

# Protecting community lands and resources

Evidence from Uganda



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



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**Protecting community lands and resources:  
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By Rachael Knight, Judy Adoko, Theresa Auma Eilu

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## Partnerships

**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 1998 Land Act, while simultaneously working to help government and policy makers understand rural communities' experiences of land tenure insecurity.

**Namati** ([www.namati.org](http://www.namati.org)) Namati is a new international organization dedicated to legal empowerment. 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 for greater and smarter investments in legal empowerment.

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## From the Directors

In northern Uganda, several factors have created a situation of intense competition for land: population growth, mass returns from displacement, weak rule of law, and the vesting of land to individual citizens under the Land Act 1998. Uganda's population, 16 million in 1991, grew more than 3% per year to over 34 million by 2011. This trend is expected to continue, with national population projections between 40.6 million and 43.4 million by 2017. As the population has grown, the average land holding per rural household has decreased by more than half, from 2 hectares in 1992-1993 to 0.9 hectares in 2004-2005.

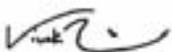
Land scarcity has contributed to higher rates of land grabbing, boundary encroachments onto neighbours' lands, intra- and inter- community land disputes, and widespread appropriation of common lands. The loss of common lands, in turn, has made it difficult for inhabitants to gather firewood, seek building materials, graze cattle, access water, and collect necessary forest resources. Protecting community lands is therefore an urgent priority.

Positively, Uganda's Land Act provides a regulatory framework and legal process that communities may follow to document and protect their customary common areas and all associated land use rights. However, more than 15 years after the Land Act was passed, not one community has successfully followed the legal processes set out in the Act to protect and secure their common lands.

To understand how to best practically apply Uganda's Land Act to support communities to protect their customary land claims, the Land and Equity Movement in Uganda (LEMU), with support from International Development Law Organization (IDLO), carried out a randomized controlled trial in more than 30 communities in Oyam District. The findings from this research suggest that **community land protection should combine four processes: 1) identifying those with rights to community land, 2) resolving boundary conflicts, 3) mapping and titling community lands, and 4) strengthening local systems for land governance.**

When all four of these efforts are joined, as is envisioned in the Land Act, the results are remarkable. **Working through already existing local land management structures**, communities wrote down their rules for land and natural resource use and revised those rules to ensure compliance with the Ugandan Constitution. They also developed plans for proactively managing their natural resources. In the process, they established new mechanisms for holding leaders accountable and for protecting the rights of women. They revived old conservation rules that had lapsed and created new rules in response to current threats.

Implementing the Land Act's protections for community land claims in this way can advance equity, peace, and prosperity. Namati and LEMU are committed to taking these efforts forward. Building on the findings of the research reported here, we aim to support communities to protect their common lands throughout northern Uganda.



Vivek Maru  
CEO Namati



Judy Adoko  
Executive Director, LEMU

# Executive summary



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

## Executive summary

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

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

The first study of its kind worldwide, the intervention's goal was to better understand the type and level of support that communities require to successfully complete community land documentation processes, as well as how to best facilitate intra-community protections for the land rights of women and other vulnerable groups.<sup>1</sup> The intervention's primary objectives were to:

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

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

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

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

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

As it supported communities to complete these processes, LEMU noted all obstacles confronted, all intra- and inter-community land conflicts and their resolutions, and all internal community debates and discussions. A pre- and post-service survey of over 600 individuals and more than 100 structured focus group discussions supplemented LEMU's observations and allowed for quantitative analysis of all short-term impacts.

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

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

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

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

## Main findings

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

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

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

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

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

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

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

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

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

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

Members of all study communities reported that the land documentation process provided the opportunity to publicly discuss and evaluate community rules and norms for the first time in living memory. Throughout the exercise, community members argued against rules they felt to be arbitrary and discriminatory, and advocated for the inclusion of rules that would protect their interests. As a result, the process appears to have made four significant shifts in various facets of local governance. The findings indicate that the process:

- Created an opportunity for communities to strengthen and enforce customary rules for land and natural resource management;
- Enabled community members to directly participate in governance decisions previously taken solely by customary and state authorities;
- Created the opportunity for community members to institute new mechanisms to hold local leaders downwardly accountable and improve leadership; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LEMU found that communities facing external threats to their land will work diligently to complete the community land documentation activities, regardless of the degree of legal support provided. Yet when the threat to a community's land is coming from inside the community itself, hardworking paralegals and even the full support of a legal and technical team may not be enough to address intra-community challenges. Indeed, LEMU's observations illustrate that irrespective of how much support they are offered, communities that struggle with elite sabotage, intractable boundary disputes that cannot be resolved through intensive mediation, internal discord, and weak leadership may not be able to successfully complete community land documentation processes. Similarly, peri-urban communities and communities with little or no internal cohesion or a highly transient population may not be appropriate for community land documentation initiatives.

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

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

## Recommendations for policy-makers

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

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

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

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

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3 *Land Act 1998, Section 25.*

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

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

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

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

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

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

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

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

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

## Recommendations for implementation and practice

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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6 Land Act 1998, Section 16(4).

# 1. Background and legal context



Community meeting to discuss the community land protection process.

# 1. Background and legal context

## Background

In northern Uganda, common grazing lands are central to village life. While nominally used for grazing livestock, communities also depend on their grazing lands to collect basic household necessities such as fuel, water, food, building materials for their homes, and traditional medicines. Yet growing population density, increasing land scarcity, weak rule of law, and the 1998 Land Act's legalization of a land market have created a situation of intense competition for land. Uganda's population, just 16 million in 1991, grew more than 3% per year to over 24 million by 2002 and 34 million by 2011.<sup>7</sup> This trend is expected to continue, with national population projected to be between 40.6 million and 43.4 million by 2017.<sup>8</sup> Correlated with population growth, the average land holding per rural household has been steadily decreasing, from 2 hectares in 1992-1993 to just 0.9 hectares in 2004-2005.<sup>9</sup> The growing land scarcity has contributed to higher rates of land grabbing, boundary encroachments onto neighbours' lands, intra- and inter-family land disputes, and rampant appropriation of common lands.

