing MOUs with their neighbors (Liberia), taking GPS coordinates of the bounds of their lands (Mozambique), and formally surveying their land (Uganda).



Boundary tree planting, Nhabundo, Mozambique.

## Boundary tree planting

Communities in all three nations planted customary “boundary trees”<sup>141</sup> to mark the negotiated borders for posterity. During this process, representatives of all neighboring communities as well as members of all families whose lands abutted the boundary line were present to supervise and approve the boundary tree-planting, watching vigilantly to ensure that their land claims remained intact. In Uganda, LEMU observed that while men tended to dominate the harmonization negotiations, most often it was the women who showed up to do the hard physical labor of planting the boundary trees.

On some occasions, the very act of physically demarcating the agreed boundaries re-invigorated boundary disputes that had appeared resolved; both old and new conflicts flared up at the actual moment of planting. Such instances indicate that boundary disputes and encroachments may emerge over time, despite the presence of the boundary trees. In Uganda, one women’s focus group explained that, “The [boundary tree planting] process was fair. Conflicts were common, but the outcome was

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141 In Uganda, the communities planted *Omara-omara* (jatropha) trees as boundary markers, as whole trees can grow out of branches stuck into the ground, making it easy to plant them in clean, fence-like lines; in Liberia, communities planted ‘soap trees’, which have extensive root patterns and are fire-resistant; and in Mozambique, communities planted *Chantufa* trees, a locally accepted customary marker.

good. The whole community was involved... We feel satisfied. [However,] others still came up to disorganize the community even after boundary trees were planted.” In some communities in Uganda, community members later returned to find the boundary trees pulled up, and agreed boundaries violated. In such instances, the boundary trees were often replanted, and discussions held to address the violations. Such conflicts likely point to a trend of ongoing boundary disputes and encroachments that may likely emerge over time, despite the existence of the boundary trees and maps.

### MOU-signing ceremonies

In Liberia, what came to be called ‘MOU-signing ceremonies’ became a critical step of the community land documentation process. These ceremonies were formal gatherings that brought together representatives of all neighboring communities to sign permanent MOU agreements attesting to the agreed boundaries. The MOU-signing ceremonies were characterized by very high attendance, singing and dancing, speeches, religious readings and post-signing celebratory meals. While all of the signing ceremonies were peaceful, a few were characterized by last-minute challenges to the agreed boundaries or to the wording/descriptions of the agreed borders in the MOU. In such instances, the communities postponed the MOU-signing ceremony to re-negotiate the agreement.

Of particular importance to these MOUs were the signature pages; the MOU template that SDI prepared stipulated that there was no limit to the number of witnesses who could sign the document<sup>142</sup> On the premise that the more witnesses, the more legitimate the agreement, SDI encouraged not only all government officials, chiefs and elders to sign the documents, but also youth and women’s representatives, as well as anyone deemed to be an appropriate witness by the communities themselves. A few of the MOUs were signed by over 200 witnesses, with an average of 110 witnesses per MOU.

SDI observed that the MOU-signing ceremonies created a forum for government officials and local leaders to show their support for the community land documentation activities. The signing ceremonies were validated and legitimized by the participation and support of various local level leaders, including paramount chiefs, clan chiefs, unification town chiefs, district commissioners, district and county superintendents, and community leaders like traditional authorities, youth leaders, women leaders, and both Christian and customary religious leaders.<sup>143</sup>

To date, while most of the Liberian study communities’ agreed boundaries are holding strong, a few have been challenged or encroached upon by neighbors. Most of

142 See SDI’s “how-to” guide for communities, available at <http://namati.org/work/community-land-protection/Phase-One-Findings-and-Reports>.

143 The leaders’ participation seemed to stem both from local pressure (community expectations) and from the political motive of leveraging the community land documentation process to gain popularity in advance of the upcoming 2011 elections.



**The County Land Commissioner and County Superintendent signing MOUs, November 2010.**

these challenges have been quickly settled by reference to the maps and descriptions in the signed MOUs. One cause for concern, however, is the likelihood that some communities agreed on boundaries as a result of social pressure, a desire to complete the overall documentation process within the timeframe of the initiative, and/or because of perceived threats of new logging and mining concessions. In some of these cases, community members were not fully satisfied with the MOU agreements. It is therefore possible that community members will challenge some of these boundaries during the formal land survey.

### **Geo-referencing/Technical Survey**

In Mozambique, once a community successfully harmonized its boundaries with its neighbors and completed its cartogram, Provincial Geographic and Cadastral Services (SPGC) officials carried out technical geo-referencing activities. During this exercise,

boundary points identified on the community's cartogram (such as rivers, bridges or roads) were geo-coded from existing government maps. Coordinates of boundary points that did not appear on government maps were then taken by GPS (global positioning system). CTV observed that the provincial geographical database was lacking in information, leaving SPGC's technicians without the necessary information relative to regional rivers and roads. As a result, the technicians — along with community leaders and residents — often had to travel to and record all community boundary points. This travel was often arduous, as many of these boundaries were located deep within forests or in areas that could only be reached by foot and with difficulty. At various moments during geo-referencing, boundary conflicts again arose and had to be resolved by community leaders before the technical exercise could continue.

Of note is that most of the Mozambican communities did not feel that they were able to contact SPGC to schedule the geo-referencing, and requested the field team's help. CTV's field staff thus served as intermediaries between the communities and the SPGC officials throughout the geo-referencing process.

In Uganda, LEMU worked with a licensed government surveyor to survey those communities that had submitted their Communal Land Associations incorporation applications and decided to pursue a Freehold Title.<sup>144</sup> Unfortunately, by the time LEMU and the government surveyor began the physical surveys — after just two months of absence from the communities while waiting for the Registrar,<sup>145</sup> — a number of new encroachment-related conflicts had erupted. For example, when the surveying team arrived in one community, it found that community members had newly encroached into the grazing lands and that community members seeking to protect the agreed boundaries had been arrested because of serious fights that broke out between them and the encroachers. Together with LEMU and the surveying team, the community went to the police with their Communal Land Association constitution. On the basis of the Communal Land Association constitution and LEMU's advocacy, the case was dismissed, the boundary re-instated and the survey completed within three days.

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144 One fundamental principle of LEMU's work is that there are no universal solutions. Accordingly, LEMU went to great lengths to comprehensively teach communities about the benefits and drawbacks of all four land documentation options: 1) take no action; 2) draw maps and plant boundary trees; 3) seek a Customary Certificate of Ownership, or 4) seek a Freehold Title. Communities were then left to discuss the options among themselves. To ensure a robust intra-community decision process, LEMU did not ask communities to make this choice until many months into the project, after the boundaries had been harmonized and the Communal Land Association constitutions were nearly complete. Interestingly, all of the communities that successfully completed their constitutions and harmonized their boundaries — most of whom faced external threats to their grazing lands — chose to seek Freehold Titles.

145 See below the section on obstacles and the administrative process.

## Findings: Impacts on local land conflict and tenure security

To gauge whether the project had a net negative or positive impact on land conflicts in the study communities, post-service survey respondents were asked if the project had directly contributed to the creation or the resolution of a land conflict that personally impacted them. Positively, the cross-national data indicate that, as reported by respondents, the project resolved many more conflicts than it created. The reported rate of conflict resolution is much higher in the paralegal treatment communities, potentially indicating the robustness of this treatment.

### Creation of land conflicts

Cross-nationally, only an average of 5% of respondents across all three treatment groups reported that the project had instigated a land conflict that personally impacted them. Across the three treatment groups, 0% of Mozambican survey respondents, 9% of Liberian survey respondents and 7% of the Ugandan respondents reported that the community land documentation activities had directly created a conflict that impacted them personally. When asked to describe the conflict, respondents tended to answer by describing *community-level* conflicts that they felt had impacted their own lives.

When asked about the conflicts that the project had directly created, Ugandan respondents described three situations. First, they described how LEMU's work caused the community to reclaim grazing lands from encroachers, thus creating intra-community conflict. Second, respondents reported that the community land documentation work spurred land grabbers to more aggressively claim grazing lands in advance of final demarcation and documentation. Third, in one community, respondents explained that the project directly created a conflict of leadership between the leaders of the various villages sharing one grazing land, concerning "who is to lead the community."

**Critically, in Uganda a full quarter (26%) of survey respondents in the control group reported that the project had directly led to a conflict in their community.** This finding illustrates the risks involved in merely introducing the concept of formally documenting community grazing lands, handing out leaflets, and then leaving the community to work through the boundary harmonization process without providing additional conflict resolution and mediation support.<sup>146</sup>

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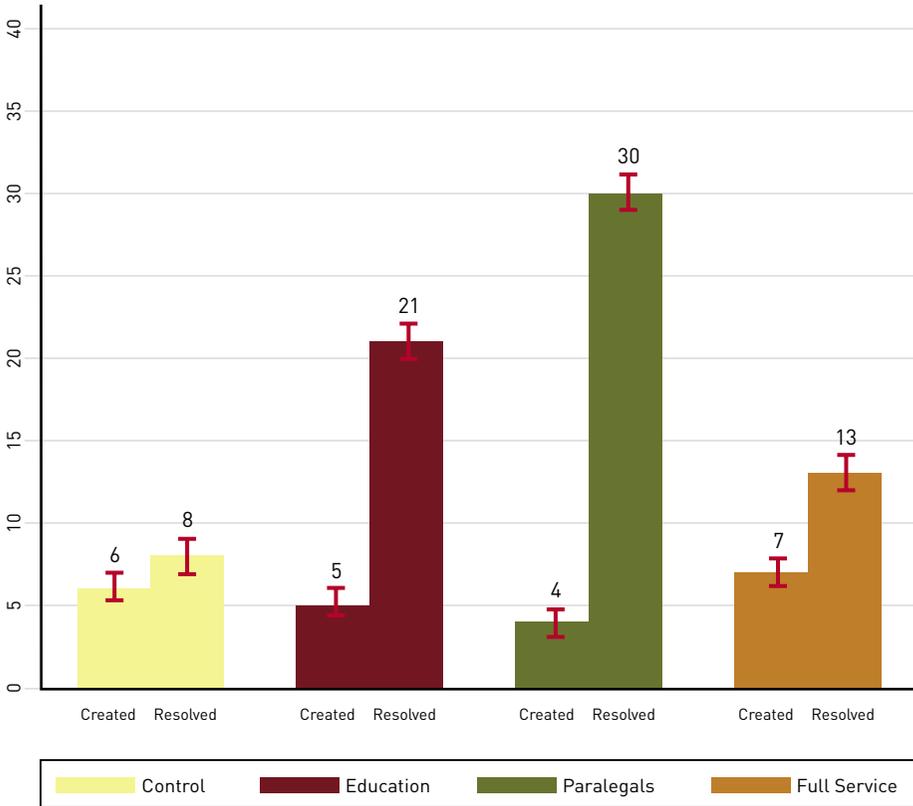
146 Now that this research has concluded, Phase II of the work will provide full services to all of the control group communities.

## Cross-national analysis of project impact on land conflicts<sup>147</sup>

Has this project...

- (a) created a land-related conflict that has personally impacted you?
- (b) helped to resolve a pre-existing land conflict that has personally impacted you?

(% respondents answering “Yes”)



<sup>147</sup> The majority of bar graphs in this report show the percentage change between the pre- and post-service respondent data. It bears noting that because the same individual respondents were interviewed in both surveys, the data indicate changes in all individual respondents' answers, averaged by treatment group. In other words, each percentage (as represented in the graphs) is the average difference by treatment group between individual respondents' pre-service and post-service answers to each question. Also important to note is that during any random sampling exercise, there is a potential for error relative to whether the respondent sample is fully representative of the population from which it is drawn. To account for this, each bar on the graph includes a thin, bounded line, or "error bar." The error bar represents the broader range of answers that may be found in the full population. Analysts can be 95% confident that the population's average lies within the upper and lower bounds of the error bar. The error bars are designed to allow the data to be easily compared using a 'visual overlap' test. If the error bars of any two bars overlap, then the difference between the two bars is not statistically significant—i.e., the difference in project impact on that treatment group cannot be said to be statistically significant. Conversely, if the error bars do not overlap, the difference is statistically significant and represents a real impact on the respondent pool for that treatment. Finally, the study randomized communities into control and treatment groups, but responses were collected from individuals. However, people living in a given village may share many characteristics in addition to being in the same treatment group. These shared characteristics, and not their treatment assignment, might be the reason that their survey responses are similar. In statistical terms, this means the data is "clustered" (i.e., individuals are being sampled from "clustered" groups, in this case, villages). Not accounting for this feature of the data would make the error bars appear smaller than they should be, and smaller error bars would make it seem as though the difference between two bars was statistically significant, leading to errors of interpretation. To take this into account, we adjusted for clustering by calculating the cluster-corrected standard errors for each outcome, and using those standard errors to generate the error bars using the method described by Schunn (1999). (Schunn, C. D. (1999). Statistical significance bars (SSB): A way to make graphs more interpretable. Unpublished manuscript.)

In Liberia, when asked about the kinds of conflicts that the project had created, survey respondents described how the boundary harmonization work either created or exacerbated conflicts over land between towns on the borders of the clans. Only one man reported an individual conflict, explaining that, as a result of the project activities, the location of his small-scale rubber plantation had been called into question (as it crossed a clan boundary line).

As in Uganda, some Liberian focus groups noted that the project actively created conflicts of power, authority and jurisdiction between leaders. Such findings lead to the conclusion that community land documentation work must be very carefully facilitated to include all respected leaders and carefully establish mechanisms to ensure that all leaders feel included and valued. Efforts should be made to proactively address any power conflicts among leaders.

Mozambican survey respondents did not report the creation of any conflicts during the project period. However, in one community CTV had to intervene and resolve a conflict of power and authority between the paralegals and a local government leader. This incident further lends support to the finding that intra-community power relations must be very carefully addressed throughout land documentation processes, particularly when introducing the paralegal model.

### Resolution of land conflicts

The data concerning the impact of project activities on conflict resolution are extremely positive: averaged across the three treatment groups, 62% of Ugandan respondents, 24% of Liberian respondents and 3% of Mozambican respondents reported that the project had directly contributed to the resolution of a land conflict in their community. These data are particularly meaningful when compared to the rates of conflict creation, and to the control groups, in which only 23% of Ugandan control group respondents, 11% of Liberian control group respondents, and less than 1% of Mozambican control group respondents reported that the project had led to the resolution of a land conflict that impacted them personally.

In Uganda, the project counted over 400 discrete intra- and inter-community conflicts among the 22 most involved study communities (some of which later rejected or withdrew from the project). When asked to describe the land conflicts that had been resolved, both focus groups and survey respondents spoke not of personal land conflicts but of community-level conflicts. They reported that the project had: **reduced intra-community land conflicts by securing the communal grazing lands** (“Demarcating land boundaries and planting trees on the boundaries stopped land conflicts;” “We now do not have land conflicts since we have planted boundary trees;” “[The project] stopped land boundary conflicts, because when the land grab-

bers heard about LEMU's project in our area, many of them stopped grabbing land that did not belong to them"); and **reduced land conflicts with neighboring communities**: ("[The project] has stopped neighboring communities from rivaling;" "It helped to stop non-community members from grazing their animals on community land"). Only a few respondents mentioned specific personal conflicts related to the project. One respondent explained how, "Using awareness created by this project, I have got my land back that somebody was claiming." Such statements may indicate the potential trickle-down effect that community-level land conflict resolution efforts may have on family-level land conflicts.

Indeed, in Uganda, post-service focus groups' reported applying their new boundary conflict resolution skills to personal boundary conflicts. Focus groups described how: "[The project activities] helped to change ways that people manage their personal land. People have learned to resolve conflicts amicably; people have learned better ways to harmonize boundaries [of family land] amicably" and "[The community land documentation activities] taught us on how to settle land disputes among our community by planting trees on our [family] boundary demarcations." Ugandan focus groups also relayed how the community land documentation efforts had led to greater community unity and cohesion, which respondents also described as "reducing conflict." They described how the project "Settled land disputes among community members by helping us have a common understanding" and "Made people understand the importance of coming together as a community and brought unity among members."

In Liberia, SDI worked to support communities to resolve all of the 37 intra- and inter-community land disputes that emerged. By the project's end, only nine boundary disputes remained unresolved. Asked to describe what land conflicts the initiative had helped to resolve, post-service survey respondents provided explanations such as: "We had a boundary dispute with [our neighboring community], but since SDI came it has been resolved;" and "The project helped solve a problem between our town and the nearby town." Only one respondent spoke about an individual land problem, reporting that what he learned about boundary dispute resolution helped his family to resolve a conflict with a neighbor concerning a "brushing [clearing] dispute on my family land." Focus groups explained how: "The project did not create any new problem, but it forced us to deal with some old conflicts between ourselves" and "The process of land ownership is something we want, so the old problems had to come out so we can resolve them."

In Mozambique, from an initial count of 19 land disputes in the study communities, only four boundary conflicts remained unresolved by the end of the initiative.<sup>148</sup> The

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148 Importantly, neither survey respondents nor focus group participants reported that the land delimitation process had created even one land conflict in any of the 20 study communities.

resolution of these conflicts was perceived by community members as one of the main successes of the initiative. One community leader explained how: “[The highlights of the project] were participatory mapping and the resolution of the boundary conflicts with [our neighbors]. These conflicts existed since colonial times, and we only managed to resolve them with the help of CTV and the district technicians.” Focus groups also made such statements as: “As a result of the community land delimitation work, we now know the boundaries of our community and will never leave this community to another. The idea of delimitation is good because no one can come to mess with what is ours.”

### New conflict resolution strategies

Notably, **focus groups in all three nations reported that the community land documentation process helped their communities to create new land conflict resolution strategies.** In some instances, community members explained that they now use national land law to support these efforts. For example, in Mozambique, one group explained that “Now we also use the formal *Lei de Terras 1997* in the resolution of our land conflicts!”

In other instances, participants tended to describe a renewed dedication and commitment to peaceful dispute resolution. In Liberia, when asked if they had created any new or different ways of resolving land conflicts over the past year as a result of the project activities, focus groups reported that: “We are more open to talking now. First everybody would just curse each other and leave, but now we sit and talk;” “[We solve disputes by] talking to parties, allowing each person to speak before deciding, being patient with decisions, be ready to negotiate and negotiate, and lastly, be willing to give [something] to get [something back];” and “Now we talk about things in the open. Also, we try to get other people with information involved in the discussions. We invite respected elders to intervene in some of our border discussion, and it is very helpful. We also learned from SDI teachings that ‘not all battles you can win.’”

Many Liberian focus groups reported that their communities successfully resolved their disputes only after recognizing their common roots. One focus group related a vivid story of their community’s challenges and how they resolved them:

*The boundary harmonization was the most difficult. We took a long time to solve that one. There was no understanding, the chairman was not working hard, we had some new clans that confused the borders, people were not serious, there were historical grievances, people were claiming areas they did not know about, and there were rumors... [To resolve these issues], we kept talking, bringing elders from different communities [to discuss] and we talked to people on the family level [sending people with family ties from our community to our neighbors]. [Eventually], we went back to our roots and realized that we are the same family.*

Another group explained:

*The boundary harmonization was the hardest because we had lots of disagreement. We could not come to one understanding. We try to use SDI's teachings but our neighbors tried to take our land by force, using traditional methods. We challenged that. We met them without traditional authority or people from Monrovia — we met them with our elders, and they brought their elders. We talked among ourselves as brothers and sisters, and we were willing to trade. Finally, we came to one understanding.*

Talking as “brothers and sisters” and realizing “we are the same family” allowed these groups to find agreement and end their boundary conflicts. While such outcomes are only anecdotal, they point to a shift towards community openness to learning or returning to non-violent modes of conflict resolution, particularly important after so many years of violent conflict.

## Potential areas of future concern relative to land conflicts and tenure security

Improved land tenure security is the overall goal of community land documentation. By supporting communities to complete their nation's land documentation process, the project hoped to contribute to the strengthening of community members' sense of tenure security.

Positively, **resolving long-standing land conflicts appears to have had an overall positive impact on land tenure security in the study communities.** Focus group discussions indicated that the process of harmonizing boundaries and resolving longstanding land conflicts promoted community harmony and increased community members' sense of tenure security. In Uganda, one community member reported that as a result of a successful boundary dispute resolution “people who could not look one another in the face for years [are] now laughing together.” Similarly, SDI observed that the boundary harmonization helped to improve communities' sense of security concerning neighbors' infringement of clan and town boundaries; community members expressed that resolving long-term conflicts and establishing boundaries clearly had helped them to feel more secure. For example, after one MOU-signing ceremony, one elder said: “Oh, thank God, today we know our boundaries and our boundaries are there forever!” At another MOU-signing ceremony, a man explained: “We now know our borders...With this project I know we will be able to live in peace with our neighbors.”

Unfortunately, at the time of the post-service survey, the study communities had not yet completed the community land documentation process or been issued documentation of their land rights. As such, the data on land tenure security were collected prematurely

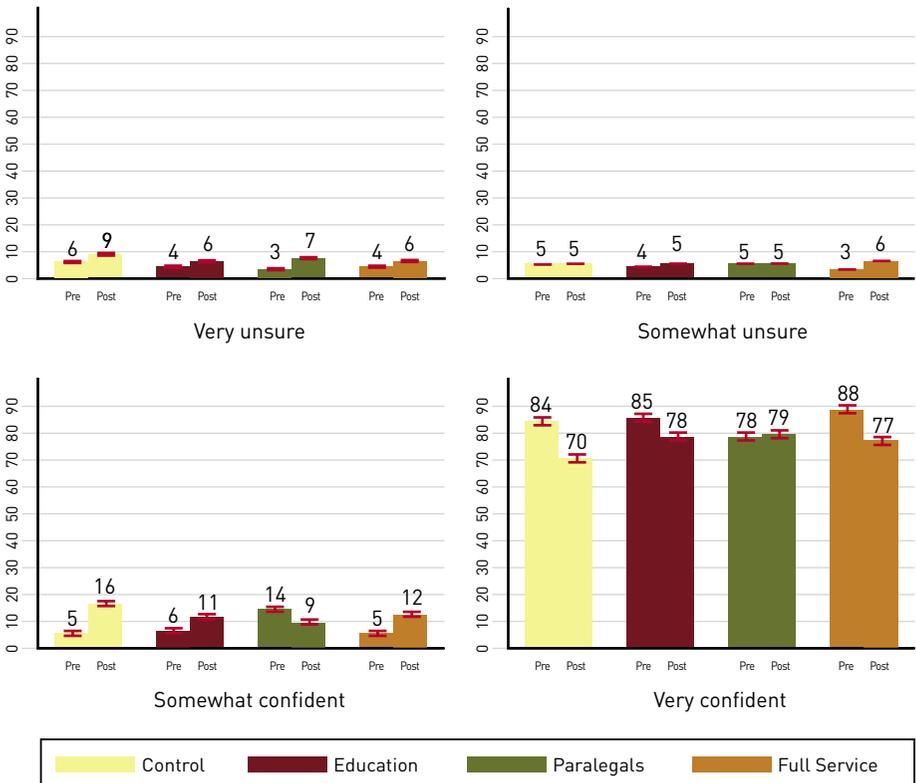
and are therefore inconclusive. However, the data offer insight into the community land documentation process, and illustrate **how critical it is to see boundary harmonization and documentation processes through to their successful completion.**

**When the post-service treatment group data is analyzed against the pre-service data, it appears that the project activities had a slightly negative impact on respondents' sense of tenure security;** more pre-service survey respondents reported being "very confident" of maintaining their current rights to shared common areas than post-service survey respondents. Meanwhile, the percentage of respondents that replied that they felt "very unsure" about their ability to maintain their current rights to the grazing lands increased slightly from an initial average of 4% in the pre-service survey to an average of 7% in the post-service survey across all groups.

### Cross-national: Confidence regarding ability to maintain current rights to shared common areas

Are you confident or unsure that you will be able to maintain your current rights to use these shared, common areas?

*(% Respondents)*



One possible analysis of the slight decrease in respondents' perceived tenure security is that, as explained above, the very act of starting the documentation process exposed existing land conflicts or exacerbated land grabbing in advance of formal documentation. Such findings highlight the risks of leaving land documentation work unfinished; **a community that starts the land documentation process and then rejects or withdraws from the effort partway through may face higher incidences of land conflict and greater tenure insecurity than before it began.**

Furthermore, **not all study communities were able to resolve all land conflicts within the span of the project.** In Uganda, despite over a year of conflict resolution efforts, some boundary conflicts have only grown more entrenched. Meanwhile, various intra-community conflicts that appeared to have been resolved were reinvigorated towards the project's end, either at the moment of the formal land survey or when it came time to reclaim the common lands from encroachers. These matters have necessitated LEMU's continued involvement. As described above, the same phenomenon may be true for the Liberian communities as well. To address these disputes, on-going monitoring and support for intra- and inter-community land conflict resolution will be necessary. Local government actors could provide such support, with reference to the boundary harmonization activities and the community's agreed rules for conflict resolution, as set out in the by-laws/constitutions (described below).

After the study communities have been granted deeds, delimitation certificates or freehold titles, new data should be collected to assess the full impact of project activities on community members' sense of tenure security.

# MAIN FINDINGS

1. The boundary harmonization exercises and related conflict resolution impacts provide strong proof that **community land documentation is not merely about demarcation. Rather it is as much 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 community land documentation work. They should craft curricula and trainings designed to support open, non-violent communication, compromise strategies, and mediation/dispute resolution tactics. Facilitating agencies should also stand ready to support resolution of particularly intractable land conflicts. Such efforts have the potential not only to resolve intra- and inter-community land disputes, but also to serve as a model of how to resolve land conflicts, which community members may thereafter apply to family-level land disputes.
2. **Map-making is not a neutral activity.** Mapping exposes all previous encroachments into or bad faith appropriation of community lands and identifies all of the community's natural resources and their locations. It therefore has the potential to instigate intra-community conflict. To prevent conflict, the entire community should be convened for mapping-related activities until all boundaries are harmonized, all land conflicts are resolved, and all boundary trees planted or markers placed. Facilitating agencies should provide extensive dispute resolution and mediation trainings before a community initiates mapping and boundary harmonization efforts.
3. **The goal of securing community land documentation created a strong impetus for communities to peacefully resolve long-running boundary conflicts.** In some communities, these boundary disputes had festered for generations, destabilizing relations with neighbors and contributing to tenure insecurity. However, compelled by the goal of documenting their land claims, communities worked hard to resolve the conflicts. For example, an elder in Liberia described how, "With the help of [this project] we were able to agree between ourselves on our borders. Some of these borders have been disputed or unknown for years, and now we are happy that we have come to one understanding about our land. This is a blessed day."
4. Communities prepared to make concessions or compromises to resolve their boundary conflicts **were able to progress more rapidly and productively through**

**the land documentation process.** These communities' capacity to compromise largely stemmed from their appreciation of the bigger picture: they were willing to sacrifice a few hectares in order to be able to document the remaining few *hundred* hectares. Their emotional focus was to protect the whole; communities who refused to compromise over two to three acres (or sometimes meters) tended to be more emotionally attached to the *conflict*, which sometimes allowed intra-community encroachment or appropriation of community lands to continue.

5. **The boundary demarcation exercises — characterized by renewed conflicts at various points along the negotiated and agreed boundaries — point to the importance of documenting every boundary agreement not only with trees or GPS coordinates, but also with a formal Memorandum of Understanding (MOU).** Before the a community demarcates its boundaries, communities should hold large formal ceremonies in which neighboring communities (including families neighboring the boundary lines) come together, critically assess all agreed boundaries, and formally agree to and witness the boundary agreements, as was done in Liberia. In addition, civil society and state actors should stand ready to provide conflict resolution support during the technical survey or GPS-mapping exercises.
6. In Liberia, SDI observed that **some communities hastily agreed to their borders in order to successfully complete** the project within the given time period. It appears that some communities agreed on boundaries based on social pressures, external cohesion or a perceived threat of concession encroachment. In some of these cases, community members were not fully satisfied with the agreement reached. Some community leaders expressed that the border agreements they signed were “not the real borders” and that their neighbors “took some of our traditional lands.” Such statements imply that the boundaries were agreed to without a true resolution of the underlying conflict. As they wait for the technical survey/GPS, communities have time to question and reevaluate the harmonized boundaries. During this reflective period, agreements may be fully accepted and/or challenged, and MOUs amended as necessary. However, conflicts may also flare up. It is therefore important to anticipate frictions during the technical survey of communities' borders and recognize the necessity of additional dispute resolution support. Overall, this situation teaches that boundary harmonization activities should be undertaken slowly, as rushed agreements may later be contested.
7. **The boundary harmonization process resolved many more conflicts than it created,** and supported communities to adopt new conflict resolution strategies. In

some instances, community members describe a renewed dedication and commitment to peaceful dispute resolution.

8. Once begun, **community land documentation processes must be seen through to their successful completion.** The boundary harmonization process has the potential to invigorate tensions and foster or exacerbate conflict, creating greater tenure insecurity in a region than before the intervention began. Government or civil society facilitators should carefully screen communities to ascertain whether they are committed to authentically resolving local boundary conflicts before beginning an intervention. Facilitators should clearly explain the risks of abandoning community land documentation efforts mid-way through the process and provide extensive conflict-resolution support until all land conflicts are resolved and all boundaries peacefully harmonized.
9. **The community land documentation activities created conflicts of power, authority and jurisdiction between leaders.** To address this, community land documentation efforts should be very carefully facilitated to involve all respected, trusted leaders and ensure that all leaders feel included and valued. Customary leaders in particular should be invited to play a role. Government or civil society facilitators should proactively address intra-community power struggles and work to establish inclusive, cooperative processes.
10. **Communities will need state support for enforcement of agreed boundaries over time.** As land scarcity continues to rise, encroachments may become more prevalent. There is a role for government actors to help communities to deal justly with encroachers and maintain the community lands as documented. In such instances, signed and witnessed MOUs may constitute critical evidence of community boundaries.

## 2. COMMUNITY GOVERNANCE AND LAND ADMINISTRATION: DRAFTING BY-LAWS AND LOCAL CONSTITUTIONS

If well facilitated, community land documentation efforts have enormous potential to galvanize communities to improve intra-community governance and promote participatory land and natural resources administration and management.

The Ugandan and Liberian data indicate that community land documentation processes that include comprehensive processes for cataloguing, discussing and amending community norms and practices have the potential to foster participatory rule-making, establish accountability mechanisms for local leaders, and promote transparency. As such, community land documentation efforts may present an exceptional and rare opportunity to create positive change that extends beyond customary land claims. In contrast, the Mozambican data illustrate that community land documentation processes that lack this component may fail to achieve positive governance changes.

After briefly describing the by-laws/constitution-drafting process in Uganda, Liberia, and Mozambique as well as the process of electing governing councils in Liberia, this section summarizes initial findings relative to intra-community governance. Further impacts of the constitution and by-laws drafting process are described below in the sections concerning natural resource conservation and women and other vulnerable groups' rights.<sup>149</sup>

### Drafting by-laws and constitutions

In both Uganda and Liberia, the community land documentation processes set out in Uganda's Land Act and in the MOU with the Liberian Land Commission include the drafting and adoption of community by-laws (Liberia) or Communal Land Association constitutions (Uganda).

In both countries, the process involved writing down previously unrecorded norms and practices, a delicate exercise requiring sensitive facilitation. To ensure that the by-laws/constitution drafting processes were well attended, participatory, iterative, transparent and grounded in custom, SDI and LEMU established a rigorous series of steps.

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<sup>149</sup> See Appendix D for full reproductions of a few Ugandan and Liberian constitutions and by-laws.

These procedures were both set out in the “how to” guides and taught repeatedly during monthly meetings.<sup>150</sup> Cross-nationally, the activity had four discrete parts:

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 drafting of second and third drafts of these rules (involving debate and discussion concerning the amendment, addition or deletion of rules);<sup>151</sup> and
4. Formal adoption by full community consensus or super-majority vote.

The field teams were particularly careful to ensure that all existing rules were recorded as a starting point from which to build the communities’ more formal by-laws/constitution. While the field teams mandated a fairly rigid *process*, the *content* was left completely open and flexible to ensure that communities felt free to draft their laws as they best saw fit.

For the most part, the study communities adhered to the recommended process, and months of robust argument and discussion ensued. Depending on the community, it took from three to eight months of weekly or bi-weekly meetings (the majority of which were held independently of field team facilitation) to proceed from a first draft to formal adoption.

To ensure that all voices and interests were represented during the process, intensive and continuous community mobilization was necessary. As a result of such mobilization efforts in Liberia and Uganda, a range of stakeholders, including women and youth, were fully engaged in the debates and adoption process of their community’s rules. **Across all study communities, more people actively participated in the by-laws/constitution and natural resources management plan-drafting process than all of the other project-related activities. The process proved to be a vital component of the community land documentation efforts; on many levels, it was the most transformative activity undertaken.**

Ten communities in Liberia and seven communities in Uganda were able to arrive at a second or third draft of their by-laws within the timeframe of the project. In

<sup>150</sup> These guides, which include detailed instructions for drafting community by-laws and Communal Land Association constitutions, are available at <http://namati.org/work/community-land-protection/Phase-One-Findings-and-Reports>.

<sup>151</sup> In between the second and third drafts of the by-laws, SDI’s and LEMU’s attorneys reviewed the drafts to ensure that they complied with Liberian and Ugandan law. In some instances, SDI consulted a judge to determine constitutionality. Communities were then guided to make necessary changes to the next draft of their by-laws.

February 14 2010  
Dyebalm Tow

By-Laws and rules for our land.

1. In line with the farming system.  
No one is allow to cross the boundary and make farm in the other Town Control area.
2. No one is allow to use chemical on any of the creek or a river in Kanweh
3. No one is allow to brush any of the forest in Kanweh by making farm.
4. Before any company can do any other thing in Kanweh, it should be the concern of the citizens. And the citizen should be able to benefit.
5. Every one should have their own villages. And no one is allow to cut palm or do any other thing with out the concern of the village owner.
6. On the line of building.  
If you are building, you make sure to complete it. But you are not to spoil the torch or the stick.

## Kangso town. Rule and Regulation.

For a Town to have a good understanding and a good Development. The town need to have a rule and regulation that corner it people. Therefore we the citizens of Kangso town have agree, to write this and regulation that will corner we all

Rule (3) No one is allow to brush or cut down tree in the forest of dahn-jakhe, and also no one is toilet.

penalty: if anyone is caught doing these art he/she will pay 25 cups of clean rice one beer bottle of red oil, one leg of meat and \$500.00 L.D cash

Rule (4) No one is allow to <sup>cut</sup> bitter-root in the town, our great grand-parent have this law for development of food and our areal

penalty: Anyone caught doing this art he/she will pay 25 cups of clean rice one beer bottle of red oil, one <sup>leg</sup> meat and \$500.00 L.D cash.

Rule (5) No one is allow to abuse publicly in the town. penalty: \$500.00 L.D cash

Uganda, five of the seven Communal Land Association constitutions were formally adopted by March 2011.<sup>152</sup>

The process provided communities with the opportunity to discuss local rules for the first time. Members of all the study communities reported that they had never before in their lifetime publicly debated and evaluated their community's rules, norms and practices. The transition from the first to the second draft was of particular importance, as this step allowed communities the space and time to reflect on their existing rules, to question the purposes of these rules, and to decide whether to keep each rule as it existed or to alter it to more accurately reflect community needs. In the process, women, youth and elders had the opportunity to both argue against rules they felt to be arbitrary and discriminatory as well as advocate for the inclusion of rules that would protect or promote their interests. (See further below, in the section on How To Facilitate Community Protection for Women and Other Vulnerable Groups' Land Rights.)

In Uganda, discussions on community rules were very dynamic, with communities taking the process seriously and engaging in authentic debate. The field team observed that communities enjoyed the process and grew animated as they began to discuss the various drafts of their community's constitutions. LEMU also observed that the transition from oral to written rules was challenging for community members. When simply asked to "shout out" existing rules and norms, community members could easily articulate their communities' rules relative to management of their grazing lands. However, when presented with the list of governance concepts that the Land Act's Regulations mandates that Communal Land Association constitutions include, communities' brainstorming processes often ground to a halt. The imposition of external guidelines appears to have made the process of "writing down their rules" an alien experience. Concepts that community members debated verbally with confidence suddenly became bewildering when trying to capture them in written form, even if the substance behind the concepts was identical. Low literacy levels only intensified the difficulty of this exercise.

LEMU also observed that asking community members to reflect on entirely new concepts such as "dissolution of the Communal Land Association" provoked intense debate and complicated otherwise clear discussions. For example, one community's first draft asserted that their Association "would never be dissolved because we will always keep cattle." Even choosing the Association's name was often a challenging

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<sup>152</sup> LEMU repeatedly stressed that the male and female head of every household in the community must be present for the final adoption of the community constitution, and that if three-quarters of all community households were not in attendance, there should be no formal adoption of the constitution. However, the constitution adoption ceremonies took place during the political season, so it became difficult for the communities to gather three-quarters of all community members for meetings. Community leaders reported to LEMU that the members who could not attend had informed them that as they had already participated in writing the drafts, they were not in disagreement with the content; they also expressed that their most significant concern was that their names be included as members of the Communal Land Association. As such, it is likely that some opposition to the constitutions may arise in the future, as members who were not present during the adoption may come forward to challenge rules. Such a situation may require the community leaders to call a General Assembly and review their constitution, a procedure set out in all constitutions. LEMU will continue to provide legal and technical support for such processes.



**Wilyec community in Uganda constitution adoption.**

task: communities debated about whether to name the Association after the dominant local clan, one of the villages, or the region. One community compromised by giving their Association the name of the stream that runs through the grazing land.

As per the project design, while LEMU assisted the full-service communities through the minutiae of this process, the field team left the education-only and paralegal communities to complete the constitution-drafting process on their own. While these communities did their best to write down rules in alignment with the subject headings set out in the *Land Act's* Regulations, their rules often lacked the detail necessary for a formal legal document. The first draft constitutions generally left out critical details regarding procedures for the election of office bearers, the dissolution of the association, and practices for future amendment of the constitution, among various other topics. Many communities simply wrote, "Elections will be carried out," without detailing an election protocol. LEMU observed that such concepts were new to community members, and the degree of detail called for in the Regulations left communities struggling and unsure.

LEMU's field team worked hard to address these gaps by generating community discussion of communities' *existing* systems of governance in their grazing lands. Yet the monthly education sessions devoted to helping the non-full service communities

address these sections of their constitutions were to no avail. Despite months of legal education and support, the education-only and paralegal communities reported that they were “stuck” and repeatedly requested LEMU’s assistance. After allowing these communities to struggle for three months or more, LEMU recorded their lack of progress and then stepped in to help all communities to arrive at a third and final draft in February 2011. A clear finding is therefore that **none of the education-only or paralegal treatment communities were able to arrive at a complete third draft without LEMU’s legal and technical assistance.**

It is also noteworthy that although Uganda’s Land Act (1998) sets out extensive suggestions for the contents of a Communal Land Association’s land and natural resources management plan and the Act’s accompanying Regulations prescribe a detailed model Communal Land Association constitution, communities naturally combined the intended contents of the two documents.<sup>153</sup> This was a natural consequence of the fact that their vast majority of the communities’ rules concern land and natural resource use and management. After observing this, LEMU determined that communities should be allowed to continue to combine the documents, as to do otherwise would be an artificial separation of what was clearly one coherent body of customary rules.<sup>154</sup> In Liberia, SDI observed the same patterns and also supported communities to combine their community by-laws and natural resources management plan into one document, split into two sections.

In Liberia, because of the nested structure of community governance in the study region,<sup>155</sup> SDI recommended a process in which each town first brainstormed its existing rules, which were then combined with all other towns’ rules and debated at the clan level. SDI observed that the study communities took the by-laws drafting process very seriously, and strictly adhered to the established process. For example, in those cases where a town did not have a resident who was sufficiently literate to write down the town’s rules, clans organized to provide a literate person from another town to help record their rules.

The process of transforming the Liberian communities’ first drafts (many of which were quite rudimentary) into second, third and final drafts was an invigorating one for community members. Discussions of community rules were dynamic, animated, and highly participatory. For example, elders in one Liberian community wanted their by-laws to include restrictions concerning access to and harvesting of palm nuts, a major source of

153 Land Act Section 25; *Third Schedule, Land Act, Cap 227, the Land Regulations, 2004*, Contents of a Model Constitution of a Communal Land Association.

154 For detailed explanations of the content of the Communal Land Association constitutions, see the national reports, available at <http://namati.org/work/community-land-protection/Phase-One-Findings-and-Reports>. Some of the constitutions are fully reproduced in Appendix D.

155 In the study region, multiple towns make up a clan; the initiative worked at the clan level. See the section on Project Design and Methodology above.

income for the youth.<sup>156</sup> The elders expressed that uncontrolled use of palm trees could lead to unsustainable use and diminishing returns. They further argued that youth's focus on palm harvesting was undermining the community's food supply; very few youth were planting rice and other locally consumed products, as they were occupied with planting palm, a non-food cash crop. The youth became alarmed and countered that palm harvesting was a major source of their income and therefore, they should "have a say" in the rules governing this resource. They argued that they were responsible for contributing to local development projects and needed income to support their commitments to their community and families. Interestingly, the women's group was called to intervene as a neutral arbitrator between the youth and the elders. The women concluded that, while some restriction was indeed necessary, the restrictions had to take account of the needs and interests of the youth. In the end, the community collectively agreed to a three-month annual freeze on gathering palm products to allow for food harvesting during the rice farming season.

As in Uganda, the rules recorded by the Liberian communities were simply written, and insufficiently detailed for formal legal documents. However, while Uganda's Land Act rigorously outlines what the Communal Land Association constitution must include, the Liberian process — as set out in the MOU with the Land Commission — did not detail the by-laws' required content. The process nevertheless involved creating entirely new procedures and protocols never before debated by the communities. SDI therefore deemed it appropriate to allow communities to craft their rules according to their preferences, with the assumption that as additional rules are found to be necessary, each community can amend its by-laws over time. To this end, SDI facilitated the study communities to include provisions for annual amendment procedures in their by-laws.

The Liberian communities' by-laws drafting process was necessarily long and drawn-out, due to the communities' decision to agree on each rule by consensus. Describing the process, Liberian participants explained how: "The rules were decided in clan wide meeting, with everyone — women and youths, took part. Everyone that wanted to speak spoke;" "We were plenty in the town hall. Women were talking;" "It was done in a clan meeting. We met in a big meeting and talked about the laws. We stayed for two days; people disagreed and agreed. It really helped us come together closer and make us to know each other;" and "The rules were decided in clan wide meeting, by the citizens of the clan ... It was the first time we had a discussion like this, so it was good we all took part."

Liberian focus group participants expressed their pleasure at having the opportunity to sit together as a community and talk about their rules. The men's focus group in one

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156 In all three nations, "youth" were generally men aged 18 to 35.

community explained: “Now people know why a particular rule is made for... Also, if someone [doesn’t] like the rule, they can say it and we can discuss it.” Echoing this, one women’s focus group described how, “People challenged some of the rules that did not make sense and made new rules to help the community.”

The extensive community engagement in rule drafting experienced in Liberia and Uganda was not seen in Mozambique, where, although very much in the spirit of the *Lei de Terras*, the activity is not a mandatory part of Mozambique’s land delimitation process. While CTV’s field team supported the Mozambican study communities to compile and analyze all existing customary rules concerning land, most Mozambican communities only completed the brainstorming or “shouting out” phase of the process. Of the 20 Mozambican study communities, 14 produced a first draft of the compilation of their customary rules, and only one (full-service) community produced a second draft.

However, CTV observed that community interest in the rule-drafting process was much higher than for the other community land delimitation activities, and that these meetings tended to be the most heavily-attended and participatory, with women in particular speaking up. Interestingly, CTV noted that in some communities the elders tried to keep youth out of the conversation, complaining that youth were irresponsible and that it was not their “place” to contribute to the discussions. Finally, as in Uganda and Liberia, CTV noted that the communities had difficulty producing coherent, legible and well-organized first drafts of their rules.