As a result of these trends, there is a high rate of tenure insecurity in northern Uganda, a prevalence of intra-community land conflict, and a rapid loss of the common grazing lands that community members rely upon for their subsistence and survival.

In some communities, the weakening of the customary bodies traditionally responsible for the management and administration of the grazing lands has exacerbated encroachment. In the study area of northern Uganda, recent upheaval, notably the Lord's Resistance Army (LRA) conflict, have diminished the authority of the customary land management bodies. As their enforcement of the rules governing communal land use has waned, the common lands have become increasingly vulnerable to encroachment by both opportunistic outsiders – Internally Displaced Persons (IDPs)<sup>10</sup>

7 Uganda Bureau of Statistics, "Number of Inhabitants by Region," Population Table 1, 2011, [http://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/Popn\\_T1\\_2011.pdf](http://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/Popn_T1_2011.pdf).

8 Uganda Bureau of Statistics, "Projections of Demographic Trends in Uganda: Volume 1," (Kampala, Uganda: UBOS, 2007), 3. <http://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/PopulationProjections2003-2017.pdf>.

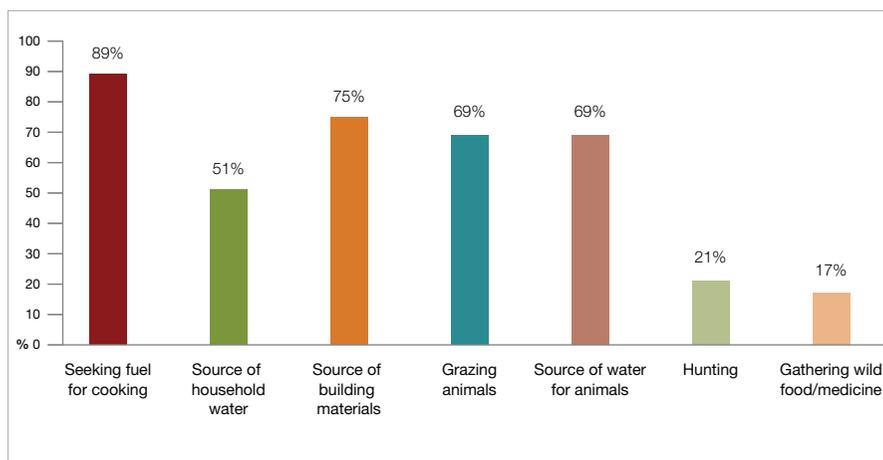
9 Uganda Bureau of Statistics, "Uganda National Household Survey 2005/2006: Report on the Agricultural Module," (Kampala, Uganda: UBOS, 2007), 14. <http://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/2005UNHSAgriculturalModuleReport.pdf>. Focus groups convened at the inception of the Initiative described how although "Twenty years ago one could easily go and farm wherever one felt like farming without anyone minding, since land was in abundance," today such practices are no longer possible, and as a result families are confined to farming only those lands they already own. Therefore, with each passing generation, parents are allocating increasingly smaller pieces of land to their children. Consequently, many young families are not allocated sufficient land to grow enough food to feed their family, and must buy or rent land to expand their family's land holdings.

10 Fleeing the violence of the recent Lord's Resistance Army conflict in northern Uganda, Internally Displaced Persons (IDPs) have settled on some communities' grazing lands. Focus groups described how: "During the Lord's Resistance Army war, some refugees from East Lango came and we gave them part of the grazing land for their [temporary] settlement but [when the war ended] they refused to leave our land." Some focus groups reported that when they tried to reclaim their communal lands from the IDPs, the result was serious land conflict.

and powerful elites – and community members alike. In other instances, the leaders responsible for managing the grazing lands became corrupted, leveraging their position to illicitly claim grazing land for their families. Such leaders set a bad precedent: other community members began following their example and claiming common grazing lands for their own private use.<sup>11</sup>

As a result, in some communities no common lands remain, as they have been fully encroached upon for private use. The loss and reduction of common areas has left no place for residents to gather firewood, seek building materials, graze cattle, access water, and collect necessary forest resources. In many villages, community members reported that members of neighbouring communities without common lands have begun to surreptitiously enter their grazing lands to graze cattle and gather wood, and that such trespassing and theft are breeding conflict between once peaceful neighbouring villages.<sup>12</sup>

**Figure 1: Ugandan respondents' use of common grazing lands**



**11** Notably, although communities are losing most of their communal lands to encroachment by community members and local elites, community members appear to be most concerned about the government and external investors seizing their land. In focus groups, many people described “protection against the government” as one of the main benefits of obtaining papers for their land. Various focus groups explained that getting papers for land “prevents your land from being grabbed by the government.” They explained: “When you have papers to your land, the government can’t take your land forcefully” and “When you have papers to your land, even the government can’t take your land.” Protection against “rich people and investors” taking land was another frequently mentioned benefit of having papers. Focus groups explained: “When you have papers to your communal land, it stops a rich person from claiming or grabbing that land”; and “if I get the papers, no rich person can come and steal my land because I have proof of ownership.”

**12** For example, more than one community welcomed the Community Land Protection Initiative in order to protect their community land and end a fight with a neighbouring community that, no longer having any grazing land of their own, had been encroaching on the study community’s grazing land and trying to graze their cattle on the community’s land.

Moreover, studies have shown that increasing land scarcity and associated land commoditization trends often precipitate a breakdown of the customary rules that govern the equitable and sustainable use of common resources — rules that functioned in the past to protect the land rights of vulnerable groups and support the sustainable management of local ecosystems.<sup>13</sup>

While scholars disagree over the relative strength of women's land claims under customary systems, the consensus is that as land becomes scarcer, long-standing customary rules are being reinterpreted to legitimate exclusionary practices. As a result, existing customary safeguards of women's rights to land are eroding.<sup>14</sup> As stated by Woodhouse, "When competition for land intensifies, the inclusive flexibility offered by customary rights 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>15</sup>

In such circumstances, customary leaders and families move away from more flexible systems of land use and inheritance (which take into consideration a woman's need to support herself and her children) to more rigid interpretations of custom that function to undermine women's land tenure security. 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. In northern Uganda, this has resulted in an increasing incidence of land grabbing from widows and other vulnerable groups.<sup>16</sup>

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- 13** 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. The increasing commercialization and commoditization of land has also influenced the operation of customary systems of land administration and management. Chimhowu and Woodhouse observe that even 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.
- 14** To understand this phenomenon, it is necessary to explain how women's land rights function under customary tenure. Broadly speaking, under patrilineal systems, daughters do not inherit property from their fathers or uncles, but move onto their husbands' lands after marriage. They are not permitted to inherit their husband's land, because (according to custom) it is passed through the male bloodline from fathers to sons and/or because it belongs to the husband's family or tribe. Within this paradigm, women's land claims hinge on their relationships with male relatives. Women cannot own land, may lose their land when widowed, may be considered the property of their husbands (who in some cultures have paid a bride price for their wives), and may have little or no decision-making power over questions of household agricultural production and sale. See generally, Renee Giovarelli, "Customary Law, Household Distribution of Wealth, and Women's Rights to Land and Property," *Seattle Journal for Social Justice* 4 (2006): 801-825; Whitehead and Tsikata "Policy Discourses." Also of note is that the Land and Equity Movement in Uganda worked with the Lango Cultural Foundation to document customary rules concerning women's inheritance rights; as agreed by all the Clan leaders in the Lango region, the written customary laws include various mechanisms designed to protect and ensure women's land tenure security. Such documentation of custom helps to support the argument that trends such as widow dispossession are not "custom" but rather an adulteration of custom that allows relatively "stronger" family members to forcibly acquire the lands of "weaker" family members. Lango Cultural Foundation, "Principles, Practices, Rights and Responsibilities (PPRR) of Customary Land Tenure in Lango Region," (2009). Available at: <http://www.land-in-uganda.org/assets/PPRR%20of%20Land%20Tenure%20Report.pdf>.
- 15** Philip Woodhouse, "African Enclosures: A Default Mode of Development," *World Development* 31, no. 10 (2003): 1715.
- 16** Judy Adoko and Simon Levine, "Land rights: Where we are and where we need to go; A review of the situation of land rights in Apac District in Uganda, and of opportunities for land rights protection work, based on the work of LEMU in 2003-4" *Berkley Trust, England* (June 2005) at 8-9.

The question of how to best protect common areas – while reducing land conflict, promoting intra-community equity and justice, and strengthening women’s land tenure security in the process – raises complex issues. Customary land management systems generally comprise a complex mesh of overlapping land ownership, use, and access rights: under customary systems in northern Uganda, land rights are considered to be held not only by all present owners (who may be defined by family, clan, or whole community, depending on the category of land), but also by all past and future generations.<sup>17</sup> While individual land titling schemes have facilitated increased tenure security in developed nations, individual titling schemes have generally failed to protect the full range of usufruct rights typical of customary land management systems, including communal or secondary rights over land, rights of way, common pool resource claims, and the migratory routes of nomadic groups. As a result, these rights have generally remained unrecorded.<sup>18</sup> Of particular concern is the erasure of women’s land rights that can occur where family title documents are issued only in the name of the male head of household.<sup>19</sup>

One method of protecting the full range of customary land rights is to allow communities to register their lands as a whole (documenting the “meta unit” or “tenorial shell”), with reference to the community’s boundaries, and to then empower communities to manage community lands and natural resources according to local norms and practices that recognize communal, overlapping, and secondary land rights. This method safeguards an entire community’s land at once, and thus may be a more efficient and cost-effective means of documenting customary land claims than individual titling.<sup>20</sup> Moreover, titling

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**17** See generally, Ben Cousins, “More Than Socially Embedded: The Distinctive Character of ‘Communal Tenure,’” *Journal of Agrarian Change* 7, no. 3 (2007).

**18** See generally, Tim Hanstad, “Designing Land Registration Systems for Developing Countries,” *American University International Law Review* 13, no. 3 (1998): 647; Whitehead and Tsikata, “Policy Discourses”; David A. Atwood, “Land Registration in Africa: The Impact on Agricultural Production,” *World Development* 18, no. 5 (1990); Richard Barrows and Michael Roth, “Land Tenure and Investment in African Agriculture: Theory and Evidence,” *The Journal of Modern African Studies* 28, no. 2 (1990); John W. Bruce, “Land Tenure Issues in Project Design and Strategies for Agricultural Development in Sub-Saharan Africa,” (Madison, WI: Land Tenure Center, University of Wisconsin-Madison, 1986); Angeliqve Haugerud, “The Consequences of Land Tenure Reform among Small Holders in the Kenya Highlands,” *Rural Africana* 15-16 (1983). Experience in implementing individual titling schemes has also shown that: i) the high costs of recording the ownership and multiple use claims of every plot of land within a nation can lead to poorly executed or unfinished mapping exercises, which can serve to further undermine the tenure security of those parcels of land not yet mapped and registered; ii) the costs of officially registering one’s land may be prohibitively expensive for the poor, which can lead to a situation in which only elites gain formal title to their lands; iii) individual land titling and registration can facilitate and lead to distress sales in time of hunger, sickness and extreme poverty; and iv) land registries can be difficult for already-vulnerable groups to access and use, and unless particular care is taken by government administrators, under-represented groups such as ethnic minorities and women may be excluded.