It remains to be seen if the study communities will implement and enforce their by-laws and constitutions over the long term. There will likely be a period of adaptation, amendment and reconfiguration to ensure that the by-laws/constitutions adequately reflect community interests and local implementation capacity. Further research and monitoring is needed to assess the long-term impacts of the by-laws and constitutions.<sup>157</sup>

## Electing community land and natural resources management bodies

In the Ugandan and Liberian land documentation processes, the adoption of a local constitution goes hand in hand with the election of a governing body responsible for overseeing community land administration and management. In Liberia, this body was called the “Governing Council.” In Uganda, these individuals are the elected officers of the Communal Land Association.

<sup>157</sup> These activities will be undertaken by CTV, LEMU and SDI as part of Namati’s Community Land Protection Program. For more information, see <http://namati.org/work/community-land-protection/>.

In Uganda, although the election of Communal Land Association officers is a mandatory step of the community land documentation process, none of the study communities were able to elect officers because, as directed by the *Land Act 1998*, this election must be conducted in the presence of a Registrar of Titles (Registrar) and no Registrar has yet been appointed for the region.<sup>158</sup>

In Liberia, some communities successfully elected governing councils after completing the by-laws drafting process. To facilitate the elections, SDI worked with communities to ensure that their by-laws included descriptions of the roles of the governing council members, criteria for council elections, details of council members' responsibilities in office, and procedures and criteria for removal from office, among other provisions. In their by-laws, communities tasked the governing councils with the responsibility for administering and managing community lands and natural resources on behalf of the community and ensuring that the by-laws and natural resources management plan are respected. Some communities also gave their governing councils the role of representing the community in meetings with investors and government officials concerning future community development.

While leaving communities to decide on their election processes, SDI advised communities that council members should represent each town as well as the diverse stakeholder interests in the community. SDI also suggested that councils include men and women, youth and elders, and that members should be honest, incorruptible, reliable and responsible. To this end, SDI facilitated communities to make lists of the characteristics they would like individuals on their governing councils to possess. Many communities included their lists of criteria directly in their by-laws. These criteria generally established that elected officers should be Liberians, married, resident in the community, of good moral character, and have a "good financial status."<sup>159</sup>

By the conclusion of the project timeframe, eight of the 20 communities had elected their governing councils.<sup>160</sup> SDI observed only some of these processes to be fully democratic: vested elites competed for control of the council in half of the eight communities. While the framework used to elect the governing councils had the basic tenets of democracy, SDI observed that the selection of the councils was not always

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158 Section 16(5) of the *Land Act 1998*. As described below in the section on Administrative procedures, despite multiple formal, written requests by both LEMU and the District of Oyam for the appointment of a Registrar in Oyam District, none has yet been appointed. Consequently, in Uganda, both the elections and the completion of the Communal Land Association registration and certification process are currently stalled.

159 See Appendix D for examples of communities' criteria for elected Governing Council members.

160 Communities generally followed a combined process of selection and election of Governing Council members. Some communities selected two people from each town and then called a large, all-community meeting at which clan residents from all towns voted on a few of these town representatives to be officers on the Council (Secretary, Treasurer, Chairperson, etc.). The other town representatives then became Council members. Other communities chose alternate methods; in one community, the by-laws called for each town in the clan to organize a five-person administrative committee, which then formed part of the clan-wide Governing Council.

fully participatory. While communities reported that they held elections, SDI's investigations revealed that some towns chose governing council representatives in a small caucus of elites. Positively, a number of community members, emboldened by the prior by-laws drafting process, spoke up against the unjust elections processes. Most of these councils were ultimately challenged and new, fully participatory elections held.

Interestingly, SDI noted that many communities also created mechanisms to hold their governing councils accountable: these communities elected parallel 'watch-dog' groups whose sole responsibility is to monitor the governing council and ensure that Council members do not abuse their powers or make decisions that run contrary to community interests. One community referred to this body as their "Citizen Committee."

In Mozambique, the election or selection of a permanent governing body is not a component of the community land delimitation process and was therefore not undertaken during the study period.

## Findings: Governance impacts

The most significant impacts of the Community Land Titling Initiative may be found in the Liberian and Ugandan communities' rules changes concerning intra-community governance. **These changes evince dramatic shifts in community conceptions of democracy, leaders' downward accountability, and the equitable administration of community lands and natural resources.** 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.

The project activities appear to have resulted in three significant shifts in various facets of local governance in the Liberian and Ugandan study communities. First, it appears that there has been some transfer of decision-making authority from local customary and state leaders to the community members themselves. Second, in the communities where there was weak leadership, community members instituted new mechanisms to hold leaders downwardly accountable and improve leadership. Third, the process appears to have had supported greater transparency and consistency of penalties for infractions. **Such shifts warrant further investigation: if the by-laws/constitutions are indeed implemented and enforced over time, the community land documentation process may promote democracy building and good governance at the local level.** These three trends are described below.

## Increased community decision-making authority

As a result of the process of drafting the by-laws/constitutions, the field teams observed the direct participation by community members in decisions previously taken solely by customary and state authorities. In Liberia and Uganda, the majority of post-service survey respondents who reported that there were changes to community rules reported that these rule changes were made predominantly by the full community together, not by leaders acting on their own authority.

In Liberia, across treatment groups, respondents reported that rule changes were made by the whole community together an average of 57% of the time. Analyzing the data from another perspective, when changes *were* made to community rules, the changes were reported to have been made by the whole community 82% of the time in the control communities,<sup>161</sup> 91% of the time in the education-only communities, 95% of the time in the paralegal communities, and 84% of the time in the full-service communities. This result is indicative of truly participatory by-laws drafting processes across all treatment groups.

The Uganda data are very similar. Post-service survey respondents reported that rule changes were made by the community together an average of 75% of the time, across treatment groups. Indeed, when changes *were* made to rules, the changes were reported to have been made by the community as a group 100% of the time in the full-service communities, 92% of the time in the paralegal communities, 95% of the time in the education-only communities, and 70% of the time in the control group communities. Of note is that in Uganda, the survey data indicate that the more legal support provided, the greater the community participation in rule-making. In comparison to both the pre-service and control group responses, this data indicate a fairly significant impact.

**Such shifts warrant further investigation: if the by-laws/ constitutions are indeed implemented and enforced over time, the community land documentation process may promote democracy building and good governance at the local level.**

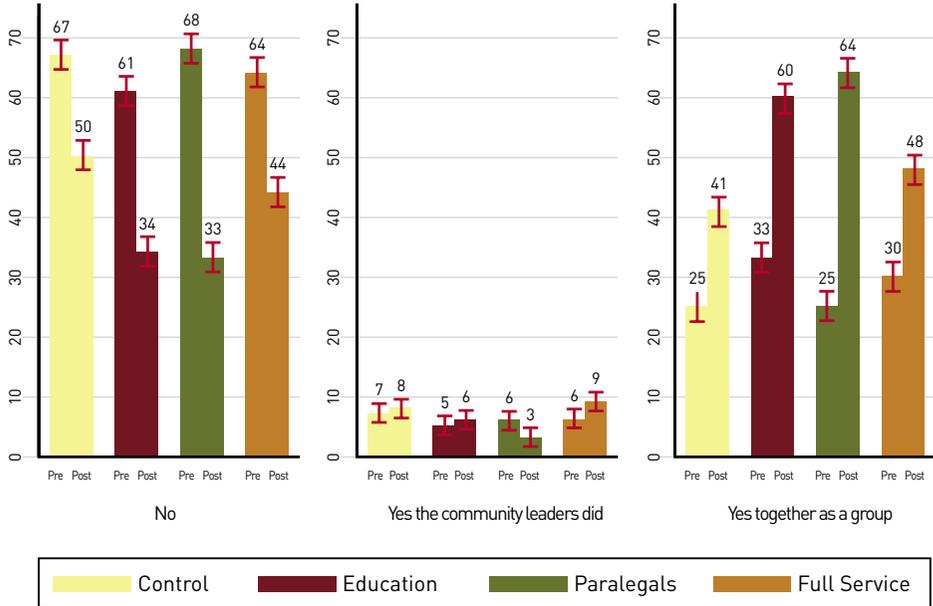
Taken together, the data from Liberia and Uganda indicate that the by-laws/constitution-drafting processes were highly participatory. This finding is positive, as one foreseen danger in leaving the education-only and paralegal treatment communities to complete the activities on their own was that a small group of elites and leaders

<sup>161</sup> In Liberia, the communities' desire to document and protect their customary lands was so high that they progressed with determination through the various community land documentation activities. Even the control communities, afforded no legal support, completed an average of 45% of the process. In Mozambique and Uganda, the control groups completed 25% and 0%, respectively.

## Liberia: Has the community changed the rules/introduced new rules governing the common areas?

Has the community changed the rules or introduced new rules governing the common areas?

(% respondents answering "Yes")



could have dominated the process, marginalizing women, youth and other groups. While these responses are not sufficient proof that this exclusion did not occur, the low percentage of respondents attributing rule changes to their leaders is promising. However, some degree of legal facilitation is necessary to ensure that these processes are fully participatory and not driven by local power-holders.

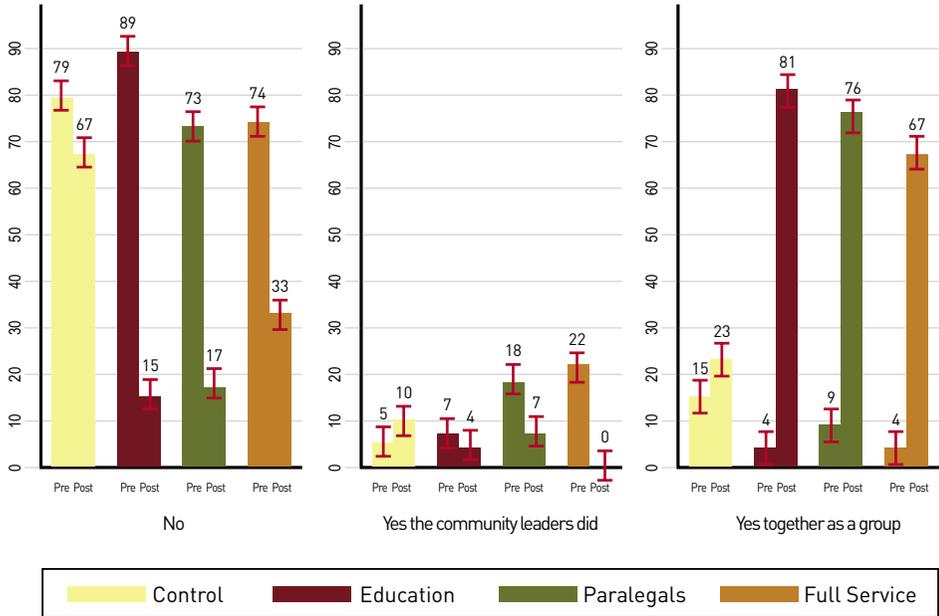
This shift in rule-making and monitoring responsibility away from individual leaders — customary or state — is evident across many of the survey questions pertaining to land and natural resources management; respondents repeatedly articulated a re-conceptualization of management responsibilities. In Liberia, when asked, “Who has the right and responsibility of determining whether or not to let others use common areas?” a combined 80% of post-service treatment group respondents named “the community as a group,” compared to a combined 30% of pre-service respondents, an increase of more than 200%. Similarly, in response to the question, “Who has the right and responsibility of monitoring or overseeing the use of common areas and natural resources found in these areas?” a combined 72% of post-service treatment group respondents chose “the community as a group,” compared to a combined 38% of pre-service respondents. The Ugandan data illustrate similar trends.<sup>162</sup>

162 For the data from Uganda, see the Ugandan report at <http://namati.org/work/community-land-protection/Phase-One-Findings-and-Reports>.

## Uganda: Has the community changed the rules/introduced new rules governing the common areas?

Has the community changed the rules or introduced new rules governing the common areas?

(% respondents answering "Yes")



To assess the validity of the data, post-service focus groups were also asked whether their communities had changed how community decisions were made in the past year, and if so, to describe such changes. Focus groups generally reported that decisions are now more often taken by a larger group — by consensus or vote — after listening to everyone’s opinions, rather than by a few leaders acting on their own. In Liberia, focus groups reported that: “There has been a change in decision making process: all the community members have to come together to agree or disagree on any new decision, and the voice of women is also considered;” and “Decisions are [now] made together as a group, not by few individuals, and conflicts are resolved harmonically in the presence of every member and neighbors.” In another community, the women’s focus group explained: “In the past elders and our big people made all the decisions. Now we call meeting for everyone to take part.” Similarly, in Uganda, focus groups explained that: “In the past, meetings were only held when there was conflict, but now members are supposed to come for meeting regularly — even when there are no conflicts — but to make decisions.”

However, it remains to be seen if such impacts will extend beyond the project activities; further research is necessary to continue to monitor future community rule-making and amendment processes.

Unfortunately, the project activities did not appear to have impacted community decision-making authority in the Mozambican study communities. Only 2% of control group respondents, 0% of education-only group respondents, 9% of paralegal group respondents and 5% of full-service respondents reported that their community made changes to its land and natural resources administration and management rules during the initiative. Interestingly, respondents across all Mozambican treatment groups reported more rule changes in the year preceding the intervention than during the year in which the intervention took place. Mozambican focus groups were unanimous in reporting that over the course of the project, they had not made any changes to community leadership, governance or decision-making processes. Focus groups reported that “There were no changes” and “We continue to work in the same way.” **Such findings add support to the conclusion that to effectuate changes in intra-community land and natural resources governance, land documentation processes should include opportunities for communities to debate and establish rules addressing these issues.**

### Increased accountability mechanisms for leaders

In both Liberia and Uganda, the negative impacts of the recent violence on local governance was both described by focus groups and observed by the field teams. In rural Liberia, the protracted civil wars destroyed social and political institutions and weakened both governance structures and the rule of law. In the process, local government positions were often co-opted by different warring or political factions; in some areas, the individuals put into power by those factions remain in power today.<sup>163</sup> SDI observed that in the study communities in Rivercess, some local government officials were not seen as legitimate leaders.

In Uganda, the insecurity brought about by the Lord’s Resistance Army conflict meant leaders tended to remain in power despite poor performance, corruption, or ineptitude. Indeed, when pre-service focus groups were asked about the main causes of poor cooperation in their communities, the most prevalent response centered around a lack of good leadership. One focus group explained: “The thing that prevents our communities from working together are competition for leadership, abuse of office by leaders ... [and] electing weak leaders. This is a disease.”

Positively, over the course of the project, many study communities in Liberia and Uganda leveraged the by-laws/constitution drafting process to improve local governance structures or directly challenge leaders who they felt were acting against their best interests.

<sup>163</sup> According to community members, in the past, chiefs were selected and put into position by a few elders (or, in some cases, the town founders); in other cases, particularly during the war, town chiefs were put into place placed by warring factions.



Mozambican community members and government officials consult a participatory map as they record GPS coordinates.

In Liberia, SDI observed that communities took action by including in their by-laws various provisions to:

- ▶ **Establish term limits and strict criteria for local leaders**, such as: “Chairpersons should be of good behavior, married, he/she should be a Liberian who has lived in the community for over a period of five years, he/she should not be denied because of his/her ethnic back ground, education or association,” and **“The leader should be elected for a period of six years.”**
- ▶ **Establish criteria for the suspension or impeachment of leaders not acting according to community interests**, such as: “Community members have the right to tell the leaders what to do and what not to do...The community is to advise leaders if they are doing wrong for about two to three times. Failure on the part of the leader(s) [to correct these mistakes gives] the [community] the right to call for re-election in a general meeting.” Moreover, focus groups in Liberia reported that: “People are now elected. If you do something wrong we will remove you;” “Leaders are now held accountable because we are using democracy to put people in position;” “Leaders have to report to the community. [They] cannot make all decisions on [their] own;” and “The

whole community is now watching our leaders. Also, the committee we set up had to be done in the open and we can remove you if we don't like what you doing for us."

- ▶ **Establish norms concerning good governance and downward accountability.** The process of electing representatives for the Interim Committees and Governing Council appears to have helped expand the ideas of good governance and downward accountability in some communities. The examples above — that “community members have the right to tell their leaders what to do and what not to do” and that the community will warn a leader if s/he is acting contrary to community interests, then remove him/her if the aberrant behavior does not change — may be read as an indicator that some communities are forging local governance systems that include downward accountability. Indeed, after an election in one community, a youth proclaimed, “We can now hold our leaders accountable!”
- ▶ **Directly or indirectly challenge leaders in public fora.** SDI observed that the process of drafting by-laws and the MOU-signing ceremonies allowed people to openly challenge their leaders to better represent community interests. For example, when one community's MOU-signing ceremony was delayed by the absence of the Paramount Chief, District Commissioner and the Statutory Superintendent, a community debate ensued, during which it was resolved that, “We elected our leaders; they are responsible to us. This [MOU signing ceremony] is a very important day for us, if any of them don't want to be part of our signing ceremony, then we will question who they are working for!” The leaders were then sent for, and their presence demanded. Upon their arrival, the community impressed upon their leaders to “act as community members first and political leaders second.” An elder pleaded, “[This] is a community thing. Let the community decide **what to do, and you [leaders] can supervise and guide our decisions.**”
- ▶ **Demand and establish mechanisms to ensure local transparency.** SDI observed that the by-laws drafting discussions helped communities to address inequities that caused resentment but for which there were previously no appropriate fora for discussion or means of redress. In one community meeting, a youth leader challenged local elders, asserting:

*When guests come in our communities, the elders go into caucus and divide whatever gift [the guest has] left [for the community].... We always ask the elders to keep some of [this] money for community development ... but as soon as a visitor comes, we are left out of the discussion. This time, we want to be part; we want transparency and a say in what happens to tokens given to our communities by our guests.*

However, a few focus groups noted that the progress made towards improved governance was incremental, slow, and applicable only to their local leaders. These groups explained: that “The chairlady was elected. But we have the same system still in place. Things are changing small small [gradually];” and “In terms of state leadership, no [there is no change], but for community leadership, people are now held accountable.”

In Uganda, communities also used the Communal Land Association constitution-writing process as a way of addressing disappointment with their leaders. For example, the first draft of one community’s constitution mandated that “leaders should not be drunkards,” and should not “shout at community members.” It was clear that the community was putting these rules in place to address behavior patterns of their current leaders. Even if such matters were not resolved, community members still felt a degree of satisfaction that their unhappiness with their leader(s) was discussed openly in a public forum.

The Ugandan study communities also instituted term limits and periodic elections for their leaders. According to the constitutions, community members may now vote to remove leaders if their behavior, commitment and trustworthiness are deemed inadequate. Describing their new rules, focus groups explained how, “The changes were on re-election of leaders who do not provide services to the community...The leaders are [now] to stay for five years, and if they are performing badly then they are then removed from their seat” and “We have improved on our rules for leadership. The chairman of the common land can be changed after five years, but if his work is good, then he can be retained or re-elected.” Some focus groups reported a change of *output*, rather than *structure*: “Now the leaders are active in their work” and “The roles and responsibilities of the leaders are [now] made known to the community members.” Focus groups also explained that, in the future, a “leader who is not performing to the expectation of the community [will be] voted out, and some important women [will be] included among men in leadership positions!”

Positively, in Uganda, community action to hold leaders accountable appears to go beyond constitutional provisions and may be counted as an immediate and swift impact of project activities: a few months after the conclusion of the intervention, one community took immediate action to dismiss its *Adwong Bar* (customary manager of the grazing lands) when they discovered that he had secretly allowed some community members to encroach into the community land even after the boundaries had been fully harmonized and demarcated. Publicly decrying his actions as a breach of their constitution, the community held a general meeting where the *Adwong Bar* was given notice that he would be replaced in three months. The community then evicted the encroachers, re-harmonized the boundaries and re-planted boundary trees

where they had been removed. All encroachers withdrew and a technical survey of the community's lands was successfully completed.

In Mozambique, the data and focus group discussions again underline the finding that as it is currently structured, Mozambique's community land delimitation process misses a valuable opportunity to bring a community together to assess local land governance and craft local accountability measures. Not one Mozambican focus group reported that their community had instituted new mechanisms to hold their leaders downwardly accountable to improved governance of land administration and management. When asked if they had made any changes to community leadership over the course of the project, focus groups stated: "We did not do anything;" "Nothing has changed;" and "We do not know, as we were not informed of any changes."

Furthermore, the majority of Mozambican focus groups explained that they did not know how the community planned to hold their leaders accountable in the future, stating: "We don't know, but our leaders will inform us" and "It's difficult to see how we can notice if they are working well or not, because we don't have many activities that we do together."

### **Increased transparency and consistency of penalties and the opportunity to question inequitable rules**

In Liberia, SDI observed — and focus groups reported — that the by-laws drafting process helped to increase the transparency of community rules and governance procedures, define clear penalties for infractions, establish procedures for rule enforcement, and allow community members to publicly question norms and practices that they felt to be unfair. Taken together, these impacts may enhance good governance and equality at the community level. Meanwhile, in Uganda, communities altered local penalties to align with national law and created a role for district government in community rule enforcement. These trends are described below.

First, SDI observed that **the process of drafting and adopting by-laws helped to build consistent norms and establish clear, publicly known penalties for infractions**. Focus groups reported that in the past, when a rule was broken, enforcement mechanisms were not consistent between and within towns, and the consequences for infractions were often unknown by community members. For any given offense, the clan chief generally decided the penalty to be paid and/or the punishment to be meted on a case-by-case basis. This left people vulnerable to leaders' arbitrary and selective rule enforcement. Penalties tended to depend on the social standing or characteristics of the offender, with harsher penalties enforced for strangers and other vulnerable groups. To remedy this problem and make penalties known to all, the majority of study communities established a fixed-value penalty system in their

by-laws. Focus group participants praised the fact that community rules were now transparent, clear, and widely known, explaining that the community land documentation activities “brought about law and order in our community.” One focus group respondent said, “Now people are more aware of the rules. Also, the punishments for breaking rules are now clear for everyone to see. This is helping our communities to live in peace.”

Second, **the by-laws drafting discussions appear to have enhanced norms enforcement.** Focus groups explained that after these discussions, communities could more easily enforce norms, as no one could feign ignorance. One respondent noted, “In the past some people were respecting our oral rules, and other people were just ignoring [them]. Now we have them written down; now it is easy for us to refer people to what is written in our by-laws.”

Third, **the by-laws discussions appeared to help communities address inequities that caused resentment, but for which there were previously no appropriate forum for discussion or means of redress.** Focus groups frequently explained how the process allowed people to air their grievances in a neutral forum. One women’s focus group provided a succinct explanation of how the by-laws discussion and drafting process “...was good, because there were things we did not talk about and that were not right. For example, men beating their wives – now no man is allowed to beat his wife.”

In Uganda, LEMU observed a **shift in both penalties for infractions and in how communities conceived of mechanisms for law enforcement:** while the constitutions provide local penalties for cases where the rules were broken, the documents stipulate that government laws and processes should be used to enforce community rules. This explicit stipulation is indicative of a gradual acceptance of state laws and institutional remedies. The final wording is also significant progress from the first draft constitutions, which tended to mandate that, in cases where the offender’s mistake could not be redeemed by the payment of a fine, he or she would be killed. This shift came as a result of LEMU’s careful facilitation: LEMU allowed communities to freely brainstorm what punishments they would levy on those who did not comply with the Communal Land Association constitution, then helped them to identify and omit those punishments that were discriminatory, criminal and/or unconstitutional.

# MAIN FINDINGS

1. **The process of drafting by-laws/constitutions must be very carefully facilitated to ensure that it promotes effective land and natural resources governance, downward accountability of leaders, and gender equity at the community level.** To this end, civil society and government facilitators should encourage the inclusion and active participation of women, youth and other vulnerable groups. In addition, the process of drafting the by-laws should take place at the lowest level of intra-community governance (at the town, village or zone level); communities should then be facilitated to combine these rules into a set of community by-laws through rigorous debate and discussion. Such a two-tiered process may help to ensure a transparent and fully participatory process, while creating multiple opportunities for community members to reflect publicly on existing or proposed rules.
2. **Communities should be allowed to determine the form and content of their rules so that they are based on existing custom and closely reflect the community's practices.** The final form of the by-laws/constitutions should reflect communities' natural tendency to combine rules for land governance of their land with rules for the sustainable management of their natural resources. To accommodate local conceptions of land and natural resources administration and management, a community's customs and practice should be modified only as necessary to ensure that the rules:
  - Sufficiently establish clear substantive and procedural rights for all community members, including women and members of vulnerable groups;
  - Do not contravene the national constitution and relevant laws;
  - Protect existing use rights and rights of way of pastoralists, hunter-gatherers and other groups;
  - Include provisions establishing the creation of an elected governing body to be responsible for community land and natural resources administration and management;
  - Include provisions that particularly important and weighty decisions, such as whether to cede land to an investor, should be made by supermajority vote, rather than by local leaders acting alone; and
  - Are approved by consensus or super-majority vote by all households in the community.

3. **To avoid the potential calcification of customary rules that writing them down might imply, an annual review should be included in the final drafts of the by-laws/constitutions, with clear amendment procedures and the requirement that rules be changed only after full consensus or super-majority vote.**
4. **Communities require legal and technical assistance to successfully complete final versions of their by-laws/constitutions.** In particular, this assistance is necessary to ensure that community by-laws and constitutions address all legally required topics, such as those set out in Uganda's Land Act. In Uganda, none of the education-only or paralegal treatment communities were able to arrive at a full and complete third draft without some degree of legal and technical support from LEMU.
5. **In Uganda and Liberia, the rule drafting process gave community members the opportunity to participate in a discussion of community rules, norms and practices for the first time.** Members of all study communities reported that they had never before publicly debated and evaluated community rules — these deliberations had previously been limited to elites and leaders. In particular, the Liberian and Ugandan field teams observed that the constitution/by-laws drafting and adoption process allowed communities the space to identify, debate, and determine rules in a participatory manner. In the process, community members had the opportunity to both argue against rules they felt to be arbitrary and discriminatory as well as advocate for the inclusion of rules that would protect or promote their interests related to community land and natural resources.
6. **The by-laws/constitution drafting process appears to have resulted in four significant shifts in various facets of local governance in the Liberian and Ugandan study communities.** The findings indicate that the process:
  - Effected a transfer of decision-making authority from local customary and state leaders to the community members themselves;
  - Created the opportunity for community members to institute new mechanisms to hold local leaders downwardly accountable and improve leadership;
  - Allowed communities to establish consistent norms and institute clear, publicly known penalties for infractions.
  - 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.

7. **The Mozambican experiences indicate that community land documentation processes that do not include a rule-drafting process may fail to effectuate necessary improvements in local governance.** Because Mozambique's land delimitation procedures do not require that communities compile, discuss and amend their existing rules for land and natural resource management, the magnitude of governance changes in Mozambique was significantly reduced. Such findings add support to the conclusion that a community land documentation process that does not include mechanisms to improve local governance and increase community leaders' accountability for good faith land administration may at best be described as a lost opportunity to effect powerful intra-community change, and at worst may make land dealings more unjust. 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.

# 3.

## CONSERVATION AND SUSTAINABLE NATURAL RESOURCES MANAGEMENT: NATURAL RESOURCES MANAGEMENT PLANS

The following section briefly details the process of drafting land and natural resources management plans in Liberia and Uganda and the process of creating zoning plans in Mozambique and Liberia. It then reviews the initial impacts of this process on current community behavior related to resource use and summarizes various trends, including: a growing sense of conservation, a resulting dedication to sustainable natural resources use and management, and an increased attention to monitoring outsiders' use of community lands and natural resources.

### Drafting land and natural resources management plans

In both Uganda and Liberia, the community land documentation process includes the drafting and adoption of community land and natural resources management plans. As described above, this process was integrated into the by-laws or constitution-drafting process. To ensure clarity and coordination, the field teams suggested that communities annex the land and natural resources management plan to their by-laws, and adopt both together as one complete document.

To ensure that the shift from oral to written rules was comprehensive and accurate, the field teams facilitated or instructed community members to brainstorm a list of every natural resource found in their community and to then remember or create rules for the sustainable management of that resource. In Liberia, SDI directed communities to begin by returning to their community maps and, using the maps, identifying all of the natural resources located within the boundaries of their lands. The communities then used the resources identified on the maps as an outline, and 'shouted out' all of their town and clan rules governing the use of each resource. In the process, SDI guided the community to discuss and review how these resources were used in the past, what rules had applied to their use in the past and how the community would like to use and regulate the resource in the future. Each community then reviewed, modified and adopted their management plans in tandem with the by-laws.

Both SDI and LEMU observed that in the process, communities repeatedly failed to list mundane substances such as mud, sticks or gravel as important resources (for

housing construction) that needed to be regulated.<sup>164</sup> In Liberia, SDI observed that at the inception of the process, when communities were first asked to identify “natural resources,” they tended to list only resources such as gold, timber, and diamonds — materials valued in a cash economy. Unless prompted, they rarely listed such “common things” as thatch, gravel, water, or plant medicine as natural resources. However, once communities began to discuss how necessary these resources were for daily survival, as well as how unconstrained use was causing depletion, communities began to re-conceptualize such “common things” as important natural resources that should be carefully conserved.

In Uganda, the first natural resource management discussions — dominated by men — revolved around the use of the community’s land for cattle grazing: men listed water sources and saltlicks for their cattle as the only resources located within these lands. It was not until LEMU hosted women’s conferences (described below) that women in the study communities began to understand that they needed to speak up to describe the wealth of natural resources upon which they regularly relied. Indeed, the women reported that while men use the common lands for grazing livestock, women use these areas on a daily basis to collect basic household necessities such as firewood, building materials, wild fruits, white ants, herbal medicines, honey and mushrooms. In both nations, **only after fostering women’s active participation in the plan drafting process did the community rules for natural resources management become truly comprehensive.**

## Making land use and zoning plans<sup>165</sup>

In Mozambique, a recent amendment of Article 35 of the *Lei de Terras’ Regulation 1997* made the creation of a community land use and zoning plan a required component of the land delimitation process.<sup>166</sup> The land use and zoning plan is a map of the community with markings indicating both the community’s current configuration as well as the community’s plans for future growth and development. During land delimitation exercises, community members must identify on their map the location of areas used for housing, agriculture, pasture, forest, markets and religious or sacred areas, and then

164 SDI and LEMU noted that the shift from oral to written rules risked failing to capture community norms and practices that were so fully taken for granted that they did not even occur to community members as being ‘rules.’ This was one example of this phenomenon.

165 In Uganda, it is noteworthy that when LEMU suggested that communities draw three distinct maps of their grazing lands (a map of the past indicating the former extension of the grazing lands; a map of the present, indicating the location of all natural resources located within the grazing lands; and a map of the future, to zone how the community will use its grazing lands going forward) the communities resisted the idea of creating zoning plans for their communal areas. Rather, LEMU observed that the communities felt that the lands were already zoned — as grazing lands.

166 In 2007, the Council of Ministers issued a decree concerning Article 35 of the *Lei de Terras 1997* Regulations that in effect subjects the issuance of delimitation certificates to government decision-making authority. Among other changes, the decree mandates the creation of a community land use plan, and implicitly limits the size of community lands: provincial governors may now only authorize the allocation of community land rights up to 1,000 hectares, although higher-level authorities can approve larger areas.



**Sacred forest in Cestos, Liberia.**

indicate both how an area is currently used and how it will be used in the future, according to the aspirations and preferences of community members.

In the study communities, the land use and zoning plans were created in the same way as the participatory maps: the community was divided into three groups (elders, women and youth). Each group produced two maps: the first map indicated how the community was currently zoned and the second map indicated how the group members felt each area should be zoned in the future (over the next ten years). The various maps were then compared and combined into a final map. This activity was not carried out in the communities that claimed that they no longer had any free land. For those communities that made a zoning plan, CTV observed that communities needed extensive training and support to complete this step.

In Liberia, communities also drew zoning plans based both on their existing community maps as well as their future development plans. Some communities also described some of these plans in the body of their by-laws. For example, one clan's by-laws contain such mandates as:

*The clan market should be built at Dorzohn at the Goah Town junction; The clan school is to be built in clan headquarters (Goah Town); The clan sport ground and the children play ground will be built in Funny Town; The chieftom compound is to be built in Nagbo Town; A motor road should be constructed to link Tiah Town to Zoewulum Town.*

## Findings: Natural resource management impacts

Survey respondents in Liberia and Uganda reported observing immediate changes in land and natural resources use as a result of drafting by-laws/constitutions and natural resources management plans. Unfortunately, in Mozambique, as the study communities were not mandated to discuss and modify their community rules, similar changes did not occur.

The majority of Liberia and Ugandan post-service survey respondents reported either strengthening old rules or adopting new rules concerning community land and natural resources management within the past year. In Uganda, an average of 70% of respondents across treatment groups reported rule changes. This result is significant in comparison to the control group, in which 33% of respondents reported observing changes related to the use or management of natural resources.

Post-service focus groups in Liberia described that particular rules about natural resources use were already being enforced in their clans. In some instances, the rules appear to be making a negative impact on certain groups' livelihoods. Members of various communities reported that "I am a hunter, and some of the laws say one man cannot lock more than 100 traps, and we cannot cut down big trees;" "I am a pit sawyer, and pit sawing is now regulated under our community law. You have to report to the community first;" "The land management plan has affected me: no work on Sunday in our community, no cutting palm;" "Now I know I cannot just cut sticks and leave it in the bush, so [while I am in the forest working] I am always thinking about what we discussed in the meetings." Similarly, in a community that decided to prohibit children from going to rivers and wells (in order to protect their safety), a woman complained that now her children could not help her gather water. These comments indicate that some communities began enforcing their rules fairly rigorously, even before formal adoption.

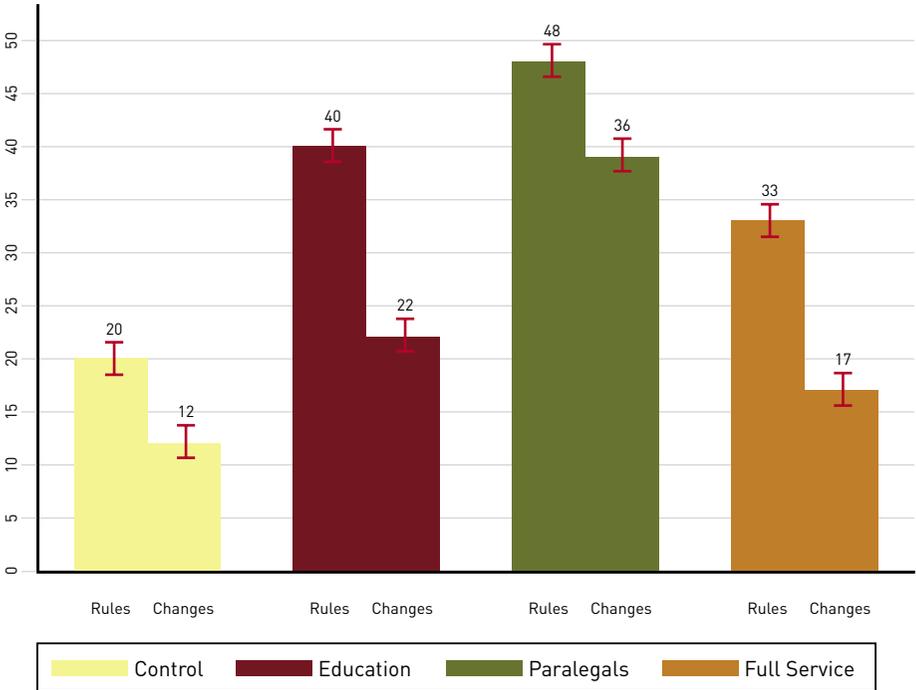
In Uganda, likely due to the lengthy and participatory nature of the constitution-drafting process, many of the constitutions' natural resources management rules appear to be commonly known throughout the communities; when asked to detail new rules their communities had established to regulate the sustainable use of natural resources, focus groups were able to articulate many of the rule changes. One focus group explained that

### Cross-national: Changes in rules for natural resources management; observed changes in natural resources use and management

In the last year...

- (a) did the community adopt new rules or strengthen old rules about land and natural resources?
- (b) have you seen any changes in the use or management of land and natural resources?

[% respondents answering "Yes"]



“The community has come up with changes in managing the resources and accessing resources from the common land: members and non-members are required to pay something little to the community treasury to access resources like sand, stones and palm trees for commercial use.” Similarly, other participants reported new laws that place “restrictions on using communal land for selfish gains” and how, in their community, “members have freedom to access building materials from the common land. Members can graze their animals freely, and non-members have been restricted from using the common land; non-members need to get permission to get resources from the common land. Resources that can be obtained for sale should be accessed with permission from the committee.”

Such responses suggest that the process of drafting by-laws/constitutions and land and natural resources management plans made an immediate impact on community resource use. In contrast, when asked if their community adopted any new rules or strengthened old rules about land and natural resources in the past year, only a combined 3% of Mozambican treatment group respondents reported that any changes were made. When asked about if they had observed any changes to their community's natural resource management strategies or actual use of resources, only a combined 1% of Mozambican treatment group respondents reported observing changes in the past year.

The extremely low percentage of respondents who identified rule or behavior changes in Mozambique significantly affects a cross-national analysis of these impacts. Even taking into account the Mozambican data, cross-nationally almost half of the paralegal group respondents reported adopting new rules or strengthening old rules concerning land and natural resources management. This data supports the finding (explored below) that the paralegal treatment was the most robust.

In Liberia and Uganda, SDI and LEMU noted two main shifts in community members' consciousness of natural resources management over the course of the project period:

1. **A growing commitment to conservation and sustainable natural resources management, associated with a concurrent revival of "old" rules that function to govern community members' use of communal resources;** and
2. **Increased monitoring of outsiders' use of community lands and natural resources.**

These shifts were also reflected in the content of communities' final land and natural resources management plans. Such changes are briefly described below.

### **Intra-community natural resources use: increased dedication to the sustainable management of natural resources<sup>167</sup>**

The rules reflect a clear — and renewed — concern with conservation and the sustainable use of natural resources. In both Uganda and Liberia, focus groups reported that enforcement of their communities' pre-existing rules concerning sustainable natural resources use had lapsed in recent years, and that the process of discussing their rules had strengthened both the substance and the enforcement of those rules.

In Uganda, pre-service focus group discussions revealed fairly consistent unwritten customary rules governing the grazing lands across all study communities. These

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<sup>167</sup> See Appendix D for examples of communities rules concerning land and natural resources.

rules tended to revolve around: maintaining the size of the common areas; regulating use of the common areas; protecting the health of cattle; and ensuring the sustainable use of common natural resources. Yet despite these rules, the pre-service focus groups reported that “people just do anything they want” with regard to taking natural resources from the grazing lands. Focus groups explained that the recent violence waged by the Lord’s Resistance Army (LRA) and other factors<sup>168</sup> had helped to undermine such rules. Focus groups described how: “People used to follow the rules but when the Lord’s Resistance Army rebels came, some leaders were killed, the books were destroyed, so we just have to sit and discuss the rules afresh” and “We had rules but the rebels came and things got disorganized.” Another respondent said, “The rules have all been broken since the people who were supposed to monitor them died.”

Positively, post-service focus group participants in Uganda reported that beginning the constitution-drafting process by “shouting out” all existing norms and practices helped to strengthen their “old rules.” This trend was evident across communities; when asked what “old rules” had been strengthened, post-service focus groups tended to cite more detailed and robust versions of the practices described by pre-service focus groups, including rules that:

- ▶ **Prohibit an individual from owning or selling common areas:** “No one can particularly come out to own the communal land as his/her own;” “No selling of communal land by anyone;” “No member should sell his/her right for using the community land to a foreigner;”
- ▶ **Prohibit cultivating or building on common lands:** “No member is supposed to cultivate on the common land” and “No construction of permanent buildings in the grazing land;”
- ▶ **Prohibit boundary violations or encroachment into the grazing lands:** “No one should encroach on ancestral land;”
- ▶ **Mandate the sustainable use of communal resources:** “We strengthened the rule against exploiting resources in the community land for personal benefits, such as no charcoal burning;” “Members are to use resources from the common land sustainably, so that the future generations also have what they need;” “Trees and other things should be cut with much respect and care and in consideration of the future;” “No overuse of communal land, especially no using communal land for commercial purposes;”

168 The focus groups were asked if the rules had always been like this or if they had changed; 72% of groups explained that their rules have always been the same, while 28% groups explained that indeed they had changed. The most frequent explanation for the change was the invasion of the Karamojong cattle rustlers in the 1980s, after which the grazing lands became bare of cattle and people began to use the common areas for farming. Focus groups explained: “We had rules in the past but because our cattle disappeared, we had to use the grazing land — it was divided among the community members [for farming]” and “The animals disappeared and made people to break the rules by farming on the grazing land, people demanded to farm on the grazing land.”



Ugandan women taking notes at community meeting concerning natural resource management plans.

- ▶ **Prohibit injuring/abusing other people's animals:** "Nobody should hurt any animal found destroying crops but should inform the owner who should be made to pay a fine worth the crops destroyed;" "Whoever will harm anybody's animal will be made to pay;" "No one should hurt any other member's animals which don't belong to him;" and "No playing sex with animal."

The participatory and prolonged "remembering" process was likely a key factor in the revival of more protectionist, sustainability-focused customary rules. Elders across all communities tended to be pleased by this development; post-service focus groups composed of elders/leaders explained that "We are using our old rules. Our old rules are better now because we all understand them" and "Resources of the communal land are not used recklessly; we are valuing the future children, that is why we are regulating the use of resources."

Similarly, in Liberia, before the project began, SDI noted that due to the dense forests, low population density and highly dispersed settlement patterns, community members tended to believe that "land can't finish." Pre-service focus groups noted that, with the exception of strict rules concerning strangers, there were no specific rules about the type, quantity, or timing of resource use per family. "You do as you

wish,” one community member explained. However, focus groups described that there was a strong expectation of “use what [resources] you cut” or, as one group described: “if you didn’t cut it, leave it. If you cut it, use it.” A similar mandate in many communities was that “resources should not be abused.” Also, some communities explained that there were strong rules mandating that relatively scarce resources, such as thatch, absolutely could not be sold. Finally, focus groups described a wide variety of rules intended to ensure that certain water sources were kept clean and appropriate for drinking.

As in Uganda, SDI observed that the Liberian pre-service focus groups often lamented that while in the past there had been clear rules for conservation in their community, since the civil wars such rules were no longer strictly enforced. Various focus groups noted that the practice of cutting more sticks than one could carry or use and then leaving them to rot on the forest floor had become a problem. Focus groups also explained that compliance with such rules was monitored by the community itself<sup>169</sup> and that, while this system functioned on some level to avoid gross infringements of community norms, no one was actively monitoring the *quantity* of natural resources used by any one community member.

Positively, SDI observed that as the community land documentation activities progressed, **communities increasingly came to understand that both their lands and their natural resources were finite and, if not well managed, could become depleted.** In response, community members began to exhibit an increased sense of dedication to conserving their lands and natural resources. Post-service focus group participants explained how the project activities helped to create a new sense of obligation to conserve the community’s natural resources, describing how: “The project opened our eyes;” “Now we know what is [scarce] and what is plenty;” and “Now we are aware that if you misuse a resource it could finish.”

In tandem with their increasing awareness of the importance of conservation, **communities across all treatment groups ‘arounded remembered’ and reinforced old rules mandating resource conservation that had recently been disregarded or weakly enforced.** Focus groups explained how: “The traditional rules were made strong [during the process] because the elders took part and explained the sense behind some of the old rules.” Communities also crafted new rules to ensure sustainable resource use. Some examples of the resulting by-laws/ rules for natural resources management plans include the following:

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169 When asked how these rules on natural resource use were monitored by the community, focus groups explained that, if one were seen transgressing a rule in the forest, “someone might tell on you.” Focus groups also described that, “[E]very community member is responsible to monitor the rules;” “It is everybody’s business to make sure the rules are followed;” and “Everyone in the community is a monitor; we don’t have community police.”

## Examples of by-laws and rules agreed in natural resource management plans in Liberia

### Forest conservation

- “No one is allowed to cut down the community hard forest for farming: no farming in the community reserve forest, so as to avoid deforestation, farming is allowed in the secondary forest, low land or swamp. Anyone caught in such practices will pay that amount of ten thousand Liberian dollars (LD\$10,000).”
- “No one is allowed to make farm from Camp One to Zuah Mountain — that is the reserve forest for Bar clan. Violators’ farms will be taken from them.”