**19** Whitehead and Tsikata “Policy Discourses”; David A. Atwood, “Land Registration in Africa: The Impact on Agricultural Production,” *World Development* 18, no. 5 (1990); Richard Barrows and Michael Roth, “Land Tenure and Investment in African Agriculture: Theory and Evidence,” *The Journal of Modern African Studies* 28, no. 2 (1990); John W. Bruce, “Land Tenure Issues in Project Design and Strategies for Agricultural Development in Sub-Saharan Africa,” (Madison, WI: Land Tenure Center, University of Wisconsin-Madison, 1986).

**20** 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).

or registering the whole community as a 'meta-unit' can facilitate the recognition of communal, overlapping and secondary land rights, and has the potential to safeguard an entire community's land at once, thus representing a more efficient and cost-effective means of protection than individual titling. Furthermore, devolving land ownership, administration and management to the community may help to foster local economic growth and promote sustainable natural resource management.<sup>21</sup>

Positively, Uganda's Land Act (1998) (Ch. 227) (herein after "Land Act 1998") provides a regulatory framework and legal process that communities may follow to document and protect their customary common areas and all associated land use rights.

### Legal context: Uganda's Land Act 1998 (Ch. 227)

Unlike many countries in Africa, where the state holds land in trust for its people, the Ugandan Constitution gives Ugandan nationals the right to own their land. Uganda's Constitution provides for four different kinds of land tenure systems: customary, freehold, leasehold, and *mailo* (a type of tenure specific to central Uganda that permits the separation of land ownership from ownership of improvements to the land made by lawful or *bona fide* occupants).<sup>22</sup> Chapter 15, § 237 (3-4) of the Constitution of the Republic of Uganda, 1995 provides that: "Land in Uganda shall be owned in accordance with the following land tenure systems: customary; freehold; mailo; and leasehold. On the coming into force of this Constitution, all Uganda citizens owning land under customary tenure may acquire certificates of ownership in a manner prescribed by Parliament; and land under customary tenure may be converted to freehold land ownership by registration." The Land Act 1998 underscores the Constitution's recognition of customary land rights as legal, enforceable land claims by formally establishing that customary land rights held by individuals and groups are ownership rights, equal to private, individual land rights.<sup>23</sup>

Importantly, under the Land Act 1998, customary land 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 legal document to evidence their land claims.

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<sup>21</sup> *Id.*

<sup>22</sup> In northern Uganda, where the Community Land Protection Initiative was implemented, customary tenure prevails.

<sup>23</sup> *Land Act 1998* (Ch 227), Act 16/1998, Republic of Uganda, Section 3(1). The *Land Act* defines customary tenure as "a form of tenure applicable to a specific area of land and a specific description or class of persons, governed by rules generally accepted as binding and authoritative by the class of persons to which it applies." The *Land Act* also stipulates that customary tenure provides for "communal ownership and use of land; in which parcels of land may be recognized as subdivisions belonging to a person, a family or a traditional institution; and which is owned in perpetuity."

However, if documentary proof of customary individual, family or group ownership is desired, the owners may seek a Certificate of Customary Ownership<sup>24</sup> (CCO) or Freehold Title.<sup>25</sup> According to the Land Act 1998, if a community seeks to formalize its rights to common areas, it must first form a legal body – a Community Land Association – and then apply for a CCO or Freehold Title. The steps that can be followed to achieve this are described below.

### **Box 1: Forming and registering a Communal Land Association**

Communities create a Communal Land Association by successfully completing the following processes:

- 1. Mapping and boundary harmonization.** Although not part of the legal process, the boundaries of the land must be agreed upon by all community members and neighbours before formal documentation can proceed. To do this, a community first meets with its neighbours to harmonize all divergent understandings of the land's boundaries and address relevant boundary conflicts. To facilitate this process, the community and its neighbours may draw sketch maps and plant boundary trees or other agreed markers.
- 2. Application to become a Communal Land Association.** The community formally begins the process by lodging an application with the District Registrar to form a "Communal Land Association."<sup>26</sup> Upon receipt of this application, the Registrar travels to the community and convenes a meeting, at which at least 60% of the community must formally vote to incorporate as an association. After voting to incorporate, the community then elects three to nine officers to lead the association, a third of whom must be women.<sup>27</sup>
- 3. Creation of an Association's constitution and common land management scheme.** The community next drafts a constitution to govern the management of the communally-owned land. The Land Act 1998 and accompanying Regulations set out what Communal Land Association constitutions must include.<sup>28</sup> After agreeing on the

<sup>24</sup> Land Act 1998, Section 4 (1).

<sup>25</sup> Land Act 1998, Section 10 (1).

<sup>26</sup> Land Act 1998, Section 16 (1).

<sup>27</sup> Land Act 1998, Section 16 (3 -5).

<sup>28</sup> Land Act 1998, Sections 17, 18, 19, Regulations Third Schedule.

Association's rules, the community submits a near-final draft of their constitution to the District Registrar, who must certify that the document provides for transparent and democratic management procedures and does not contradict the Ugandan Constitution.<sup>29</sup> If certain provisions do not meet these standards, the community must make all necessary changes before voting to formally adopt the constitution as its governing framework. The constitution comes into effect and is binding upon members after an absolute majority affirmative vote.<sup>30</sup> The community also must draft a "common land management scheme" that details how its Communal Land Association will manage the land and natural resources set aside for common use. This scheme (hereafter referred to as a "land and natural resource management plan") comes into effect after it is "agreed to by the community on whose behalf the association holds land."<sup>31</sup>

4. **Incorporation of the Communal Land Association.** Once officers have been elected and the Association's constitution and natural resource management plan have been adopted, the Association can apply to the District Registrar for formal incorporation. When the District Registrar is satisfied that all relevant regulations have been complied with, s/he will issue a certificate of incorporation, subject to any conditions and limitations that may be prescribed.<sup>32</sup> The Communal Land Association then becomes a legal body corporate that can sue and be sued and enter into binding legal contracts.<sup>33</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 members. 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 are considered null and void.<sup>34</sup>

<sup>29</sup> *Land Act 1998*, Section 17(1–3). 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.

<sup>30</sup> *Land Act 1998*, Section 17.

<sup>31</sup> *Land Act 1998*, Section 23, 24.

<sup>32</sup> *Land Act 1998*, Section 18 (1) (2).

<sup>33</sup> *Land Act 1998*, Section 19 (1).

<sup>34</sup> *Land Act 1998*, Section 19 (3). This section states that a Communal Land Association's elected managing committee may not transact community land "unless a majority convened for the purpose approve the specific transactions which are the subject of the meeting, and any transaction which is concluded which does not comply with this subsection shall be null and void and shall give rise to no rights or interest in the land." The vagueness of this provision may allow for the management committee to convene any configuration of community members (i.e. not 100% of community residents or Communal Land Association members) and seek the approval of only a simple majority of this group. Such vagueness may create the opportunity for bad faith action by a Communal Land Association management committee.

- 5. Application for documentation of land claims.** Once incorporated, a Communal Land Association may then apply for either a Certificate of Customary Ownership (CCO) or a Freehold Title to its lands.
- **Applying for a Certificate of Customary Ownership (CCO).** Article 4 of the Land Act 1998 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 CCO is intended to be relatively simple and low-cost. No metes and bounds are included in a CCO; a technical survey is not required. The application includes only a sketch drawing of the land, a description of the names of all neighbouring land claims, and a detailed listing of all rights of way, easements and other third party rights. A local “Area Land Committee” (ALC) undertakes an adjudication process<sup>35</sup> and addresses any existing conflicts related to the land in question by holding a hearing. At this hearing, evidence not admissible in a court of law but recognized as valid by the community may be admitted as long as it aligns with “the rules of natural justice.”<sup>36</sup> After the ALC communicates its findings to the District, a “District Land Board” issues the CCO.

Once issued, a CCO is conclusive evidence of customary ownership, and the land continues to be regulated and transacted according to customary laws.<sup>37</sup> The holder of a CCO can lease, sell, mortgage, pledge, subdivide or transfer the land, as well as dispose of it by will, and create, alter or discharge an easement to the land.<sup>38</sup> Any such transactions must be reported to the Recorder and copies of any accompanying documents provided. The Land Act 1998 provides that financial institutions and authorities must recognize CCO’s as a valid certificate of ownership and evidence of title.<sup>39</sup> However, lacking metes and bounds, a CCO does not protect against future boundary disputes concerning the exact limits of neighbouring property claims.

<sup>35</sup> Land Act 1998, Section 5.

<sup>36</sup> Land Act 1998, Section 5 (2).

<sup>37</sup> Land Act 1998, Section 8 (1).

<sup>38</sup> Land Act 1998, Section 8 (2).

<sup>39</sup> Land Act 1998, Section 8 (7).

- **Applying for a Freehold Title.** Individuals, families or communities may choose to apply for a Freehold Title for their lands. They may either follow this process immediately, or they may decide to first apply for a CCO and then later follow the Freehold Title process. Under Article 9 of the Land Act 1998, “Any person, family, community or association holding land under customary tenure on former public land may convert the customary tenure into freehold tenure in accordance with this Act.”<sup>40</sup>

To apply for a Freehold Title, the community must submit the necessary forms and associated fees to their Area Land Committee and follow the same adjudication and investigation procedures as the CCO process, outlined above.<sup>41</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>42</sup> Second, once the District Land Board receives the Area Land Committee’s report and recommendations, it orders that the land in question be professionally surveyed by a certified surveyor according to mandates established in the *Survey Act* (1939). Once the survey has been completed, the District Land Board then approves or denies the application and the District Registrar issues a Certificate of Freehold Title.<sup>43</sup> Any encumbrances, restrictions, easements, conditions or limitations as per third party rights must be duly noted on the title.<sup>44</sup>

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<sup>40</sup> *Land Act 1998*, Section 9 (1).

<sup>41</sup> *Land Act 1998*, Sections 5,11. If a group or individual already has a CCO, then this process is relatively straightforward: it begins where the CCO process leaves off – with the professional survey.

<sup>42</sup> *Land Act 1998*, Section 11(2)(3). The Act does not make it clear, however, what this second decision is to be based on.

<sup>43</sup> *Land Act 1998*, Section 13.

<sup>44</sup> *Land Act 1998*, Section 14(3).

When a Communal Land Association holds land under a CCO or Freehold Title, the Communal Land Association may choose to set aside areas of land for common use by all members of the Association for grazing and watering livestock, hunting, and the gathering of wood fuel, building materials, wild foods, and plant medicines.<sup>45</sup> Boundaries of common areas may be marked according to accepted local practices.<sup>46</sup> Thereafter, any established common areas must be managed according to a common land management scheme agreed upon by all Association members.<sup>47</sup>

In addition to establishing strong protections for Ugandan's customary land claims and the creation of natural resource management plans, the Land Act 1998 includes significant protections for the rights of women, children and people with disabilities. While falling short of giving women the rights to co-own land with their husbands, the Land Act 1998 does allow women to own land in their own right.<sup>48</sup> The law also provides explicit protection against discriminatory customary practices: it mandates 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 *Constitution of the Republic of Uganda* — shall be null and void.