### Reserve Areas

- “The community shall have reserve areas, such as creeks, rivers, *Zoe* Bush and forest. Some of the reserves areas identif[ied] are; the Wru-nee creek located in Blatoe — no one should set net, fishing and set basket on it. The reserve forest is located between Blatoe and Normah — no hunting, farming, logging and pit sawing is allowed. The mountain is reserve[d] for minerals and a place near sand beach.”

### Water Sanitation

- “No one is allowed to put chemicals into any of our water for any purpose. Violators shall pay the fine of LD\$1,500. No one is allowed to toilet into any of the water constantly – creeks are not latrines. Anyone found using the creek as a latrine shall pay the amount of LD\$300 as fine. If any of our neighboring clan is mining up our territorial water, which causing water pollution, that clan shall give to the affected clan 10% of any agreement reached.”

### Sustainable use of resources/minimization of waste

- “Local building materials (round poles, rattan, raff-falls, thatch, etc.) are not to be sold, they should be used for community member to build. As a community member, if you destroy these local building materials, the community will ask the person to pay for the items; To misuse palm is not allow, anyone violating this rule, the community will hold you responsible to pay for the palm;”
- “No one is allowed to clear a large area of thatch bush for farming. The thatch has to be managed for our thatch buildings; The round poles and rafters must be manage well, stick cut should be used for the intended purpose; To manage the forest, the community should practice and encourage young bush and swamps farming; Large palm bush areas should not be allow for farming activities; No illegal pit sawing will be allow to damage the forest, anyone wishing must obtain a legal document from government or a permit from the community.”

### Animal Protection/hunting control:

- “Every individual is allowed to lack 50 traps in the bush for local animals; No one is allowed to hunt and kill wild animals in the clan.”

Post-service focus groups in Liberia reported being very satisfied with their by-laws and natural resources management plans. One focus group explained, “Now people know where the resources are, and how much we have, and what the laws about them are. Talking about the laws helped everyone see it for themselves. Now no one can complain they don’t know the law.” Other focus groups reported that the process of drafting the management plans was a “good idea because we all know our resources, where they are, and how much they are. Now we all can respect the rules that guide their use.”

When making their zoning plans, **a number of communities set aside reserve forests to guard for future communal use.** SDI noted communities initially thought of a “reserve forest” as an area kept for external use or investment, in order to “bring development.” Yet over the course of the project, communities began to redefine “reserve forest” as an area for the communities’ own future use, or as an area to safeguard a sufficient supply of locally-used materials necessary for community survival (such as thatch, rope, etc.). Some community members seemed to view these rules as integral to their future prosperity and development; one focus group reported, “We have big forest so it is good we use it the right way, otherwise we will be like [our neighbor, who lost most of its forest to concessions].” Another explained that, “We are conserving our traditional and reserve forest so no one, not even a company, can touch it!”

### **Increased monitoring of outsiders’ use of community natural resources**

The process of drafting a natural resources management plan appears to have led communities to become increasingly vigilant about monitoring and enforcing limits on outsiders’ extraction of natural resources. Notably, both LEMU and SDI observed that the study communities did not attempt to fully impede outsiders’ resource use, but only to control, monitor and tax these activities for community profit and development.

In their constitutions, the Ugandan communities divided their resources into two general groups: those resources available for open, unmonitored use, and those natural resources whose use must be carefully managed and monitored. The various resources that may be accessed by community members without permission generally include: building/construction materials, grass, white ants, water, herbs, firewood for household use, and medicinal plants.<sup>170</sup> While individual families may gather these materials to build their homes, the constitutions clearly state that anyone seeking to collect large amounts of these materials from the communal areas to sell for personal profit must be granted permission and pay fees to the Communal Land

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<sup>170</sup> Women’s participation was critical to generating comprehensive lists of these resources, as women are generally responsible for gathering these materials from the grazing lands.

Association. The natural resources that may not be gathered freely and for which permission must always be sought and payment made include: sand, stone, palm poles, and firewood for sale. Focus group respondents were aware of these changes.

Notably, some Ugandan communities' constitutions acknowledge their neighbors' pre-existing use and access rights and allow this use to continue freely (as was strongly advised by LEMU), but prohibit their neighbors from having any decision-making powers concerning these resources. Other communities' constitutions clearly restrict and limit neighbors' resource use. These communities felt that their neighbors had been using their grazing lands illegitimately, as encroachers, without historical precedent or agreement. They therefore used the constitution-drafting process to stop encroachers' free access, levying fees to non-members who seek to use community lands to graze their animals or gather firewood. Their constitutions include various rules that prohibit 'outsiders' (including direct neighbors) from using common grazing lands and natural resources, such as "No outsider cuts trees from our community land;" and "No foreigners should enter the land."

Focus groups described these changes. Leaders focus groups reported that they now have new laws that place "restrictions on using communal land for selfish gains" as well as a rule that directs people to "ask for consent of the community when one wants to use communal land [for activities that exceed typical household use]." In one community, a focus group reported that, "Members have freedom to access building materials from the common land. Members can graze their animals freely, and non-members have been restricted from using the common land; non-members need to get permission to get resources from the common land. Resources that can be obtained for sale should be accessed with permission from the committee."

In Liberia, SDI also observed that communities established rules in their by-laws and natural resources management plans to address issues related to both the pursuit of private investments by corporations, and efforts by "strangers"<sup>171</sup> to carry out other small-scale extractive activities for personal profit in their forests. Some examples of such restrictions include:

- ▶ "No logging company is allowed to do hunting in and around the community common forest and as well as the concession forest, anyone caught violating will bear the full weight of the law;"
- ▶ "Strangers are not allowed to cut palm in our community, until he/they can meet the community leaders. After accepted, he/they will pay 2 tin of palm oil to the town. If in any case, the palm cutter have to run away without pay-

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171 In the study region of Liberia, a "stranger" is a person who was not born in the community where he or she is currently residing.

ing the contribution to the town people, the stranger father is responsible to pay the 2 tin of palm oil to the town. No stranger is allowed to get in our bush to dig gold without consulting the community leaders, failure to do so, he/they shall pay US\$5,000;”

- ▶ “Any stranger who expresses interest to live in the town, should spent three months in consultation with the stranger father before he is allow to enter the bush to cut palm or hunt;”
- ▶ “If a company wants to make farm on our land all of the community members and all of the leaders elected, including government officials are to meet in a big community meeting. If all of the community members, official elected by the their various communities and the officials of government are not present, not less than 50% of the community is allow to document a sale of land to any company;”
- ▶ “The community should receive 20% of each plank saw and 80% goes to the individual sawing the planks; Every creek owner operating or mining within our community should pay one gram of gold per month; Persons wanting to do investment or business in our community should pay a percentage;” and
- ▶ “No illegal pit sawing will be allowed to damage the forest, anyone wishing [to do so] must obtain a legal document from government or a permit from the community.”

**Importantly, the communities’ land and natural resources management plans illustrate communities’ receptiveness to outside investment, but within a regulatory framework that ensures that the community has the power to determine how their lands and resources are used and provides that the community will concretely gain and prosper from the arrangement.** For example, while being open to investors using some of their lands and natural resources, communities in Liberia were adamant that such integrated development should only proceed if:

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

For example, as detailed in one Liberian community’s land and natural resources management plan:

*Any company wishing to operate within Central Morweh Clan, should meet the land management committee ... Any company mining gold in the clan should pay 25% per gram to the Council ... Any company wishing to operate in the clan for any purpose, that company should employ 75% of the residents [and any] company wishing to operate in the clan shall allot the personnel manager position to the clan.*

SDI observed that **communities were not adverse to concessions being granted within their communities, but rather were concerned that there be: clear, open, and transparent negotiations between communities and investors; the provision of safeguards to ensure against potential investor abuse; and enforceable contractual agreements to hold investors accountable to contributing to community development and prosperity.** CTV's pre-service focus group discussions in



Community meeting, Uganda.

Mozambique also indicated that communities were open to private investment, but only if fortified by strong safeguards and contractual guarantees of development and respect for communities' economic, cultural, and environmental interests.

Going forward, further monitoring is necessary to gauge the full impact of these changes and to provide support to communities in the implementation and enforcement of their land and natural resources management plans.

### **No changes made to land and natural resources management in Mozambique**

In Mozambique, when asked about their rules governing common area use, the majority of groups described rules that serve to keep lakes, rivers, and riverbanks clean and well cared for, as water is not plentiful in the region. Focus group members explained that "There are rules that we created ourselves to regulate use of the common areas, for example: do not wash your clothing in the place that we take water to drink, and do not plant your crops at the source of the river, because it might dry up the river" and "All community members must take care of the river, not purposefully dirtying the river, not leaving the riverbanks full of grass, planting along the riverbanks in an orderly fashion." Every community that had a system of rules described a mechanism for monitoring them; many communities described having a very structured system for managing cultivation on the riverbanks, overseen by a specific individual or special group.

A number of focus groups explained that in their community either: there were no rules governing their common areas; there *had* been rules in their community in the past, but such rules were no longer in force; or that rules exist in theory, but people do not comply with them anymore. One group explained, "In the past, the rules were more severe. Today the rules exist but they are not followed. It is normal to see a lot of grass on community land, in plots that have already been given to community members. It is also normal to see the river dirty, with the animals drinking water in the same place where people are washing clothes and taking water to drink, as if there were no rules at all."

Critically, a number of pre-service focus groups described situations in which the "old" rules designed to ensure equitable land and natural resources management were eroding, with the elderly and the poorest community members most vulnerable to losing their access to common resources, particularly to the more fertile riverbank lands considered common areas in the past. Focus groups reported that during those times of the year when community members rely on common areas to meet their household needs, "More influential people usurp the lands of vulnerable groups to plant rice." Some focus groups reported that their communities' distribu-

tion of parcels along the riverbanks exacerbated class inequity within the community, as local members-only associations claimed the riverbanks to farm. The focus groups explained: “These rules are not fair to those people who have no money and cannot join an association; they automatically lose the right to cultivate the land which belongs to the whole community.”

Some groups described a recent practice of certain community members owning and controlling parcels of what had formally been considered community land. Focus groups described how influential community members abused the common areas, claiming them as their own. One focus group explained that “These rules are not fair for those who want to cultivate on the riverbanks and do not have a space — we think that we should return to a process of redistribution of parcels; today some community members sell their parcels along the river as if these land were their personal property!” Such sentiments point to a breakdown of both the communal aspects of the land and the enforcement of customary norms, with certain families improperly claiming common land for their personal, exclusive use and then selling or renting it as “owners.”

The Mozambican pre-service focus groups were also very vocal about the variety of negative impacts of the foreign enterprises newly-located within their communities, including environmental degradation, loss of access to critical natural resources necessary for livelihoods and survival, and lack of promised employment or improvements, among others.<sup>172</sup>

**Unfortunately, as the *Lei de Terras* and accompanying Regulations and Technical Annex do not mandate that Mozambican communities discuss their customs concerning the governance of common resources, these issues were never discussed in an open forum as part of the community land delimitation activities.** While CTV facilitated communities to “shout out” a list of all of their current rules so as to be able to assess for research purposes whether these rules contravened national law, there has not yet been robust community discussion of rules, norms and practices related to natural resources management. As such, the articulated frustrations were not addressed. Although the majority of the Mozambican study communities will likely receive their land delimitation certificates in the coming months, it does not appear that there will be accompanying improvements in intra-community land and natural resources administration and management.

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<sup>172</sup> See the complete Mozambique report for further details, available at: <http://namati.org/work/community-land-protection/Phase-One-Findings-and-Reports>.

# MAIN FINDINGS

1. **The process of discussing their rules for natural resources management helped communities to re-conceptualize such “common things” as thatch, gravel, water, or plant medicine as important natural resources that should be conserved.**
2. **Women’s active involvement in the by-laws/constitution and land and natural resources management plan drafting process improved the documents’ comprehensiveness.** In Uganda, women were instrumental in cataloguing and mapping all non-market resources available in the common areas, including resources like ant hills, wild foods, medicinal plants, etc. In Liberia, women were more focused on protecting water sources than men, and included greater detail and more resources on their community maps than the men.
3. **The natural resources management plan drafting process prompted communities to both craft new rules to conserve their resources as well as to “remember” and reinforce old rules that promote sustainable natural resource use.** In both Liberia and Uganda, communities’ constitutions/by-laws included rules that promoted and enforced conservation of key resources such as firewood, thatch and other building and construction materials; forest conservation; water sanitation/maintenance of clean drinking water sites; sustainable hunting and fishing; and other protections.
4. **Creating a natural resources management plan brought increased attention to monitoring outsiders’ use of community lands and natural resources.** Notably, almost every community included rules to strictly regulate the use of community natural resources by “outsiders” (non-community members). These rules generally were not designed to fully impede outsiders’ resource use, but rather to allow the community to better control, monitor, and tax such activities for sustainability and community profit and development.

## 4. ADMINISTRATIVE PROCEDURES

The study communities confronted a wide range of obstacles over the course of the initiative. The most intractable of these obstacles related to the formal administrative components of the community land documentation process.

As explained above, none of the study communities obtained formal documentation during the study period. Part of this was due to the study's limited duration and the general slowness of even well-functioning bureaucratic processes. However, in Liberia and Uganda state inaction and lack of necessary resources significantly impeded community land documentation processes.

### Liberia: Lack of permission to GPS or survey community lands

In Liberia, due to the President's moratorium on public land sale (defined within the *Public Lands Law (1972–1973)*), the initiative could not assess or evaluate Liberia's current legal and administrative community land documentation procedures.<sup>173</sup> Rather, the Liberian communities followed the local procedures set out in SDI's MOU with the Land Commission; this process did not require filling out forms or pursuing specific administrative processes. Accordingly, at the completion of the election of Governing Councils, the community land documentation process stalled, as the study communities had carried out all of the steps outlined in the MOU.<sup>174</sup>

However, Clause 3 of the MOU between SDI/IDLO and the Land Commission states that “During the period of the interim public land sale process, the Land Commission will work with SDI and IDLO to assist the local communities in the study to begin identifying their borders and to obtain an official, government-issued title or deed.” Therefore, when the Land Commission issued its revised ‘interim public land sale process’ in early April 2011, both SDI and the communities anticipated that they would be able to either formally survey or, at a minimum, take GPS coordinates of the communities' lands. The Land Commission, however, communicated that such action necessitated the approval

<sup>173</sup> It is important to note that when designed, the Community Land Titling Initiative planned to implement the Public Lands Act 1972-1973 process for seeking a public land sale deed, the only law in Liberia outlining a process through which communities could become the legal owners of their customary lands. SDI pursued this legal procedure for the first six months of implementation, during which time SDI's field team educated communities about the process and started all boundary harmonization activities. However, the moratorium placed on public land sale in March 2010 and the resulting MOU with the Land Commission established an entirely new process for the communities to follow. This change caused some hurdles and set the project behind in schedule.

<sup>174</sup> See the above section on Legal Context for more information on the MOU

of the Ministry of Internal Affairs. Although the Land Commission facilitated a number of meetings to help SDI secure this approval, to date the Ministry of Internal Affairs has not granted permission to survey the communities.<sup>175</sup>

## Uganda: Lack of key local government land officials

By the end of the study period, five of the Ugandan study communities had applied to be incorporated as Communal Land Associations and were ready for a certified Land Surveyor to survey their lands. However, the process stalled due to the lack of a District Registrar of Titles (Registrar). Under Uganda's Land Act, communities must lodge their application for formation of a Communal Land Association with the Registrar.<sup>176</sup> Then, once the community drafts its constitution, the Registrar must 1) certify that the final document includes transparent and democratic management procedures and does not contravene the National Constitution; 2) oversee the elections of Association Executive Committees; and 3) ultimately issue the certificate of incorporation.<sup>177</sup>

Unfortunately, despite multiple formal requests by LEMU and the District of Oyam (which was extremely supportive of the community land documentation work) for the appointment of a District Registrar of Titles, the national government has to date not yet appointed a Registrar nor assigned a Registrar from another District to serve the Oyam communities (more than two years after the first requests). As a result, none of the study communities were able to elect their Executive Committees during the period of the project intervention because there was no Registrar to supervise the elections, as required by law. Consequently, completion of the Communal Land Association Registration and Certification process has stalled, awaiting a Registrar or appropriate Ministry of Lands official to oversee and facilitate these procedures.

## Mozambique: Community review of the technical file pending

According to the process set out in the Regulations and Technical Annex of the *Lei de Terras*, once the Provincial Geographic and Cadastral Services (SPGC) technicians georeference the land, SPGC then prepares technical maps of the study communities super-

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175 While there is no legal precedent for this approval, SDI and IDLO deemed it prudent to abide by the Land Commission's dictates.

176 Article 16, sections 1, 3.

177 Article 17, sections 1–3.

imposed on a topographical map of the region. These maps reference the communities' location and identify all surrounding communities, private concessions, and easements that exist within or touch the communities. SPGC technicians also produce accompanying formal reports that detail the boundary points identified in the geo-referencing activities as well as any shared-use and access arrangements that exist with neighboring communities. Together, these documents make up the "technical file." Alongside SPGC's production of a technical file, the communities must produce a descriptive report.

According to the process set out in the Regulations and Technical Annex of the *Lei de Terras*, once the Provincial Geographic and Cadastral Services (SPGC) technicians geo-references the land, it then prepares technical maps of the study communities superimposed on a topographical map of the region. These maps reference the communities' location and identify all surrounding communities, private concessions, and easements that exist within or touch the communities. SPGC technicians also produce accompanying formal reports that detail the boundary points identified in the geo-referencing activities as well as any shared-use and access arrangements that exist with neighboring communities. Together, these documents make up the "technical file." Alongside SPGC's production of a technical file, the communities must produce a descriptive report.

Because SPGC creates the technical files, SPGC performed this activity in the same way for all the study communities who arrived at this step of the delimitation process, regardless of treatment group. By the end of the study period, thirteen communities had completed their descriptive reports and submitted them to SPGC.

Despite completing the geo-referencing activities in January 2011, CTV received the technical files from SPGC in July 2011, after the study period was over. CTV is now continuing to work with the study communities to complete the delimitation process.<sup>178</sup> The next step is a verification of the files, during which the sketch map, technical report and descriptive report are presented to the community and all neighbors for approval.<sup>179</sup>

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178 CTV will undertake this work as part of Phase II of the initiative, to be carried out under the aegis of Namati's Community Land Protection Program. For more information see <http://namati.org/work/community-land-protection/>.

179 Technical Annex Article 12, section 1.

# MAIN FINDING

1. In Liberia and Uganda, SDI and LEMU observed that for those communities who persevered through the land documentation process, the greatest impediments to success were administrative or bureaucratic inefficiencies, lack of necessary government staffing and resources, lack of political will, and other institutional or state obstacles.



Meeting with Clan and Paramount Chiefs, Rivercess, Liberia.

# HOW TO BEST SUPPORT COMMUNITY LAND DOCUMENTATION EFFORTS

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3. Correlation Between the Level of Legal Assistance Provided and Participation Rates 147

**THE FOLLOWING SECTION DETAILS** the findings relative to the question “What type and level of support is required in order for communities to successfully complete community land titling processes?” Within this query were two secondary questions:

- ▶ Is there a correlation between the level of assistance provided and the relative success achieved?
- ▶ Is there a correlation between the level of assistance provided and communities’ effectiveness in overcoming obstacles faced in the process of following the mandated legal procedures?

The resulting findings are derived from analysis of the pre-and post-service survey responses, a comprehensive statistical analysis of the data collected, and the

field teams’ observations. The section first describes the progress of each treatment group. It then briefly outlines the correlation between the level of legal assistance provided and communities’ effectiveness in overcoming challenges faced during the community land documentation process. Next, the section reviews the degree of community participation in the project activities by treatment group, as high community participation rates were critical to ensuring that the communities’ efforts reflected the full array of diverse groups’ interests. The section concludes by summarizing the potential benefits of the paralegal support model, detailing exactly which components of the community land documentation process do require active legal and technical support, and discussing the costs of the intervention by treatment group. Finally, the section warns that communities struggling with

With adequate legal education and capacity-building, communities can successfully complete many of the community land documentation activities on their own. The data suggest that communities were most successful when supported by trained community paralegals supervised by a legal and technical team.

significant intra-community obstacles may not be good candidates for community land documentation efforts; before work starts in such communities, supplementary conflict-resolution support should be provided.

# 1.

## THE IMPACT OF SERVICE PROVISION ON COMMUNITY PROGRESS

The Initiative employed both statistical and non-statistical analyses to assess the impact of service provision on the communities' progress. To ensure parity in the statistical analysis, the different land documentation processes were simplified to their four core non-administrative components, which communities in all three nations were required to complete. These four stages were:

1. Creation and election of a coordinating or interim committee;
2. Boundary harmonization;
3. The drafting and adoption of community by-laws/constitutions to regulate community land administration;<sup>180</sup> and
4. The drafting and adoption of community land and natural resources management and zoning plans.<sup>181</sup>

The results suggest that, **as measured against the control group, the level of service provided had a statistically significant impact on community progress through the land documentation process.** When compared against the other groups, **the paralegal group's progress was significantly stronger and more robust than that of both the education-only and the full-service group,** while the education-only group's performance was also stronger than the full-service group's performance.

### Statistical analysis of treatment impact across all three nations<sup>182</sup>

- ▶ 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.

180 As explained above, this process is not part of the Mozambique's land delimitation process. However, to create parity with the Liberian and Ugandan communities, the Mozambican communities attempted to undertake this work as well.

181 To create parity between nations, the final stage of the Liberian process — the election of the governing councils — was not included in this analysis.

182 See Appendix C for summaries of each community's progress.

These relatively surprising outcomes support three 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 communities have the responsibility to complete most project activities on their own, they are motivated to take the work more seriously. As a result, they appear to 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 and technical team completes the work on behalf of the community.**

Indeed, both SDI and LEMU observed that the **presence of paralegals appeared to further communities’ feeling of empowerment by allowing the process to be internally-driven and by fostering the sense that the community was performing the land documentation work on its own initiative.** Conversely, the field teams observed that some of the full-service communities appeared to adopt a passive attitude towards the process, possibly taking for granted that, as one man explained, “The lawyer is going to run behind our paper.” Likewise, in Uganda, on one occasion a full-service community was engaged in a lively debate concerning the second draft of the community constitution when a nearby political rally (providing free alcohol) was scheduled to start. At this time, the community stopped the meeting and told the Ugandan field team, “You just finish it for us!”

It may be that even when the community land documentation work is compelling, engaging, and accepted as necessary to community land tenure security, if led by an outside NGO, the community may see it as removed from village life, with the final responsibility for the desired outcomes lying with the NGO, not the community. In contrast, giving a community the direct responsibility to complete land documentation work (with guidance from legal and technical professionals and under the leadership of trained community paralegals) appears to further a sense of ownership over outcomes and motivate communities to take the community land documentation exercises seriously.

Second, the relative success of the education-only and control groups that neighbored paralegal group communities indicates that **well trained and rigorously supervised paralegals may positively impact not only the progress of the immediate communities in which they work, but may also have wide-ranging spillover impacts throughout the region in which they are based.** SDI observed that the control communities’ enthusiastic determination to “get their papers” led members of some control communities to ask their treatment group neighbors what SDI had been teaching them so that they could follow along at a similar pace. Furthermore, both CTV and SDI observed that **the education-only and control communities adjacent to paralegal communities routinely sought information and support directly from the paralegals.** For example,

one control community in Liberia described how they were only able to resolve their boundary harmonization difficulties once they looked to paralegals from neighboring communities for help:

*The hard part was boundary harmonization. We had too many conflicts among ourselves... We could not have meetings. That was frustrating. There was misunderstanding. We were not thinking like one people; maybe we did not understand the project. People refused to come to meetings; it was hard for us. Then we started talking to the animators [paralegals] in other clans. They helped us a lot.*

Third, SDI, LEMU and CTV observed that **communities need targeted legal and technical support to complete certain formal steps within the community land documentation process**. The above statistical analysis includes only intra- and inter-community activities; it does not include those steps of the process that involve community interaction with government agencies or administrative systems. Indeed, in Mozambique and Uganda, the field teams observed that communities always needed outside support when interacting with state agents: in Mozambique, communities required assistance to contact relevant government agencies to schedule the GPS survey of their lands and compile the final certificate application file; in Uganda, communities needed help when contracting a licensed surveyor and completing the Communal Land Association incorporation and freehold title application forms.

*Non-statistical* analysis of study communities' progress according to the specific steps of their national processes<sup>183</sup> yielded similar results in Liberia and Mozambique, while in Uganda the data show little difference between the various treatments on community progress.<sup>184</sup>

In the study region in Liberia, the prevalence of forestry concessions and resulting tenure insecurity have **created a strong desire among rural Liberians to seek formal documentation for their land claims**. SDI observed — and the findings illustrate — that this desire motivated communities to complete as much of the land documentation process as possible within the study period, even when offered no legal support.

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183 Because the sample sizes for these national-level analyses were so small, the findings are not conclusive and should be considered only indicative of potential trends. It may be that these results may stem from the small sample size and the dysfunction of those communities randomly assigned to the "full services" treatment group that ultimately rejected the initiative.

184 See Appendix C for a representation of how these figures were calculated.

## Non-statistical analysis of treatment impact in Liberia

- ▶ Control Group: average completed 45.2% of the process.
- ▶ Education-only treatment group: average completed 70% of the process.
- ▶ Paralegal treatment group: average completed 85.2% of the process.
- ▶ Full legal services treatment group: average completed 57.6% of the process

It is particularly significant that the control communities in Liberia were able to complete over 45% of the community land documentation process set out in the MOU with the Land Commission with no more direction than written guides and handouts. SDI observed that by secretly sending emissaries to listen in on the full-service and paralegal communities' meetings, approaching neighboring paralegals personally for advice and support, and otherwise going to great lengths to get necessary information, the control communities were able to successfully complete a fair percentage of the process. Again, these findings indicate that given clear direction, guidance and the promise of land documentation, communities can and will undertake much of the community land documentation work on their own.

In Mozambique, as in the cross-national analysis, the paralegal group progressed further, on average, than the other treatment groups. However, the full-service group in Mozambique completed more of the process than the education-only group.

## Non-statistical analysis of treatment impact in Mozambique

- ▶ Control Group: average completed 25% of the process.
- ▶ Education-only treatment group: average completed 62% of the process
- ▶ Paralegal treatment group: average completed 82% of the process
- ▶ Full legal services treatment group: average completed 69% of the process

In Uganda, all three non-control treatment groups seemed to have a similar completion rate, factoring in where the education-only and paralegal groups would have stopped had LEMU not helped them finalize their Communal Land Association constitutions.

## Non-statistical analysis of treatment impact in Uganda

- ▶ Control Group: average completed 0% of the process.
- ▶ Education-only treatment group: average completed 44% of the process.
- ▶ Paralegal treatment group: average completed 42% of the process.
- ▶ Full legal services treatment group: average completed 47% of the process.

However, these non-statistical calculations may obscure a more complicated practical reality and minimize the importance of higher levels of legal services: **both CTV and LEMU observed that when a community did not face intractable intra-community obstacles, the higher the level of support provided, the more quickly and easily communities were able to complete the requisite land documentation activities.** In Mozambique, the paralegal and full-service treatment groups would have completed the project in equal standing were it not for one of the full-service communities' early rejection of the project. In Uganda, if the two full-service communities that continued with the project were averaged alone, their combined completion rate would be 95%, not 47%. Across the board, these full-service communities' rejection of the project had little to do with the level of legal services provided, and more to do with internal community dynamics, corrupt leaders and the presence of multiple foreign investors. It may therefore be hypothesized that an additional benefit of having internal drivers is the paralegals' apparent **ability to help communities navigate through intra-community tensions or obstacles that a full-services team of outside professionals may not be aware of, understand, or know how to properly address.** This trend is explored in the following section.

## 2.

### OBSTACLES CONFRONTED DURING COMMUNITY LAND DOCUMENTATION EFFORTS

The field teams observed that a variety of factors weighed more heavily on community capacity to complete the project activities than the degree of legal services provided. Rather, a community's successful completion of the community land documentation activities appeared to depend more strongly on four factors which were observed to significantly impact a community's chances of success:

- ▶ The strength and unity of community leaders;
- ▶ The presence or absence of elite interference or influence;
- ▶ The degree and kind of threat to its lands a community is facing; and
- ▶ The degree of internal community cohesion and cooperation.<sup>185</sup>

These obstacles are described briefly below, followed by a discussion of the correlation between the level of legal assistance provided and communities' effectiveness in overcoming these obstacles.

## Weak leadership and power struggles between leaders

In all three nations, the field teams observed the importance of community leaders' support for land documentation efforts. Without exception, when communities had particularly weak leaders, leaders amenable to the influence of outside elites, and/or leaders who covertly opposed documentation efforts, communities were unable to successfully complete the project activities, even when provided with paralegal or full legal services support. Further, the field teams observed that those few communities who proactively ousted corrupt leaders mid-way through the community land documentation process — instilling trusted individuals in their place — were thereafter able to progress quickly.<sup>186</sup> They also observed that communities fortunate to have motivated, dedicated and trusted leaders progressed well through the activities, even when only provided legal education support.

The field teams noted that community leaders must not only be strong and well respected, but that relatively good cooperation between various community leaders is essential. Generally, at least part of a community would disengage from land documentation efforts if one or more influential community leaders expressed a lack of support for the project, even if other influential leaders supported and encouraged the work. CTV also observed that if there was a power struggle between leaders, communities generally failed to progress through the land delimitation process.

## Intra-community threats to community land

In Liberia and Uganda, the field teams observed **if the threat to a community's land is coming from inside the community itself (local encroachers or local leaders and elites who seek to obstruct the process to claim land for themselves), even the full**

<sup>185</sup> See the analysis, below, of the various intra-community obstacles encountered.

<sup>186</sup> See Appendix C for detailed descriptions of the study communities' experiences.

**support of a legal and technical team may not be enough to address such intra-community challenges;** the community land documentation work may be rejected. Internal encroachers have a strong incentive to work hard to demobilize their communities, leaving the communal lands undocumented and vulnerable to exploitation.

Conversely, all three nations' field teams observed that **when a community had faced or was currently facing a specific external threat to its land claims, the community fully embraced community land documentation and worked diligently to complete all processes necessary to ensure protection for its land claims, regardless of the degree of legal support provided.** Both SDI and LEMU observed that a community's sense that its lands were being threatened not only impacted its capacity to work together cooperatively, but also increased its drive and determination to complete the documentation work.<sup>187</sup> The Liberian communities' efforts indicate the strong impact that fear of external threat to land claims had on community progress. SDI noted that the threat of losing community land to foreign investors was a strong motivator for all 20 study communities; it was frequently mentioned as a source of anxiety and insecurity during project meetings. In Uganda, as well, communities that were currently confronting or had in the past confronted an external threat to their land claims generally embraced the project and did their best to complete the community land documentation activities.<sup>188</sup>

Relatedly, LEMU observed that **the absence of an outside threat had a strong negative impact on the study communities' progress, even when communities were facing equally severe or more immediate internal threats to their grazing lands.** The field team observed that because the Ugandan communities were so afraid of losing land to outside investors and government agencies, they preferred to remain with "known" internal threats than risk trusting outsiders, even if the outsiders came from an NGO offering legal support to help protect community land.

## Elite interference

In Uganda and Liberia, **the presence of an influential elite who opposed the project often had the power to stall or halt project activities for months or indefinitely.**<sup>189</sup> In Liberia, both local and Monrovia-based elites often interfered with community land documentation efforts to preserve their own farms, plantations or investments. In one full-service community, Monrovia-based elites effectively halted community progress by

<sup>187</sup> This same sense of acute threat was not observed in Mozambique, likely as a result of the proliferation of coconut trees that community residents plant to stake and secure their land claims; CTV observed that despite the growing number of tourism investments along the coast of the study region, the communities did not exhibit high levels of fear that their lands would be appropriated.

<sup>188</sup> See Appendix C for details of the communities' experiences.

<sup>189</sup> CTV's field team in Mozambique did not observe any instances of elite interference during the project period.

forbidding any boundary harmonization agreements without their approval, a decree motivated by the presumption of unexplored mineral resources within the community.<sup>190</sup> In Uganda, community withdrawal due to elite interference was a significant problem and seriously threatened the integrity of the intervention. LEMU observed 16 instances of elite interference or sabotage in 11 of the study communities. Of these 11 communities, only four continued their work with LEMU; the others rejected the project. For example, after energetically participating in all project activities for seven months, one Ugandan community suddenly withdrew from the project after the brother of the *Adwong Bar* (customary manager of the grazing lands) convinced him to reject the project. The brother was a civil servant in the region who sought to appropriate some of the grazing lands for his own private use.

While in Mozambique and Liberia only one community in each nation withdrew from the intervention, in Uganda more than half of the study communities eventually rejected the project. In these communities, influential or powerful individuals (fearing loss of lands they had already appropriated in bad faith, or a restriction on the amount of land they could appropriate in the future) took steps to demobilize their community. To remedy this problem, LEMU held repeated meetings with trusted community leaders to gain their support for the project and their help in remobilizing the community. This tactic did not always work, or functioned only until the land grabber redoubled his or her demobilization efforts. In some cases, communities accepted the project, rejected it, invited LEMU back, and then rejected the project again. Although LEMU often had no choice but to leave when community members informed the field team that LEMU's support was no longer wanted or welcome (violence was occasionally threatened), this put LEMU in the unfortunate position of discontinuing work with the communities most in need of its legal support: LEMU's departure often meant that the community would indeed lose more of its grazing lands to elite appropriation.

## Lack of internal community cohesion and cooperation

The field teams observed that **communities that had a high degree of internal cohesion and unity tended to successfully complete the work, even in the presence of other obstacles**. Specifically, the field teams observed a direct correlation between: a) community cohesion, b) local leader/local elite support for the project and c) the level of meeting attendance, which directly impacted the degree of community progress through the land documentation activities. Conversely, the field teams observed that **communi-**

<sup>190</sup> For example, the border dispute between two Liberian communities was partly influenced by elite individuals with cash crop farms. These individuals tended to lead boundary discussions in a direction that they perceived would benefit them, in some cases contradicting the expressed decision of the broader community. However, elite interference did not always result in negative outcomes; SDI observed that local leaders contending for political offices in the coming 2011 election tried to co-opt the project to their advantage, supporting the project activities while claiming that they were the ones who should be credited for bringing the land documentation work to the community.

**ties that had a high degree of internal friction and division were less able to make progress, regardless of the level of legal services support provided.** Noting this, one woman's focus group in Liberia explained, "The hard part was meetings. No one went to meeting. We just sit on our hands. We don't know, maybe the men don't want the land. The problem is not solved yet; we have no meetings." Generally, the project did not cause this disunity; the lack of cohesion was often described by pre-service focus groups and observed by the field teams as a pre-existing community dynamic.

In Liberia, SDI observed that certain key factors tended to erode or undermine the degree of community cohesion, and therefore its ability to complete the project work, including:

- ▶ *Proximity and number of towns in a "community."* Clans with isolated and dispersed towns and clans composed of a large number of smaller towns often had a hard time creating a sense of a coherent "community unit." In such situations, it was often difficult for the various towns to work collaboratively and in unison.<sup>191</sup>
- ▶ *Transience of community members/degree of urbanization.* Peri-urban communities with larger populations and communities with a high percentage of transient residents (living in the community while working as short-term gold miners or pit-sawers<sup>192</sup>) tended to struggle to work together and had more difficulty completing project activities.
- ▶ *Historical grievances/conflict between towns in a clan.* Entrenched disputes between towns in a clan often made it difficult for the clan to work collaboratively.

In Uganda, because various villages often share ownership rights to one large grazing land, loosely affiliated villages had to work together as one "community" to document their shared grazing land. LEMU observed that communities made up of three or more villages often had difficult time progressing through the land documentation process, as coordination and cooperation proved challenging.<sup>193</sup> Their difficulties extended to every detail of the project: various villages in a community often debated over where the project meetings would be held, which leaders could chair the meetings and from which villages or clans the paralegals should come. Such decisions often became the focus of complex intra-community/inter-village power negotiations. In contrast, smaller, less populous, and less diverse communities tended to more easily unite around the project activities.

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<sup>191</sup> However, when a community felt a strong sense of threat to its land claims, size and distance tended to matter less, as community fears of external forces were enough to unite them to cooperate.

<sup>192</sup> Small-scale, usually illegal, loggers in Liberia.

<sup>193</sup> See the complete Uganda report for further details, available at: <http://namati.org/work/community-land-protection/Phase-One-Findings-and-Reports>.

In Mozambique, CTV struggled to mobilize strong participation (described below) and observed that in a number of situations, leaders and a few prominent community members completed the delimitation activities. The low participation outcomes appeared to have less to do with CTV's mobilization efforts and more to do with underlying community cooperation problems that pre-dated the inception of project activities. Focus groups in Mozambique frequently explained how "People do not bother to work together anymore, each one cares only about his individual life;" "Nowadays people are more concerned with their own home and family, they no longer look much to cooperating with other community members — times have changed;" and "Today, each person is preoccupied with taking care of their own private affairs. There is more selfishness these days, people no longer look to our collectively interests, only to their personal interests." Other focus groups attributed failure to participate in community land documentation efforts on either a lack of leadership or a lack of respect for their current leaders. For their part, leaders appeared frustrated with local people for not being more actively involved in community decisions and meetings. Leaders explained how, "We always hold meetings with the people of our community for them to see how we work, but they no longer participate in meetings and know nothing of the community."

## Correlation between the level of legal assistance provided and communities' effectiveness in overcoming these obstacles

A series of cross-national statistical tests assessed the importance of these factors.<sup>194</sup> Surprisingly, contradictory to the field teams' observations, statistical analysis found that while many of these factors do impact a community's ability to successfully complete the land documentation activities, **the factors appear to have less influence on the outcome than the degree of legal services provided.** This suggests that the negative impact of such obstacles can be offset or even overcome by the appropriate provision of legal services.

Statistical analyses also examined whether there was a correlation *between* the level of assistance provided and communities' effectiveness in overcoming intra-community obstacles faced in the process of following community land documentation procedures (the joint effect of each of these obstacles/factors in combination with level of legal service support provided). The results of these analyses illustrate a very unexpected finding: when faced with an intra-community obstacle that impedes progress, the statistical significance of the impact of providing full legal

<sup>194</sup> See Appendix B for the full statistical analysis.

service support is negated. In other words, **in the presence of intra-community obstacles, a full-service community's ability to progress successfully through the community land documentation process is no different than that of a control group community.** The cross-national statistical analysis also shows that in any given community that faces a variety of intra-community obstacles, the communities in the education-only and paralegal groups had more success in overcoming these problems than the communities in the control group and the full-service group.

These findings appear to indicate that **outside professionals may either inadequately address, fail to perceive, or accidentally exacerbate intra-community tensions.** Alternatively, these findings may indicate the disempowering effect of receiving full legal services help versus the legal empowerment effects of supporting a community to perform much of the work on its own, under the guidance of trained, supervised community paralegals.

### 3. CORRELATION BETWEEN THE LEVEL OF LEGAL ASSISTANCE PROVIDED AND PARTICIPATION RATES

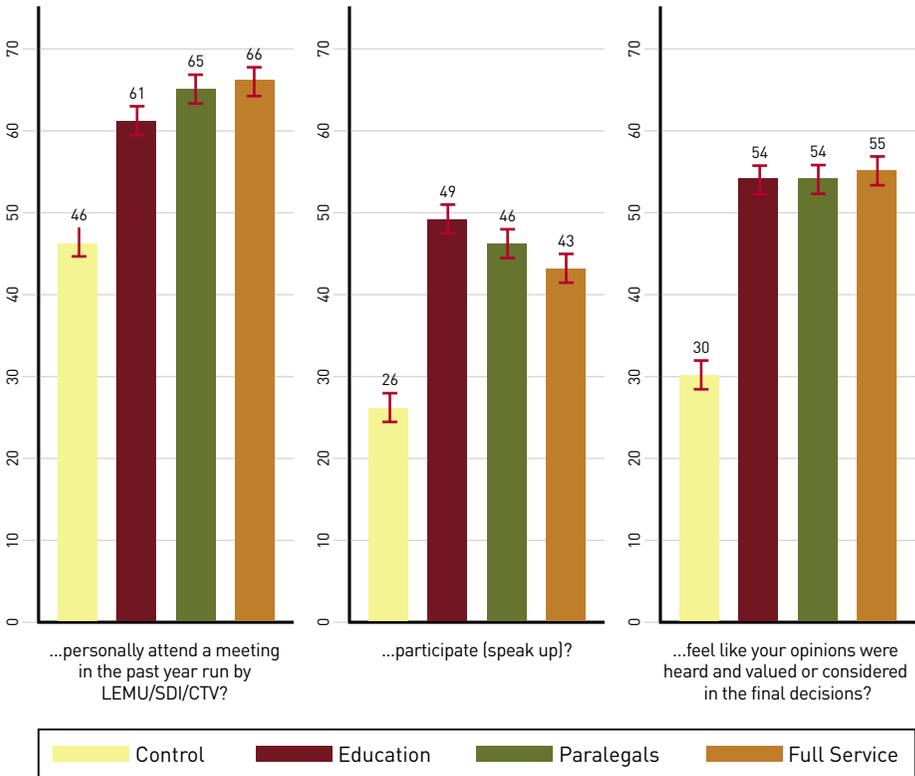
According to cross-national statistical analyses, the three treatments had a statistically significant, positive impact on the *frequency of meeting* attendance during the intervention as compared to the year prior to the project. The three treatments also appear to have significantly increased community attendance at project-related meetings during the intervention, as compared to control group attendance. The cross-national statistical analysis furthermore found that the treatment groups had a statistically significant impact on the frequency of survey respondents' reported rates of verbal participation during project-related meetings, as compared to the control group. However, the statistical analysis did not find any significant difference in either attendance or participation rates between the three treatment groups; the impact was only relative to the control group (as evidenced by the overlapping error bars, see above footnote 147).<sup>195</sup>

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195 See Appendix B for a full description of the statistical analyses.

## Cross-national community participation and attendance rates<sup>196</sup>

In the past one year, did you...  
 (% respondents answering “Yes”)



When respondents in all three nations were asked if they had attended a project-related meeting over the past year, the paralegal and full-service groups’ response rates were similar, and only slightly higher than the education-only treatment group’s rates; the three treatment groups reported similar rates of speaking up in a project meeting, with the education-only group respondents reporting that they spoke up slightly more frequently.<sup>197</sup> Respondents from all three treatment groups also reported striking similar rates of feeling “heard” and that their opinions were “valued and considered” during community decisions.

<sup>196</sup> Although the second and third questions were not asked to the full respondent pool (but only to those reported attending and speaking in meetings), these percentages do reflect that of participants answering “yes” within the full respondent pool.

<sup>197</sup> One hypothesis may be that once a community embraces the project, monthly legal education and capacity-building visits by a field team may be enough to stimulate community participation and involvement; the members of the paralegal and education-only communities may have attended community-run/paralegal-run meetings because they were also attending the meetings called by LEMU, CTV and SDI, and therefore understood that “homework” assignments had been given and needed to be completed before the field teams’ re-appearance the following month.