Importantly, the law 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. It also specifically 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 all spouses, dependent children of majority age, and where children are below the age of the majority or orphaned children, with the prior written consent of the Area Land Committee.<sup>49</sup> Should the seller/lessor fail to secure the required approval and consent, the matter may be referred to the District Land Tribunal. The Land Act 1998 also requires that all land administration and management bodies have female representatives among their members.<sup>50</sup>

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45 *Land Act 1998*, Section 23. It may also choose to recognize and establish that all or part of the Association's land is occupied and used by individuals, households and families for their own purposes and benefit. (Section 22(1)).

46 *Land Act 1998*, Section 23.

47 For a more detailed account of the contents of a common land management scheme, please see Section III (4).

48 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*.

49 *Land Act 1998*, Section 39(1).

50 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, sub-section 3; Section 65, sub-section 2; Section 47, sub-section 4.

Yet while the Land Act 1998 should theoretically support high levels of tenure security, the current situation in Uganda is one of acute land insecurity and escalating land conflict, for all of the reasons described above. Moreover, 14 years after the Land Act 1998 was passed, not one community in Uganda has followed the above-mentioned 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 of which are linked to issues of political will.

Most significantly, the state not only lacks secure sites to house land titles, but also has not hired the officials whose role it is to approve Communal Land Association applications. The critical land officials not yet in place in northern Uganda include District Registrars, Land Recorders, land officers, and land surveyors. Moreover, Area Land Committee members are not paid for their work, which inhibits the zealous performance of their duties.

Moreover, there are many other significant obstacles to the full and successful implementation of the Land Act 1998. These obstacles include rural villagers' lack of information about the process necessary to acquire documentation for their lands; overly complex and bureaucratic procedures, (including forms that do not facilitate community land documentation); and the Ugandan government's emphasis on documenting individual land claims. This emphasis on individual titling has contributed to a lack of necessary government resources allocated towards community land protection efforts. In addition, although the application fees are quite low, the cost of hiring a surveyor (necessary for obtaining a Freehold Title) is extremely expensive, making the process financially unfeasible for many rural communities.

Meanwhile, efforts to document community lands and natural resources raise difficult questions of justice and equity. The Communal Land Association structure necessarily devolves land management to the communities themselves. Such devolution to the local level presents risks associated with elite capture, corruption, and exploitation of vulnerable groups.<sup>51</sup> In practice,

*14 years after the Land Act 1998 was passed, not one community in Uganda has followed the above-mentioned legal procedures to successfully form a Communal Land Association and obtain a community freehold title or Certificate of Customary Ownership for their common lands.*

Communal Land Associations may be dominated by local power-holders who may act corruptly, manage natural resources unsustainably, or leverage their position to capture economic benefits intended for community distribution. Alternatively, natural resource management decisions may entrench class differences or perpetuate intra-community discrimination.<sup>52</sup> In such contexts, community members with more tenuous land claims – particularly women, widows, and orphans – may be at increased risk of having their land appropriated in bad faith or their rights violated.<sup>53</sup>

The question, therefore, is how best to support Ugandan communities to form Communal Land Associations to protect their lands and natural resources, while simultaneously ensuring that intra-community land governance ensures gender equity, justice, leaders' downward accountability, and sustainable use of natural resources. To address these challenges and investigate how to best support communities to successfully leverage the Land Act 1998 to protect their communal lands, the Land and Equity Movement in Uganda (LEMU) and the International Development Law Organization (IDLO) undertook a two-year pilot project entitled the *Community Land Protection Initiative*. The study's design, implementation, and resulting findings are detailed below.

51 See generally, Ghazala Mansuri and Vijayendra Rao, *Localizing Development: Does Participation Work?* World Bank (2013).

52 See also, Cotula et al., *Land Grab or Development Opportunity? Agricultural Investment and International Land Deals In Africa*.

53 Paul Mathieu, Philippe Lavigne Delville, Hubert Ouédraogo, Mahamadou Zongo, and Lacinan Paré, 2003, *Making land transactions more secure in the west of Burkina Faso*. London, IIED/GRET; Peters, "Inequality and Social Conflict Over Land in Africa"; Woodhouse, "African Enclosures: A Default Mode of Development"; Yngstrom, "Women, Wives, and Land Rights in Africa."

## 2. Project design and methodology



Women ceremoniously welcome the field team to their community before the start of a meeting.

## 2. Project design and methodology

### Project design

In the context of growing land scarcity, increased local competition for land and natural resources, and the escalating incidence of land-related conflict in Uganda, the Land and Equity Movement in Uganda (LEMU) and the International Development Law Organization (IDLO) set out to investigate how best to support communities to successfully follow legal procedures to formally document and protect their land rights. This effort, the *Community Land Protection Initiative*, was carried out in Oyam District, northern Uganda, from March 2009 to March 2011. The study was simultaneously undertaken in Liberia and Mozambique to allow for cross-national comparison.<sup>54</sup>

The first study of its kind worldwide, the intervention's goal was to better understand the type and level of support that communities require to successfully complete community land documentation processes, as well as how to best facilitate intra-community protections for the land rights of vulnerable groups. The intervention's primary objectives were to:

- Facilitate the protection of customarily-held lands by seeking formal documentation of community land claims;
- Understand how to best and most efficiently support communities to protect their lands through legally established land documentation processes;
- Devise and pilot strategies to guard against intra-community injustice and discrimination and protect the land rights of vulnerable groups during community land documentation processes;
- Craft country-specific recommendations for the improvement of land documentation laws and policies in order to improve fairness and make titling procedures easier for both communities and land administrators to follow.

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<sup>54</sup> For further information on the cross-national study and results, see "Protecting Community Lands and Resources: Evidence from Liberia, Mozambique, and Uganda" at <http://namati.org/work/community-land-protection/Phase-One-Findings-and-Reports>.

The project therefore investigated the following central questions:

**1. How to best support communities to successfully follow formal land documentation processes to protect their customary land claims?**

- Is there a correlation between the level of assistance provided and community progress through the mandated community land documentation processes?
- Is there a correlation between the level of legal assistance provided and communities' effectiveness in overcoming obstacles faced?
- Is there a correlation between the level of legal assistance provided and community participation in community land documentation activities?

**2. During community land documentation efforts, how can the protection of women's and other vulnerable groups' land rights best be facilitated?**

- Is there a correlation between the level of assistance provided and the meaningful participation by vulnerable groups throughout the community land documentation process?
- Is there a correlation between the level of assistance provided and whether communities adopted safeguards aimed at protecting the land rights of women and vulnerable groups?

To undertake the objectives and investigate the central research questions, LEMU conducted a randomized controlled trial.<sup>55</sup>

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<sup>55</sup> Randomized controlled trial 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 they 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. That allows the study's results to be causally attributed to differences between the intervention and control conditions. RCT use reflects a growing recognition that observational studies without a randomly assigned control group are a poor way of testing whether an intervention works. 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 as a randomized controlled trial.

## Methodology

LEMU undertook the investigation in Northern Uganda, where rural communities retain strong traditional land management practices based on customary tenure. Oyam District was selected because the district government was receptive and eager to support project activities. Oyam was also chosen for its low population density and the general homogeneity of its population, which is composed almost entirely of Lango people. LEMU hypothesized that these characteristics would assure a fairly unified local population and reduce the potential for identity-based conflict during the community land documentation process, as might occur in more diverse districts.

### Map 1: Uganda



Source: UN Office for the Coordination of Humanitarian Affairs.

At the project's inception, LEMU held a series of district- and parish-level workshops to inform local leaders about the project and to seek their permission to undertake the investigation in the region. Despite initial assertions by sub-county officials and clan leaders that “no more communal grazing lands exist,” parish-level leaders identified various common grazing lands and invited LEMU to visit them. LEMU then travelled to the identified communities and held a series of meetings with community members, clan leaders, LC1s (village-level government officials) and *Adwong Bars* (customary managers of the grazing lands) to inform them about the investigation, answer questions, ascertain if their communities were interested in taking part in the project, and seek their invitation to begin community land documentation activities.

Community and government leaders from Iceme, Minakulu, and Loro sub-counties welcomed LEMU to work in their regions and directed the field team to visit certain specific communities that had communal grazing lands in need of protection. Of these communities, LEMU then randomly selected 20 communities that actively expressed a desire to seek documentation for their community land rights. LEMU then randomly assigned these communities to one of four different treatment groups, each of which received a different level of legal services provision.<sup>56</sup> The four legal services treatments were as follows:

- **Monthly legal education and training (Education-only):** These five communities received one three-hour training session each month for 14 months. The training sessions were conducted by the project field team, which was composed of two lawyers and one local community mobilizer. The training sessions were designed to teach communities about their land rights under the Land Act 1998 and regional custom, as documented in the Principles, Practices, Rights and Responsibility (PPRR) book of the Lango Cultural Foundation.<sup>57</sup> The monthly trainings also taught community members about Uganda's community land documentation process, including how to successfully undertake and complete each stage of the process. They furthermore included information and capacity building concerning:

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<sup>56</sup> LEMU randomly assigned the communities to treatment groups, 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 anticipated 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.

<sup>57</sup> Lango Cultural Foundation, “Principles, Practices, Rights and Responsibilities (PPRR).”

- » Relevant national law, including sections of the national constitution, national inheritance law, natural resource and conservation law, among others;
- » 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;
- » The location and role of relevant government agencies;
- » Instructions for accessing and completing government forms and creating required documentary proof;
- » The structure of the national court system; and all other necessary skills and information.

The communities were given copies of the Land Act 1998 and Regulations, the PPRR, and “how-to” guides prepared by LEMU, which detail the Communal Land Association formation process and describe the various land documentation options available.<sup>58</sup> Training methodologies included role-plays, practice exercises, and question-and answer sessions, among other techniques developed to ensure that information was delivered in a culturally appropriate manner, taking into account literacy levels and the time and resource constraints of community stakeholders.

All community members were invited to take part in the monthly training meetings. Specific measures were adopted to ensure the participation of women.<sup>59</sup> After each month’s training, LEMU gave these communities “homework” assignments to complete before the following month’s meeting; the assignments included the completion of whatever step(s) of the process that the community was working on at the time.

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**58** See LEMU’s guide for communities at: <http://namati.org/work/community-land-protection/Phase-One-Findings-and-Reports>.

**59** Measures included the scheduling of meetings in places and at times that women could more easily attend and sending community leaders and the Community Support Persons door-to-door throughout the village specifically requesting that: women attend; husbands bring their wives with them to meetings; women cook lunch for the whole community at the meeting venue to ensure other women’s attendance; and, as necessary, women-only meetings to directly address women’s concerns and interests and support women to bring these issues to the wider community.