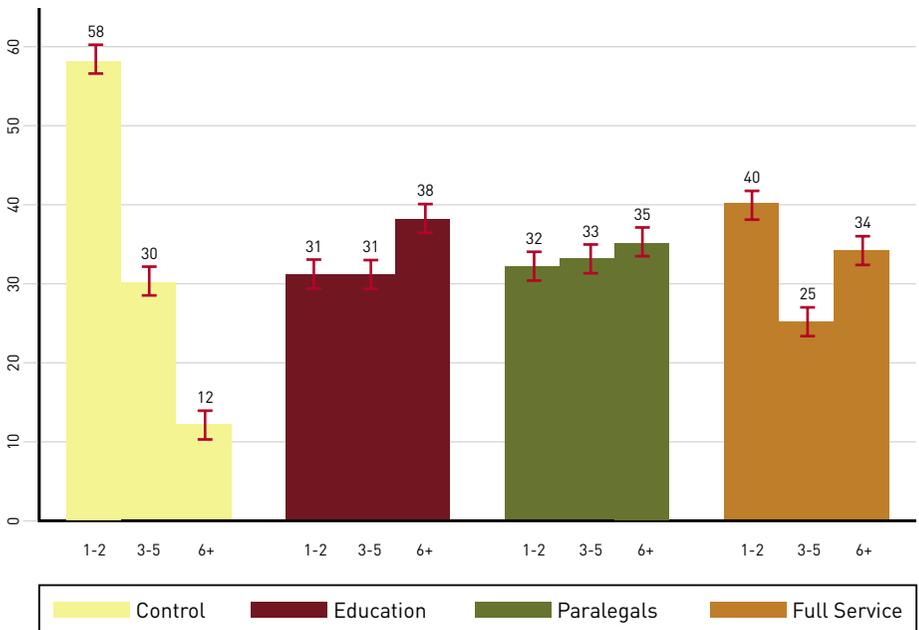
Cross-nationally, an average of 64% of treatment group respondents attended project-related meetings, while an average of 46% of treatment group respondents reported participating verbally during these meetings. Interestingly, across all three treatment groups, greater numbers of respondents reported feeling as though their opinions were “heard and valued, or considered in the final decisions” than reported actually voicing their opinions. It is also notable that survey respondents across all three treatment groups reported similar rates of feeling that their opinions were “heard and valued,” potentially indicating that the level of treatment provided made no impact in this regard.

Strikingly, the data also indicate a very high level of community member commitment to the process: more than a third of the survey respondents in all treatment groups who reported attending a project meeting reported attending six or more project-related meetings.

**Cross-national: Number of meetings attended by treatment group**

Frequency of attendance at project-related meetings

*(number of meetings attended by each survey respondent who reported attending a project meeting)*



Cross-nationally, it appears that the majority of treatment group respondents participated in the community land documentation process: only one third of survey respondents reported never attending any project-related meetings. (As explained below, the

cross-national rates are significantly reduced by the Mozambican data.) The cross-national data also indicate that the full-service and paralegal treatment group respondents who reported not attending any project meetings (34% and 35%, respectively) were more aware of the project than those education-only and control group respondents who did not attend project meetings: while 31% of control group respondents and 33% of education-only group respondents reported both not attending meetings and not being aware of the project activities in their community, only 19% of paralegal group respondents and 14% of full-service group respondents reported both not attending meetings and not being aware of project activities.

The attendance and participation rates look very different when broken out by nation. Notably, the Ugandan and Liberian respondents' reported rates of meeting attendance are astoundingly high. In Uganda, across the three treatment groups, an average of 88% of survey respondents reported attending a meeting run by LEMU, while an average of 56% reported speaking up to voice their opinion. Meanwhile, an average of 86% of Ugandan treatment group survey respondents reported feeling that their opinions were respected or considered in community decisions. Similarly, in Liberia, an average of 80% of treatment group respondents reported participating in a meeting run by SDI, while an average of 73% of treatment group respondents reported speaking up in a meeting.<sup>198</sup> In Liberia, an average of 77% of treatment group survey respondents felt that their opinions were respected or considered in community decisions.

In Mozambique, however, the majority of survey respondents reported not attending even one community land delimitation meeting: 71% of education-only respondents, 61% of paralegal respondents and 50% of full-service respondents reported not attending any project meetings. Moreover, only an average of 10% of post-service survey respondents reported speaking up during a project-related meeting. These figures indicate a fairly un-participatory process across all groups. CTV's field team noted this poor participation in the first months of the intervention and constantly worked to remedy the situation, even using project funds to transport community members from the central market to the site of the project meetings. Unfortunately, such efforts did not appear to make a strong impact on participation. Given CTV's elaborate efforts to galvanize community participation, the low participation rates may have had less to do with CTV's mobilization efforts and more to do with the underlying problems of cohesion and cooperation explained above.<sup>199</sup>

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198 A full 57% of control community respondents reported attending a project-related meeting; this data may reflect the MOU-signing ceremonies, which called all neighboring clans to the ceremony for witnessing and verification. The data may also reflect control group community members' participation in project-related meetings that communities held on their own as they completed the project activities.

199 The communities' low participation rates likely had a negative impact on the successful completion of the project activities. Further research is necessary to understand why the community land delimitation meetings and related activities in Mozambique were characterized by such low attendance and participation.

# MAIN FINDINGS

- 1. The field teams' observations and the statistical analyses show that carefully trained and supervised paralegal support was the most effective level of legal services provision.** The paralegal group's progress was significantly stronger and more robust than that of both the education-only and the full-service groups. The field teams' observations indicate that community-based paralegals make a positive impact on communities' capacity to complete land documentation activities by:
  - **Helping communities to address intra-community difficulties that may not be evident to or resolvable by outside technicians or lawyers.** The statistical analyses indicate the paralegal and education-only communities had more success in overcoming these problems than the full-service group communities. Cross-nationally, paralegal communities remained engaged throughout the project despite intra-community obstacles, while full-services groups tended to reject the work or drop out when confronted with internal tensions.
  - **Increasing community attendance.** The field teams observed that having trusted community members integrally involved in — and hired by — the project helped to galvanize community participation in land documentation efforts, particularly in comparison to the education-only treatment communities' participation.
  - **Fostering empowerment and creating a sense of community ownership over the community land documentation work.** The paralegals appeared to further their communities' feeling of empowerment by allowing the process to be more internally driven; leaving communities to complete most project activities on their own motivated them to take the work more seriously than when a legal and technical team completes the work on a community's behalf.
  - **Strengthening both their own community's capacity as well as the capacity of neighboring communities.** Unlike the field teams, the paralegals were locally available on a daily basis. Both CTV and SDI observed education-only and control group communities proactively seeking out information and support from neighboring community paralegals.

However, it is important to note that community-based paralegals often have very low initial capacity and need frequent training, supervision and support by a legal and technical team.

**2. 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.** Given clear direction and the promise of land documentation, communities can and will do much of the land documentation work on their own. However, the field team's experiences indicate that legal and technical professionals must actively provide the following supports throughout the process:

- Introducing the land documentation process and providing periodic legal education and capacity-building training;
- 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, particularly to ensure compliance with national laws and sufficient detail to make the constitutions actionable;
- Implementing a women's empowerment/participation strategy and convening special women-only meetings to ensure women's full participation in all community land documentation activities; and
- Providing assistance to communities to follow all of the administrative components of the community land documentation process, including: liaising with government agencies, contracting professional land surveyors, compiling all necessary evidentiary proof of community land claims, and completing all the relevant application forms.

In addition, a legal and technical team must closely supervise each community paralegal's efforts, not only to ensure that the paralegal's work product is of high quality, but also to step in to provide additional support when required. The direct involvement of a legal team may also be necessary to demonstrate to all stakeholders (government officials, investors, local elites, etc.) that the community's efforts are being supported by lawyers who have the capacity to take legal action, if necessary.

**3. A paralegal-driven process may be less costly — and more scale-able — than the full-service approach, as the paralegal model allows a few professionals to supervise multiple community-based paralegals.** A feasible, low-cost strategy for wide-scale land documentation efforts may be for civil society or government agencies to work concurrently with a manageable number of communities led by paralegals. In Mozambique the costs of supporting community land delimitation were calculated by treatment group. Under CTV's facilitation, 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. This figure includes 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. 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.<sup>200</sup> Considering the high number of families living in each community (anywhere from 200 to 1000), the community land delimitation process may be deemed a highly economical way to protect large numbers of families' land claims at once. Although cost estimations vary widely according to the national legal framework and economic context, one analysis found average costs of first-time household land registration to sometimes be above US \$100 per parcel, with average costs between US \$20 and US \$60 per parcel.<sup>201</sup> For a hypothetical community of 500 families and large common areas, registering the tenurial shell would cost less than half of efforts to register individual or family lands.

- 4. Finally, the research suggests that an unhealthy or dysfunctional community may not be able to complete the complex process of documenting land claims.**<sup>202</sup> Cross-nationally, the field teams' observations identified risk factors to completion, including: elite sabotage, intractable boundary disputes, internal discord, and weak or divided leadership. Similarly, peri-urban communities and communities with little or no internal cohesion or a highly transient population may not be appropriate for such 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, capacity-building and leadership-enhancement trainings may need to be provided before a community can undertake land documentation efforts.

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200 Unfortunately, it was not possible to calculate costs by treatment group in Liberia and Uganda.

201 Burns, T. 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.

202 Both healthy and dysfunctional communities will likely have numerous land conflicts; however, in a healthy community, community members talk openly about conflicts and make efforts to genuinely resolve the matter and arrive at peace.



Women at a community meeting in Uganda

# HOW TO FACILITATE COMMUNITY PROTECTION FOR WOMEN AND OTHER VULNERABLE GROUPS' LAND RIGHTS

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**G**ROWING LAND SCARCITY and increasing competition for land have been shown to exacerbate local power asymmetries and affect a breakdown in the customary rules that equitably govern land holdings and the sustainable use of common resources in rural communities.<sup>203</sup> Research has found that as land becomes scarce, “belonging” and social ties are redefined: fearing loss of land, customary leaders and families shift from more flexible, negotiable systems of land

Community land documentation processes afford important opportunities to address intra-community discrimination and injustice and craft local mechanisms to safeguard vulnerable groups’ land rights.

holding to more rigid, discriminatory interpretations of land rights. In the process, despite the strength and negotiability of kinship-based land claims, customary protections for women’s land rights are disregarded and “forgotten” and the land rights of less powerful family members become more tenuous. In some contexts, families are reinterpreting and “rediscovering” customary rules to weaken women’s land rights.<sup>204</sup> In practice, this puts those with weaker land claims — including women, orphans, pastoralists, and other vulnerable groups — at the greatest risk of losing their land.

Meanwhile, under community land documentation schemes, land management and administration are necessarily devolved to communities themselves. Yet if specific mechanisms are not put into place to ensure against intra-community injustice and discrimination, there is a heightened risk that women, widows, orphans, and other vulnerable groups may lose land to land-grabbing relatives, in boundary disputes with more powerful community members, and other inequitable situations. Even when the governing body managing community land is elected, elite capture may still be possible, with “the elected council being dominated by a few families having stronger (land tenure or other) status under customary law, greater capacity to mobilize resources from the outside world through political or other connections and economic resources.”<sup>205</sup>

As such, the Community Land Titling Initiative sought to address the issue of how to best facilitate the protection of women’s and other vulnerable groups’ land rights in the context of community land and natural resources management. Within this query, the Initiative investigated the following subsidiary questions:

- ▶ Is there a correlation between the level of assistance provided and meaningful participation by vulnerable groups in terms of: participation in community meetings; the drafting, finalization and adoption of community by-laws; and the drafting, finalization and adoption of land and natural resource management plans?

203 See generally: Cotula (2009), Peters (2004); Whitehead and Tsikata (2003), Woodhouse. (2003).

204 See Mathieu *et al.*, (2003), Peters (2004); Giovarelli (2006); Peters (2004); Quan (2007); Yngstrom (2002); Cotula and Toulmin (2007); Whitehead and Tsikata (2003); McAuslan (2000); Adoko (2000).

205 Cotula, above n 4, 62.

- ▶ Is there a correlation between the level of assistance provided and whether communities adopted safeguards aimed at protecting the land rights of women and other vulnerable groups?

The following section details the field teams' efforts to foster women's active participation in the community land documentation process and the relative success of their efforts according to the level of legal services treatment provided. The section then describes the various impacts of the by-laws/constitution-drafting process on women's and other vulnerable groups' rights.

## Women's participation in community land documentation activities

Throughout the community land documentation activities, the field teams worked to both teach communities about women's substantive land rights and to ensure women's involvement in community meetings. To this end, the field teams adopted specific measures to ensure the participation of women and other marginalized groups in all community land documentation activities. Such measures included:

- ▶ Requesting that each paralegal treatment community elect one male and one female paralegal;
- ▶ Ensuring women's inclusion on the interim coordinating committees;
- ▶ Repeatedly urging communities to include the voices and interests of women, youth and strangers<sup>206</sup> in all activities throughout the project;
- ▶ Scheduling community land documentation meetings in places and at times that women could more easily attend;
- ▶ Requesting that paralegal and education-only treatment communities organize and schedule all of their own meetings at times and locations that accommodated working hours and allowed for full participation of all community members;
- ▶ Sending community leaders and paralegals door-to-door throughout their villages to specifically request that women attend project meetings;
- ▶ Asking men to bring their wives with them to project meetings; and
- ▶ Instructing paralegals to mobilize women and other vulnerable groups to attend their meetings.<sup>207</sup>

206 In the study region of Liberia, a "stranger" is a person who was not born in the community where he or she is currently residing.

207 To augment these efforts, LEMU also adopted a variety of additional mobilization strategies, including: broadcasting women's names over the local radio and asking them to personally attend the next project meeting; holding meetings on Sunday afternoons when women were free from household and farm work; and inviting women to meetings at the end of church services on Sunday, among other strategies. In one community, local women cooked lunch for the whole community at the meeting venue, thus alleviating other women's cooking duties and ensuring their attendance.

## Holding Women's Conferences

In Uganda, despite employing various strategies to increase women's participation, both women's attendance at meetings and women's verbal participation during meetings remained low for the first half of the project.<sup>208</sup> LEMU therefore deemed it necessary to take action to determine why women were not participating, proactively address these factors, and motivate women to attend and participate in all future project activities. To this end, LEMU held a series of "women's conferences" in all of the parishes and sub-counties where the study communities were located.

At the conferences, LEMU worked to help women understand how women's participation in the Communal Land Association constitution-drafting process was critical and how, if they were *not* involved in the discussions, they might inadvertently lose some of their use and access rights to the grazing areas. LEMU also took the opportunity to again educate women about their land rights under Uganda's *Land Act 1998*. The conferences evolved into fruitful discussions, during which the women began to articulate their needs and interests and to craft strategies to ensure that their voices were heard during the constitution-drafting deliberations. At the end of the conferences, LEMU assigned the women the task of holding similar meetings for the rest of the women in their community to pass on all of the information they had learned. LEMU also asked the participants to work with other women in their community to document what natural resources they use within the grazing lands and discuss among themselves (prior to the larger, full community meetings) how they would like these resources to be managed and protected.

The women's conferences proved to be a turning point in women's participation in the community land documentation activities in Uganda. Once women began to feel that their input in the process was valued and important, they began to attend the wider community meetings in much larger numbers; at subsequent meetings, male and female participation rates were more equal, with women occasionally outnumbering men. LEMU also observed that these efforts increased women's confidence to speak up and argue (successfully) against the inclusion of Communal Land Association rules that would discriminate against them.

**Such experiences indicate that to ensure women's active participation, facilitators should convene women in separate groups throughout the community land documentation process to support them to feel confident to voice their opin-**

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<sup>208</sup> It was not until months into the work that LEMU understood the reasons for women's low participation during meetings. It became clear that although the community used their grazing lands for a variety of activities critical to their survival and livelihoods, the community perception was that they were protecting their grazing lands—and, as grazing animals is primarily a male activity, it was assumed that the project related only to men. As a result, when women did attend meetings, they tended to sit at the back and remain silent. Yet women use the grazing lands (which also include forests) on a daily basis to collect basic household necessities such as firewood, building materials, wild fruits, white ants, herbal medicines, honey and mushrooms, among other resources.



Women pose for a photo with project staff after one “Women’s Conference,” August 2010.

**ions, articulate their interests, and make critical contributions to community land documentation efforts.**

In Mozambique and Liberia, the field teams observed that while women tended to remain silent throughout the boundary harmonization activities, during the ‘shouting out’ and ensuing discussion of communities’ existing land and natural resources rules, women became quite vocal. In Mozambique, CTV observed that women were particularly active in describing and discussing customary rules related to widow dispossession and the subordination of women’s land rights. Indeed, the rules-drafting and debating process appears to have been a key instigator of women’s active participation; the field teams observed that **women’s participation in project meetings increased significantly during the rule-drafting activities in all three nations.**

Furthermore, LEMU and SDI observed that women’s active involvement in the by-laws/constitution drafting process improved the documents’ comprehensiveness. For example, in Uganda, women were instrumental in cataloguing and mapping all non-market resources available in the common areas, including resources such as anthills, wild foods, and medicinal plants. In Liberia, women were very vocal regarding conservation issues, in particular the use, protection and sanitation of water points.

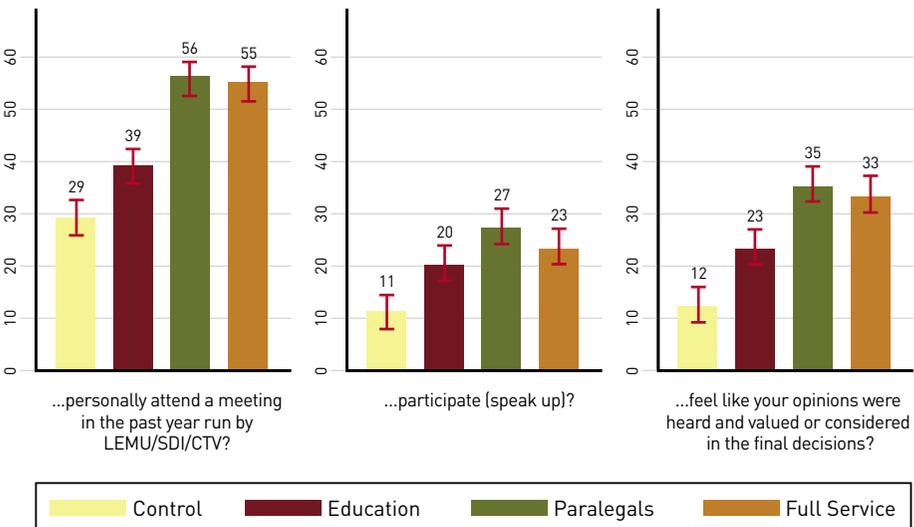
## The impact of legal services treatment on women’s participation

**Cross-nationally, the survey data reveal that the paralegal and full-service treatments appear to have had a similar impact on both women’s attendance at community meetings as well as their verbal participation during meetings.** Notably, the paralegal treatment achieved slightly higher rates of attendance and verbal participation than all other treatments. Meanwhile, women in the education-only treatment group reported attending project-related meetings and feeling “heard” much less frequently than women in the paralegal and full-service treatment groups. **This data may indicate that that monthly legal education is not sufficient to ensure women’s participation in community land documentation activities.**

The cross-national analysis also reveals that **the paralegal treatment had a slightly higher impact on the number of project meetings each female respondent attended:** 56% of women respondents in the paralegal group communities reported attending three or more meetings, in comparison to 47% of full service women respondents and 46% of education-only women respondents.

### Cross-national: Women’s meeting attendance and participation<sup>209</sup>

In the past one year, did you...  
 [% respondents answering “Yes”]



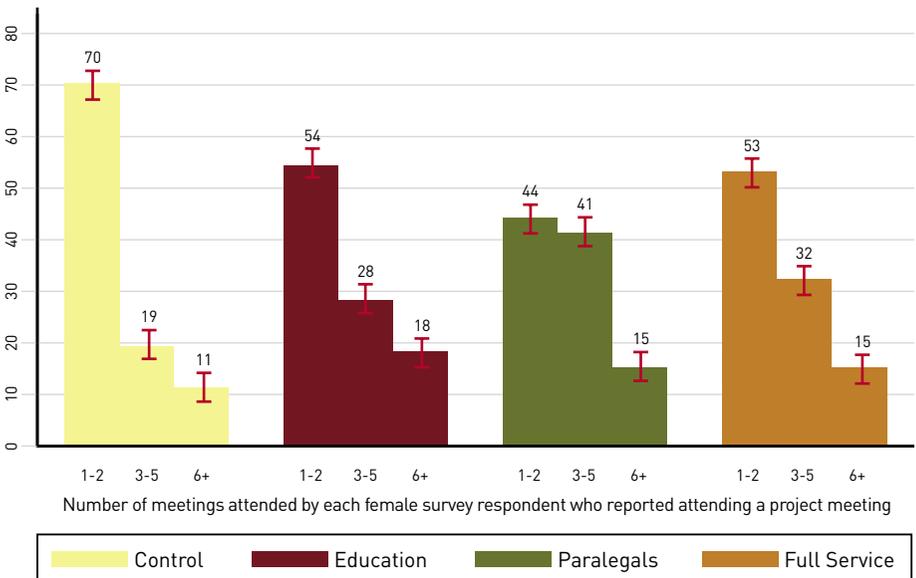
<sup>209</sup> Although the second and third questions were asked only of those reported attending and speaking in meetings, these percentages were calculated out of the full female respondent pool, and thus percentages reflect the full female respondent pool’s answers.

In Uganda, over 94% of female survey respondents in the full-service group and 93% of female survey respondents in the paralegal treatment group reported attending meetings run by LEMU (in contrast to 60% in the education-only treatment group and 50% in the control group). Similarly, in Mozambique, women’s attendance at project meetings correlated positively with the level of legal services: the more services provided, the higher women’s participation. A full 49% of Mozambican female respondents in the full-service group reported that they attended project-related meetings, compared to 37% of female respondents in the paralegal group and 28% of female respondents in the education-only group. Such data support the finding that paralegal support is likely the minimum support necessary to ensure that women participate meaningfully in community land documentation activities.

In Liberia, women’s attendance and participation were highest in the paralegal treatment group (63% and 48%, respectively) with the education-only treatment group following closely (56% and 41%, respectively). Interestingly, women’s rates of attendance and participation in the Liberian full-service treatment group were similar to that of the control group.

**Cross-national: Number of project-related meetings attended by women respondents**

Frequency of attendance at project-related meetings  
 (% respondents)



## Impacts of the community land documentation activities on women's substantive and procedural rights

The Community Land Titling Initiative aimed to understand how to best support communities to create intra-community mechanisms to protect the land rights of women and other vulnerable groups. In Liberia and Uganda, the by-laws/constitution-drafting process proved seminal to the fulfillment of this goal. Unfortunately, because all but one of the Mozambican communities did not progress farther than brainstorming a list of their current community rules, they did not establish any intra-community mechanisms to safeguard women's land rights.

Cross-national analysis of the data illustrates that **the by-laws/constitution-drafting process had a statistically significant impact on the substance of women's and other vulnerable groups' land rights**. To determine this, a statistical analysis assessed the number of provisions in the by-laws/constitutions that could be interpreted as strengthening the land rights of women and other vulnerable groups. Cross-nationally by treatment group in Uganda and Liberia, this analysis found that:

- ▶ The control group communities included an average of **0.8** provisions.
- ▶ The legal education-only treatment communities included an average of **4.0** provisions.
- ▶ The paralegal treatment communities included an average of **5.5** provisions.
- ▶ The full-service communities included an average of **2.8** provisions.<sup>210</sup>

Some of the resulting shifts in women's procedural and substantive rights are briefly explored below.

### Procedural Rights

In Liberia and Uganda, women's participation in the by-laws/constitution drafting discussions appeared to translate into changes in community perceptions of women's "role" or "place" in land governance. In each nation, both women and men's focus groups reported that prior to the project, the community did not consider it appropriate for women to participate in discussions concerning "land business." However, by the end of the initiative, focus groups described situations in which women were actively taking part in community decisions concerning land and natural resources management rules.

<sup>210</sup> LEMU was involved in the final drafting of all of these seven constitutions; after noting where in the constitution-drafting process communities had stalled, LEMU supported all treatment communities to finish their third and final drafts. This strategy adulterated the cross-national results. Furthermore, due to the Mozambican communities' failure to complete these processes, the sample size was very small. As a result, these findings should not be considered conclusive; further research is necessary.

In Liberia, at the start of the project, SDI observed that community discussions were limited to a few male elders. Yet over time, women and youth became increasingly engaged. Describing this trend, a female town chief explained how “Men look at things differently than before. First women were not allowed to talk in land business; now we are invited to all the meetings!” Indeed, post-service focus groups almost unanimously explained that as a direct result of the project activities, women now took part in community decision-making about land and natural resources management. Women’s focus groups explained that: “Now we can talk all together about women’s rights and how women can own property;” “We talked, and they listened to us;” and “Yes, we the women were talking about our rights!” In one men’s focus group, the men reported that women “are now considered as part of the decision-making committee.”

SDI observed that such changes occurred as a result of persistent demands from women and youth. For example, during one meeting, when a woman expressed her disappointment that the town hosting the meeting did not have even one female representative present, her observation prompted town elders to dispatch a team tasked with mobilizing town women to attend.

However, some men and women’s focus groups candidly described how “Men still decide things in the community,” and “Men are the leaders.” For example, in one community, the women explained that “[Although we] agreed that under the law men and women are the same, men still decide things in the community; they are the head of the family.” Such statements indicate the need for further research to assess the implementation and more long-term impacts of the by-laws drafting and adoption process.

In Uganda, before the intervention, while participants in all-women pre-service focus groups reported that they often attended community meetings, only half of the women described freely sharing their opinions during those meetings. The rest of the women admitted that they were afraid to speak up for fear of being belittled or because of personal shyness. These women described how “The leaders underlook us;” “The leaders say that women do not have important points to mention;” “We are considered inferior, [men think] that we have nothing useful to contribute;” “The men in this community demean us;” and “Sometimes they think that we don’t have points because we are women — the community leaders minimize us.” A few women explained that community members do not listen to women because “Women are not normally informed. The majority of us are ignorant.” More positively, a number of women argued that they in fact speak very freely to make the point that they have important things to contribute and to prove to men that men should listen more to women. These women explained that “We speak freely because the men think we have weak ideas, so we speak out to prove them wrong.”

Positively, after taking part in the land documentation activities, women in post-service focus groups from treatment communities almost unanimously expressed that they felt able to fully participate in meetings, and that their communities had included women's opinions and ideas in decisions concerning the content of the Community Land Association constitutions. In stark contrast to the pre-service focus groups, women explained that "At the end of the day, the written document represents our opinions, too" and "When a community meeting is held and women also participate meaningfully, our ideas are respected."

Most importantly, in Uganda the third drafts of the communities' constitutions incorporated concrete rules for electing women to be officers of the Communal Land Associations, such as:

*"Elections [Officers]: The community has the mandate to elect leaders of the Grazing Land ... [including a]: Chairperson; Vice Chairperson; Secretary; Treasurer; Publicist; Security Officer; Women Leader; Youth Leader; and two elders, one male and the other one female."*

*"Functions of the Women Leader: Ensure that the women are making effective use of the grazing land; Educating/sensitizing women at meetings; Advising on matters that concern women of the grazing land; Reconciling women in case of any conflict; Collecting women's views, including their challenges in matters related to the grazing land, and forwarding them to the meeting for redress; [and] Encouraging the women to regularly attend meetings."*

These rules conform with the mandates of Uganda's Land Act (1998), which stipulates that one third of a Communal Land Association's officers must be women.<sup>211</sup> While the inclusion of such rules may have occurred due to legal obligation rather than a sea-change of community opinion, it is possible that their practical enactment may solidify the conceptual shifts that began during the constitution-drafting process.

In Mozambique, with some notable exceptions,<sup>212</sup> women's pre-service focus groups generally described an unsupportive community environment. One women's focus group reported that: "Often we are afraid and ashamed to speak at community meetings because people laugh at us when we speak. They say we do not have valuable opinions and when we speak we feel like we're stealing their time." Other focus groups of women explained that "Women and youth are considered to be people with nothing to say in community

211 Section 16 (4). "A meeting of a group of persons convened under this section shall determine whether to incorporate themselves into an association; where not less than 60 percent of the group determine so to incorporate themselves, elect not more than nine nor less than three persons, of whom not less than one-third shall be women, to be the officers of the association."

212 Those women who felt free and empowered to speak said, for instance: "Nothing affects our willingness to talk, women who participate in meetings speak freely, we have no problems and are not ashamed to speak;" and "We speak freely; we state our opinions without fear of the men!" Another group said, "Men often think that women do not serve to give opinions, but in our community women are heard and respected."

meetings;” “In this community they give women the opportunity to speak, but we do not feel comfortable talking, so we are quiet. The leaders always ask if we have something to say, but we leave our husbands and sons to speak;” and “Men do not consider our opinions, they think that women do not understand certain issues. So we only speak when the discussion concerns issues that are specific to women.”

In contrast to the shifts observed in Uganda and Liberia, it does not appear that the Mozambican communities’ perceptions of women’s role in land and natural resources management changed over the course of the Initiative. This was likely due to the lack of sustained and iterative debate of community rules; as explained above, the by-laws/constitution-drafting process was where women were able to participate most actively. One analysis may be that **by being involved in the rule-making process, women were able to practically and concretely prove that they, too, had important contributions to make to community land and natural resources management practices.** It may be that because the process in Mozambique did not include this step, community perceptions of women’s role in local land governance did not change.

### Substantive Rights

To assess changes in either knowledge or perception of women’s land rights, pre- and post-service survey respondents’ answers to questions concerning perceptions widows’ land rights were analyzed.<sup>213</sup> Cross-nationally, the data show that **the community land documentation activities and related legal education strengthened respondents’ support for widows’ land rights.** Specifically, the percentage of respondents who believed that widows must leave their lands after their husbands’ deaths and/or that a widow’s right to remain in her land is conditional on her “good behavior” or subsequent marriage to another man in the same patrilineal line significantly decreased: while cross-nationally an average of 30% of pre-service survey respondents across all four groups agreed that a widow may only stay on her land “if she has been a ‘good daughter-in-law’ or remarries her husband’s brother,” only an average of 6% of all post-service treatment group respondents agreed.<sup>214</sup> Statistically, this decrease is highly significant.

However, looked at more closely, while cross-national statistical analysis of these answers found a highly significant improvement in *women’s* responses to these questions across all three treatment groups, when men’s answers were compared against the control group, only the men in the education-only treatment group showed sta-

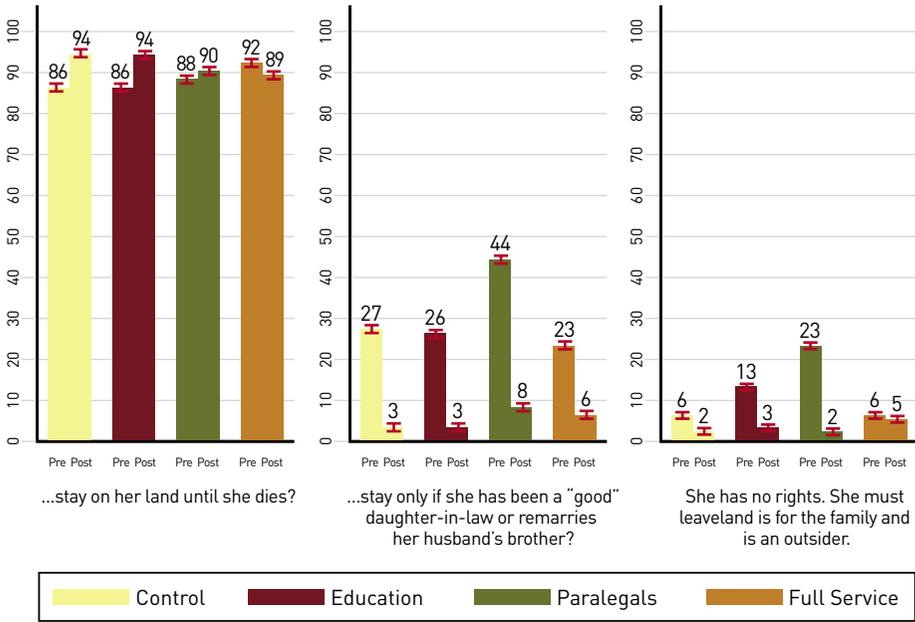
213 Questions concerning the strength of widows’ land rights were asked as a proxy for the land rights of extremely vulnerable groups in general, as in many rural African contexts, widows living in patrilineal societies generally have the weakest land rights in the community.

214 The control group respondents’ answers also reflect this trend, making it unclear whether this change was due to the intervention or other influences. However, it is noteworthy that the control groups received guides, law books and manuals that described women’s land rights, and in Liberia and Mozambique, control groups sought out legal information from nearby paralegals, and at times surreptitiously sent members of their communities to listen in on their neighbors’ monthly meetings with SDI and CTV. As such, the project may have also caused this change in the control communities.

## Cross-national: Perceptions of widow's land rights

Does a widow have the right to...

(% respondents answering "Yes")



tistically significant changes in their rate of support of widows' rights. Further research is necessary to understand this trend, as well as how to better effectuate change in this realm.<sup>215</sup> Further research is necessary to understand this trend, as well as how to better effectuate change in this realm.

In Liberia, as a direct result of the by-laws drafting process, communities made changes to their by-laws to strengthen women's land rights.<sup>216</sup> Of the 14 Liberian communities that completed a second draft of their by-laws, the communities included an average of 2.9 provisions protecting the rights of women, children and strangers. Examples of some of these provisions include:

- ▶ "If any citizen from our town go out and marry different woman or man and come home, and they have children and properties and our brother/sister dies that property is belonging to the woman and her children of the man and his children,"

215 See Appendix B for the full statistical analysis.

216 It is important to note that in the study communities, not all women are treated the same. Focus groups stated that "women from another town" or 'stranger women' (i.e. women who married into the area but were born in another location) do not get the same treatment with respect to land rights and inheritance of land as women who were born in that town. One group explained, "Native women are shown favoritism; stranger women are always considered as strangers in the community." In particular, in most cases of divorce, communities often expect stranger women to return to their families, forsaking the land they claimed under marriage with their husband. However, SDI observed that communities generally allow widows to stay on their lands after their husbands passed away; communities reported that a widow may stay if she "choose[s] to stay in her husband's house."

- ▶ “If there is a property for a dead man, the widow is to take that property, except [if] there is an agreement between the widow and her husband’s family;”
- ▶ “A married man is not allowed to beat his wife in the bush or on the farm. Penalty is LR\$600;”
- ▶ “No raping is allowed; anyone found raping will be turned over to the authority (police);”
- ▶ “No one is allowed to beat his/her friend child/children. Anyone who beats his/her friend child/children and causes body harm will pay not less than LR\$1000 to treat the child/children and continue to pay money until the child/children get better.”

Interestingly, the most prevalent new rule concerning women in almost every Liberian community’s by-laws did not concern land, but rather forbid domestic violence against women. The inclusion of these provisions in almost every community’s by-laws — above and beyond the number of provisions establishing women’s land rights — indicates that given the chance to advocate for their rights, land ownership was not at the forefront of women’s agendas. Rather, women appeared to be more concerned with the abolition of domestic violence.<sup>217</sup>

In addition to new rules proscribing domestic violence, both men’s and women’s post-service focus groups described that now, according to new community rules, “Women are allowed to own land.” Focus groups responses indicate that such rule changes were a result of both SDI’s legal training as well as community debate concerning local norms and practices.<sup>218</sup> Notably, one woman said, “Yes, some people thought women should not have property, but we argued for women.” Focus groups explained how, in their by-laws, “Women are... allowed to own land just like men. They can inherit land just like men;” “Yes, now women can own property. Also, if your husband dies you get part of his property; that’s what the law now says;” and “Talking about the law has made women to have greater protection in our town.” In one community, the men’s focus group explained, “Women can do the same things men can do. Women can own property now; do business, farm, and even do mining business.”

Focus groups’ responses paint a nuanced picture of community reaction to such changes. In one community, when his focus group answered that women now had the same land rights and access as men, one man in the group disagreed, arguing, “Women and men don’t have the same land rights. In practice, the land belongs to

217 This finding is important; an investigation might be undertaken to determine if similar exercises could be undertaken to specifically address gender-based violence.

218 Meanwhile, SDI observed that communities had some pre-existing knowledge of various relevant laws. While facilitating full-service communities’ discussions, SDI observed that women were well aware of their rights under Liberian law, in particular those rights set out in the *Devolution of Estates and Establish Rights of Inheritance for Spouses of Both Statutory and Customary Marriages Act (2003)*. This Act sets out that women’s inheritance rights under common law marriages also apply to customary marriages. Similarly, during by-laws discussions, SDI occasionally observed various community members arguing, “That is against women’s rights!” or “That is against human rights!”

the men. We need to start changing that.” Such discussions illustrate the as-yet still largely theoretical nature of the new rights that the communities included in their by-laws. However, this man’s assessment that “we need to start changing that” may indicate some degree of positive conceptual change.

## Changes to “strangers” rights in Liberia

In Liberia, the by-laws drafting process also appears to have impacted ideas of “strangers” rights in the study communities. In Rivercess, most communities have very strong rules about belonging and exclusion. In local terms, a “stranger” is a person not born into the community where he or she is currently living. Traditionally, strangers cannot plant “life trees”<sup>219</sup> and are not considered owners of the land. Communities justify restricting strangers’ land use rights on the grounds that strangers are either merely passing through and therefore have no investment in/responsibility to the community, or that strangers are not known well enough to be trusted. However, SDI observed that communities’ definitions of “who was a stranger” were usually vague and often defined on a case-by-case basis, with each community deciding for itself who was a “stranger,” whether he or she could own land, and on what terms.

When introducing the process of writing down community by-laws, SDI stressed that communities should not write laws that contradict the Liberian Constitution or discriminate against any group’s rights. To this end, SDI made a particular effort to provoke debate about strangers and to steer these debates towards discussions about inclusion, belonging, and equality. As a result of SDI’s prompting, communities discussed questions concerning strangers’ ownership of community land during the by-laws drafting process. For example, when in one community some people argued that strangers could not own land, other community members questioned, “What if they are living here for ten years? Fifteen years? Twenty years?” The question then became “Who is a stranger?” In another community, a woman who was a teacher and came from another clan asked: “We who are strangers but who built our houses here, are married here, got children here — are we to be part of the process of making these rules?” The community thought about it and said, “Yes, why not?”

As a result of these discussions, communities made critical changes to their community rules. For example, one community included a rule in their by-laws that: “A stranger who lives in a town for twenty (20) years is considered a citizen. During death his children and wife/family will be consider citizen, therefore they can own land and property.”

219 “Life trees” are resource-bearing trees such as rubber, orange and mango, which under custom establish the planter’s ownership claim to the land.

To verify these observations, SDI asked post-service focus groups questions such as: “Who is included in local understandings of land ownership in your community? Who is excluded?” In a number of communities, focus groups explained that they had indeed changed their rules about strangers during the by-laws drafting process, and that their definition of “stranger” had now shifted from someone from outside the community to someone who is from another country. One participant in a men’s focus group explained that “Everyone in the community is included; no more ‘stranger business’ as long as you are a Liberian and decided to live among us. You have to follow the community rules before you are considered a part of the community. After that, you have the same access rights as everyone else.”

In Uganda, the constitution-drafting process effectuated significant substantive changes to women’s rights. The seven final Communal Land Association constitutions include an average of 11.6 provisions that function to protect women’s land rights. As a direct result of the constitution-drafting process, women — unmarried daughters, wives, and widows alike — are considered equal members in the Communal Land Association, with the same rights to land and natural resources as male members.<sup>220</sup> Specifically, the provisions protecting women’s substantive and procedural rights do so in four main ways:

- ▶ The constitutions specify that only ‘natives’ of the communities are automatic members of the Communal Land Associations, but define ‘natives’ as any person (male or female) born into the community (including unmarried daughters), as well as any wife or widow of a man born in the community or any woman who eloped with a man born into the community.<sup>221</sup>
- ▶ The constitutions allocate a seat on the Executive Management Committee to a woman leader, as stipulated in the *Land Act 1998*, whose duties, according to the constitution, include “collecting women’s views” and representing these views at management meetings.
- ▶ The constitutions carefully detail the resources that women gather from the grazing lands, and protect the rights of all community members to continue to freely collect these resources, thus ensuring that women have permanent and open access to the grazing lands, regardless of whether they own cattle.

220 The initiative focused on community-level protection for women’s land rights, not women’s land rights at the household level. The overarching goal was only for the Communal Land Associations to be gender equitable.

221 These constitutional provisions are of legal importance because they shift the definition of who is a ‘native’ of a community from only those ‘born there’ to those who have married into the community. For example, one community’s constitution states: “The natives of Okeng shall be the following persons: a) all those persons born in Okeng Village; b) those who are married in Okeng Village; c) those who are buried in Okeng Village; d) widows; and e) a woman who has not produced a child, or unmarried, but has stayed for a long time in Okeng is a member.”

- ▶ The constitutions list the exact procedure for inheritance of a family's membership rights in the Communal Land Association, and specify that a man's wife is the first inheritor.

To substantiate the survey data and add context to the rules set out in their Communal Land Association constitutions, Ugandan focus groups were asked if their communities had made any changes to women's land rights during their efforts to document their grazing lands. Interestingly, while men's focus groups tended to conclude that they had passed "many new rules" concerning women's land rights, women's focus groups tended to answer that they had not been given any "new" rights to land. In a few communities, women's focus groups explained that the constitutions allow women the right to "collect anything from the communal land the way we want, the same as men," as well as to graze their animals in the common areas along with the men. In one community, women described that now, "Women's rights to the common areas are fully protected."

This discrepancy may be attributed to the fact that the long lists of women's rights described by the men's focus groups were not actually new rights for women, but merely the incorporation of rights set out in the *Constitution of the Republic of Uganda (1995)*, the *Land Act (1998)*, and the Principles, Practices, Rights and Responsibilities (PPRR) documented by the Lango Cultural Foundation.<sup>222</sup> For example, the elders in one community reported:

*Yes, we changed our rules on women's rights: widows are allowed to stay on the family land until their death, widows are not allowed to sell part of their land without the approval of the clan elders, girls born in a family have the right to inherit this land, girls who have been divorced have the right to be given part of the family land, and elders are supposed to manage land on behalf of the orphans until they are old enough to manage the land on their own.*

While these rules felt "new" to men, the women knew these to be their rights under both custom and formal law. This information leads to the finding that rather than resulting in new rights, women's participation and self-advocacy throughout Uganda's Communal Land Association-formation process resulted in:

- ▶ A *strengthening* 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; and/or

<sup>222</sup> During the monthly project meetings, LEMU dedicated a great deal of time and energy to teaching communities about women's land rights in the Ugandan Constitution, the Land Act 1998 and other relevant national laws, as well as the rights enshrined in the Principles, Practices, Rights and Responsibilities (PPRR). Available at: [www.land-in-uganda.org/documents.htm](http://www.land-in-uganda.org/documents.htm)) The communities therefore both learned about national laws protecting women's and children's land rights and were reminded of similar protections in their customs.

- ▶ The *rejuvenation* of customary rights that had in recent years eroded or been abused.

Such gains are not insubstantial: taken together, communities' inclusion of formal legal protections as well as the revival and/or strengthening of customary protections for women's land claims in their constitutions amount to a fair degree of protection for women's land rights.

However, while the inclusion of such provisions in the Ugandan community constitutions and Liberian by-laws is a laudable step forward, further support and monitoring are necessary to ensure that such provisions are implemented and enforced both immediately and over the long term.

In Mozambique, when both men's and women's pre-service focus groups were asked about the practical realities of women's land rights in their community, respondents generally described that women have far fewer rights to land than men. The groups explained that while women have the right to decide how to manage the family lands, men have the authority and right to transact land, to have their name on legal documents pertaining to land (even when the wife has purchased the land), and to decide how to spend any profits from the sale of produce grown on the lands. One focus group summed it up succinctly: "Women have their role in the family, and the men have theirs. In relation to land, it is known that only men are the land owners. The women stay on the lands of their husbands, brothers or parents, but the land does not belong to them."

Focus groups explained that families often use this rationale to expel widows from family lands after the husbands' deaths, describing how "It's the men who inherit land — when a woman is widowed she is expelled from the lands of her in-laws, because they say that the land does not belong to her;" "Men have more rights to land than women, and can uproot/dispossess women from the land — this happens a lot with widows and separated women: the brothers of the late husband kick his widow off the land, especially if she does not have sons;" and "There are no equal rights between men and women — for example, men are allowed to be polygamous, and when women are widowed they are very often expelled from their lands and accused of witchcraft."<sup>223</sup>

Such intra-community land-grabbing from women and other vulnerable groups appears

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<sup>223</sup> Pre-service focus group participants appeared to know about women's formal rights to land both under Mozambican law. One focus group made the astute observation that "Women and men have equal rights in theory, but not in practice." Other focus groups were similarly practical: they understood women's land rights under national law, but were clear that this was more an ideal than practice. For example, in one group, when one member volunteered that "The law says that men and women have equal rights and these must be enforced," another group member responded by saying, "Let's not delude ourselves, we all know that in reality, even though we consult with our wives, who ultimately makes the final decision in our homes is the man, because he is the real head of the family."

to be a significant source of conflict; when asked about the main causes of land disputes, community leaders listed, among other causes, “The expropriation of land from the elderly and from widows;” “When people come in bad faith to usurp the lands of the elderly, because they live alone and do not have anyone to defend them;” and “There are family conflicts related to incorrect division of land inherited from their ancestors, and the fact that some families expel widows from their lands when their husbands die.”

In line with these reports, **many of the first draft/“brainstormed” lists of community rules for land and natural resources management included rules that directly contravene the Mozambican Constitution’s protections for women’s rights.** A typical example can be seen in the first draft of one community’s rules, which included the mandate that when a male head of household dies, inheritance of the family’s land goes automatically and exclusively to his sons, while his daughters may only use the lands with their brothers’ consent. This rule violates the Mozambican Constitution’s Articles 36 and 83, which establish equality for men and women and equal inheritance.<sup>224</sup> **However, due to the lack of an intra-community rule-drafting process as a required component of Mozambique’s delimitation process, communities did not discuss how to take concrete action to remedy gender-based injustices or establish mechanisms to protect women’s and other vulnerable groups’ land rights.**

Indeed, despite pre-service focus groups’ frequent description of how widows’ land claims were often in jeopardy, when post-service focus groups were asked, “Has the community changed its rules about women’s land inheritance or land rights over the past year?” the vast majority of focus groups answered either a simple, “No” or elaborated that “Nothing has changed;” “We don’t need to change anything;” or “Nothing has changed, and widows pass a very bad time after the death of their husbands, their children send them away and at times call them witches.” To remedy this, CTV is now working with the study communities to analyze their rules and arrive at new drafts that do not contravene the national constitution.<sup>225</sup>

Finally, **the cross-national data very clearly show that rural communities look to customary leaders to protect the land rights of women and other vulnerable groups.**<sup>226</sup> Rather than shifting responsibility for protecting women’s land claims to state officials, the legal education concerning women’s formal land rights appears

224 *Constitution of Mozambique (1990, amended 2004)*, articles 36, 83. (“Principle of Equality. Men and women shall be equal before the law in all spheres of political, economic, social and cultural life;” Article 83, “Right or Inheritance. The State recognizes and guarantees, in accordance with the law, the right of inheritance.”)

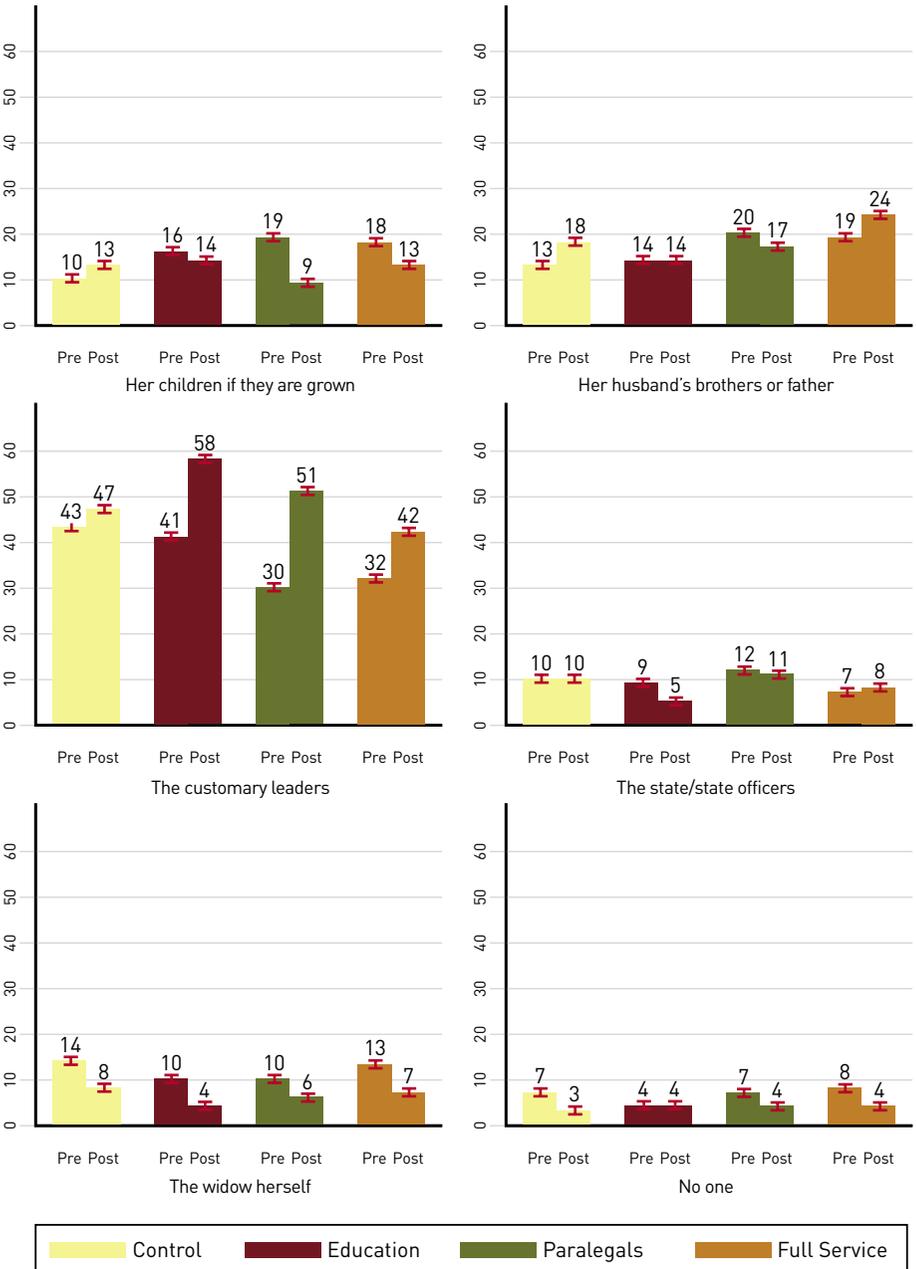
225 This work will continue during Phase II of the intervention, to be undertaken by CTV in partnership with Namati, a new global legal empowerment organization.

226 Relatedly, the constitution-drafting process illustrates how *custom and women’s rights do not necessarily contradict each other*. For example, in Uganda, LEMU dedicated a great deal of time and energy to teaching communities about women’s land rights in the Ugandan Constitution, *Land Act 1998* and the customary rights written out in the Principles, Practices, Rights and Responsibilities (PPRR) documented by the Lango Cultural Foundation. Reminded of their own customary protections for women’s rights, communities often chose to enshrine these protections in the community constitutions.

## Cross-national men's answers: Who protects a widow's land claims?

Who protects a widow's land claims if someone is encroaching on her family's land?

(% respondents answering "Yes")





Ugandan women perform a celebratory dance to demonstrate their new legal knowledge at a monthly community meeting.

to have increased respondents' conviction that such protection is local customary leaders' responsibility. Indeed, in comparison to the pre-service data, post-service respondents placed this responsibility less on widows' family members (children and in-laws) and more on local leaders.

The data illustrate the importance of working with customary leaders to support their role as protectors of women's land rights. In rural areas where access to the formal justice system is difficult, rather than marginalizing customary leaders as the central figures in a discriminatory legal paradigm and isolating them as being part of the problem, women's rights advocates should leverage customary leaders' role as protectors of women's and other vulnerable groups' land rights. Efforts should be made to support customary leaders' fulfillment of this responsibility; they should be trained and cultivated as allies in the defense of women's land rights. Such efforts may lead to authentic improvements in the protection and enforcement of women's land rights at the local level. Positively, post-service focus groups held with community leaders indicate that they are open to learning more about formal legal protections for women's land tenure security and shifting community practices to align with national law.

# MAIN FINDINGS

- 1. If well-facilitated, the process of drafting and revising community rules for land and natural resources management may open up an authentic space for women and other vulnerable groups to question customary norms and practices that disadvantage them and to advocate for rules that strengthen their land rights and tenure security.**
- 2. Legal and technical facilitators may need to take special actions to ensure women's active participation in project activities, including:**
  - Carrying out a gender analysis and crafting strategies to proactively address gender inequities that may negatively impact community land documentation exercises;
  - Holding community land documentation meetings at times and locations that accommodate women's schedules, i.e. 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 empowering women to address these issues during community land documentation efforts.
- 3. Paralegal support may be the “minimum” level of external intervention necessary to ensure women's robust participation;** the data appear to indicate that the education-only treatment was generally less successful at promoting and ensuring women's active participation.
- 4. The active involvement of women and other vulnerable groups throughout the bylaws/constitution-drafting debates appears to have strengthened women's procedural and substantive rights in their communities. It has done this in two central ways.**
  - Procedurally: as a result of the process, community members' perceptions that land is “men's business” shifted; women's opinions appear to have been taken seriously during discussions; and many communities' by-laws/constitutions include provisions that women and youth must have elected representatives on the permanent governing bodies responsible for community land and natural resources management.
  - Substantively: communities adopted provisions to strengthen and protect women's land rights and made changes to ensure that community rules did not contravene national law.

5. The data from Mozambique illustrate the importance of drafting community by-laws/constitutions. A review of existing customary norms and practices found that many communities currently have rules that undermine and contravene women's constitutional rights. **Yet because Mozambique's current community land delimitation process does not mandate a review of intra-community governance, communities did not revise their customs to conform to national law.** Such findings lead to the conclusion that some process of cataloguing, discussing and amending community rules is central to efforts to protect women's land claims.
6. Custom does not necessarily undermine or weaken women's land rights. **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.** Customary leaders may be important allies in the enforcement of women's land rights, as the data indicate that communities consider these leaders primarily responsible for the protection of women's and widows' land rights. Customary leaders indicated that they are open to shifting local practices to align with national laws.

While analysis of the communities' by-laws/constitutions and the field teams' observations indicate positive trends, long-term research and monitoring are necessary to fully comprehend the intervention's impacts on women's and other vulnerable groups' land rights. The study communities' implementation and enforcement of such provisions will be the true test of genuine impact. To fortify the gains made, community women must actively flex their new procedural rights and continue to participate in community meetings concerning land and natural resources. Further legal and technical support will also be necessary to ensure continued enforcement of women's procedural and substantive rights.



Liberian man witnessing a boundary harmonization MOU.



Community meeting in Uganda.

# **FINDINGS AND RECOMMENDATIONS**

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**N LIBERIA AND UGANDA**, the data indicate that the community land documentation activities appeared to help:

- ▶ Resolve long-standing land disputes;
- ▶ Improve governance and establish local mechanisms to enhance the downward accountability of community leaders;
- ▶ Encourage transparency and equality in rule enforcement;
- ▶ Stimulate communities to conserve and sustainably manage the use of natural resources;
- ▶ Align community norms and practices with national law; and
- ▶ Strengthen the rights of women, strangers and other vulnerable groups.

In contrast, communities in Mozambique experienced relatively little change. The Mozambican study communities differed from their Liberian and Ugandan counterparts because they did not undergo extended, iterative, and fully participatory processes of cataloguing, discussing and adopting a set of community rules or by-laws. They therefore did not reap the diverse benefits of the by-law drafting process.

We conclude that community land documentation processes are not merely land registration exercises. **Rather, community land documentation efforts are tripartite endeavors, consisting of (1) the *technical* task of mapping, documenting and protecting community lands, (2) the *peace-building* task of land conflict resolution, and (3) the *governance* task of strengthening local land and natural resources management and promoting equity.** As such, community land documentation processes should be structured to proactively address intra-community governance, resolve land conflicts, and strengthen the rights of women and other vulnerable groups.

This section briefly summarizes the study's main findings and sets out **recommendations**. The policy section addresses the framework of national legislation and regulations, and may be most useful for policy makers and those involved in advocacy. The **implementation** section includes practical recommendations for state or civil society agencies that facilitate community land documentation efforts in the field. These recommendations are intended to be useful to both the study nations as well as to all other nations seeking to support community land documentation processes.

It is important to reiterate that the following conclusions are necessarily preliminary. Due to the limited study period and the various administrative and regulatory obstacles described above, none of the study communities have yet been issued titles, deeds or delimitation certificates for their land. Further research is therefore war-

ranted. Additional investigation is also necessary to determine the long-term social and economic impacts of documenting community land rights. Moreover, continued engagement is required to understand how to best support community efforts to implement their newly-adopted by-laws/constitutions and land and natural resources management plans, and to discern what additional assistance is necessary to ensure that documented community lands claims are truly protected over the long-term.<sup>227</sup>

## FINDINGS AND RECOMMENDATIONS FOR POLICY MAKERS

### A. Make community land documentation and protection a priority

**In the context of national governments' continued granting of large-scale land concessions, community land documentation should be a priority.** A focus on documenting family and individual lands will be costly, time-consuming and leave rural communities vulnerable as a group. Furthermore, family and individual land titling efforts fail to protect the common and reserve areas upon which communities depend, yet which are often the first lands governments allocate to investors, elites and state development projects. In contrast, community land documentation has the potential to safeguard an entire community's land at once.

Registering 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. In Mozambique, as facilitated by CTV, the total costs of land delimitation per community were at most US\$3,968 with full legal support. In Liberia, a rough estimate of the costs (not including GPS costs) came out to \$7,700 USD per community.<sup>228</sup> These figures include community meeting costs, staff salaries, petrol, office rent, office supplies, per diems for government technicians, and all other community land documentation-related costs. As for individual titling, cost estimations vary widely according to national legal framework and economic context, but one global analysis found first-time household land registration costs to occasionally exceed US\$100 per parcel, with average costs between US\$20

227 To undertake these activities, Namati, SDI, LEMU and CTV will join together under the aegis of Namati's Community Land Protection Program. See <http://namati.org/work/community-land-protection/> and the afterword, below.

228 In Uganda, the project team has not yet calculated these figures.

and US\$60 per parcel.<sup>229</sup> Considering the number of families living in each study community (anywhere from 100 to 1000 families), community land documentation processes are arguably an economical way to protect large numbers of families' land claims. For a hypothetical community of 500 families and large common areas, registering the tenurial shell would cost less than half of efforts to register individual or family lands. Indeed, in their 2009 review of land registration efforts, Deininger and Feder conclude that:

*[In contexts where] the provision of individual titles in a rather slow and costly process will not be viable economically, a number of measures are available to make land rights more secure. These include a legal framework that recognizes traditional rights by individuals and groups, dissemination of information, institutional reform, and the registration of rights — possibly first at the group level rather than the individual level — in a way that can be subsequently upgraded according to clear rules, with information maintained in a coherent format to avoid parallel systems.*<sup>230</sup>

Once the community as a whole has been documented and registered, the focus may turn to documentation of family and individual lands. This process may thereafter go more smoothly, as community members will already have learned and practiced strategies for land conflict resolution and boundary harmonization. Indeed, during the study period, a handful of community members reported successfully applying tactics learned during community land documentation activities to resolve conflicts concerning their family lands.

After communities have documented their communal land, the community may choose to leverage its land and natural resources for increased community prosperity. For example, a community with clear legal rights over its lands and natural resources may take steps to control unmonitored logging or alluvial mining, and instead set extraction limits and impose fees that may be used to fund local development projects. Alternatively, communities may choose to enter into business partnerships with investors for mutually beneficial local development initiatives that promote community interests.

## **B. Simplify procedures to allow for communities to successfully complete community land documentation processes**

Although the community land documentation processes followed primarily concerned intra-community activities, the few instances when the study communities interacted

229 Burns, T. 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.

230 Deininger and Feder, *Land Registration, Governance, and Development: Evidence and Implications for Policy*, Oxford University Press on behalf of the International Bank for Reconstruction and Development, 2009, pp. 233-266, at 257, emphasis added.

with or needed the assistance of state agencies or officials illustrated that 1) the most intractable obstacles faced by communities related to formal administrative procedures or the internal functioning of state systems; and 2) communities irrefutably needed outside support when interacting with state agents. Furthermore, while intra-community tensions led to the withdrawal of some communities from the initiative, the greatest impediments to successful community land documentation stemmed from administrative or bureaucratic inefficiencies, lack of necessary government staffing and resources, lack of political will, and other institutional obstacles.

To facilitate community land documentation efforts, the administrative procedures necessary to document customary land claims should be accessible, streamlined, practical, and easily navigated by rural communities. To this end, state actors should:

- ▶ **Properly hire, train, and compensate officers and functionaries necessary to the successful implementation of community land documentation processes.** In Uganda, the single largest hurdle to the successful completion of the communities' Communal Land Association-formation process was the lack of a District Registrar of Titles.
- ▶ **Administer and process community land documentation applications at the county, district or provincial level, rather than in the national capital.** Whenever possible, government land administrators should travel to communities to provide support and assistance, process application documents, and verify details.
- ▶ **Permit the use of GPS technology.** The high costs of hiring a licensed land surveyor essentially prohibit poor rural villages from seeking formal documentation of their land claims. Regulations should eliminate the requirement of a technical land survey and instead allow for the use of Global Positioning System (GPS) technology to record the dimensions of community lands.
- ▶ **Impose only reasonable procedural burdens, which take into account the income, capacity, language and literacy restrictions of rural community applicants.** Such changes might include:
  - Widening the definition of proof to include customary forms of evidence,<sup>231</sup>
  - Mandating that state officials actively support communities to fill in all required forms and otherwise address any obstacles related to language and literacy; and
  - Eliminating all but the most nominal application fees, including fees related to land surveys, GPS and technical maps.

231 See for example J Unruh, 'Land Tenure and the "Evidence Landscape"' (2006) 96(4) *Developing Countries' Annals of the Association of American Geographers* 754–772.

National governments should pilot and assess all proposed processes for formal documentation of customary land claims for feasibility before passing them into law. Before a process is formally adopted, governments should resolve implementation difficulties and institutional challenges and proactively address issues of political will, government capacity, and resource constraints.

## C. Make improved local land governance a central objective of community land documentation processes

**Community land documentation should not only aim to register community land in the national cadastre, but also to effect important intra-community changes in local land and natural resources governance.** Governments and facilitating agencies should structure community land documentation procedures to include a community-wide, democratic and fully participatory review of local rules for community land and natural resources administration and management. Such processes are critical; while a document for land rights provides protection against land usurpation by outsiders, a document alone can do little to either protect against intra-community threats to common lands or ensure that communities conserve 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. 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 in the Liberian and Ugandan study communities.<sup>232</sup> The findings indicate that the process:

- ▶ 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;
- ▶ Allowed communities to establish consistent norms and institute clear, publicly known penalties for infractions.
- ▶ Helped to align local custom and practice with national law.

<sup>232</sup> Unfortunately, because the Mozambican communities did not progress past a final draft of their community rules, the Mozambican data do not show similarly positive impacts on intra-community governance.

To leverage the land documentation process to improve community land governance, policy makers and legislators should:

1. **Mandate procedures through which communities must examine and amend existing community rules, norms and practices.** As in Uganda's Land Act (1998) and the pilot process set out in the MOU with the Liberian Land Commission, communities seeking to document their lands should discuss community norms and practices and formally adopt a constitution or set of by-laws.<sup>233</sup> Before approving a community's land documentation application, government officials should complete a mandatory check that the community's rules comply with national law. Where differences between customary norms and national legislation arise, facilitating civil society agencies should conduct additional awareness-raising and legal training activities that promote community understanding of the discrepancies. Community members may then be supported to complete another round of discussions to alter their rules as necessary. Once the community formally adopts its agreed rules, community members (and the State) can hold local leaders accountable to fair rule enforcement.

It bears noting that the by-laws/constitution-drafting process requires significant time and facilitation support. If rule-drafting is a prerequisite for filing community land documentation applications, it could stifle local enthusiasm and result in poorly-drafted by-laws/constitutions that do not reflect full community participation. Alternatively, the process may leave community lands unprotected as communities take the time to fully discuss their rules for land and natural resources administration and management. To avoid these potential pitfalls, national governments could make the by-laws/constitutions-drafting process a parallel component of the land documentation process, allowing the formal land documentation application to go forward (thus protecting the lands in question within the national cadastre) with established mechanisms to ensure that the applicant community's by-laws/constitutions are completed within a reasonable period.

2. **Mandate the creation of elected intra-community governance structures.** To ensure downward accountability and a community check on the powers of local authorities, land documentation processes should include the creation of an elected group of men and women who determine land matters in concert with the wider community.<sup>234</sup> Communities may compose these

<sup>233</sup> Importantly, law should ensure that communities adopt by-laws/constitutions by a process other than simple majority vote. Allowing an absolute majority to vote to adopt community by-laws/constitutions has the potential to marginalize members of minority or more vulnerable groups. Although consensus is ideal, a super-majority vote system may be most feasible.

<sup>234</sup> Communities' creation of new bodies to manage and administrate community lands and natural resources is key for two central reasons: first, to ensure that the leadership includes women, youth, and other groups previously marginalized from community leadership positions, and second, to ensure that the governing body complies with the new by-laws/constitution. Relatedly, the creation of a new governing body by election signals an immediate enactment and enforcement of the community by-laws/constitutions.



Community meeting in Mozambique.

governing councils to include both existing local leaders (and/or members of pre-existing land governance bodies) as well as representatives of vulnerable groups elected through transparent and participatory processes. This composition may help to ensure that the governing bodies are both respected and adequately representative of the diversity of stakeholder interests. To create checks and balances against intra-community discrimination and elite capture, communities should provide for universal suffrage and regular all-community meetings in their by-laws/constitutions. Communities should also establish oversight mechanisms to ensure that their leaders and governing body act in good faith, that community dialogue is inclusive, and that decisions are democratic.

- 3. Vest the rights to the land in the community, and allow for the community name to be on the title, deed or final community land registration document.** Governments should issue all deed or title documents in the name of the community, and assign the actual rights to the land to the community as a whole. Allowing a few individuals' names to appear on the land registration document may more easily facilitate corrupt land and natural

resources management or illegal sale of community land and resources.<sup>235</sup> The land documentation process should therefore include the creation of a trust, association or corporate body in whose name the community may register all documents. The elected community land management body should have explicit responsibility to manage community land according to the fiduciary duties that a trustee owes trust beneficiaries or a corporate board owes stakeholders. Governments should ensure that all land registration forms and other relevant documents consider and accommodate community land documentation.<sup>236</sup>

## **D. Establish concrete local mechanisms that serve to protect the land rights of women and other vulnerable groups.**

The law and its accompanying regulations should mandate express protections to ensure that rights of women and other vulnerable groups are actually implemented and enforced at the local, regional and national level. Such interventions might include:

1. Establishing a process by which women and other vulnerable groups can take action to ensure that intra-community rules for land and natural resources governance enshrine and protect their rights;
2. Ensuring that all formal or informal family land documentation application forms include spaces for the names of both the husband and the wife or wives;
3. Including provisions in national legislation that safeguard women's land rights (for example, requiring that the written consent of all adult family members living on the land be obtained before land can be sold or mortgaged);<sup>237</sup>
4. Establishing that any community land and natural resources administration and management body include female representatives who represent women's interests;
5. Training local leaders to play a more active role in protecting the land claims of women and other vulnerable groups; and

<sup>235</sup> Furthermore, governing officers are elected, non-permanent managers who may no longer be in office after the second election cycle. As such, putting their names (or any other individual names) on the final document will mean that the document will become inaccurate and require a change of title the moment new officers are elected or the named individuals pass away. Any process that necessitates frequent change of title procedures will add administrative hurdles, make the community land documentation process more difficult, or weaken the accuracy and strength of the final community land registration document.

<sup>236</sup> In Uganda, neither the CCO nor the Freehold Title applications are designed in such a way that they can be completed by Communal Land Associations. While many sections of Uganda's Land Act (1998) carefully articulate the processes through which communities can apply for joint title to their lands, none of the actual application forms allow for this possibility.

<sup>237</sup> This is the law in Uganda. *Uganda Land Act 1998*, section 39.

6. Creating local, accessible and culturally acceptable mediation/arbitration mechanisms (composed of both customary and state leaders and elected women representatives) to resolve cases concerning the violation of women and other vulnerable groups' land rights.

## **E. Establish support, facilitation and oversight roles for government officials both during and after the community land documentation process.**

Local and regional government officials have an important role to play as supporters of community land documentation efforts. When legal frameworks devolve control over land and natural resources management to rural communities, governments should empower those district and regional officials previously in charge of local land administration to take on the role of supporters, trainers and advisors. To this end:

**Local and regional land officials should actively provide support to communities during community land documentation efforts.** With proper training and funding, local and regional officials can:

1. Provide legal education to improve communities' awareness of their land rights and develop community capacity to complete relevant administrative and judicial procedures;
  - Provide conflict resolution support during boundary harmonization;
  - Witness MOU-signing ceremonies, which document harmonized boundaries;
  - Witness MOU-signing ceremonies documenting harmonized boundaries;
  - Verify that community by-laws/constitutions align with national law and uphold constitutional guarantees;
  - Supervise all GPS, surveying and boundary demarcation activities;
  - Be available to answer community land documentation-related questions and provide technical support on an as-needed basis; among other activities.

**This assistance should be request-based, rather than mandatory; requiring state oversight may stall or impede community progress,** as occurred in Uganda.

2. Local and regional land officials should also provide long-term support for community land and natural resources administration and management after the community land documentation process is complete. Communities will likely require a range of on-going government support after obtaining documentation. Such assistance might include:

- Providing technical support for intra-community land and natural resources administration and management. To help communities sustainably and equitably manage their land and natural resources, government officials may provide technical support, land dispute resolution assistance, and capacity-building trainings for elected governing councils and community leaders, among other help.
- Protecting community lands from encroachment by elites and local power holders. Necessary enforcement support will likely concern both 1) addressing bad faith efforts to appropriate community lands and 2) penalizing illegal resource extraction. In such situations, communities should be able to seek recourse from the police and through the state court system, as theft and corruption are criminal acts under national law. In the event that the “land grabber” is a district official or has ties to powerful local government figures, the central state should enforce a community’s property rights.
- Acting as a check against abuse of power by community leaders and elected governing bodies. Communities may need support addressing corruption, mismanagement and unjust actions taken by elected local officials. Upon a community’s request, state officials should monitor and supervise community land administration and management bodies to ensure that the elected officers are fulfilling their fiduciary duties and acting in accordance with constitutional principles.
- Enforcing women’s and other vulnerable groups’ land rights, as set out in the national constitution and the community by-laws/constitution. Such enforcement support may include training customary leaders in relevant national law, working alongside customary leaders to jointly address rights violations, and making justice systems and formal rights protections more accessible to rural women and other vulnerable groups.
- Enforcing contracted agreements with investors. State officials should actively support communities’ interests during negotiations with outside investors. State officials should also supervise and enforce the fulfillment of all benefit-sharing and/or rental agreements that communities have with investors. An impartial or independent ombudsman may best undertake these roles. Government officials or an appointed ombudsman could:
  - Provide free legal representation for communities during negotiations concerning land-sharing agreements with investors;
  - Create regulatory mechanisms to hold investors accountable for delivering agreed-upon compensation to communities. To this end, all community-investor agreements should be written down and considered formal contracts enforceable under national contract law;

- Create expedited, easy-to-navigate complaints procedures and appeals processes that communities can pursue, should investors fail to deliver the agreed benefits or rental payments; and
- Establish penalties for investors who fail to fulfill their contractual obligations under community-investor agreements.

Such government assistance should be made readily available and accessible via mobile clinics and other means of bringing state support directly to rural communities. These efforts should include both the executive branch of government (ministry officials and technicians, as well as the police) as well as the judicial branch: judges and magistrates should actively create legal precedent that enforces the strength and sanctity of community land rights.

To carry out these roles, state administrators may require training on relevant land legislation and related procedures.<sup>238</sup> Administrators should also be sensitized to the needs of rural communities and encouraged to see their role as “solution-providers” and defenders of community rights. Generating such changes in institutional culture is complex and may require both oversight and the provision of incentives. These measures should be undertaken in combination with wider government efforts to:

- ▶ Allocate state resources to ensure that communities receive government assistance in applying for community land documentation; the state should adequately pay regional land officials for their work and equip them with vehicles and other necessary technical supplies.
- ▶ Create mechanisms to ensure downward and upward accountability for both state and customary land administrators;
- ▶ Change incentives for local and regional land administrators to ensure both political will and capacity to fully support communities to document, protect and develop their land; and
- ▶ Assist rural communities to access the technical, agricultural and financial aid required to successfully leverage land and natural resources rights for community development.

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<sup>238</sup> The field teams found that most local land officials were severely lacking in knowledge concerning both the content of their nation’s land laws and how to implement community land documentation processes. Facilitating civil society agencies should institute annual training sessions for all regional land officials; these officials can then provide training for more local land officials within their districts/areas.

## FINDINGS AND RECOMMENDATIONS FOR PRACTICAL IMPLEMENTATION OF COMMUNITY LAND DOCUMENTATION PROCESSES

### A. Communities should drive the land documentation process, led by trained and supervised paralegals

Giving a community the direct responsibility to complete land documentation work — with guidance from legal and technical professionals and under the leadership of trained community paralegals — appears to be an empowering model for providing legal services support during community land documentation processes.

Cross-national statistical analysis of the treatment groups' progress found that the full-service treatment group communities performed more poorly than both the education-only and paralegal treatment group communities across a range of indicators. This finding indicates that leaving communities with the responsibility of completing most project activities on their own motivated them to take the work more seriously, integrate and internalize the legal education and capacity-building training provided more thoroughly, address intra-community obstacles more proactively, and claim greater “ownership” over the community land documentation process than when a legal and technical team completed this work for the community.

With adequate legal education and capacity-building, communities can successfully complete many of the community land documentation activities on their own, while for others they need targeted technical and legal support.

To support community-driven processes, facilitating agencies should:

- 1. Let communities define themselves.** Defining a “community” is a complex political process with associated socio-cultural and geo-spatial implications at the local level.<sup>239</sup> As such, communities should define themselves after extensive, highly participatory discussions. It is counterproductive and ill-advised for legislation and/or government agents to define what a community is or should be and impose this structure on existing groups. Commu-

<sup>239</sup> In the study regions, difficulties related to community definition were rooted in overlapping definitions of authority, territory and identity. Specifically, the study communities' process of defining for themselves the composition of their 'community' was often complicated by: 1) the nested quality of rural social organization in the study regions; 2) historical fracturing and division of groups/social units; 3) common areas fully shared between villages/towns that identified as separate entities; 4) differences between customary and administrative/state-drawn boundaries; 5) historical migration patterns, ecological changes, and infrastructure development; and 6) competition over valuable natural resources; and other factors.

nity land documentation processes should include a phase that ensures that the participants carefully negotiate and determine the spatial/social unit of the “community.” In the event of a disagreement over community definition, state and customary leaders may jointly arbitrate the issue.

2. **Let the community choose how it wants to document its lands.** Facilitators should present communities with various options (formal legal documentation, informal map-making and boundary tree planting, etc.) and then leave communities to choose the course of action that they consider best. Guided by community decisions, NGOs might then provide the education and capacity-building support necessary to help communities actualize their land protection choices.
3. **Include and involve all local leaders.** The field teams found that communities’ capacity to successfully compete land documentation processes was directly related to leaders’ integrity, management abilities, commitment to the project, and skill in mobilizing their communities through the various steps of the land documentation process. Leaders may need special training and capacity-building to enhance this role.

Notably, the **community land documentation activities sometimes created conflicts of power, authority and jurisdiction between leaders.** To address this, facilitators should:

- **Proactively support the involvement of customary leaders.** Customary leaders’ involvement in the community land documentation process is crucial, particularly during activities that involve recounting the history of the community, identifying the boundaries of community land, and identifying all sacred or cultural sites to ensure their protection and preservation.
- **Address intra-community power struggles and build inclusive, cooperative processes.** Cooperation between local government leaders and customary leaders is critical to the success of community land documentation processes. Facilitators should proactively address power struggles between leaders and attempt to ensure cooperation and coordination between and within all local power structures, both customary and state.
- **Foster regional-level support for the community land documentation work.** Facilitating agencies should encourage community members to invite regional officials to support communities’ land documentation efforts; the field teams observed that strong, unified regional leadership (both customary and state) ensured community confidence. Such leaders are particularly helpful in the event of intractable land and boundary disputes.

**4. Help communities create balanced, inclusive interim coordinating committees.** An elected interim coordinating committee should be diverse and include strong, competent representatives of all interest groups, including youth, women, members of groups that practice a range of livelihoods, and all clan/tribal minority groups. These individuals may then be given the responsibility for:

- Mobilizing members of their interest 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 these interests during community land documentation activities; and
- Reporting back to members of these groups on the content of community discussions as well as the community's land documentation progress.

The field teams found that **land documentation coordinating committees work best when they include both existing leaders as well as a diverse group of new elected members** that represent all stakeholder groups in the community. It is important that facilitators work with these groups to ensure that the existing leaders do not dominate or control all community land documentation activities and decision-making processes.

**5. Encourage full community participation in all community land documentation activities, taking care to include all stakeholders.** To this end, facilitators should:

- **Enter communities with complete transparency, calling for full community participation.** At the inception of all community land documentation work, the entire community must be convened to identify community leaders to work with, elect a diverse interim/coordinating committee, draw maps, take an inventory of ongoing land conflicts (internal and external) and gather all other necessary and pertinent information. Information should be solicited publicly and cross-checked by all stakeholders, including neighboring communities. Discrepancies should be ironed out publicly and transparently resolved.
- **Ensure full community participation during meetings.** Attendance at meetings does not always lead to verbal participation, particularly when intra-community power and authority imbalances privilege the opinions and concerns of some groups over others. Facilitators must proactively take measures to ensure that women, youth and other marginalized groups feel comfortable speaking up during community land documentation activities. Facilitators can convene women, youth and

elders in separate groups in advance of these meetings to help them to articulate their interests. Other measures may include breaking community meetings into smaller identity-based groups or giving vocal or domineering community leaders the role of moderator to ensure that they speak less while still feeling integrally involved in the process.

**6. Leave communities to do much of the community land documentation work on their own, according to local knowledge and skills.** While communities need legal and technical assistance to successfully complete land documentation efforts, they should be left to complete community land documentation activities on their own as much as possible. Each community will have its own timing needs based on its particular circumstances. To support communities' individual processes, facilitating agencies should:

- **Introduce each community land documentation activity, build the capacity of the community to complete it, and then leave the community to do the work, guided by community paralegals** who can call on the facilitating legal/technical team for support and assistance on an as-needed basis. NGOs supporting this work should make communities and their leaders responsible for requesting NGO support when they need it. Placing the responsibility on the communities to actively seek support will also help to avoid failed meetings and wasted resources.
- **Create workbooks detailing all the community land documentation steps.** The workbooks could include space for communities to take meeting minutes, draw maps, record drafts of community rules/norms, record debates and keep all of their work in one place. Such workbooks can provide templates and examples of what the various products might look like, suggest advice for overcoming obstacles, and provide a guide for peaceful mediation. After filling out these books, communities may invite civil society and government technicians to review these workbooks and help the communities to improve their work products until they reach the standards necessary for processing a community land documentation application.

**7. Train selected community members as “land paralegals” who can support their communities throughout community land documentation processes.** Well-trained and supervised paralegals proved to be the most effective and efficient method of supporting community land documentation efforts. In all three nations, the paralegals had a significant, positive impact on communities' capacity to complete the land documentation activities. Paralegal assistance appears to:

- Help communities address intra-community obstacles that outside technicians or lawyers cannot recognize or resolve.
- **Increase community participation.**
- **Foster empowerment and create a sense of community ownership over the community land documentation work by allowing the process to be more internally driven.**
- **Strengthen both their own community's capacity as well as the capacity of neighboring communities by being available locally on a daily basis.**

Once the community land documentation activities are complete and the land claims documents have been issued, the communities may continue to benefit from having two trained paralegals in their community. These paralegals may then be leveraged to link their community to legal and technical support services in any forthcoming land and natural resources-related transactions or negotiations with government and investors.

However, it is important to note that community-based paralegals often have very low initial capacity and need frequent training, supervision and support by a legal and technical support team.

- 8. Recognize that while motivated communities can perform much of this work on their own, communities need targeted legal and technical assistance to successfully complete community land documentation efforts.** The field teams observed that communities are able to elect and form coordinating committees; harmonize boundaries with their neighbors; resolve some land conflicts; draw participatory maps; complete simple zoning plans; and compile the first drafts of their community rules/by-laws with minimal technical assistance.

However, the findings indicate that for a community land documentation process to progress smoothly, lawyers and technicians must:

- **Introduce the land documentation process and provide 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;**
- **Provide mediation and conflict-resolution support during significant, particularly contentious land conflicts that communities are unable to resolve on their own;**
- **Provide legal support and technical assistance during the completion of the community's second and third drafts of their by-laws;**
- **Implement of a women's empowerment/participation strategy to**

**ensure women's full participation in all community land documentation activities; and**

- **Support communities during all administrative processes, including: contracting and liaising with government agencies, working with land surveyors/GPS technicians, and completing and filing of all application forms and related documents.**

In addition, it is critical that a professional team closely supervise each community paralegal's efforts not only to ensure that their work product is of high quality, but also to step in when necessary and demonstrate to all stakeholders (government officials, investors, local elites) that the community's efforts are being supported by a team of lawyers who have the capacity to take legal action.

## **B. Recognize that boundary harmonization and demarcation processes are conflict-resolution exercises and conduct them accordingly.**

The boundary harmonization process was without a doubt the most challenging part of the community land documentation process for all communities. **This phase of the project not only unearthed every latent, unresolved land conflict, but also created new boundary disputes that flared up in response to the impending documentation efforts.** It was the beginning of both serious internal and external conflicts, even in communities that previously reported that they had no boundary disputes and had generally peaceful relations internally and with their neighbors.

Yet **while the potential for conflict was significant, communities' strong desire to obtain documentation for their lands created a strong impetus for the peaceful resolution of long-running boundary disputes.** Compelled by the goal of documenting their land claims, many of the study communities worked to negotiate compromises and resolve land disputes that had endured for years. Specifically, the field teams observed that communities prepared to make concessions or compromises to resolve their boundary conflicts progressed more rapidly through the land documentation process. **Positively, the resolution of long-standing land conflicts both within and between communities appeared to have an overall constructive impact on land tenure security and intra-community conflicts.**

**Community land documentation is not only a registration and demarcation exercise, but is as much if not more a conflict resolution exercise, and facilitating agencies should treat the process as such.** Facilitating agencies should proactively prepare for land conflict resolution to be a central component of the community land documenta-

tion work, and should craft trainings designed to support open, non-violent boundary negotiation. Such efforts have the potential not only resolve intra and inter-community land disputes, but also to serve as a model for the resolution of household-level land disputes. Furthermore, when facilitating boundary harmonization efforts, state and civil society agencies should ensure that communities:

1. **Map publicly and comprehensively.** Map-making is not a neutral activity. It exposes all previous encroachments into or bad faith appropriation of community lands and identifies all of the community's natural resources and their locations. It therefore should be undertaken very carefully. The field teams' experiences suggest that map-making should only occur once communities trust the facilitators. The entire community should be convened for all mapping-related activities until all boundaries are harmonized, all land conflicts are resolved, and all boundary trees planted or markers placed. 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.
2. **Ensure that all relevant groups' ownership, use and access rights to the land being documented are protected.** 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, and to confirm this at a regional public meeting at which representatives and leaders of all neighboring communities are present, as well as district officials.<sup>240</sup> Communities should acknowledge and preserve any existing reciprocal land use sharing agreements with neighbors; formal procedures should be instituted to protect these shared and overlapping use and access rights. Strategies for protection might entail including land sharing provisions in community by-laws/constitutions or drafting inter-community MOUs to record such agreements for posterity. Government officials processing community land documentation applications should also verify that all neighboring communities' rights of use and access have been properly protected. Officials may perform this check through discussions with local officials who have intimate knowledge of local communities' overlapping ownership, use and access rights, or by calling all neighboring villages to an open hearing. Such efforts are particularly important in regions where farmer communities overlap with pastoralist or hunter-gatherer communities.
3. **Address boundary conflicts creatively.** Facilitating agencies should provide extensive conflict resolution and mediation training before a community be-

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<sup>240</sup> Burns, T. 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.

gins boundary harmonization efforts. Facilitators should train and support communities to employ a range of compromise strategies and mediation/dispute resolution tactics, such as agreeing to share the land as a common area and documenting it as such; dividing the land down the middle evenly; and allowing disputed regions or households to choose — either as a group or individually — where they feel they most belong; among others. Facilitating agencies should stand ready to support the resolution of particularly intractable land conflicts and to call in local government officials, should their involvement in conflict resolution be necessary.

4. **Allow communities as much time as they need to arrive at authentic boundary agreements.** In Liberia, SDI observed that some communities hastily agreed to their borders in order to successfully complete the project within the given time period. In some of these cases, communities did not truly resolve underlying boundary conflicts. As a result, boundary conflicts flared anew in some communities soon after the MOU-signing ceremonies. As a result, some boundary conflicts flared up again, even after the MOU-signing ceremonies. Such instances indicate the importance of carrying out the boundary harmonization activities slowly and not rushing to agreements that may later be contested.
5. **Document each harmonized boundary in a formal MOU.** The boundary demarcation exercises point to the importance of documenting every boundary agreement not only with trees or GPS coordinates but also with formal MOUs. Before the boundaries of a community are demarcated, the community should hold a large, formal ceremony in which neighboring communities (including families neighboring the boundary lines) come together, critically assess the agreed boundaries, and formally agree to and witness these boundaries. Relevant local and regional officials, as well as representatives of youth, women's, and other groups, should read and publicly sign these boundary harmonization MOUs. Communities can then refer to these agreements during future boundary conflicts.
6. **Request ongoing state support for boundary enforcement.** Even after communities harmonize boundaries and sign MOUs, they will still need government support for the protection of communal lands. As land scarcity continues to rise, encroachments may become more and more prevalent. In these situations, government actors can help communities to deal justly with encroachers and maintain the community lands as documented. In such instances, the witnessed MOUs will be of critical importance as evidence.

## C. Leverage the community land documentation process to support communities to improve intra-community governance

A highly participatory land documentation process has the potential to galvanize communities to improve intra-community governance, foster participatory rule-making, and establish accountability mechanisms for local leaders. To achieve such outcomes, civil society and government facilitators should:

1. **Begin the process of drafting the by-laws/constitutions at the lowest level of intra-community governance (at the town, village or zone level), then merge these rules into a set of community by-laws 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.
2. **Handle the transition from oral to written rules delicately.** The process of writing down previously unwritten rules and practices may change them. Any land or natural resources uses, claims or practices that are not included in the by-laws/constitutions may be, by omission, negated, lost or inadvertently prohibited. As such, the discussion of existing rules must be deftly handled to ensure that the transition from oral to written does not undermine more inclusionary practices. To this end, facilitators should keep the process very flexible at the beginning, allowing communities to capture all norms and practices, even those that are so taken for granted that they do not seem like “rules.” Drawing a resource map listing all community natural resources or a diagram of the community leadership structure may facilitate brainstorming and help create an outline of what the by-laws/constitution and/or natural resources management plans should address.
3. **Allow communities to merge their by-laws/constitutions and land and natural resources management plans into one document.** The field teams observed that the majority of community rules concerned land and natural resources management and that it was a false distinction to ask communities to divide their by-laws from their natural resources management plans. One document with loosely defined sections would simplify the process for communities and make it easier for communities to convert their existing community rules into a formal legal document.
4. **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 customs and practices when necessary to ensure that the rules:

- Do not contravene the national constitution and relevant laws;
- Establish clear substantive and procedural rights for all community members, including women and members of vulnerable groups;
- Protect existing use rights and rights of way of other groups like pastoralists and hunter-gatherers;
- Include provisions establishing the creation of an elected governing body to be responsible for community land and natural resources administration and management;
- Include provisions that particularly important and weighty decisions, such as whether to cede land to an investor, should be made by supermajority vote, rather than by local leaders acting alone;
- Include provisions for annual review and amendment, to avoid the potential calcification of customary rules that writing them down might imply; and
- Have been approved by all households in the community by consensus or super-majority vote.

**Community land documentation processes should conclude with the election of a diverse and representative governing body.** Facilitating NGO's or government agencies may need to monitor the election of these bodies to ensure that the elections were participatory, transparent and fair, and that the positions were not captured by elites. Communities might also create parallel “watchdog” groups to monitor the elected council's decisions and actions.

## **D. Leverage the community land documentation process to support sustainable natural resources management and conservation**

The field teams observed that the process of discussing and amending their rules for land and natural resources management fostered two main shifts in community members' ideas about natural resources management. First, **communities' rules reflect a clear — and renewed — concern with conservation and the sustainable use of natural resources.** During the by-laws/constitution drafting process, communities both crafted new rules to conserve their resources as well as “remembered” and reinforced old rules that promote sustainable natural resources use. These shifts were reflected in the communities' land and natural resources management plans, which included rules that promoted conservation of forests and natural resources, water sanitation, sustainable hunting and fishing, and other protections.

Second, communities created rules that more closely control and monitor non-residents' use of community lands and natural resources. These rules generally do not fully impede "outsiders" use of community natural resources, but rather allow the community to control, monitor and tax these activities for community profit and development. Communities' land and natural resources management plans indicate that communities are not adverse to outside investment so long as:

- ▶ The community itself is involved in discussing and negotiating all aspects of the investment project;
- ▶ Restrictions are put into place to ensure community health, environmental and cultural protections;
- ▶ Benefits/fair compensation accrue to the community; and
- ▶ A signed contract, enforceable in a jurisdiction with strong rule of law, ensures that all community benefits will be delivered.

To support community-led conservation, stewardship and sustainable management of natural resources both during and after the community land documentation process, facilitating civil society and state agencies might:

1. Train communities on a wide range of sustainable natural resources management techniques;
2. Foster local "remembering" and reinstitution of customary natural resources management practices;
3. Facilitate discussions concerning on what terms and conditions the community would share its land and natural resources with outside investors;
4. Support communities to monitor and control use of their natural resources by community members, neighbors, and local investors alike;
5. Support communities to both enforce their rules against poaching, illegal logging, and other unsanctioned extraction efforts as well as to request police support for enforcement;
6. Support community negotiations with investors, providing counsel and support throughout all community-investor interactions (as described above); and
7. Support communities to responsibly, transparently and equitably manage any benefits accrued as a result of community-investor partnerships or outsiders' use of community land and natural resources.

## E. 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

**Women's active involvement in the bylaws/constitution-drafting debates appears to have strengthened women's procedural and substantive rights.** Procedurally, the process appears to have shifted community members' perceptions that land is "men's business;" as a result, women's opinions were taken seriously during discussions and many communities' by-laws/constitutions include provisions that women and youth must have elected representatives on the permanent governing bodies responsible for community land and natural resources management. Substantively, the process provided an opportunity for women and other vulnerable groups to ensure the inclusion of stronger protections for their 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 with national laws that protect women's land rights.

In contrast, the data from Mozambique illustrate the importance of an iterative community by-laws/constitution drafting process: a review of existing customary rules found that many Mozambican communities currently have rules that undermine women's constitutional rights. Yet because the current community land delimitation process does not mandate that communities actively review their customary norms and practices and revise them to conform with national law, these rules remain in force. Such findings lead to the conclusion that **some process of cataloguing, discussing and amending community rules is central to efforts to protect women's land claims during community land documentation activities.**

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 in the broader community meetings;
- ▶ Support communities to elect a governing council that includes female representatives;
- ▶ Provide paralegal support; the data appear to indicate that paralegal support may be the “lowest” degree of external intervention necessary to ensure women’s robust participation in community land documentation activities; and
- ▶ Support men and leaders to be protectors and enforcers of women’s land rights. Facilitators may need to:
  - Teach men and customary leaders about national laws that guarantee women’s rights;
  - Remind community members of customary rules that served to protect women’s and other vulnerable groups’ rights; and
  - Help men and community leaders to remember those customs that emphasize men’s and leaders’ role in protecting the rights of women and other vulnerable groups.

Such efforts to create intra-community mechanisms to protect and enforce women’s and other vulnerable groups’ land claims will become increasingly necessary as land grows in value and becomes more scarce, and as intra-community competition for land exacerbates discrimination and disenfranchisement of vulnerable groups.

## **F. Recognize that community land documentation may not be appropriate for all communities without pre-intervention support**

While every study community faced a variety of obstacles, some communities were able to overcome obstacles more effectively than other communities. **The research suggests that an unhealthy or dysfunctional community may not be able to successfully complete the complex process of documenting community land claims.** Cross-nationally, the field teams’ observations illustrate that communities that struggle with elite sabotage, intractable boundary disputes, internal discord and 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 how much support they are offered. In such situations, the process may become a

pawn in intra-community conflicts of power. 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 but be unable to complete the land documentation process, the effort may invigorate tensions and exacerbate conflict, leaving the community in a worse situation than before the intervention began.** As such:

- ▶ Civil society and government advocates preparing to begin land documentation activities in a community should **first assess the community's internal dynamics and existing conflicts and then work to address and resolve these underlying conflicts before the community land documentation process.** Civil society and government agencies may need to provide supplemental conflict resolution training and community-building and leadership-enhancement activities.
- ▶ **Facilitators should prioritize communities facing external threats to their land.** The field teams' experiences illustrate that communities facing external threats to their land will work with focus and determination to complete the community land documentation activities, even when provided minimal legal support.
- ▶ **Supplemental support should be provided to communities facing intra-community threats.** In instances where weaker community members initiate land documentation efforts in order to protect their land from being grabbed by local elites, it is important that legal advocates proactively address intra-community disparities in power and influence. In such instances, 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 intra-conflict at issue, then begin the community land documentation process.

\* \* \*

Nations that have introduced community land documentation laws and processes have an opportunity to advance an innovative model of rural development, one that places people at its center and empowers communities to proactively define how they will govern land and natural resources. While there are many challenges to overcome, the findings of the Community Land Titling Initiative provide important insight into how to support communities to document and protect their lands, as well as how governments may best approach the development of sound legal and regulatory land protection frameworks.

Although further investigation is necessary, the data illustrate that if well-facilitated, 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 real changes that have the potential to promote good governance and downward accountability of leaders, strengthen women's rights, proactively resolve land conflicts, align local rules with national law, and promote conservation and sustainable natural resources practices.

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 fully leverage its lands for locally-driven development, prosperity and human flourishing.

## AFTERWORD: Namati's Community Land Protection Program

Namati, a new international organization dedicated to expanding the field of legal empowerment, is taking this work forward into Phase II of the Community Land Titling Initiative. In partnership with the Land and Equity Movement in Uganda (LEMU), The Sustainable Development Institute (SDI), and Centro Terra Viva (CTV), Namati launched its global **Community Land Protection Program**.

The Community Land Protection Program's goal is to proactively strengthen communities' ability to protect, enforce and defend their customary land rights. The program endeavors to promote genuine legal protections for customary land tenure and the recognition of customary land rights as legally-enforceable ownership claims. In the coming years, Namati and its partners will work to:

### 1. Expand and scale-up the model

- ▶ Scale-up community land protection activities throughout Liberia, Uganda and Mozambique, both through continued support to the Phase I study communities as well as through expansion into other rural communities throughout these nations.
- ▶ Expand and strengthen the network of civil society actors protecting community land rights globally, working to transfer "lessons learned" during Phase I to other NGOs and communities across the world, with the goal of documenting and protecting as many community lands as possible.

### 2. Impact policy

- ▶ Impact national land policy and practice in Liberia, Uganda and Mozambique, with the goal of promoting improvements that facilitate communities' successful completion of community land documentation processes.
- ▶ Advocate for other nations to establish community land documentation processes, and in those nations whose legislative frameworks already provide for such processes, advocate for widespread implementation of such legislation.
- ▶ Promote a model of community land protection that emphasizes intra-community governance, accountability, conflict resolution, conservation, equity and justice as important goals of community land protection processes, on par with securing land rights documentation.

### **3. Ensure equity and justice in community-investor relations**

- ▶ Support just, equitable and empowered community-investor partnerships, ensuring that communities are properly prepared and have legal representation during all negotiations with investors and state actors concerning the use of community lands and natural resources.

### **4. Investigate impacts**

- ▶ Investigate the long-term impacts of community land documentation efforts and monitor what long-term support communities require to successfully implement and enforce their by-laws/constitutions and leverage their land for endogenously-driven local development.

### **5. Influence global dialogue**

- ▶ Impact the global dialogue on community land and natural resource rights, promoting community land protection as a critical, high profile issue and expanding the audience of actors invested in protecting community land claims.

Namati will continue IDLO's model of working closely with local partners to accomplish these aims. The hope is that through our combined efforts, we can support vibrant community empowerment; authentic community sovereignty and authority over land and natural resources; good community governance that fosters equity, justice, fairness and accountability for leaders and community members alike; equitable, enforceable investor-community partnerships that result in tangible land and natural resources benefits for communities; and community stewardship of the earth, ensuring that land and resources are managed sustainably, in trust for future generations.

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Liberian field staff prepare MOU documents for signature.

## APPENDICES

### APPENDIX A SELECTION AND RANDOMIZATION OF THE STUDY COMMUNITIES; SAMPLING METHODOLOGY

#### Liberia

##### *Selecting the study region*

Given Liberia's post-conflict situation and the potential of land documentation work to incite confrontation, SDI decided that, for this research, it was best to select a county that had a relatively homogenous population and a low-density residential pattern. SDI selected Rivercess County as the study region, as it is 97% Bassa and has a population density of 33 people per square mile.<sup>241</sup> SDI hypothesized that this lack of diversity would reduce the potential for identity-based conflict during the process, as might occur in more diverse counties. Furthermore, in 2007, when the Forest Development Authority (FDA) called for Liberians to present their land deeds for public recognition, almost no public land sale deeds emerged from Rivercess County, demonstrating that the vast majority of land was not yet documented.

Rivercess County is one of the poorest and most rural counties in Liberia and the site of multiple logging concessions. SDI hypothesized that, as a result of the concessions and the lack of deeded land, the population of Rivercess County felt a sense of threat to their land claims, and therefore had motivation to be part of a research project through which they could protect their lands. Finally, cognizant of the highly sensitive nature of land documentation, SDI deemed it wise to select a county where it had previously worked for many years.<sup>242</sup> In particular, SDI has good working relationships with Rivercess County's Paramount Chiefs, who could vouch for the project at critical moments. Rivercess County land officials also welcomed the project and pledged their enthusiastic cooperation.

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241 Liberia has an average population density of 93 people per square mile; Rivercess is the third least populated county in Liberia (Liberia Institute and Geo-Information Services (2008) <http://www.lisgis.org/> at 20 September 2011).

242 This decision proved to be very wise; in Uganda, the local partner began the project in a district where it had not previously worked, and faced constant challenges stemming from communities' lack of trust in an organization that was relatively unknown before the project began.

### ***Random assignment of communities into treatment groups***

The Sustainable Development Institute (SDI) sent word through customary and state leaders that the project would work with 20 communities throughout Rivercess County that both felt a strong desire to take part in the project and seek documentation for their lands and were not actively engaged in a contentious conflict with an external actor over land. Dozens of communities volunteered to participate. SDI randomly selected 20 clans to participate in the project, called a meeting of the clan leaders to fully explain the experimental nature of the project, and asked the leaders to sign informed consent forms. To randomly sort the communities into treatment groups, the field team placed slips of paper, each inscribed with a treatment group, into a hat; and community leaders each selected a piece of paper, thus determining their treatment group. The leaders did the drawing of paper publicly for transparency and to take responsibility of choosing treatment groups themselves. The research team gave leaders an in-depth explanation of the service level of their treatment group and encouraged all communities to work hard to complete the process.

It is important to note that given the geo-political topography of Rivercess County and the random nature of the selection, many of the study communities shared borders with other study communities. This arrangement created possibilities for ‘contamination’ between the treatment groups, especially during the boundary harmonization exercises wherein even the control groups interacted directly with groups receiving more legal support.

### ***Randomized selection of survey respondents***

The households to be included in the survey were selected in the following manner: the research team surveyed the four largest towns in each of the 20 communities to ensure a representative sample of households from across the clan. Within each town, the research team selected eight households to interview, for a total of 32 individual interviews in each community.

To select these households, the research team met with the elders and chiefs of each town. At this meeting, which took place in the town center and was usually observed by dozens of town members, the community listed the names of all the families in the town. This often consisted of no more than 40 households and sometimes as few as ten households, depending on the size of the town. The leaders were advised that no one would benefit or be paid for taking part in the survey.

The elders and leaders listed every household in their town; the research team then asked the elders and chiefs to identify the following ‘non-normal’ households (community members were included to ensure transparency and erase any doubt of favoritism in the listing process): widow-headed households; female-headed households; parentless/

youth-headed households; households headed by someone from outside the county, also called ‘stranger’-headed households; and any other households that were not male-headed. The team then separated the households into two lists: native male-headed households (including polygamous households); and households headed by strangers, women, children and widows. The research team numbered each of these two lists of households (from 1-n).

The team placed numbered papers into a hat, then drew the papers to randomly selected households for interviews. While the ratio varied from town to town, the team selected a 3:1 ratio of native male-headed households to women/widow/stranger-headed households. At the household level, as deemed culturally appropriate, the project team usually interviewed the head of the household, although researchers tried to interview women 50 percent of the time.

## Mozambique

### *Selecting the Study Region*

In Mozambique, the research was undertaken in the province of Inhambane, a coastal region in the southern part of Mozambique, roughly 500 kilometers north of Maputo. In Inhambane, 80% of the population lives in rural areas, practicing a combination of agriculture and fishing as their means of livelihood. The main ethnic groups are the Betonga and the Matsua,<sup>243</sup> who stake individual and family land claims by planting coconut trees, which are therefore predominant throughout the region.

In recent years, the province of Inhambane has seen a remarkable increase in foreigners seeking land for both agriculture and the development of tourist activities, resulting in a rising number of land conflicts. Despite the high number of hotels and guesthouses springing up along the coast of Inhambane, at times blocking villager’s beach access and interfering with their livelihoods, the region had issued very few community land delimitation certificates in comparison to other provinces in Mozambique. Anticipating that communities were therefore experiencing a high degree of land tenure insecurity, the project team selected Inhambane as an optimal location for the study.

### *Random assignment of communities into treatment groups*

To select the communities, the team worked through a local, Inhambane-based NGO called ACUDES, an organization trusted by rural communities in the study region. The team traveled with ACUDES staff to meet with local customary leaders and gov-

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243 Alternative spellings are also Bitonga and Matswa.

ernment officials and describe the project. The team selected prospective communities to ensure a diversity of landscapes and livelihoods. Leaders were instructed to go back and discuss the project with their communities, and, if interested in participating, come to a meeting in Maxixe in November 2009. Over 40 community leaders from 20 communities attended. As in Liberia, community leaders drew slips of paper out of a hat to transparently and fairly determine their treatment group assignment publicly. At the conclusion of this activity, the team described the project further and answered all questions.

### ***Randomized selection of survey respondents***

In Mozambique, although the project was working at the level of the *povoados*, the community areas were still extremely large. To establish parity with the size of study communities in Liberia and Uganda, the team randomly sampled households located within a two-hour walking distance of the community meeting place.

To identify household survey respondents, the team met with community leaders and asked them about the total number of inhabitants and households in their community. This information was easily ascertainable because the leaders were required to do a semi-annual local census. Furthermore, the social organization of rural communities in Inhambane includes groupings of 70 to 90 families into ‘zones’, each overseen by a *chef de zona* (leader of the area). When selecting households to survey, the team asked the community leaders to draft a list of the existing zones and then the project team randomly chose two zones situated within two hours of the established community meeting site. The team then advised that no one would benefit or be paid for taking part in the survey and asked the heads of these two zones to list the households in their area and identify those that:

- ▶ Had a male head of household;
- ▶ Had a female head of household;
- ▶ Had a widow as head of household;
- ▶ Had a youth as head of household (orphan or young adult); and
- ▶ Were ‘outsider’ or ‘*refugiato*’ families.

The team then disaggregated the list of households into these five categories and assigned numbers (from 1 –n) to each family on each list. The team randomly chose ten families from each list, for a total of 50 families in each community. The researchers then interviewed the heads of each household (as speaking to the head of household was deemed most culturally appropriate), with the aim of interviewing as close to 50 percent female respondents as possible.

## Uganda

### *Selecting the study region*

In most parts of Uganda, communally-owned lands no longer exist; due to population growth, increasing land scarcity and a burgeoning land market, communal grazing lands have largely been converted into individual and family lands, either by allocation or encroachment. In 2008, LEMU conducted research in northern Uganda that confirmed that there were few community lands left, leaving community members to graze their animals only within state-owned and -protected wetland areas. However, LEMU suspected that communally-owned grazing lands remained in some parts of northern Uganda, as rural communities retain strong traditional land management practices based on customary tenure. Northern Uganda was therefore selected as the study region. It was also selected because LEMU's regional base is in northern Uganda, and, due to the sensitive nature of land rights, it was judged that the project should be carried out in an area where LEMU was already known and trusted, and had strong relationships with traditional institutions and local governments. This also allowed for enhanced collaboration and cooperation.

After meeting with government officials from various districts in Northern Uganda, LEMU selected Oyam District to be the site of the project. Oyam was chosen because the district government was extremely receptive to the project and eager to support the project activities. The Oyam District Authority suggested that LEMU conduct the project in Iceme, Minakulu and Loro sub-counties, as LEMU had already provided some training on Ugandans' land rights under customary tenure in this region. However, LEMU had not previously worked extensively in Oyam, and was not well known throughout the District.

To identify communities with common lands, LEMU held a workshop for several levels of local leadership. Meetings were then held at the parish level for all the customary and state leaders (including the LC1s of all the villages in the selected parishes) to inform them about the project and seek their approval and acceptance. Despite initial assertions by sub-county officials and clan leaders that "no more communal grazing lands exist," parish-level leaders identified many remaining communal grazing lands and invited LEMU to work with the land owners.

### *Random assignment of communities into treatment groups*

Unlike in Mozambique and Liberia, in Uganda, the Land and Equity Movement in Uganda (LEMU) did not hold a public treatment-group assignment ceremony. LEMU instead randomly assigned the communities to treatment groups by selecting five community names out of a hat for each treatment group, with one exception. In one area, four

separate study communities were situated around the same piece of common land, each owning a distinct part of it. These communities had a conflict over the extent of each community's ownership rights. The team therefore foresaw that much of their effort in this region would be conflict resolution work. In order to minimize 'leakage' between treatment groups and avoid the perception of privileging one community over another, the project team wrote the names of the four communities on the same piece of paper and thus assigned all four communities to the same treatment group.

### ***Randomized selection of survey respondents***

The project team used random sampling to select survey respondents in order to ensure a representative sampling of community demographics. To carry out the selection, LEMU met with community leaders; the team explained to the leaders that the project would not pay or provide benefits to survey participants. Using the LC1 population records registry, the team worked with the leaders to draw up comprehensive lists of all community members. LEMU then numbered the listed households from 1-n. 40 numbers were then chosen by simple random sampling, and the 40 households corresponding to those numbers were selected to participate in the survey.

When more than one village shared a common area, the project team selected one village at random and surveyed 40 respondents from that village. When the randomly selected village had fewer than 40 households, the researchers surveyed every household and then selected households from a second village to complete a total of 40 surveys. At each household, the project team asked the household head to identify all members of the household, and then the team selected and interviewed one member. If the individual selected was not present, the researchers returned a second time to attempt again to find that person at home. If the individual was still not available, then the researchers surveyed another household member.

## APPENDIX B

### Statistical Analysis of Impact of Service Provision<sup>244</sup>

Tai Young-Taft, PhD

1. **What type and level of support do communities require to successfully complete community land titling processes?**
  - a) Is there a correlation between the level of assistance provided and the relative success achieved?
  - b) Is there a correlation between the level of assistance provided and communities' effectiveness in overcoming obstacles faced in process of following their nation's land documentation procedures?

#### 1a. Analysis of treatment effect on stage attained in the titling process

Statistical analysis of all study communities across Mozambique, Liberia and Uganda suggests that, when measured against the control groups' progress, the level of service had a significant impact on the stage attained in the land documentation process.

Because our study is set up to consider the average "African community," that is, as represented by Uganda, Mozambique, and Liberia, we consider relationships between explanatory variables and stage attained in the land titling process over all communities in each of the three countries. The reason for this is both so we may make general statements regarding the larger aggregate that Uganda, Mozambique, and Liberia represent and also because we only have about 15 control communities and 15 communities from each treatment level blocked across countries. In this regard, we consider four major stages in the land completion process, which all communities in all countries must complete before they are to get their titles, namely:

1. Creation and election of a coordinating or interim committee,
2. Boundary harmonization,
3. Establishing formal rules for community land administration, and
4. Establishing a land and natural resources management plan.

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<sup>244</sup> One component of the variation in the data that should be pointed out is that survey respondent selection was carried out under different regimes in each country, and so our presumption that they are the same is not represented in the data. That said, systematic correlation across a variety of similar tests may suggest some robustness in terms of our simplifying assumptions' ability to represent genuine correlations from the signal.

We construct a composite index from these four stages by assigning a value of 1/4 to the completion of each stage. There is no order in completion of stages, and all stages must be completed to obtain a title, so this is a plausible measure.

Of the four treatment groups, the 16 communities in the control group who finished the program had an average of 18.75% of stages completed in March, 2011 when measured in this manner. The education only group of 14 communities had an average of half of the stages completed by the same time, and the paralegal group of 15 communities had an average of 58.33%. Very interestingly, the group with the most extensive treatment, the full legal aid group of 17 communities that was assigned lawyers to work with them over the period, only completed an average of 33.82% of the steps. This may be due to the fact that community members believed the lawyer would undertake the steps for them and so were not motivated to undertake the intensive community centered work themselves, though we add none of the communities ultimately obtained a community land title — perhaps as our window of analysis is too short for its observation — and it may be that complete legal assistance is required to ultimately formalize the process.

We performed standard bivariate hypothesis tests testing the statistical significance that treatment groups differed in outcome from the control group, and found all such tests had very high significance, with, as expected, positive coefficients. Additionally, the test between the control group and the education only group produced an adjusted R-squared of .62, the test between the control group and the paralegal group produced an adjusted R-squared of .68, and the test between the control group and the full service group produced an adjusted R-squared of .38.

Additionally, we found such tests indicated very high statistical significance in differences between treatment groups, and the test of the education only group relative to the full service group produced an adjusted R-square of .43, the test of the paralegal group relative to the full service group produced an R-squared of .56, and the of the test education only group relative to the paralegal group produced an adjusted R-squared of about .77.

### **1b. Analysis of service provision and important conditioning variables'/obstacles' joint effect on stage attained in land titling process**

We then turned to address the question of whether there is a correlation between the level of assistance provided and communities' effectiveness in overcoming obstacles faced in the process of following the mandated legal procedures. Observation and analysis of the obstacles confronted by communities' in their efforts to follow their nation's community land documentation procedures led to the conclusion

that a variety of factors weighed more heavily on communities' capacity to complete the project activities than the level of legal services provided. Specifically, the most prevalent obstacles or difficulties encountered were:

- (a) The strength/unity or weakness/disunity of community leaders;
- (b) The presence or absence of elite interference or influence;
- (c) The degree and kind of threat to its lands a community is facing;
- (d) The degree of internal community cohesion and cooperation; and
- (e) The presence or absence of an intractable boundary dispute.

The joint effect of each of these factors and the level of legal service support provided are analyzed in turn below.

### **(a) The strength and unity/weakness and disunity of community leaders**

It was observed that the strength and cohesion of community leadership before the inception of the project impacted the community's capacity to successfully work through the project activities. To consider this hypothesis statistically, we create a composite index of leader aptitude of nation-state and customary leaders as follows. For elected governmental officials, if respondents responded positively to each of the following questions:

- (1) How well are local government officials protecting community land rights?
- (2) How well are local government officials helping individual families protect their land rights?
- (3) How well are local government officials protecting the rights of widows and children?
- (4) How well are local government officials making sure the people benefit from resources extracted from the area?
- (5) How well are local government officials making sure that the people are consulted when the government sends investors to the area?
- (6) How well are local government officials hearing land cases and resolving them?
- (7) How well are local government officials making sure that local people prosper and develop, bring development opportunities to the area?

they would receive a point, and the results were summed and divided by the number of questions to provide an index from 0 to 1. Community members were asked the first six questions from above regarding customary leaders, and the results were dealt with analogously.

We then tested the hypothesis that these indices of strength of community leadership lead to positive progress in the community land titling process, as measured

in our progress index above, while including treatment level relative to the control group effects over the three countries in our sample. In particular, as above, we measured a particular treatment effect relative to the control group with a '1', where the control group was assigned a '0'. The coefficients we report below can therefore be interpreted as the average difference relative to the intercept and other conditioning variable effect of the treatment on the population (that is, relative to the control). As we have a small sample of communities, our study does not support extensive consideration of inclusion of many controls in addition to the treatment due to a small number of degrees of freedom. That said, considering the joint effect of two variables is an interesting exercise given this framework, and may not use up too many degrees of freedom relative to the sample size.

Effects from the education only group controlling for our index relative to state officials resulted in a hypothesis test significant at the 6% level, with a statistically significant positive coefficient of .23 associated with the treatment and a positive insignificant coefficient associated with the governmental leader competency index, whose positive effect was washed out by the standard error.

With regards to the paralegal group, we found significant results with a highly significant coefficient of .29 associated with the treatment effect, and highly non-significant local state leader competency effect, with modest negative effect with less than half of the magnitude of the standard error.

Considering both effects in the context of the full service group negated the significance of the treatment only regression.

Customary leader regressions produced a regression significant at the 10% level with a significant positive coefficient of .23 associated with the education only treatment and no significant effect associated with the customary leadership index, while the paralegal regression in this context produced a significant regression with a highly significant treatment effect associated with a .30 coefficient and an insignificant customary leadership index. Finally, the full service regression produced a significant regression, but with the treatment effect only significant at the 12% level, and an insignificant customary leadership index.

A further factor to note is that community leaders must not only be strong and well respected, but there must be relatively good cooperation between the various leaders in the community. This is necessary because, in the event that one or two more influential community leaders express a lack of support for land documentation efforts, at least part of the community will disengage, even if other influential leaders are supporting and encouraging their community to do the work.

In order to consider this we considered the interaction effect between the local state leadership and customary leadership indices. In the context of the education only treatment, the regression was significant at the 7% level with a significant effect associated with the treatment group with an estimated coefficient of .23, and an insignificant effect associated with the interaction term. In the context of paralegal treatment this produced a significant regression with a highly significant treatment effect and .30 estimated treatment coefficient and insignificant interaction effect, and in the context of full treatment this produced an insignificant regression.

With regard to existence of power struggles between leaders, our education only regression set produce highly significant results with similarly significant results relative to the treatment specific effect, accompanied with an estimated coefficient of .38, and no significance suggested relative to the count of elite attempts at power influencing. With regards to the paralegal regression, we attained high significance for the joint effect of treatment and count of elite attempt at influence, accompanied by a highly significant effect from the treatment — associated with an estimated coefficient of .48 — and counter-intuitively positive effect of .22, significant at the 10% level.

### **(b) The presence or absence of elite interference or influence**

Count of elites trying to influence decisions produced significant results with regards to the education only group relative to the control group, with significant results associated with the treatment effect, with an estimated coefficient of .37, and no significance associated with the count of elites trying to influence decisions. The paralegal regression produced highly significant results with a highly significant treatment coefficient associated with a .42 estimated coefficient and insignificant effect relative to the count of elites attempting to influence decision making. Finally, the full service group did not produce a statistically significant effect, while controlling for count of elite interference.

### **(c) The degree and kind of threat to its lands a community is facing**

External Threats. Observations in the field also suggest when a community has in the past faced or is currently facing an external threat to its land claims, the community fully embraces the project and works diligently to complete all processes necessary to procure documentation of its land claims. These external threats are perceived as so great that it is “worth it” to risk trusting an outside NGO for support protecting their communal lands. The existence of external threat regression produced highly significant results for the education only case with a highly significant coefficient of .32 associated with the treatment and an insignificant effect associ-

ated with number of external threats recorded, similarly significant results for the paralegal treatment, with a highly significant coefficient of .40 associated with the treatment, and an insignificant effect associated with the count of external threats recorded, and no significance associated with the full service regression.

Internal threats. It was observed on the ground that because communities are so afraid of losing land to outside investors and government agencies, when the threats faced by a community are only internal (coming from community members) the community will reject the project, preferring to remain with the internal threats rather than risk trusting outsiders, even an NGO providing legal support to help protect community land. Likewise, communities that had a high degree of internal friction and division were not able to complete the project activities.

The internal threat regression resulted in a highly significant result for the education only treatment along with a highly significant .26 coefficient associated with the treatment effect, and a quite modest negative coefficient associated with the internal threat, significant at the 10% level, a highly significant result for the paralegal group, associated with a highly significant .38 coefficient associated with the treatment and an insignificant internal threat coefficient, and the full service regression resulted in a significant effect, associated with an insignificant treatment effect, and a significant and quite modest negative internal threat effect.

Relatedly, it was observed the presence of a feared or influential elite who opposes the project often has the power to either ensure community rejection of the project, stall or halt project activities for months at a time, or to completely sabotage the project's success from within.

#### **(d) The degree of internal community cohesion and cooperation**

It was similarly observed the failure of communities to unite around the work was a key factor in whether they stayed in the project or rejected it/withdrew from it. It is important to note that this lack of unity was not caused by the project, but was inherent in pre-existing community dynamics. It was observed in the field that communities that had a high degree of internal friction and division were not able to complete the project activities.

In assessing the validity of this hypothesis we consider positive responses to the statement: "Working together as a community is empowering; we get things done better and faster as a group."

Using share of positive response (agreement versus disagreement) to the above question as a measure of community cohesion we attained statistically significant results at the 10% level for the education only treatment accompanied by significant results associated with a .24 estimated coefficient for the treatment group and insignificance of community cohesion, highly significant results associated with the paralegal regression, accompanied by highly significant results pertaining to treatment effect with a .30 estimated coefficient, and insignificant effects from this measure of community cohesion, and finally insignificant effects associated with the full service regression.

Additionally, we consider community member participation as measured by positive response to one or more of the following classifications:

- (1) Has attended a community meeting in the past year,
- (2) Has combined with others to raise an issue to a community leader in the past year,
- (3) Has contributed to community development projects in the past year,
- (4) Has contributed to environmental protection and prevention of forest fires,
- (5) Has contributed to surveillance and monitoring of hunting and forest exploitation within the community.

We then took the share of respondents who responded positively to at least one of these criteria to be the community's average response, and consider how it predicted level of attainment in the titling process. Using this measure of community cohesion we find concordant results, namely with results significant at the 10% level, significant treatment effects of education only, with an associated .23 slope coefficient, and insignificant effect of community participation. Likewise, the paralegal assistance regression produced significant results with significant treatment effects associated with a .27 estimated coefficient, and insignificant community cohesion effects. Full legal service was not statistically significant.

#### **(e) The presence or absence of an intractable boundary dispute**

Finally, with regards to presence of an unresolved boundary dispute, the education only regression produced highly significant results with highly significant results associated with the positive .27 coefficient pertaining to the treatment effect slope term, and meaningful -.16 coefficient associated with the boundary dispute term, significant at the 6% level. The paralegal regression produced highly significant results with highly significant results associated with the .38 coefficient representing the slope parameter associated with the treatment effect, and an insignificant boundary dispute effect, with the full service regression also being highly signifi-

cant, this time with a highly significant negative coefficient of  $-.30$  associated with the boundary dispute effect and a  $.16$  coefficient associated with the treatment effect, at the 10% level.

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In sum, our treatments remain highly significant while controlling for a wide array of controls thought to be pertinent during the field review in the context of two independent variable regressions with regards to education only and paralegal treatments, though less so with regards to the full service treatments, even with our relatively small dataset. Secondary effects thought to be important during the experiment did not tend to hold up to these tests. In particular, the only secondary effects that retained significance were (1) existence of internal threats, which were significant in the education only (at the 10% level) and full service regressions, though in both instances with very small coefficients, (2) count of elite attempt at influence in the context of paralegal treatments, with a strong counterintuitive positive coefficient of  $.22$ , significant at the 10% level (perhaps indicating a positive motivating effect of count of elite attempt at influence in the context of paralegal treatment), and (3) presence of an unresolved boundary, which had a negative coefficient of  $-.16$  associated with it in the education only regression, significant at the 6% level, and a highly significant coefficient of  $-.30$  associated with the full service regression.

## **2. How to best facilitate the protection of the land rights of women and vulnerable groups in the context of decentralized land management and administration?**

- a. Is there a correlation between the level of assistance provided and meaningful participation by vulnerable groups in terms of: community meetings; the drafting, finalization and adoption of community by-laws/constitutions; and the drafting, finalization and adoption of land and natural resource management plans?
- b. Is there a correlation between the level of assistance provided and whether communities adopted safeguards aimed at protecting the land rights of woman and vulnerable groups?

To explore these questions, we first looked at the extent of community participation overall. We then looked specifically at women's participation in the community land titling activities. Finally we investigated the impacts of the project work on women's land rights in the study communities. For this set of data, we looked at individual respondent's answers in the pre- and post-service survey, as a whole and also per community. Statistical analysis found that the project had a statistically

significant impact on both community-wide meeting attendance and verbal participation rates across treatment groups. Looking at the women's data only we found that paralegal treatment was the only treatment to significantly increase women's participation rates as compared to their participation the year before the project, but that for the year of the project only, all women's participation rates in all three treatment groups' was significantly higher than women's participation in the control group. Furthermore, the data show that the intervention improved women's and men's awareness of widows land rights. Finally, we found that the project had a statistically significant impact on changes in the treatment groups' community rules concerning women's and other vulnerable groups' rights to their land. These findings are detailed below.

## **2a. Meeting attendance and voicing of opinion in community meetings**

### **General community participation in project activities**

The data also suggests the level of support impacts community participation in the project activities. Post-service survey respondents throughout the study communities responded that treatment level was positively associated with higher rate of individual meeting attendance in the preceding 12 months. In this context, we exploit the individual survey level nature of the data and conduct an individual survey respondent bivariate hypothesis test considering significance of difference between treatment class and control (1) relative to the continental sample of all three countries and (2) relative to individual countries.

Relative to the Africa case, the education only treatment was different from the control group with very high significance and a positive coefficient, the paralegal treatment was different from the control group with similarly highly significant results and positive coefficient, and finally the full service treatment was also statistically different from the control group with a positive estimated coefficient, also highly significant.

Bivariate hypotheses tests in the case of Uganda suggested the education only group was highly statistically significantly different from the control group, the paralegal group was highly statistically significantly different from the control group, and the full legal services group was highly statistically significantly different from the control group, all with the expected positive sign.

Relative to Liberia, concordant hypothesis tests suggest a positive effect of education only treatment on share of survey respondents having attended a meeting in the past year, paralegal treatments were positively correlated with having attended a meeting in the past year relative to the control treatment, and finally full service

treatments were likewise positively and significantly correlated to meeting attendance in the past year, all with high significance.

Finally, relative to Mozambique, we find essentially the same thing, with education only differing positively from control, paralegal differing positively from control, and full service differing positively from control, all again with high significance.

The data also show interesting patterns in percentage of people who spoke up during meetings. In this context, all results were positive with high statistical significance.

## **Women's participation in project activities**

We are also interested in the effect of treatment on women's attendance of community meetings. When specifying bivariate hypotheses tests relative to control groups, we only found the paralegal treatment to have increased the average share of female respondents who answered, "Yes, often," or "Yes, several times," as opposed to "Yes, once or twice," or "No," significantly, relative to the question:

Have you attended a community meeting in the past year?

by community, and relative to the control group the paralegal group had on average a 16% increase in share of community that responded as above. Arguably, this could have been due to an increase in specifically project related meetings, and to such an extent we also consider how treatment relative to control predicts total share of people having attended a community in the past year using the post-service survey, independent of the previous year, and we find very high significance for all three treatment groups, with significant coefficients predicting share attending meetings in the previous year, with education only retaining a .63 estimated coefficient, paralegals a .65 percent coefficient, and full service a .71 estimated coefficient.

If we instead consider effects of treatments on average share of women who have voiced their opinions in community meetings, we find insignificance for all of our bivariate hypotheses tests for effect from treatments relative to this dependent variable.

### **2b) Impact on women's land tenure security**

Next, we considered women's responses to questions regarding their confidence in their ability to maintain current rights to shared common areas, and measured the change in their perceptions from the year before the start of the project to the year during which the project was undertaken.

If we consider the effect of the treatments on changes in female responses relative to confidence regarding their ability to maintain current rights to shared common areas from the year prior to the initiation of the project relative to the year during which the project was undertaken, as averaged across the community, we find that only the full service regression is significant at the 10% level, with treatment inducing a counterintuitive negative  $-.08$  effect on the average variable response, 'Very confident' or 'Somewhat confident,' relative to 'Very unsure' or 'Somewhat unsure.' If we look at change of share of women who gained land by community, we find the only treatment that had a significant effect was the education only group, which had a positive effect of  $.08$ , significant at the 10% level.

Likewise, the education only treatment was the only group to show statistically significant effects on change in share of women who lost land, producing a  $-.06$  coefficient.

If we then ask women how many different types of people protect women's land claims, relative to possible responses

- (1) her children if they are grown,
- (2) her husband's brothers or father,
- (3) the state/state officials,
- (4) the traditional leaders,
- (5) other,
- (6) the widow herself,
- (7) the customary leaders,

and measure if respondents could name 0, 1, or 2 different types, we found treatment class could not predict change in this variable relative to the year prior to the treatment and the year during the treatment in bivariate hypothesis tests.

If we consider change in share of correct female responses to a set of 5 questions pertaining to local (national) land rights over the year prior to the experiment and the year of the experiment itself, we find that education only and full service treatments have counter-intuitively negative significant coefficients of  $-.08$  and  $-.07$  respectively.

If we see how treatment effects predict positive change in responses to the question:

A woman has a right to retain control over the land she lives on after her husband dies?

relative to the year prior to the onset of the experiment and the year in which the experiment was being conducted, with possible responses being “Yes” or “No”, we obtain significance for the education only group with a positive coefficient of .09 and significance at the 10% level for the paralegal group with an estimated coefficient of .07.

If we instead focus on male response to the question in the above manner, we only get significance for the education only group at the 10% level with an estimated coefficient of .09.

If we see how treatment effects predict positive change in responses to the question: “A woman has a right to make decisions about the use of her household’s land after her husband dies?” relative to the year prior to the onset of the experiment and the year in which the experiment was being conducted, with possible responses being “Yes” or “No”, we only obtain significance for the education only group with a positive coefficient of .16.

If we instead focus on male response to the question in the above manner, we only get significance for the education only group with an estimated coefficient of .14.

Finally, we turn to considering the effect of treatment group on the number of provisions in communities’ bylaws/rules/ constitutions and land and natural resources management plans that could be interpreted as strengthening vulnerable groups’ land rights in the community. In this analysis, we find that all treatment classes had a statistically significant, positive effect. To conduct this analysis, we took all the provisions counted as strengthening women and other vulnerable groups’ rights, and then divided this number by the number of communities that completed a second or third draft of these documents. The average number of provisions per bylaws/constitution was found to be 3.19. Compared across treatment groups, the education-only groups had, on average, 4 more provisions than the control groups, the paralegals had 5.5 more provisions than the control, and the full service had 2.83 provisions. Statistical analysis of these results concluded that they are statistically significant.

Clan/ Community	Interim Committee Elected (1 possible point)	Boundaries Har- monized/ MoU Signed (2 possible points)	Bordering Communities	By-laws (3 possible points)	Management Plan (1 possible point)	Governing Committee (1 possible point)	Total Points (8 possible points)
Boehtarr (Full Service)	YES (1)	Signed (2)	Goenotarr, Jowein, Duah, Central Morweh	3 <sup>rd</sup> draft (3)	Completed (1)	Selected/ Elected (1)	8/8 = 100%
Geonotarr (Full Service)	YES (1)	2 borders left	Boehtarr, Jowein, Gbarsaw, Kiyah	2 <sup>nd</sup> draft(2)	In process	In process	3/8 = 38%
Zialue (Full Service)	YES (1)	Signed (2)	Teekpeh, Beawar, Dorbor	3 <sup>rd</sup> draft (3)	Completed (1)	Selected/ Elected (1)	8/8 = 100%
Gbarsaw (Full Service)	YES (1)	4 borders left	Kahwhere, Goenotarr, Whea- saye, Kiyah, Dorbor	1 <sup>st</sup> draft (1)	In process	In process	2/8 = 25%
Kanwhere (Full Service)	YES (1)	1 border left	Kiyah, Gbarsaw, Wheasaye	1 <sup>st</sup> draft (1)	In process	In process	2/8 = 25%
Central Morweh (Paralegal)	YES (1)	Signed (2)	Sawpue, Teekpeh, Jowein, Duah, Zarque, Boehtarr	3 <sup>rd</sup> draft (3)	Completed (1)	Selected/ Elected (1)	8/8 = 100%
Duah (Paralegal)	YES (1)	Signed (2)	Central Morweh, Bar, Zarque, Boehtarr, Sawpue	3 <sup>rd</sup> draft (3)	Completed (1)	Selected/ Elected (1)	8/8 = 100%
Toboe (Paralegal)	YES (1)	Signed (2)	Kebbeh, Dowein, Hwolorzohn, Jueh	2 <sup>nd</sup> draft(2)	In process	In process	5/8 = 63%
Jowein (Paralegal)	YES (1)	Signed (2)	Boehtarr, Goenotarr, Sawpue, Dorbor, Central Morweh, Teekpeh	3 <sup>rd</sup> draft (3)	In process	In process	6/8 = 75%
Bars (Paralegal)	YES (1)	Signed (2)	Zarque, Duah	3 <sup>rd</sup> draft (3)	Com- pleted(1)	Selected/ Elected but then challenged	7/8 = 88%
Zarque (Education- Only)	YES (1)	Signed (2)	Central Morweh, Duah, Bar	3 <sup>rd</sup> draft (3)	Completed (1)	Selected/ Elected (1)	8/8 = 100%
Dorbor (Education- Only)	YES (1)	Signed (2)	Zialue, Gbarsaw, Teekpeh, Dowein, Jowein	2 <sup>nd</sup> draft(2)	Completed (1)	Selected/ Elected but then challenged	6/8= 75%
Kebbeh (Education- Only)	YES (1)	Signed (2)	Garyeazohn, Banana, Hwolor- zohn, Toboe, Dowein, Siahn	2 <sup>nd</sup> draft(2)	In process	Selected/ Elected (1)	6/8 = 75%
Wheasaye (Education- Only)	YES (1)	2 borders left	Siahn, Dowein, Kanwhere, Gbarsaw, Beorquiah	1 <sup>st</sup> draft (1)	In process	In process	2/8 = 25%
Dowein (Education- Only)	YES (1)	Signed (2)	Wheasaye, Toboe, Siahn, Kebbeh, Dorbor	3 <sup>rd</sup> draft (3)	In process	In process	6/8 = 75%
Siahn (Control)	YES (1)	Signed(2)	Wheasaye, Banana, Kebbeh, Dowein,	3 <sup>rd</sup> draft (3)	In process	In process	6/8 = 75%
Teekpeh (Control)	YES (1)	Boundaries agreed, but MOU unsigned (1)	Central Morweh, Dorbor, Zialue, Sawpue, Jowein	3 <sup>rd</sup> draft (3)	In process	In process	5/8 = 63%
Sawpue (Control)	YES (1)	Boundaries agreed, but MOU unsigned (1)	Central Morweh, Duah, Jowein, Teekpeh	1 <sup>st</sup> draft (1)	In process	In process	3/8 = 38%
Hwolorzohn (Control)	YES (1)	1 border left	Kebbeh, Toboe, Banana, Bowein	1 <sup>st</sup> draft (1)	In process	In process	2/8 = 25%
Bowein (Control)	YES (1)	2 borders left	Hwolorzohn, Banana,	1 <sup>st</sup> draft (1)	In process	In process	2/8 = 25%

## APPENDIX C

### BRIEF SUMMARIES OF COMMUNITY PROGRESS AND NON-STATISTICAL ANALYSIS OF SUCCESS RATES

#### **LIBERIA: Success of each community weighted by percentage of the delimitation process completed**

#### **Liberia: Brief summaries of community experiences**

##### **Progress of full-service treatment communities**

##### ***Khanwhere***

Khanwhere was characterized by well-organized towns, general internal community cohesion (both inter- and intra-town cohesion) and good cooperation between community leaders. The community's motivation was driven by its close proximity to the concession area of the Liberia Agriculture Company (LAC), a private investment entity: Khanwhere feared that the company would expand its holdings into its area. Despite this perceived threat, the community struggled to harmonize one of its boundaries, largely due to the obstinance of its neighbor, Gbarsaw. The clan also struggled to overcome its geography: the clan is divided by a large river, limiting interaction between towns, which made full participation difficult.

##### ***Gbarsaw***

Overall, Gbarsaw was the least successful community in the study; throughout the project, the clan struggled to organize successful meetings. Despite receiving full legal support, Gbarsaw was one of the few communities that failed to harmonize its borders and did not progress further than a first draft of by-laws. Neighboring clans reported that they tried to schedule boundary harmonization meetings with Gbarsaw, but Gbarsaw did not always attend. Gbarsaw's relative stagnation may be ascribed to intra-community distrust and division related to past efforts to seek land documentation. Community members reported that three years prior to the project, elites with connections to Monrovia had "taxed" community members to raise funds in order "to run after the community land." Nothing appeared to come from community members' contributions. One woman lamented that, to date, "No one [has said] anything about the money we collected or the work [we did]." As a result, SDI's efforts were met with distrust. The clan's efforts were further frustrated by interference from Monrovia-based elites. An elder threatened "big trouble" against anyone who attempted to negotiate community boundaries without first consulting leaders

in Monrovia. Moreover, these elites took over the boundary negotiations with two of its neighbors, Goenotarr and Wheasaye, marginalizing local leaders' roles and entrenching the conflicts. The reason for the elite's keen interference was linked to local perceptions that the clan's land is rich with unexplored mineral deposits. Finally, SDI observed very poor internal clan cohesion; each town repeatedly asked for its own land documentation process.

### ***Goenotarr***

Goenotarr failed to fully harmonize its boundaries (partly due to Gbarsaw) and completed only the second draft of its by-laws. Goenotarr did not complete the land and natural resources management plan, and as such did not elect a Governing Council. Despite early progress, a crack in community cohesion stalled documentation efforts. Furthermore, although the community's meetings were relatively well attended, meetings were nonetheless dominated by the traditional leaders. Part of their efforts to control every aspect of the project appeared to be driven by the leaders' individual and family land claims, some of which crossed over clan boundaries. Furthermore, it appeared as though the leaders' domination of project activities and bad faith boundary negotiations left most women and youth apathetic towards the project. The lack of community cohesion was compounded by a high number of transient youth from throughout the region living in Goenotarr, drawn by alluvial (gold and diamond) mining opportunities.

### ***Boettarr***

Boettarr was strongly influenced by its customary leaders, who at first had reservations about the project that seemed to stem from a lack of understanding of the project's goals. Furthermore, there were several reported deeds in Boettarr, allegedly owned by towns and prominent citizens. These deeds reportedly ranged from 400 to 1,000 acres. As a result of the confusion surrounding these, interest in the project was initially low and meetings were poorly attended. Gradually, however, community leaders became extremely supportive of the project, resulting in full community participation in the project activities. Boettarr was thereafter able to successfully complete the process and transparently elect a community-endorsed Governing Council. Certain factors contributed to Boettarr's eventual success: first, the Interim Committee leader was very hardworking and effective. Second, the community was able to easily harmonize its three borders due to its 'sisterhood' with its neighbor Goenotarr, and to the hard work of its two neighbors, both of which were paralegal communities (Jowein and Central Morweh). Fourth, the towns in Boettarr were located in close proximity to one another, facilitating meeting attendance at clan-wide meetings. Interestingly, the chairman of Boettarr's Interim Committee spent a great deal of time attending the meetings of the neighboring paralegal treatment group communities, trying to benefit from the teachings and strategies used by their animators, then taking those communities' lessons and ideas home to discuss with his own community.

## ***Zialue***

Community leaders and members in Zialue were highly receptive to the project. Meetings were generally well attended, and the relationship between the community and its committee members was positive. The Interim Committee relayed to SDI that they felt very “support[ed] by our leaders... they have been really helping us.” As a result, Zialue was able to complete all the activities through transparent Governing Council elections. Zialue’s success may have been linked to the community’s sense of urgency: the community felt threatened by encroachment from neighbors from across the county line between Rivercess and Grand Gedah County. This sense of threat was likely one of the community’s major motivations for the project.

However, Zialue struggled for most of the project: despite having only two boundaries in need of harmonization, Zialue was one of the last communities to harmonize borders and organize a MOU-signing ceremony. One reason for this slow pace was its location: Zialue is located at the far end of the county and spent most of its efforts towards harmonizing its county-line boundary. Despite SDI’s clear message that the county-line boundary was non-negotiable, this boundary became a preoccupation for the community. On one occasion, the community dispatched a team to Monrovia to express their frustration to government representatives. A second reason for Zialue’s boundary harmonization difficulties was linked to community members’ perception that a mountain located on their border with Teekpa is rich with unexplored mineral deposits. The community appeared to view any attempt to divide the land without knowledge of the location of these mineral resources as potentially disadvantageous to the community. Finally, Zialue’s towns were distant from each other, a factor that made the many full-clan meetings difficult to convene. However, in the last few months of the project, community members very openly agreed to focus on “getting a paper for our traditional land and put our differences behind us.” Thereafter, cooperation between the community and its Interim Committee and SDI’s full support allowed Zialue to progress successfully through the various steps.

## **Progress of paralegal treatment communities**

### ***Central Morweh***

Central Morweh successfully fulfilled all steps of the project, including completing a third draft of its by-laws and electing a Governing Council. Part of the community’s success may be attributed to its youth, who were very active, organized, highly literate, and had an excellent working relationship with their elders. The community consistently attended scheduled meetings, all of which were characterized by good participation by all stakeholders and identity groups. SDI observed that the youth’s presence and outspokenness encouraged women and strangers to communicate and participate

during community meetings. For example, upon finding out that a border was not being harmonized because a few individuals (whose cash crops had been planted across the agreed old boundary) were stalling the negotiations in order to protect their crops, some community members became upset and challenged the Interim Committee, demanding transparency and calling for all decisions to be made by the whole community in general meetings. Central Morweh was also characterized by: leaders' and elites' relatively high level of understanding of and dedication to the project; good intra-clan organization; a unified power dynamic both between community leaders and between all community stakeholders; and a well-organized, competent Interim Committee.

### *Jowein*

Like Central Morweh, Jowein has a strong youth culture, high capacity and skills, and some previous experience in development projects. Notably, Jowein had to remove and replace its Interim Committee Chairman on account of his having purposefully stalled the community's progress to protect a personal land claim that he believed the project would dispute. His bad faith efforts were a source of conflict in Jowein for most of the project until the community took action to challenge his leadership. Once Jowein installed a new Interim Committee Chairman, the community moved rapidly through the land documentation process: in only a few months, the community harmonized all its borders, signed its MOU, and successfully completed a third draft of its by-laws. Led by the animators, Jowein's youth participation also proved to be instrumental in educating the community about land rights and guiding the community through the documentation steps.

### *Toboe*

Toboe struggled to harmonize its borders, partly due to its composition (in the rainy season, Toboe is isolated due to floods, essentially becoming an island) and spatial isolation from the other study communities and partly due to recent state-mandated changes; not even the Clan Chief was clear about which towns fell within Toboe, as some non-island towns' allegiances were recently re-characterized by state administrators. Indeed, many of the towns in the region could not say what clan they were part of. Additionally, Toboe is characterized by very small towns (the largest have only ten or 11 households), which are mostly surrounded by water. Furthermore, the community faced intra-community conflicts, a high degree of distrust and misinformation, and poor relations between the Interim Committee and the animators on the one hand, and the community and its elders on the other. Among all of the study's community animators, Toboe's animators had the lowest capacity. Yet, due to these animators' hard work and determination, Toboe did manage to successfully harmonize all its borders, host a MOU-signing ceremony and complete a second draft of its by-laws.

## ***Duah***

Duah faced very few obstacles during the project. Meetings in Duah were attended by a relatively high percentage of the clan's members and characterized by high participation by women, youth and elders. Under its animators' strong leadership, Duah also completed the third draft of its by-laws, finished a land and natural resources management plan and elected a Governing Council. However, Duah struggled to resolve at least two post-MOU-signing border disputes, both of which it addressed by referencing the MOU and calling upon witnesses that had attended the MoU-signing ceremony. These disputes largely reflected the fact the Duah exchanged three of its boundary towns with its neighbors, leaving some areas vaguely defined.

## ***Bars***

Ingeniously, Bars' community animators deliberately rotated the clan's meetings between towns, and in doing so successfully maximized participation, increased awareness and ultimately created a community-wide sense of ownership over the process. Furthermore, Bars had only two boundaries to negotiate and was thus the first community to fully harmonize its borders and sign its MOU, which was done in a festival-like signing ceremony with over 200 witnesses. Bars was also aided in its efforts by strong motivation: it felt a high degree of threat to its lands as a result of various concession areas. Moreover, at the inception of the project, Bars was engaged in a protracted land dispute between an elite community member and two towns in the clan. (The individual was claiming 3,500 acres of land as his private, deeded land, leading to a protracted legal case between the individual and the two towns surrounding the claim area and costing the community "A lot of money in lawyer, [transportation], and communication fees... we don't know how much we [have] spent".) Yet as a result of its strong community animators and its dedication to the project activities, Bars was able to complete a third draft of its by-laws and elect its Governing Council. However, this election was later challenged and overturned when it was discovered that the town that hosted the elections was overly represented during the election process and thus had more than its fair share of council representatives. The Governing Council was disbanded and another election scheduled.

## **Progress of the education-only treatment communities**

### ***Dorbor***

Dorbor's leaders were among one of the most cohesive leadership groups in the study communities. The community — and the Interim Committee — also had the full support of local elites, including the Paramount Chief and Clan Chief. Because of the chiefs' support and strong leadership, Dorbor was able to complete most of the project activities with relative ease. After negotiating two particularly entrenched

boundary disputes with its neighbors (Gbarsaw and Jowein), Dorbor successfully harmonized its remaining boundaries, held an MOU-signing ceremony, completed two drafts of its by-laws and finalized its land and natural resources management plan. However, while Dorbor's meetings appeared to be fully participatory, some decisions seemed to have been made by a few dominant individuals; Dorbor's Governing Council was selected by a handful of individuals from one specific town. However, when the wider community challenged the council election process it was overturned and a new, more representative election was scheduled.

### *Zarque*

Zarque is located between three paralegal treatment group communities, which helped it to benefit from the community animator's knowledge. SDI observed members of Zarque's Interim Committee and few of its elders attending several of Bars' and Duah's community meetings. SDI also noted that the committee chairman of Zarque visited the community animators of Duah, Central Morweh, and Bars on a number of occasions to seek guidance and information. Zarque also reported learning useful conflict resolution techniques from its neighbors' animators. Furthermore, the leaders and elites of Zarque were receptive of the project and highly supportive of the Interim Committee. As a result, Zarque successfully harmonized its borders, hosted an MOU-signing ceremony, and completed the second draft of its by-laws. It also completed a first draft of its land and natural resources management plan and elected a Governing Council. Zarque's Interim Committee had one of the most literate, competent chairmen (having post-high school education) in the study. While this helped the community to be successful in its efforts, Zarque tended to be highly dependent on this chairman, creating weakness in its leadership structure. Zarque recently faced challenges to its negotiated boundaries: some community members were unhappy with what they felt were unfair or rushed compromises. Positively, these conflicts were addressed by referencing the signed MOUs.

### *Wheasaye*

Wheasaye's experience illustrates the challenges of community land documentation in peri-urban communities or communities without strong internal cohesion. There are over 20 towns in Wheasaye, with a distance of seven hours walking between many of them. As a result, Wheasaye struggled to organize even one successful meeting. In fact, meetings in this clan were dominated by new members who usually claimed, "This is the first time I have heard about this [project]." While such claims are questionable, as SDI introduced the project in each of Wheasaye's towns, these individuals' statements exhibit the clan's lack of cohesion and the poor information flow between towns. Wheasaye also suffered from weak cooperation between leaders and intra-clan boundary disputes. Furthermore, the biggest town in the clan and

the second largest urban area in Rivercess County, Yarpah Town,<sup>245</sup> failed to engage with the project. Frustrated, the Chairman of the Interim Committee eventually re-signed, and no replacement was made. As a result, the clan abandoned the project without completing most of the steps. However, individual towns who were interested in the project took the opportunity to work on harmonizing their town borders.

### ***Kebbeh***

Kebbeh is sparsely populated; its largest town, Ghorzohn, has roughly 40 households and the next largest town has three households. Kebbeh's small population helped the community to unite, making most of the project steps relatively easy to accomplish. Focus group participants expressed how, as a result of the project meetings, "People were coming from far places to take part, and [this] made our community feel like one again." By the project's end, Kebbeh had successfully harmonized its borders, hosted a MOU-signing ceremony, completed a second draft of its by-laws, and elected its Governing Council. However, as a result of the extremely small populations of the other towns, Ghorzohn residents tended to dominate the process.

### ***Dowein***

Dowein was mostly controlled by interest groups from one of its towns, Nezuine. Elites in Nezuine were initially reluctant to accept the project, arguing that they already had a deed for their town land and therefore their participation in the project was not necessary. An elder said, "This is for our neighbors; we already have our paper." According to him, the deed belonged to the whole clan, but was held in trust by Nezuine. This issue proved to be a major distraction for Dowein; most community meetings were dominated by discussions addressing the legitimacy of Nezuine's deed claim. (Notably, some of the elders in charge of the deed were based in Monrovia, only periodically visiting the community.) Gradually, the authenticity of this deed became a major source of confusion. Clan members began to challenge the elders and elites from Monrovia to present the deed. Finally, when an incomplete, unofficial document indicating 2,000 acres was presented as the deed, community members became angry with the individuals that had been impeding the land documentation process on account of the deed's alleged existence. An elder in the group asked, "How much is 2,000 acres? We don't even know. Is it enough? We thought we had more than that!" Eventually, the clan rejected this document and Dowein's Interim Committee members were challenged to double their efforts. An elder admonished, "If we lose this thing, all you people that been telling us about this deed will be to blame!" Thus followed a unanimous clan decision for the community to fully complete all steps of the project. Interestingly, in less than two months after

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<sup>245</sup> Yarpah Town is a transient community; most residents are business people who come from somewhere else and thus do not feel a part of the greater clan of Wheasaye.

this discussion, Dowein harmonized all their boundaries, hosted a successful MOU-signing ceremony, and completed a third draft of their community by-laws.

## Progress of the control group

### *Siahn*

Siahn had motivated, well-organized and highly competent leaders who were able to work together to mobilize the community. Even during the pre-service survey, SDI noted that there was evidence of a strong sense of cohesion between elders, women and youth in Siahn. Siahn's efforts were made easier due to the close proximity of its towns, which facilitated full participation in all project activities. Siahn was also motivated by a strong sense of threat to its lands from Dowein, one of its neighbors, stemming from a disagreement over a tree plantation established by the Oriental Timber Company (OTC) on land spanning both clans; the conflict was resolved when both clans agreed to equally divide the plantation. Moreover, under the Taylor regime, Siahn residents reportedly suffered under a concession company with abusive labor practices and unsustainable timber extraction methodologies, which strengthened their determination to gain rights to their lands. Siahn's Interim Committee members also had very strong leadership and management skills; committee members were able to draft their own documents, and dispatched literate individuals into all the clan's towns to help in the drafting of the town's by-laws. SDI also observed that some of these individuals made a point of discretely attending SDI's monthly meetings in neighboring clans.

### *Sawpue*

Sawpue was able to glean a great deal of information from neighboring paralegal communities, Jowein and Central Morweh; two of Sawpue's three borders are with these communities. It is likely that the community animators helped Sawpue to harmonize its borders. Furthermore, individual leaders (particularly the young Interim Committee members) explained to SDI that they had strong ties and shared common activities and interests with their peers in Jowein and Central Morweh. Such interactions led to a sharing of skills and information between the three communities, making boundary negotiations relatively easy. However, Sawpue's Interim Committee was not able to organize a MOU-signing ceremony or to lead its community to through debates towards a second draft of its by-laws. The Committee's failure was likely due to the fact that Sawpue is a relatively new, sparsely-populated clan and does not yet have a strong sense of cohesion or internal organization.

### *Bowein and Hwolorzohn*

These two clans were dominated by their highly motivated District Commissioner (DC) who, likely out of a desire to be helpful and provide support, directed the major-

ity of efforts in both communities. The DC spearheaded most of the land documentation work, including organizing meetings and facilitating border harmonization discussions. However, as a result of the DC's well-meaning interventions, no strong community-based structures were ever created in either Bowein or Hwolorzohn, and neither community progressed through the land documentation process. In those instances where the DC could not be present to lead the communities' efforts, activities did not progress. An inter-clan boundary dispute between the clans further exacerbated their stagnation; the DC tended to focus his efforts on trying to resolve this dispute, at the exclusion of other project activities. Unfortunately, the boundary dispute escalated and was referred to the offices of the County Superintendent and the civil authority. When the Superintendent, a native of Bowein, found in Bowein's favor, Hwolorzohn denounced the verdict; the clans are currently re-engaging in customary dispute resolution methods.<sup>246</sup>

Compounding these difficulties was the fact that the DC held almost all of the project meetings in Bowein, so that the people of Hwolorzohn had to walk extremely long distances to attend the meetings. To ensure representation at these meetings, Hwolorzohn clan elders sent the more able-bodied youth to these meetings, who, while capable of walking long distances, did not have sufficient authority to resolve the border dispute with Bowein. Due to the DC's leadership, the combination of both clans into one process, and the lack of any parallel intra-clan meetings alongside the joint meetings called by the DC, community members in these clans reported to SDI that they did not feel that the project was a community initiative, but rather a forum organized by the DC to reconcile the two clans' boundary conflict.

### ***Teekpa***

Teekpa is located at the far end of the county, and therefore benefitted very little from information and capacity leakage from nearby study communities. Furthermore, Teekpa's progress was hindered by its spacious distribution of towns, which negatively impacted community cooperation. Moreover, one of its towns was claiming to have formal documentation for over 250,000 acres of land, which was physically impossible. Based on its claims, this town interfered in Teekpa's efforts to harmonize its boundaries, and called on elites in Monrovia to help it prove its case. These elites, motivated by the perception that the clan likely had undiscovered valuable resources within the mountain shared with Zialue, further obstructed the community's progress. Interestingly, in the final months of the project, the Paramount Chief and other local leaders strongly pushed for Teekpa to harmonize its boundaries, directly challenging the elites from Monrovia. As a result of the Paramount Chief's strong leadership, by the final months of the project the community was able to

<sup>246</sup> It is worth noting that the Superintendent refused, initially, to participate in this dispute. He was approached on several occasions, mainly by Bowein, to participate in the discussion. According to the DC, he advised both clans to find a traditional method of conflict resolution; however, they insisted that he intervene.



harmonize its boundaries and complete a third draft of its by-laws. In the process, the clan was able to address their internal differences, arrive at compromises, and promise that all towns' legitimate land claims would remain.

## **MOZAMBIQUE: Success of each community weighted by percentage of the delimitation process completed**

### **Mozambique: Brief summaries of community experiences**

#### **Progress of the full-service treatment communities**

##### ***Nhabundo***

Despite the presence of strong, competent leaders, community participation in Nhabundo was low, particularly among women and youth. As a result, delimitation activities were not always completed in a participatory manner. The community's progress was also complicated by various uncontrolled fires, multiple deaths in the community over the course of the project, and complex boundary conflicts. CTV's field team dedicated a great deal of time and energy to mediating these conflicts. Furthermore, the community of Nhabundo did not demonstrate a strong interest in the project, likely due to the fact that there were no common areas within the community available for use by investors and community members' reported sense of tenure security (which they attributed to their use of coconut trees as markers of personal property).

##### ***Mathi***

Part way through the land delimitation activities, the leader in Mathi who had been working most directly with CTV died, suspending project activities for two months. When he was replaced, the new leader changed the venue of all project meetings from the town center to his own house, located in a remote section of the community. This change meant that nearby residents started to attend project meetings, while all of the original regular participants no longer participated. To address this change, CTV held many more meetings than expected and provided transportation to the new leader's home. Positively, as a result of CTV's efforts, the community meetings remained characterized by good community participation, including participation of women and youth.

Mathi's high levels of enthusiasm for the project may have been due to its fertile soils and extended coastal/beachfront lands. Foreign investors routinely seek to invest in Mathi, which is a cause of concern for community members. During CTV's mediation of a conflict between Mathi and an investor, community members expressed that they were particularly worried about their fertile lands and coconut trees, explaining: "Here in the community, the concern is that for this community land to be used by the Boer, our coconut trees have to be felled." The high degree of external threat appears to have served as strong motivating factors for community participation in and enthusiasm for delimitation activities. With CTV's support the community was able to complete all activities and make a first draft of its existing rules of land and natural resources management.

### ***Coge-Sande***

Although this community completed all project activities, including the descriptive report, Coge-Sande repeatedly delayed and cancelled meetings and attendance at community meetings was low. A power struggle between the customary leadership (the *Regulo*) and the state-affiliated *Lider Comunitario* threatened the community's success. Frustrated with the *Lider Comunitario*'s involvement, the *Regulo* once complained to CTV, "The project meetings should not be done here in the center of the village because the *Lider Comunitario* does not understand anything about community land! In matters of land I should be in front, not the *Lider Comunitario*, and the meeting should be held at my home!" In response, the *Regulo* often demanded that the meetings take place at his house, where he felt he had more power, a mandate that led to low turnout and frequent postponement of meetings. The power struggles among Coge-Sande's leadership led to low community participation and interest. The community nevertheless completed all of the project activities with CTV's help, including making a first draft of its current rules for land and natural resources administration and management.

### ***Ligogo***

Ligogo withdrew from the project in its first months, abandoning the process midway. Despite CTV's countless efforts to mobilize the community, both leaders and community members repeatedly failed to attend scheduled meetings. The community's rejection of the project appeared to stem from community members' lack of trust in both district government officials and their own local customary leaders. Community members explained, "The administration acts against members of the community when we try to claim our rights." Similarly, a community leader in Ligogo said, "We are tired, many projects promise things and fail, and we're tired of fighting. The whites will no longer let us pass to the beaches; everything is for them, all our resources." Other community members explained to CTV that their community was not able to work together because people appear to only be concerned

with their individual parcels of land. During the last successful meeting, community members literally fled from the meeting at the moment that CTV's field team began to facilitate work on the participatory appraisal. Despite CTV's inquiries, no explanation for this action was given, and subsequent meetings were not attended.

### ***Petane***

The community of Petane successfully carried out the project activities, including completing its descriptive report. Petane was also the only community that managed to complete a second draft of its community rules for land and natural resources management, having discussed and debated the rules and amended those found to be unconstitutional. Petane enjoyed this success due to the high degree of cohesion between its leaders, community members' trust in these leaders, and strong community-wide concern with protection of their lands and natural resources, especially the river that runs alongside the community.

## **Progress of the paralegal treatment communities**

### ***Furvela***

In Furvela, CTV noted a general lack of enthusiasm for the project by both leaders and community members. The project tasks were conducted primarily by the community mobilizers, with little participation of local leadership, possibly due to the community's election of the *Lider Comunitario's* daughter (who was also the niece of the *Regulo*) as one of the community mobilizers. To stimulate community involvement in the delimitation activities, the mobilizers frequently changed the location of the community meetings, from the local market to the home of the *Lider Comunitario*, among other locations. Interestingly, the mobilizers in Furvela had very strong literacy and technical skills, and spent some time in meetings working on issues of adult literacy, which helped the community to work on their participatory appraisal report (DRP). However, the mobilizers' efforts did not seem to have an impact on community members' participation rates, likely because leaders were not involved. However, it appears that the leader's non-involvement was not of their own volition; on the day of the geo-referencing, when it was necessary to resolve all remaining land disputes, the *Regulo* explained to CTV's field team, "They did not consult or seek the help of the customary leaders in drawing these maps of the community, even though it is us who know the community!" Lack of community leaders' participation also negatively impact participation in discussions of the community's rules for natural resource management. (Notably, Furvela was unique in this respect; in the other paralegal communities all activities appeared to have been completed in partnership with community leaders.)

### ***Magumbo***

This coastal community showed a great deal of interest in the delimitation exercises. Over the course of the project, CTV supported Magumbo to resolve a long-standing land dispute that had endured for more than 50 years. Magumbo's community leadership structure worked well with both CTV and the community mobilizers; meetings were rarely cancelled or postponed. The community progressed well through all community land delimitation activities, and CTV noted that community members were generally very pleased with the process, as illustrated by one post-service focus group's comment:

It's a good project because we get to know our limits and the boundaries of our neighbors, we got to know the natural resources in our community, [We learned] the importance of protecting ourselves against foreigners who want to use our beach, and [we learned about] the Land Law, which helped us to resolve the conflict with Nhatxota and Pateguana.

### ***Inhamussua and Inharrumbo***

Although the communities of Inhamussua and Inharrumbo were at first very distrustful of the field team and the project, the activities progressed successfully and uneventfully, largely due to the high level of commitment of both the mobilizers and community leaders. In both communities all of the monthly meetings CTV scheduled were held, although there was often low turnout. In Inhamussua, due to the arid soil and the lack of investors' presence (and therefore a lack of external threat to community land) CTV observed a particularly low level of motivation. In Inharrumbo, the death of the previous traditional leader had left the community with no one to recount their community's historical narrative, and community mobilizers in Inharrumbo reported that it was very challenging to map community boundaries because it was hard to find a group of elders who could respond to questions about the community's boundaries and limits. Of note is that in Inharrumbo, women's participation was often greater than men's participation.

### ***Mahangue***

In Mahangue, the *Lider Comunitario* initially resisted cooperating with the community mobilizers because he felt that their work undermined his authority. This resistance resulted in a number of cancelled meetings and meetings characterized by extremely low community attendance. The *Lider Comunitario* only accepted the paralegals' role in the delimitation process after CTV's field team intervened and held a meeting to explain the project and its structure. After this conflict was resolved, the community was then able to successfully complete all of the project activities under the joint leadership of the mobilizers and the *Lider Comunitario*.

## Progress of the education-only treatment communities

### *Paindane*

The community of Paindane started activities later than the other study communities because the community leader did not at first understand the gravity or importance of the delimitation process. A number of scheduled meetings were cancelled or went unattended as a result of insufficient intra-community mobilization. However, when the community leader realized the importance of the work for his community, he began to call meetings at the community commercial center, which resulted in high levels of community participation. Unfortunately, Paindane did not make much progress due to a boundary conflict with its neighbor Guinjata; the conflict occupied a significant portion of the community's energy. For this reason it was only able to complete the mapping and the cartogram activities.

### *Mahundza*

Mahundza was the sole education-only community that successfully completed a historical profile and participatory appraisal (DRP). This community had active, strong leadership. Community meetings were characterized by the enthusiastic participation of youth and a high level of women's attendance and participation, regularly including Mozambican Women's Organization (*Organização da Mulher Moçambicana*, or OMM) representatives. However, CTV noted that while the work was completed, it was often not done in a participatory manner; the field team observed that the community leaders appeared to have completed most of the final delimitation documents on their own.

### *Macavane, Marrengo and Guiconela-Guifugo*

In these three communities, CTV observed community leaders' weak capacity to mobilize community members to participate in their communities' land delimitation process. All three communities' meetings were characterized by repeated delays, postponements and poor attendance. While the three communities generally completed the necessary delimitation activities, the work did not appear to have been performed by the community as a group. However, in Marrengo, after geo-referencing was complete and the work turned to discussion of the community's rules, the situation shifted: community participation, including that of women, increased significantly. Yet, due to capacity and literacy issues, all three communities were unable to complete the participatory appraisal work of writing their community history and analyzing and describing their community's social and economic organization (the DRP). Furthermore, only Guiconela-Guifugo was able to write up the descriptive report and the first draft of its community rules. Although the communities

made efforts to record their processes, community members' writing skills were not up to the level required to produce the documents required by the Technical Annex.

## Progress of the control group communities

### *Chinginguire and Maduela*

Chinginguire and Maduela made remarkable progress, and were able to complete most of the delimitation activities. These two control communities were able to achieve progress for two reasons, namely:

The *Regulado* that the *Povoado* of Chinginguire is a component part of had been delimited in the past, and as a result, some members of the community had clear memories of taking part in delimitation exercises. Furthermore, Chinginguire is populated in great part by demobilized soldiers (and their families), who have some education and were therefore able to read the manuals and laws to lead their communities through some of the delimitation activities.

The community of Madeula was influenced and supported by its neighbors, particularly the surrounding communities of Petane (full-service) and Inhamussua (paralegal). The mobilizers from Inhamussua reported that the leaders of Maduela frequently sought their assistance during participatory mapping and boundary harmonization activities. With the mobilizers help, Maduela was able to complete many of the delimitation activities.

Maduela and Chinginguire were also able to complete the geo-referencing activities. While CTV was involved in helping to schedule geo-referencing (led by the SPGC technicians), CTV did not supervise this process, nor any of the other project activities. However, it appeared that community participation was weak, and that most of the work was performed by community leaders.

### *Nhamangua*

The community of Nhamangua abandoned the work almost immediately. This rejection was partly due to the fact that the community did not benefit from interactions with neighboring communities; the community leader who would have led the process (and interacted with neighboring leaders) fell sick for four months. He was therefore unable to meet with other leaders in the *localidade* and the community was left out of the general momentum of the project's process in the area.

### ***Marrucua***

The community of Marrucua benefited from becoming part of a community land delimitation project promoted by the Morrumbene District Government. Although Marrucua had already made some advances on its own before the District stepped in to undertake delimitation exercises, the District's process mandated that the work begin again from the start. Positively, the community reported that the second time around, the process went smoothly as a result of community leaders' knowledge gained from reading the manuals and guides distributed by CTV. A community leader in Marrucua explained: "We had to start the process over, but as we had already led some activities such as participatory mapping and initiated the boundary harmonization work [on our own], [beginning again with the district] was not complicated for us, because we had already used the material given to us by CTV."

### ***Jogo***

The community of Jogo did not make any progress, largely due to its *Regulo*, who insisted that rather than working at the level of the *povoado* he wanted all three *povoados* within his domain to work together to seek delimitation at the level of the *regulado*. However, this *Regulo* did not call the leaders or the people from the three *povoados* to meet, and as a result the process stalled and was eventually abandoned. Previously, the project included plans to work with only one of the three *povoados*, Matuwi, but the *Regulo's* insistence that any land delimitation efforts within his authority be combined rendered the process more unwieldy because it involved three communities, three sets of leaders and a much larger area of land. As one of those leaders explained:

*It was not easy to unite the people of all three communities, because we only meet once a month together as a group... and in this monthly meeting we always have many problems and issues to resolve, and there was no time left to complete the project activities. [We also faced] low participation from community members of the three communities, and sometimes we even lacked the participation of the leaders of the povoados.*

Jogo also did not have the positive influence of any neighboring communities involved in the project and therefore failed to feel the momentum of other communities' experiences. Jogo's experience demonstrates that performing this work at the level of *regulado* may be more difficult than performing the work at the *povoado* level, where the population is smaller and the land to be delimited is well known to all.

Name of Community	Election of Intermediaries (1 possible point)	Boundary Harmonization and Boundary Tree-Planting (2 possible points)	Constitution Drafting and Adoption (4 possible points, one for each draft and 1 for adoption) NOTE: All communities received LEMU support	Submission of Application for a Communal Land Association (1 possible point)	Survey of Land (1 possible point)	Total Points (9 possible points)
Arec/ Adokoboi (Full service)	YES (1)	YES (2)	Successful adoption (4)	YES (1)	No	8/9 = 89%
Okeng (Full service)	YES (1)	YES (2)	Successful adoption (4)	YES (1)	Yes(1)	9/9=100%
Cuke (Full service)	No	No	No	No	No	0/9 = 0%
Apala (Full service)	No	No	No	No	No	0/9 = 0%
Akwic (Paralegal)	YES (1)	YES (2)	Successful Adoption (2) (needed LEMU support to get past 2 <sup>nd</sup> draft)	YES (1)	No	6/9 = 67%
Okere (Paralegal)	YES (1)	YES (2)	Successful Adoption (2) (needed LEMU support to get past 2 <sup>nd</sup> draft)	No	No	5/9 = 56%
Teaduru (Paralegal)	YES (1)	No	Successful Adoption (2) (needed LEMU support to get past 2 <sup>nd</sup> draft)	No	No	3/9= 33%
Wilyec (Paralegal)	YES (1)	No	Successful Adoption (2) (needed LEMU support to get past 2 <sup>nd</sup> draft)	YES (1)	No	4/9= 44%
Dog Elizabeth (Paralegal)	YES (1)	No	No	No	No	1/9 = 11%
Olamadek (Education-only)	YES (1)	YES (2)	1st draft completed (1)	No	No	4/9 = 44%
Awangi (Education-only)	YES (1)	YES (2)	Successful Adoption (2) (needed LEMU support to get past 2 <sup>nd</sup> draft)	YES (1)	Yes (1)	7/9= 78%
Atop/Atur (Education-only)	YES (1)	No	No	No	No	1/9 = 11%
Mantwon (Control)	No	No	No	No	No	0/9= 0%
Akot (Control)	No	No	No	No	No	0/9= 0%
Wigweng (Control)	No	No	No	No	No	0/9 = 0%
Aber Abwot (Control)	No	No	No	No	No	0/9 = 0%

## UGANDA: Success of each community weighted by percentage of the delimitation process completed

### Uganda: Brief summaries of community experiences

#### Progress of the full-service treatment communities

##### *Okeng*

LEMU was first invited to support Okeng to document its grazing lands in May 2010. However, Okeng rejected the project soon thereafter, suspecting that LEMU's underlying intention was to steal the land. However, after the Parish Development Committee Chairman of the area called a village meeting, during which he explained the project objectives and asked the community to accept and invite LEMU back, Okeng re-joined the project. Although Okeng re-joined the project a full eight months after the other communities, it was one of the first communities to complete the project activities and successfully submit a Communal Land Association incorporation application. Okeng's success in such a short time period is a testament to what a truly motivated and unified community can accomplish with legal support.

Okeng's success can be attributed to three factors: a) the full-service support LEMU provided; b) the deep sense of threat that its residents feel to their grazing lands from neighboring villages' encroachment; and c) the fact that Okeng's grazing land is owned by only one village, meaning that ownership rights to Okeng's common areas are contiguous with members' own organic sense of community, which eliminated the need to unify various distinct villages into one whole. Notably, Okeng's constitution-drafting process was very robust and enthusiastic. The community was also fair-minded: despite fearing their neighbors' encroachment, during a discussion of whether to continue to allow their neighbors to use their grazing lands, one resident noted, "If we stop the neighbors from grazing in our land, what will happen when one of our sons is contesting for a political post and needs votes from the whole sub-county? We should allow them to graze — it is good to have good relationships with our neighbors." In response, Okeng's constitution clearly states that people who "show their interest in writing to the leaders of the committee that oversees the community land" may apply to use the grazing lands and that "Aliens whom the people of Okeng will grant permission to use their grazing land shall observe these regulations."

Okeng chose to seek a freehold title for their lands, and are currently waiting to be incorporated by the Registrar before electing their Executive Committee. Although they have not yet been incorporated, Okeng's grazing lands (26 hectares) have been sur-

veyed by a licensed surveyor and deed plans are being processed while the community waits to be incorporated, elect an executive committee and apply for Freehold Title. Although the surveying exercise prompted new boundary conflicts between the community and new encroachers, Okeng's leaders used their constitution and maps of the agreed boundaries to quickly and peacefully resolve the conflicts.

### ***Arec/Adokoboi***

Arec/Adokoboi joined the project in September 2009. LEMU spent six full months introducing the project before the community was ready to elect their intermediaries in April 2010. Although Arec/Adokoboi was not highly suspicious of LEMU, it was nevertheless necessary to spend a great deal of time identifying the community, conducting the baseline survey and making sure that the community fully understood the project. With LEMU's full support, the community then moved fairly rapidly through the project activities, averaging two months per step. By March 2011, Arec/Adokoboi had adopted their constitution and land and natural resources management plan and submitted their request to be incorporated by the Registrar. In total, the project activities required 12 full months of work. Like Okeng, Arec/Adokoboi chose to seek a Freehold Title for their lands and are now waiting for the Registrar to incorporate their CLA before electing an Executive Committee. In addition to LEMU's full support, the success of Arec/Adokoboi's efforts was due to its sense of cohesion. The community is composed of two villages (Arec and Adokoboi) made up of only 91 households from two clans; people feel that they are relatives. During the pre-survey, an elder explained "We are brothers: there were two brothers in the past, one stayed in Arec and the other went to Adokoboi and we have lived in harmony till this day." Moreover, the dominant clan has continually respected the rights of the minority clan.

However, there was some in-fighting among the intermediary group; various factions wanted recognition (in the form of 'credit' or payment) for bringing LEMU and the project to their community. The project underestimated the severity of this issue until it erupted during the technical surveying exercise. The surveyor, together with LEMU staff and an Oyam District officer, arrived to survey the land as requested. The second day, the survey team found that one of the intermediaries who was absent on the first day had heard that the other intermediaries were paid 5,000 Ugandan Shillings (US\$2) each for their physical labor in clearing the boundaries for the surveyor. Angry that she had missed this payment, she began spreading false rumors in the community that LEMU had — for the full duration of the project — conspired with the intermediaries and the *Adwong Bar* to sell the land, and that the money paid to intermediaries was to purchase the community land. This immediately disrupted the surveying exercise; the community demanded that the surveyor leave and the stone markers be removed until LEMU could fully work through these suspicions with the community. As a result, the technical survey was postponed.

One conclusion that can be drawn from this is that a clear community understanding of the project's goals by all the community members is key to the success of the project; when this understanding is adulterated by rumors, the community's success in documenting its lands is jeopardized.

### ***Apala***

Apala rejected the project in late November 2010, after months of stalling and little progress. Intra-community tensions and distrust of both the project and Apala's own leaders contributed to this failure. Apala was particularly opposed to the election of an intermediary group and demanded that LEMU meet only with the full community. No efforts were made to begin drafting a Communal Land Association constitution. LEMU worked to convince Apala of the integrity of the project, even bringing key leaders from Apala to Okere to gain their trust and show them the benefits of the work; however, these efforts proved futile.

There were three general reasons for Apala's lack of progress and rejection of the project. First, Apala had taken steps in the past to formally document its grazing lands, trusting their *Adwong Bar* to collect community funds and submit an application for Freehold Title. However, this man instead "ate the money." Frustrated, the community lost both its motivation to seek documentation for its lands and its trust in this *Adwong Bar*. Unfortunately, following protocol, LEMU was introduced to the community by this *Adwong Bar*. Second, the community of Apala is composed of four villages (of a combined 378 households), one of which is an IDP settlement on the edge of the grazing lands. The three original villages were wary of taking part in any process that might have legitimated the land claims of the IDPs or given them any influence over community land administration and management. Third, Apala was one of the communities where its more vulnerable members embraced the project, but certain land grabbers foresaw that formal documentation would impede future encroachment and thus thwarted the project's progress. Turnout at meetings fluctuated widely due to the community's conflict about proceeding. In April 2010, community leaders told LEMU not to come back again until they were invited; in June 2010, the community called LEMU back saying, "[We] thank God that you are here, please come back and teach us so that we can continue with what we started sometime back." One woman said, "How I wish I was a man, I would rally behind you and ensure that this project succeeds." However, by November 2010, the situation had shifted again and LEMU was told not to return.

### ***Cuke***

Cuke joined the project late, in June 2010, and immediately dedicated a great deal of time and effort to harmonizing its boundaries. However, by November 2010 progress had stalled. LEMU observed that one possible reason for this was that the *Adwong Bar*

had encroached into the grazing lands and seized a large portion of land for himself and his family. He was a member of the dominant clan and appeared to be working to turn members of his clan against the project by refusing to attend community meetings. Although the minority clans still very much wanted to proceed, the *Adwong Bar* told LEMU not to return, and then asked the Parish Development Committee to inform LEMU that “Cuke was not interested in continuing with the project.”

## Progress of the paralegal treatment communities

### *Dog Elizabeth*

The community of Dog Elizabeth is composed of four villages made up of 467 households from over twenty clans. Despite a very strong CSP, the community was not able to even harmonize its boundaries. This paralysis was due to the presence of IDPs who had settled and were fighting to remain on Dog Elizabeth’s grazing lands. Despite the other three villages’ strong desire to document their land claims (as a way of reclaiming their grazing areas from the IDPs), after months of a stalemate, the IDPs’ threats of witchcraft became severe enough that these communities feared for their lives and withdrew from the project.

### *Akwic*

Work in Akwic began in November 2009 and moved swiftly through the boundary harmonization, tree-planting and constitution-drafting process. By the project’s end, Akwic had formally adopted a Communal Land Association constitution and submitted an application to have its Communal Land Association incorporated by the Registrar. Akwic also chose to seek a Freehold Title and, like Okeng and Arec/Adokoboi, it is currently waiting to be incorporated by the Registrar before electing its Executive Committee. Akwic has not yet had its land surveyed because one of the residents of Akwic is among the plaintiffs in the civil suit between Wilyec and Teaduru. Although Akwic’s boundary with Teaduru was harmonized and boundary trees planted, the community decided that they could not proceed with the surveying exercise until the dispute between Wilyec and Teaduru was resolved.

Part of the community’s success can be attributed to the creativity of the paralegals/CSPs; after observing low meeting attendance and that community members were instead sitting in drinking groups, the CSPs decided to use their own money to buy alcohol and prepare tea as a way of drawing in members of all 72 households. Of note is that Akwic and Wilyec used to be united and share one grazing land, and still have shared rights of access over the other’s lands. As part of the project work, these communities included reciprocal use and access rights within both of their constitutions to ensure that the other community’s animals would have continued access to allwater sources and natural salt licks.

## ***Okere***

The community of Okere is composed of one village of 65 households. In the past, Okere was part of Teaduru, but was split from Teaduru by the sub-county administration. Upon being split off, Okere wanted to take part of the grazing lands as its own, a position which Teaduru rejected. The matter resulted in a conflict, which the Resident District Commissioner resolved by formally dividing the grazing lands between Okere and Teaduru. AS SUCH, Before the project could begin, it was necessary to convince Okere that LEMU was not conniving with Teaduru to grab back the grazing lands. As a result, work in Okere began in earnest only in March 2010, and progressed smoothly and productively until March 2011. In the span of 12 months, Okere completed all project steps, including voting to seek a Freehold Title once the Registrar incorporates their Communal Land Association. The community was so committed that they held meetings even when the CSPs were not available to facilitate; the *Adwong Bar* led meetings and seamlessly shared the responsibility of facilitating project activities. Furthermore, one of the older men in the community who had previously grabbed a large portion of the communal grazing lands for himself and his sons ceremoniously retreated from these lands and returned them to the community, publicly acknowledging his bad faith actions and asking all other encroachers to follow his example.

Of particular interest is that the female CSP in Okere, realizing that women were not attending meetings because they had to cook lunch for their families, devised an ingenious solution: the day of the meeting, she would call all households in the community to send firewood and cups of beans and rice to her, and then cook lunch while the meeting was held, thus alleviating the reason for women's absence. As a result of her efforts, Okere had the highest participation of women throughout the project; community members from almost every household attended the meetings because they knew that there would be a community feast afterwards. However, this same female CSP demobilized her community when it became clear that the remaining encroachers, of which she was one, would indeed have to leave the grazing lands. The *Land Act* stipulates that a constitution may be adopted by 60% or more of a community; despite a majority of Okere's community members adopting their constitution, the CSP and 13 other encroachers disputed a constitutional provision regarding encroachment. Because the community was not unanimous in its acceptance of the constitution's provisions but adopted it nevertheless, those in disagreement found another way to impede the process. Okere's experience points to the need for unanimous community acceptance. The community's progress has stalled and it has now compromised on simply drawing a sketch map of its lands as its only form of documentation.

## ***Wilyec and Teaduru***

The communities of Wilyec and Teaduru, each composed of one village of 86 and 50 households respectively, both progressed smoothly and without incident through all

steps of the community land documentation process. Under the leadership and guidance of their CSPs, both communities successfully created a third and final draft of their Communal Land Association constitutions within 16 months of beginning the project. Both communities chose to seek a Freehold Title, but only Wilyec made a commitment to this choice by applying to be incorporated as a Communal Land Association.

However, the two communities are currently embroiled in a significant boundary conflict. Wilyec and Teaduru were once one large clan that was split into two different parishes over 30 years ago; the current conflict concerns a disputed boundary line between their grazing areas. Although the land at issue is a few hundred meters of swampland, Teaduru's unwillingness to compromise on sharing or splitting the land or accepting the administrative boundary as the dividing line had perpetuated and deepened the dispute. To address the issue, LEMU attempted mediation on two separate occasions, bringing in sub-county officials to support these discussions. The Area Land Committee also held two mediation sessions, which failed to result in a resolution. The conflict's continuation may be attributed to Teaduru's strong-willed and powerful *Vice-Adwong Bar*, who appears more committed to maintaining the conflict than to resolving it. Teaduru eventually filed a lawsuit in the Lira Chief Magistrates' court concerning the boundary.<sup>247</sup> The surveying of the community lands will commence when the court has made a declaration regarding the boundaries.

Of note is that in both communities, intra-community conflicts arose over the role of the CSPs. In Wilyec, members of the intermediary group, upset that the CSPs had received bicycles and cell phones to support their work, abandoned the work and left all project activities to the CSPs. Similarly, in Teaduru, for some months the LC1 (the community-level local government official) refused to attend the project meetings in retaliation for his sense that the CSPs were usurping his role in the community. Eventually a conflict resolution meeting was held and the matter resolved.

## Progress of the education-only treatment communities

### *Awangi*

Awangi, a community composed of four villages of 225 households, successfully completed all project activities, including harmonizing all its boundaries, planting boundary trees, and formally adopting its constitution and land and natural resources management plan. Community members in Awangi held dozens of meetings on their own to complete the project work within ten months. They would have completed the activities even sooner, but even with LEMU educating Awangi month

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<sup>247</sup> The matter has been heard once by the court, with one visit to the site of the boundary. LEMU hired an advocate to assist them in the matter, because Wilyec requested legal assistance.

after month on how to write the constitution the community remained unable to produce a workable second draft. After watching Awangi try hard but flounder for five months, LEMU stepped in to guide the community through to the final adoption of their constitution. With LEMU's help, they were able to complete this work within three months. Like other communities who reached this stage, Awangi chose to seek a Freehold Title and is now awaiting the Registrar's incorporation of its Communal Land Association. Awangi's technical survey of its 103 hectares was completed within three days, both peacefully and with the full participation and approval of all community members.

Awangi's success is attributable to the high degree of threat it feels to its lands from a district leader, who previously claimed half of the community's grazing lands for his own personal farm. In addition, Awangi feared that the District Council might in the future extend the nearby town of Oyam into its grazing land. As a result of these threats, Awangi wholeheartedly embraced the project. Another factor that contributed to Awangi's success is that the Chairman for Iceme Sub-County Community Grazing Land hails from Awangi. Both his support for the project and central role in mobilizing community members gave LEMU credibility in the eyes of the community because they knew that this Chairman had worked hard to protect other grazing lands in Iceme Sub-County and would not betray them.

### ***Atop/Atur***

Atop/Atur is composed of four villages of a combined 316 households. Due to the complexity of these villages' grazing land ownership and access rights, it took LEMU four months to disentangle the various narratives and determine which villages had ownership rights to the grazing lands and which had only use and access rights. Partially due to these complexities, Atop/Atur was only able to complete its election of the intermediary group. At the project's inception, the community had implored LEMU to help them protect what remained of their grazing lands after an elite from outside the community had claimed exclusive use rights to a portion of the grazing lands and sued two families who challenged his claims. However, from July to November 2010, the community did not arrive for LEMU's monthly meetings, and in November, community leaders called LEMU to explain that the community was no longer interested in taking part in the project. Through investigation, LEMU learned that the reason that the project had been rejected was because an ex-clan head had been demobilizing the community, claiming that LEMU was conniving with the government to grab the community's land to build a dam.

### ***Olamadek***

Olamadek is composed of only one village made up of 183 households. Olamadek succeeded in harmonizing its boundaries, planting boundary trees and completing the

first draft of its constitution. Olamadek had lost land in the past to a rich community member living abroad who promised the community he would build a community school and hospital if they gave him the land; instead, he processed a title in his own name and did not build any infrastructure. As a result, Olamadek realized the urgency of protecting its remaining grazing lands. To this end, Olamadek's leaders and the intermediaries worked diligently to lead their community through the community land documentation process. The community was further motivated by its fears that the neighboring communities of Atop and Atur, which had already been entering Olamadek's grazing lands to access water during the dry season, would further encroach into Olamadek's grazing land. By the project's end, Olamadek started barring residents from Atop and Atur from accessing its grazing lands. It is likely that after Olamadek's success in documenting its lands, Atop and Atur will have little choice but to invite LEMU back to ensure that their own grazing lands are protected.

Notably, the community was unable to proceed to a second and third draft of the Communal Land Association constitution on its own. After months of allowing the community to struggle in this phase, LEMU noted this difficulty and began to assist Olamadek to complete its constitution. However, despite its early efforts and strong desire to seek title to its lands, the community did not arrive for three consecutive meetings organized by LEMU because its members preferred to attend local political rallies where money and alcohol were offered to attendees. The political season continued until the end of the project activities in March 2011; due to the community's distraction, Olamadek failed to complete the constitution-drafting process.

## Progress of the control group communities<sup>248</sup>

### *Mantwon*

Mantwon, composed of four villages, joined the project in January 2010. After the baseline survey was completed, LEMU convened the community, introduced and fully explained the project and distributed the packets of informational materials and copies of the Land Act and Regulations to leaders. The *Adwong Bar* reported to LEMU that he had made repeated efforts to convene his community to begin working on boundary harmonization but that no one came to the meetings. Finally, in January 2011, the *Adwong Bar* called another meeting to which LEMU's community mobilizer was invited. At this meeting, community members agreed to dedicate effort to harmonize their boundaries,

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<sup>248</sup> These communities were not "pure" controls, in that they volunteered to take part in the project, had an introductory meeting with LEMU's field team, during which they received copies of the Land Act and the "how-to" guide, and were motivated to complete the legal process on their own.

but to date internal boundary disputes remain unresolved. If requested, in Phase II LEMU will begin to provide the required support to help Mantwon resolve its disputes and move through the process of documenting its land rights.

### ***Wigweng***

Wigweng is composed of one village made up of 120 households. When LEMU first approached the community in October 2009 to conduct the baseline survey, Wigweng asked LEMU for help fencing their grazing lands. After LEMU distributed the guides and legal information materials, the *Adwong Bar* began to invite community members to meetings to discuss how to harmonize their boundaries and protect their grazing lands from encroachment. However, no meeting ever took place because a powerful family in the community who had previously grabbed a portion of the grazing lands for their own use approached the *Adwong Bar* to request that he formalize their ownership rights to that land before the community began harmonization and demarcation work. This request sparked a community-wide conflict that went to the office of the LC3 (subcounty-level local government official) in October 2010. To date, the matter has not been resolved and all community progress remains stalled.

### ***Akot***

Akot neighbors Wigweng and faces the same threat from the same influential family. It is composed of one village made up of 68 households. The *Adwong Bar* of Akot reported to LEMU that he had attempted to call meetings, but that only a few community members attended because the rest of the community was afraid to get involved due to the conflict. As a result, the community has not taken any steps towards beginning the land documentation activities.

### ***Aber-Abwot***

Aber-Abwot is composed of two villages with a combined 103 households. The *Adwong Bar* of Aber-Abwot reported that the guides and legal materials had been distributed throughout Aber-Abwot, but that the community has not taken any steps to begin community land documentation activities. He reported that although he called meetings to address the issue, no one arrived at these meetings, an outcome he attributed to the LC2's (parish-level local government official) public disapproval of the project. The *Adwong Bar* stated that this official was highly trusted by the community, and without his support of the project, the community did not feel that it could participate.

## APPENDIX D

### EXAMPLES OF UGANDAN COMMUNAL LAND ASSOCIATION CONSTITUTIONS; EXAMPLES OF LIBERIAN BY-LAWS<sup>249</sup>

#### Uganda Example:

##### Okeng Communal Land Association Constitution

Adopted on 12th January 2011

1. Name of the Association: Okeng Note en Kuc Community Grazing Ground
2. Supremacy of the Constitution of this Association  
The constitution of this association is the supreme law that will be used to guarantee the welfare of this association. No other law shall be promulgated over and above this constitution, apart from the laws enacted by the Parliament of Uganda, or the local government statutory organs at the district and sub-county levels.
3. Location of the Association  
Okeng Village, Ajul Parish, Aleka Sub-county, Oyam District, Uganda.
4. Objectives/Rationale for Protecting the Community Grazing Ground
  - a. For taking care of our livestock
  - b. For protecting the trees
  - c. For conserving grasses in the plains
  - d. For conserving grazing field for livestock
  - e. For playing football
  - f. For light-baiting white ants
  - g. For picking mushroom
  - h. For conserving trees used for building purposes.
  - i. As safeguard against land grabbers
  - j. For the future of our children
  - k. To make government aware that this land belongs to us
  - l. For hunting

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<sup>249</sup> Please note that the following Communal Land Association constitution and community by-laws have not been edited for grammar or content.

- m. To safeguard our land against possible seizure /grabbing by government or companies.
- n. For conserving local herbs.
- o. For acquiring lease title showing our right to the ownership of Okeng Community Field
- p. For abating encroachment that may reduce the size of the community land.
- q. For acquiring grass used for making fan-trays/winnower.

## 5. Membership

Membership of Bar Okeng shall be constituted by the following categories:

### 1. The natives of Okeng

The natives of Okeng shall be the following persons:

- a. Natives of Okeng Village.
  - b. All those persons born in Okeng Village.
  - c. Those who are married in Okeng Village.
  - d. Those who are buried in Okeng Village.
  - e. Widows.
  - f. A woman who has not produced a child, or unmarried, but has stayed for a long time in Okeng is a member.
2. People who have bought land, or those who have been offered land, and immigrants shall become members upon payment of registration fee.
3. Aliens whom the people of Okeng will grant permission to use their grazing land shall observe these regulations:
- a. Show their interest in writing to the leaders of the committee that oversees the community land.
  - b. Accept to register as members.
  - c. Accept to follow the rules and regulations of the community grazing field.
  - d. Accept to make use of the open field in conformity to the following resolutions adopted by the community:
    - Pay annual fee of fifty thousand shillings(50,000=) to be able to use the open field (utility fee)
    - Pay half annual/six monthly fee of 30000=
    - Monthly fee of 15000=
    - Weekly fee of 4000=
  - e. If anyone for some reason is not in position to pay the utility fee agreed upon by the community, such a person will forward his or her request to the supervisory committee of the grazing land. The commit-

tee reserves the right to accept or reject the request. The committee shall forward its resolution to the General Meeting.

## 6. Membership fee.

1. Members who are the natives of Okeng shall pay membership as stipulated below:
  - a. 2000= per household.
  - b. 1000 per household for single occupants.
  - c. Members coming from outside shall pay 5000=.
  - d. Anybody who defaults payment shall forfeit his/her membership.
  - e. The supervisory/executive committee of the grazing ground should first summon the defaulter to find out why he or she has not paid the membership fees, and then caution the member three times before locking him/her out.
  - f. Names of members shall be recorded on household basis.
  - g. Refusal to adhere to the rules is an offence.
  - h. Failure to make contributions is an offence.
  - j. Members should benefit from/use the community land equally.
  - k. If for any problem, there is need for any member to make preferential use of the community land; such a member should first seek the approval of the executive committee of the community land.
  - l. Non members are permitted to bring their animals only for spraying in the community grazing ground, but not to graze their cattle on the land.
  - m. There shall be no cultivation of the grazing land.
  - n. No member has the right to sell the grazing land.

## 7. Deceased Members;

- a. The wife inherits his rights.
- b. If he has no wife, his children shall become heirs.
- c. If he has no children, the grandchild, child born to his son shall become his heir; or the grandchild, i.e. child born to his returned/unmarried daughter shall assume his rights.

## 8. Relinquishing/Withdrawal/Termination of Membership.

- a. Deceased person.
- b. Any person who withdraws his membership.
- c. Any person deemed by the committee to have violated a rule that warrants termination of his membership.
- d. Any person who refuses to pay membership fee.
- e. Any person involved in acts of witchcraft.

- f. Any person who commits an act of bestiality.
- g. Any person who embezzles public funds.
- h. And any act deemed by the members as bad enough to warrant cancellation of membership.

## 9. Elections

The people of Okeng Note En Kuc reserve the right to elect leaders of the Community Grazing Ground.

### a) Office bearers for the Community Grazing Ground are as follows:

- 1. Chairperson
- 2. Vice Chairperson
- 3. Secretary
- 4. Treasurer
- 5. Publicist
- 6. Security Officer
- 7. Women's Leader
- 8. Youth Leader
- 9. Elder (Male or Female)

Office bearers shall be elected at the General Meeting.

### b) Elections shall run as follows:

- 1. Elders of the term ending shall conduct election of the chairman, after which the elected chairman shall assume duties immediately, guiding the elders through the election of the other office bearers. If any elder is nominated for any office, he will rise and go outside to join the people.
- 2. Election shall be by lining up behind the nominated candidates.
- 3. The candidates shall be nominated, and should be seconded by two other members.
- 4. Each position shall be contested by at least two people.
- 5. All office bearers shall be determined through electoral process.
- 6. Approved candidates shall conduct open campaign before the people of Okeng. Elections shall be conducted in only one day.
- 7. The quorum for election shall be  $\frac{1}{2}$  of the members with voting rights.
- 8. Only the members who are 18 years and above shall be eligible to vote.
- 9. Election of leaders shall be after three years of service.
- 10. There shall be by-election in the event that the elected member is not working to the satisfaction of the association.

## 10. The Functions of the Chairperson

- 1. Overseeing the operations of the grazing field.
- 2. Soliciting for funds from any organization that can help improve the performance of the grazing field.

3. Supervising the leaders of the grazing field.
4. Protecting the grazing ground in conformity to the community's expectations.
5. Monitoring the financial operations of the grazing field.
6. Ensuring that the grazing field project is not stalled/does not fail.
7. Liaising with the government and other offices.
8. Signing minutes (of meetings).
9. Signing cheques.
11. Utilizing and keeping custody of the community's stamp (seal).
12. Any other duty assigned by the community.

#### 11. The Functions of the Vice Chairperson

1. He should perform all the functions of the chairperson when the chairperson is absent.
2. Should perform all duties delegated by the chairperson.

#### 12. The Functions of the Secretary

1. Writing minutes of all meetings.
2. Keeping of records.
3. Recording all revenues accruing to the community's coffers.
4. Keeping in safe custody the map of the grazing field.
5. Counting the number of trees planted in the boundaries of the grazing field.
6. Convening meetings in case the members are disgruntled with the chairperson or his vice.
7. Identifying the names and number of the members of the grazing field, and removing the names of deceased members as well as registering new ones.
8. Should sign the minutes.
9. Should use official stamp.
10. Co-ordinate with the treasurer and help him execute his duties.
11. Any other duty assigned by the chairperson.

#### 13. Functions of the Treasurer

1. Keeping financial records.
2. Presenting financial accountability to the members.
3. Signing the community's bank cheques.
4. Keeping the community's bank accounts.
5. Keeping the community's finances, collecting dues accruing from the grazing field
6. Any other duty assigned by the community.

#### 14. Functions of the Publicist

1. Should disseminate adequate information to all members.
2. Organize venue for meetings.
3. Should inform members about any malpractice in the grazing field.

#### 15. Functions of the Security officer

1. Protecting residential areas.
2. Protecting the community's property.
3. Maintaining security.
4. Informing people about any malpractice in the grazing field.
5. Ensuring that the rules and regulations of the grazing field are followed.

#### 16. Functions of the Women Leader

1. Ensuring that the women are making affective use of the grazing field.
2. Educating/sensitizing women at meetings.
3. Advising women on matters that concern them in the grazing field.
4. Reconciling women in cases of any conflict.
5. Collecting women's views and helping them to make the best use of the grazing field in conformity to the community's expectations.

#### 17. Functions of the Youth leader

1. Collecting views of the youth
2. Educating the youth about the regulations of the grazing field and those of the government.
3. Advising the youth
4. Gathering from the youth, the problems affecting them and forwarding those problems to the community.
5. Any other duty assigned to him

#### 18. Functions of the Elders

1. Settling disputes and misunderstandings.
2. Advising the community.
3. Conducting meetings to elect the chairperson of the grazing field.
4. Ensuring that the elections are successful
5. Advising on effective way of livestock keeping.
6. Counseling, guiding and educating children.
7. Gathering and uniting all the clans in Okeng.
8. Any other duty assigned to them.

#### 19. Expected qualities for leaders of the Grazing Field

1. Trustworthiness and dedication to service.
2. Liaising/keeping contact with the people.

3. A person who is not temperamental
4. A person who is not a witch.
5. A person who is not a thief
6. A person who does not defraud public property.
7. A person who helps the needy/poor.
8. A person who is literate (knows how to read and write).
9. A person who is sane.
10. A person who has insight/common sense.
11. A person who is not quarrelsome and likes conflicting with people.
12. A person who is not a cheat/corrupt.
13. A person who is not spiteful/scornful.
14. A person who does not consume opium/narcotics.
15. A person who does not have carnal knowledge of cows.
16. A person who is not a saboteur/conspirator.
17. A person who is not heavily indebted in a manner that risks sequestration of the community's land.
18. He should not be a person convicted in a court of law (tried and jailed for a criminal offence).
19. A person who is not sexually immoral.

## 20. Remuneration of workers of the Grazing Field

1. There shall be no remuneration of workers of the Grazing Field
2. The committee should have income and expenditure budget which should be approved by the community before it is enforced.
3. The leaders reserve right to implement approved public expenditures and give accountability to the community members in accordance to the existing resolutions.
4. The community reserves right to pick money from the public pool and give it to the officials as token of appreciation for any work well done.

## 21. Removal of the Office Bearers

The community reserves the right to remove the office bearers if they violate the following (decision by  $\frac{1}{2}$  of the members)

1. If they engage in stealing.
2. If they engage in witchcraft.
3. If they are corrupt.
4. If they fail to discharge their duties.
5. If they commit bestiality.
6. If they commit acts of sabotage/conspiracy.

7. If they commit murder.
8. If they inflict injury on cattle.
9. And any other offence deem worthy of dismissal/removal from office.

## 22. Financial regulations

1. How to generate revenue in the community's coffer.
  - a. Membership fee.
  - b. External funding like donations from philanthropists.
  - c. Fund raising.
  - d. Funding from government.
  - e. Money accruing from sales of public assets/resources.
  - f. And any other legitimate sources of raising revenue.
  
2. Financial Expenditure
  - a. The community should approve financial expenditure before any money is spent.
  - b. All payments, transactions, or sales shall be done in writing, and this process shall be implemented by the committee, upon approval by the community.
  - c. The treasurer shall present books of accounts to the public after every three months.
  - d. The community shall invite an auditor to audit the community's books of accounts once every year.
  - e. The community reserves the right to outline how they expect to use any money that accrues to its pool.

## 23. Bank (keeping public Funds)

1. Where possible, public funds should be kept in a bank agreed by the members.
2. The chairperson, treasurer, and the secretary should sign before any withdrawal from the bank is made.
3. Any two can sign for withdrawal of money, but the chairperson must first sign as principle signatory.
4. Bank statement should be brought before the members after every three months.

## 24. Meetings

1. To be held:
  - a. every month, and
  - b. In case of any emergency.
2. Convening a General Meeting shall be as follows:

- a. Quarterly (Four times a year, after every three months).
- b. Emergency meeting may be convened in case there is a prompt need.

## 25. Procedure of amending the constitution

The community reserves the right to cause changes or amend their laws as follows:

1. The constitution of Community Grazing Field shall be amended/changed at Okeng General Meeting, which is held after every three months.
2. The community Grazing Field committee shall give public notice for the meeting one month in advance.
3. Each member of the community Grazing Field, who wants to have amendment, shall forward his proposal in writing to the chairperson, clearly indicating which article/clause he is recommending for amendment. Such notice of amendment should be taken to the chairperson one month prior to the meeting date.
4. The chairperson should inform the members, which article/clause of the constitution is to be amended by the people. This information should be dispatched together with the notice inviting people for the General Meeting.
5. Any member who is discontented with a particular provision in the constitution should forward his/her case to the Chairperson of the Grazing field.
6. The Chairperson should summon his committee and put it in writing, how the community expects the law to be amended.
7. After the committee has received this complaint, it will forward it before the General Meeting.
8. The Committee shall publicly disclose the 'point of discontent' in the constitution that was adopted and promulgated by the community, and proceed to ask them whether the said article/clause is worth amendment; so that in case of need, such amendment is done collectively.
9. The members should agree collectively, the date for amending the constitution, if it is found to be necessary.
10. When the General Meeting is called to order, to begin the process of amendment on any article or clause, or section of the constitution, one person or a group of persons who have authored proposal for this amendment should make a clear presentation of their grievances before the meeting; to enable the members critically deliberate on the subject, and analyze their arguments for amendment. They should also come out with clear proposition on how they expect the amendment of the said article, or clause, or section to be done; subject to approval of the members, on what should be done or changed.
11. Resolutions of the General Meeting should be minuted by the secretary and read to the people, and if approved by the members, it shall become a new law in force.

12. Members who have ratified and approved this law should be more than ½ of all members of Okeng who have duly signed the resolution document.
26. Instituting/Dissolving the Association of the Community Grazing Ground.
    1. Members reserve the right to resolve at once that the group/association be dissolved.
    2. Issues that may warrant dissolution of the group:
      - a. When there is no unity.
      - b. When there is unmanageable tension/conflict.
      - c. When there is irrepressible practice of witchcraft/sorcery.
      - d. If the group is dividing people instead of ushering peace.
    3. Settlement/Disposal of Assets in case of Dissolution of the Group:
      - a. Members should equally distribute the land and other assets/resources there-in.
      - b. If the grazing Field had projects/productive activity, such assets/items should be sold and the proceeds accruing from the sales should be equally shared, or alternatively the group should come out with a mutually acceptable alternative beneficial to all members.
      - c. Equal sharing of proceeds shall be applicable only to registered members.
      - d. Before the assets/proceeds are distributed/shared, a general meeting should first be convened. This will make it possible to dispatch notice to members who are far away, to enable them keep abreast with what is happening.
      - e. Members should give ample time for sending information to members who are far away, preferably seven days, two weeks (14 days), one month.
      - f. This message/notice should be circulated by the chairperson.
      - g. Information shall be circulated through the following media:
        1. Telephone.
        2. Radio.
        3. Newspapers (news papers read throughout Uganda).
        4. Before distribution/sharing of community property, members should first meet to determine the procedure of how the said properties shall be shared.
        5. The committee shall then disclose the detail of the procedure before all members.
26. Conflict Resolution/settlement of Disputes in the Community Grazing Field
    1. The elected committee will hear/settle all disputes in the grazing field.
    2. If the committee hears the case and comes to a settlement, the person who

has lost the case should report to the General Meeting in case he is not contented with the way the case has been settled.

3. If the committee feels that the magnitude of the case is beyond its ability to settle, they may refer it to the General Meeting.
  4. If the General Meeting hears the case and comes to a settlement, and the complainant remains discontented, he/she should be allowed to appeal his/her case to a higher court.
  5. If the accused person refuses to adhere to the opinion of the General Meeting, the community should subject him to a trial.
  6. If any person has any grievance(s) against any member or the committee, he/she should present that complaint to the Chairperson or the Vice Chairperson.
  7. Notice should be served to the accused/defendant, and he or she should be given time as follows:
    8. One week, or such a grace period may be given in consideration of the personal handicap that the accused is faced with at that time.
    9. Anybody who will fail to respond to court summons three times shall lose the case as per the laws governing the community grazing field.
26. Penalties to be administered to offenders or those convicted of breaking the Community's rules.
1. Penalties shall be levied according to the offense committed.
  2. He/she shall be forbidden completely from using the grazing field, or temporarily suspended from using it.
  3. He/she shall be fined according to the offense committed, and the fine should be above 5000= / 10000=, 8000= for minor offenses, 50,000= for major offenses payable to the committee.
  4. The offender shall negotiate a settlement with the aggrieved person.
  5. The offender shall also be cautioned by the committee.
  6. The offender may also be sentenced to community service in the grazing field.
  7. If the offense is financial loss, the culprit should first reimburse the lost funds, and thereafter face fine.
  8. If the offender is a committee member, he or she may be removed from the committee.
  9. The committee reserves the right to levy as many as two or three different fines if they deem it necessary.
27. Guidelines for keeping in safe custody the lease documents/certificate/land title
- The community members shall sit to decide how the land documents should be safely kept.

## 28. Guidelines for using Resources in the Grazing Field (Management Plan)

1. Resources that the members get from the Grazing Field.
  - a. Spear grass.
  - b. Local herbs.
  - c. Building poles for members.
  - d. Bird hunting reserve.
  - e. Water source.
  - f. Fishing.
  - g. Opobo plant used as fastening strap, and edible fruit.
  - h. Clay soil for pot making.
  - i. Firewood.
  - j. Red stones for building.
  - k. Building sand.
  - l. Mango Trees.
  - m. Edible berries.
  - n. Mushroom species.
  - o. Reserve for edible fruits.
  
2. Categories of animals that shall be reared in the Grazing Field
  - a. Cattle
  - b. Sheep
  - c. Goats
  
3. Each member or each household has the right to graze the following number of livestock in the Grazing Field.
  1. 30 head of cattle
  2. 50 herd of goats
  3. 50 flock of sheep
  
4. Fragmentation/Division of the Grazing Field
  - a. The Grazing Field shall not be fragmented/divided in smaller units.
  - b. The community members have not permitted anybody to keep his cattle overnight in the Grazing Field. Each livestock owner should keep his animals overnight at home and only take them for grazing and watering in the Grazing Field.
  - c. Whoever shall keep his animal(s) overnight in the grazing Field commits an offense and shall exact a fine of 3000,4000,15000, 20000= determined by the number of days the animal(s) have stayed in the Grazing Field.
  - d. No person who inadvertently leaves his animal(s) overnight in the Grazing Field shall be fined, if confirmed by the members that the act was unintended.

5. Members agreed that the Animal Tract leading to the Grazing Field should be three fold:
  - a. The motor/truck alley stretching from the sand mines.
  - b. The route toward Okwanga Swamp.
  - c. The route that passes through Amwan John's home to Okwanga Swamp.

#### 6. Hunting

- a. Hunting is permitted in the Grazing Field.
- b. The hunter should obey the constitution of the republic of Uganda.
- c. If any hunter is spotted in the grazing reserve/field and by coincidence any cattle or animal is found injured, he will be prosecuted if it is confirmed that he is responsible for the injury sustained by that animal.

#### 7. Trees (Functions of Trees)

- a. Providing food, such as sweet berry, mangoes, black berry, vine.
- b. Firewood (Dry twigs/logs)
- c. For Building
- d. Curative herbs (herbal medicine)
- e. Firewood shall be acquired by fetching as in the traditional practice, and shall not be for sale. No tree stem shall be sold.
- f. Tree stems (poles) for building shall be used only by the members.
- g. It is agreed that some types of trees shall be used for making beds/chairs.
- h. Anybody who desires to use trees contrary to established rules should first go through the committee. Examples of such intention include brick burning, and timber cutting.
- i. The committee may grant permission to such persons to make use of the trees if it finds it fitting. Thereafter the committee should be ready to give accountability before the General Meeting.

#### 8. Minor Resources in the Grazing Field

##### **Sand/Stones**

- a. Any member who wishes to use the sand or stones in the Grazing Field may get it free of charge but should clearly give prior notice to the committee.
- b. The committee reserves the right to give/sell sand/stone according to that person's interest.
- c. Any member who brokers a sale shall be paid a commission of 2000= or more, depending on the magnitude of work done.
- d. The community members shall cut spear grass for thatching houses, but not for sale.

*Matters relating to Termite Mound (Anthill)*

- a. People will do light-baiting of white ants following the guidelines agreed earlier.
- b. Harvesting mushrooms shall also follow the earlier guideline.
- c. New anthills should preferably be taken by members who are without.
- d. Anybody who fights over anthills commits an offense. Such a person shall be fined by the committee.
- e. Any member who has many anthills is permitted by law to offer them to other members.
- f. Nobody is permitted by law to perform healing/cleansing ritual in the Grazing Field.
- g. Any person who shall be found doing anything, while exploiting any endowment in the grazing field, without following guidelines stipulated by the committee, shall be arrested, tried and fined 15,000, 5000,20000, 2000 shillings depending on the magnitude of the offense.
- h. The tenure of the rules/guidelines governing the use of resources in the Grazing Field shall be the term limit of the committee/group leaders.
- i. The committee members reserve the right to do anything that they deem necessary for the safety of their grazing field.

## Liberia Examples

### Wheasaye Clan's 1st Draft By-Laws

1. A town is a place where people respect each other and live together. Anyone who will disrespect other person he/she will be taken to the town chief to explain why.
2. The town has a builder/owner, therefore anyone who lives in the town and wants to build should ask for a spot from the owner.
3. All the people in the town have their individual right to own property. No other individual interferes into other person things such as stealing, if you are caught and found guilty, you will pay LR\$500 to the town.
4. The local town chief is a person selected by the town people or appointed, therefore, all the powers of the town have been invested in him, so he must be respected.
5. The town chief has the right to call a town meeting when he finds it necessary or unnecessary (a) the town chief have to attend all meetings when he is inform of them (b) all town chief are to be in chair for six years (c) according to article 4 which stated the town chief must be respected. Also the town chief should respect the town people.

6. The people of the town have the right to respect one another to show love as one people.
7. No gossiping/propaganda is allowed in the town, anyone found guilty in the act will pay LR\$250 to the town.
8. Mischief is not allowed. To insult anyone in the town by any man, anyone caught and found guilty will pay LR\$250.
9. No one is allowed to curse anyone in the town by any man, anyone caught will pay LR\$300.
10. There should not be any abusing words in the town. Anyone caught and found guilty will pay LR\$100.
11. No sexual contact should be between a married man and a woman, no one is also allowed to introduce more than one person as a partner to their family, if that person or persons are found guilty both parties will pay LR\$1000.
12. No one is allowed to fight in the town, if found doing so will pay LR\$500 each.
13. No stranger is allowed to stay in the town within three days without been presented to the town chief.
14. No one is allowed to used chemicals in our waters (creek, river), to dig [for] fish or hoe [in]side the water; anyone found doing so will pay LR\$500 to the town.
15. Anyone refusing to attend meetings either by designation/ representation will pay LR\$100 to the town.
16. Anyone wishing to build a house in the town should ask the town chief/owner to show them a place or spot to build (a) no married man is allowed to live in the town [for] a year without building a house; [if no house is built] the elders of the town will demand the host of said person to give [his own] house to the person and rebuild another house for himself.
17. No one is allowed to take any member of the town to law suit/court.
18. Stealing is not allowed in our towns, if you are caught stealing, you will pay the amount of LR\$500.
19. No man is allowed to beat his wife on the farm, if found you will pay LR\$500.
20. Strangers are not allowed to take the canoe from the crossing point without permission from the town chief, if found you will pay LR\$750.
21. Washing at the drinking water side is not allowed, if found you will pay LR\$300.
22. All strangers who want to engage in farming, hunting, mining activities and sewing of planks are to be done, in consultation with the town authority.
23. Strangers entering our forest for any reason, have to do it in consultation with the town authority.
24. Members of the town have to sleep with the bereave family until that body is buried, people refusing will pay LR\$100.
25. Any dead news in the town has to be communicated to the town chief as soon as possible.

26. Any dead body that is placed in a casket in the town, the family will pay the sum of LR\$500, one chicken, one gallon of liquor and 25 cups of clean rice to the town people.
27. When the dead body is not in casket, the family will pay the sum of LR\$400, one chicken, one gallon of liquor and 25 cups of clean rice.
28. Whenever a town crier is given announcement everybody should stop what they are doing (tape, talking and radio) and paid attention, so that they will understand what the announcement is all about.
29. Those the announcement are directed to, should addressed themselves to the announcement, failure on your part, will pay LR\$100.
30. No one is allowed to keep a sick person on the farm until the person get worse, if the town boys have to bring that person to town the family will pay LR\$250 and one gallon of liquor to the town before they can bring that person in the town. If the person died, the family will pay LR\$500 with one gallon of liquor to the town before they can go for the dead body.
31. If a company wants to take over individual plantation, that company will have to give the individual the value of the plantation.
32. No one is allowed to make farm in the devil bush, thatch bush and the high forest.
33. Any resources taken from the town should be an agreement between the citizen and the person/company/ Government.
34. No one should carry slippers or wash clothes within the fence area of the pump, failure will pay LR\$100.
35. No disturbance/noise in the night and before 7:00 am, failure will pay LR\$25.
36. Any able man who refuses to brush community road will pay LR\$250.
37. Anyone who cuts building materials and did not use them, that person will pay LR\$1500.
38. If palm nuts are harvested and not used, when spoiled the person responsible will pay LR\$500.
39. Every man is to participate in community work, failure will pay LR\$250.
40. With the approval of the town chief, no messenger should be given the opportunity to arrest anybody.
41. Before taking someone to court, you should first carry the person to the town chief, [if you] fail [to do this] you will pay LR\$300.
42. No one is allowed to sell house thatch or sticks to outsider, violators will pay LR\$250.
43. No one is allowed to cut down palm trees, failure will pay LR\$250.
44. Anyone coming to town work after 8:30 am will pay a late fee of LR\$25.

## Jowein Clan's By-laws

1. All citizen of this town are equal before the by-laws and constitution of this town.
2. No one is allowed to use abusive words that have greater impact on male and female, failure will pay 10 cups of rice and 1 chicken to the town/250LD.
3. Stranger is not allowed to cut palm in our community palm bush, until he/they meet with community and must pay the amount 2 tin of oil as rent for the community land used.
4. Any community member, who will receive stranger, should report the stranger to the community leaders through the town chief within two days.
5. All youth above 18yrs, who are not in school, should brush and tie bridges along all major roads linking the town, youth who will refuse will pay a bucket of rice, 1 beer bottle of palm oil, 1 leg of meat and 1 beer bottle of strong drink.
6. Every woman is to take part in the cleaning of the waterside road.
7. Any stranger who wants to build a house in our town should give a token to the community through the town chief as spot identification fees.
8. Every household head must construct a latrine and a bathroom
9. No community member is allow to plant coffee, cocoa, rubber within the perimeter of 5 miles as of the date of this by-laws and constitution. Anyone who defies this rule leads the community with no alternative but to a permit the community to give the spot to someone who wants to construct.
10. No one is log to raise domestic animals in our town.
11. No one is allowed to fight in the bush or beat his wife in the bush, failure will pay 500LD
12. No stranger is allowed to get in our bush to dig gold without consulting the community leaders. He/she has to pay certain amount of money to community before he/she starts work.
13. Every able man is allowed to clean our cemetery once a year, with the supervision of the town chief.
14. No one is allowed to throw chemical/public into our waters.
15. All town disputes are to be reported to the town chief first before taken to government, refusal will pay 150LD.
16. Anyone who does not want to live in this town again, the town will take back any life tree you plant and your house, only your house will be left for you.
17. No is allow to disturb publicly in the morning while people are still in bed, up to 7am.
18. No one is allow to wash, pupu, wash clothes, wear slippers and fishing at the upper part of our drinking water. If caught will pay 150 LD
19. No one is allow to cut palm tree to make palm wine, except old palm trees that cannot produce any longer.
20. No one should gossip against anyone.

21. All community members are to attend all call meetings.
22. No one is allow to make forest farm that will destroy our logs and other trees that are important to us.
23. No stranger is allow to hunt in our bush without permission from the town chief.
24. No one is allow to beat on anyone's child without any good reason.
25. No pit sawer should be allow to enter our forest for sewing without the concern of the citizen.
26. No one is allow to do any harmful thing of fight in the town, if caught you will pay 500LD to the town.
27. Children less than 10 years are not allow to swim in the river alone, babies are not allow to the waterside and children are not allow to go to the pump, if caught parents will pay 250 LD.
28. Anyone caught cutting palm and allowing it to spoil in the bush will pay 1 tin of palm oil.
29. No one is allow to cut house sticks and allow it to spoil in the bush and any house built without completion and the sticks spoil the person will pay 1500LD.
30. Any hunter killing big animal, one quarter of that meat should be given to the town.
31. Strangers coming to dig gold and to cut palm to make oil, should give some of the palm oil and gold to the town.
32. Every able man of the town should build a house in the town
33. Anyone not attending meeting whenever the town chief or the elder call meeting will pay fine of 25 LD, except there is a excuse of death or sickness
34. No town citizen is allowed to make noise from 12 am to 7 am. Anyone caught doing so, he/she will pay the amount of 250-500 LD. Only in the case of emergency or danger
35. Everybody from this town have equal right to live in any town in Liberia and participate in the development of Lakpsee. He/she should live by the town law. Anyone who refuses to participate in any development, he/she should leave the town.
36. If anyone died in this town, all citizen should sleep under the body kitchen, anyone refusing to sleep under the body kitchen, he/she should pay the amount of 10 cups of clean rice
37. If any man form our town go out and married different woman or man and come home, and they have children and properties and our brother/sister died that properties is belonging to the woman and her children of the man and his children
38. If a citizen go out and married a woman/man, and they do not have a child, and the man die, the property they have, part of it goes to the woman and the family
39. All elders are to attend community and development meetings, if he refuses twice that elder will be talking back to the labour force again.

## Central Morweh's land and natural resources management plan

### *Owning land and accessing land in Central Morweh clan*

- a. Every citizen residing in Central Morweh clan shall have the right to own three acres of residential land and thirteen (13) acres of farm land;
- b. To be a real owner of land in Central Morweh clan, you should go through the process established in law to buy, survey the land and acquiring deed or title from the clan governance.
- c. Every non-profitable organization shall have the right to own land in Central Morweh clan; if said organization leave, their property or properties belong to the clan.
- d. Any company wishing to operate within Central Morweh clan, should meet the land management committee
- e. Any person or group of people from another clan wishing to fishing on our territorial water should give 10% of the fish collected. If violated, that person or group shall pay LR\$3,000 to the council.

### *Non-renewable resources*

- f. Any company mining gold in the clan should pay 25% per gram to the council.
- g. Any individual or individuals mining gold in the clan should pay 10% per gram to the council.
- h. Any company wishing to mine diamond should pay 40% per 100 points
- i. Any company mining iron ore in the clan that company shall deposit 30% per ton to the council
- j. If any company mining oil in the clan, the company should deposit 30% to the council per ton

### *Sawing*

- k. Any organization wishing to do pit sawing shall pay 15% of each 100 pieces
- l. Any individuals found doing pit sawing without the council concern, that person shall pay US\$50
- m. Any individual doing pit sawing in the clan shall pay 10% on each hundred pieces

### *Round poles*

- n. Any person, group of people wishing to do round poles business, shall pay 10% on each 100 pieces
- o. Every individual wanting to build a house are to cut round poles free of charge, but if he/ she damages the round poles, shall pay LR\$50 for each pole

### *Rattan*

- p. Any individual or organization wishing to do rattan business shall pay the followings:

- Six (6) tires truck, shall pay US\$50
  - Eighteen (18) tires truck, shall pay US\$250
  - Pick up load, shall pay US\$15 or LR\$500 per year
- Any community member wanting to do business such as: [make] chairs, baskets, fenders, shall pay a registration fee of LR\$500 per year.

### ***Animals***

- q. Every individual is allowed to lack 50 traps in the bush for local animals.
- r. No one is allowed to hunt and kill wide animals in the clan

### ***Palm trees***

- s. Nobody is allowed to cut down palm tree that is not in the farm. Anyone found cutting palm tree down that is not found in a farm is to pay LR\$500 as fine to the council.
- t. Any community member wishing to do palm wine business should register the amount of LR\$500 per annual

### ***Forest law***

- u. Thirty percent (30%) of the forest is agreed upon to be reserved
- v. The forest is to be reserved for thirty (30) years
- w. No one person, family, or organization is allowed to sell any portion of land within Central Morweh clan without the concern of the council. Anyone found in violation of selling a piece of land without the concern council, shall pay the amount of US\$200.

If someone moves into our community after the land management plan and bylaw are adopted, that person may get land through these means:

- Build a house in the quarter of their host,
  - Participate in and contribute to community development activities and agree to abide by the clan rules
- x. No one is allowed to make forest farm within the period of fifteen (15) years. if anyone caught making forest farm, he/she shall pay LR\$3,500 as fine to the council
  - y. Any company wishing to operate in the clan for any purpose, that company should employ 75% of the residence
  - z. Company wishing to operate in the clan shall allot the personnel manager position to the clan

### ***Water***

- aa. No one is allowed to put chemical into any of our water for any purpose. Violators shall pay the fine of LR\$1,500.
- bb. No one is allowed to toilet into any of the water constantly—creeks are not latrines. Anyone found using the creek as a latrine, shall pay the amount of LR\$300 as fine.

- cc. If any of our neighboring clan is mining up our territorial water, which causing water pollution, that clan shall give to the affected clan 10% of any agreement reached.
- dd. Any organization such as NGO, Company wishing to mine sand from any of our water, shall pay 20% per ton to the council.
- ee. If a community is undertaking a project that require sand, that community should pay 5% per ton to the council.
- ff. No one is allowed to do any fishing activities such as; hook laying, net fishing on the Duah creek for two (2) years.
- gg. Anyone found doing any fishing activities on the reserved creek (Duah Creek) is to be fine 500LD to the council.

Four years from the date this management plan is adopted, any individual or group of people wishing to lay hook or net fishing should register to the council for LD\$500 per year.

### ***Tree (round logs)***

Any company doing logging in the clan shall pay 30% per cube to the Council.

### ***Allocation of benefits***

Twenty (20%) percent of all funds received should be given to the clan headquarter for identified and approved projects.

Ten (10%) percent of all funds received shall be given to each of the town for identified and approved project.

## **Duah Clan's Land and Natural Resources Management Plan**

1. Any sawyer sawing planks in our clan shall give the amount of seven thousand Liberian dollars (LR\$7,000) for every five hundred pieces of planks/a load of planks.
2. Anyone who want to plant a cash crops in a town shall go 35 feet away from the town before planting, to avoid the destruction of your crops during the construction of additional houses within the town
3. All crops should be planted 800 ft away from the clan headquarters.
4. Anyone who wants to mine sand in the Duah creek will pay LR\$500 for pick up load.
5. All cemeteries are to be 350 ft away from the town.
6. Any company wanting to operate in our reserve forest will built a clinic at the Nagbo Town junction.
7. The clan market should be built at Dorzohn at the Goah Town junction

8. The clan school is to be built in clan headquarters (Goah Town).
9. The clan sport ground and the children play ground will be built in Funny Town
10. The chieftom compound is to be built in Nagbo Town.
11. A motor road should be constructed to link Tiah Town to Zoewulum Town.

## **Boehtarr Clan's Governing Council Rules**

### ***Election criteria***

1. These chairpersons should be of good behavior, married, he/she should be a Liberian, who has lived in the community for over a period of five years, he/she should not be denied because of his/her ethnic back ground, education or association
2. The leader should be elected for a period of six years.
3. Community members have the right to tell the leaders what to do and what not to do.

### ***Impeachment***

1. The community is to advise leaders if they are doing wrong for about two to three times. Failure on the part of the leader(s) [to correct these mistakes gives] the [community] the right to call for re-election in a general meeting.
2. If he/she receives a 2/3 majority vote of the community to remove him/her from office, that leader can be removed from office.
3. The leader that is impeached has the right to contest in the election for the same position. During the re-election the former leader should be represented at the ballot box, where the voting will take place.
4. Any leader failing to attend leadership meetings will pay LR\$50 and a community/town failing to attend a general meeting should pay LR\$100.





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.