- Paralegal support and monthly legal education and training (Paralegal):** These five communities received the monthly legal training and materials described above, as well as the support of two community-based and community-elected paralegals.<sup>60</sup> Because these individuals were not board certified paralegals, but rather trained and supervised community members, they were termed “Community Support Persons” or CSPs.<sup>61</sup> At the start of the project, the Community Support Persons received two intensive two-day trainings covering the topics detailed above, as well as other relevant information. The CSPs were then required to attend monthly meetings with LEMU’s field team, during which they were rigorously trained and supervised.<sup>62</sup> The paralegal communities were also assigned “homework” to complete between the monthly training sessions.
- Full legal support and monthly legal education and training (Full-service):** These five communities received the monthly legal training described above, as well as the full support of the project lawyers and the rest of LEMU’s field team. LEMU directly assisted and supported these communities throughout the land documentation process, providing all necessary legal assistance. This support included: help with boundary harmonization; mediation of land conflicts; help drafting and revising Communal Land Association constitutions and land and natural resource management plans; support in the preparation and presentation of required land documentation forms; and all other necessary assistance.
- Control/Minimal informational dissemination (Control):** The intent 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) was actively working to follow community land documentation procedures without any external legal and technical support. It is important to note that these communities were not “pure” controls in the scientific sense: they each received one project introduction meeting, at which time community members were given copies of

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<sup>60</sup> LEMU left the selection process in the hands of the communities, but did stipulate that the paralegals should: be literate and able to write; have a high degree of integrity and honesty; not work with another NGO or in a government position; and be well-respected by community members.

<sup>61</sup> Note that although the CSPs were not trained, certified paralegals, the terms “Community Support Person” and “paralegal” will be used interchangeably throughout this paper.

<sup>62</sup> The CSPs were also given detailed instructions during these monthly meetings that covered both substantive and procedural issues. Substantive topics included: women’s land rights; national inheritance law; natural resources and conservation law; and relevant sections of the National Constitution, among others. Procedural topics included: mobilization strategies; best practices for meeting facilitation, particularly how to ensure the inclusion of vulnerable groups; conflict resolution strategies; tools for boundary harmonization and demarcation efforts; strategies for aligning customary rights with national laws; and generally how to lead communities through the formal legal and administrative processes for formally documenting community land.

Uganda's land laws and regulations, the PRR, and LEMU's detailed "how-to" guides. At the project introduction meeting, LEMU explained that should a community complete the requisite steps of the community land documentation process and choose to seek a Freehold Title, LEMU would cover the costs of the formal technical survey of their lands. This was offered to all communities in order to distinguish financial obstacles from procedural obstacles.

After randomly assigning the study communities to their treatment group, LEMU observed and recorded each community's progress through the requisite steps, noting: 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<sup>63</sup> survey of over 600 individuals<sup>64</sup> and more than 100 structured focus group discussions supplemented these observations.<sup>65</sup> Cross nationally, the study included the participation of over 2,225 survey respondents and more than 250 focus group discussions.

The communities' experiences following the Communal Land Association-formation process, the survey findings, and the field teams' observations are described below in Section III.

To ensure that relevant district and parish land administrators had adequate knowledge of community land protection procedures, LEMU also conducted workshops to train local, district, and provincial land officials. Finally, to keep the Ugandan government apprised of the Initiative and its progress, LEMU met quarterly with district and national officials, at which time LEMU staff briefed officials on the project work and findings to date. LEMU also used these meetings as an opportunity to request necessary government support, particularly the assignment of a Registrar of Titles to Oyam District.

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**63** It is important to note that LEMU was not able to return to all of the study communities to conduct the post-service survey interviews. LEMU's researchers were threatened with violence when they returned to conduct the survey in two of the communities that had rejected the project. It was therefore judged that LEMU could only complete the post-service survey in those communities where it had not been actively rejected. For this reason, no post-service survey was conducted in two of the full-service communities, one of the paralegal communities, and one of the control communities. While the change in survey plans seriously compromised the validity of the data in Uganda, it was judged unwise to put lives of the research team at risk.

**64** Individuals taking part in the baseline and post-service survey were selected by simple random sampling to ensure a representative sampling of community demographics. The survey included both structured questions with predetermined answer categories, as well as some semi-structured or open-ended questions, so as to capture both qualitative and quantitative data.

**65** The focus group discussions held in each study community 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-service survey). The research team visited the village a few days before the focus group meetings and informed the LC1 (the community-level local government official) 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 the groups uninited.

### 3. Project implementation and findings



Community members participate in a discussion about their Communal Land Association constitution.

### 3. Project implementation and findings

The sequencing of all project activities was driven by the Communal Land Association incorporation process set out in Uganda's Land Act (1998) (Ch. 227). LEMU support the communities to undertake the following steps:

1. **Community land documentation process introduction:** legal education and awareness; creation of an “intermediary group” to coordinate the community process; Community Support Person election in the paralegal treatment communities.
2. **Mapping and boundary harmonization:** mapping the boundaries of the communal grazing lands; negotiation with neighbours concerning the location of the boundary limits; conflict resolution; planting boundary trees along the limits of the grazing land.
3. **Drafting a Communal Land Association constitution and land management plan:** cataloguing all existing community rules, norms, and practices for local land and natural resource management; drafting and adopting a constitution and a land management plan to govern the administration and management of communal grazing lands.
4. **Filing an application to become a Communal Land Association:** submitting an application for the formation of a Communal Land Association with the District Registrar; convening a community meeting with the Registrar, at which time the community formally agrees to incorporate as an association and elects three to nine Communal Land Association officers.
5. **Formally documenting community lands:** surveying or taking GPS measurements of the community land; submitting an application for either a CCO or a Freehold Title.

The legal procedures set out in the Land Act 1998 gave the communities' work an internal momentum and clear direction: communities were educated about the full arc of the process and guided to successfully complete each step. To help communities through the process, LEMU produced a *Guidebook to Community Land Protection* that explains in detail how communities may follow the Land Act 1998 to seek documentation of their communal lands.<sup>66</sup>

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66 See <http://www.namati.org/tools/protecting-your-communitys-land-information-leaflet-uganda/> for the full guide.

Due to their complexity and depth, the boundary harmonization and Communal Land Association constitution drafting efforts were undertaken in tandem, as they each required extensive discussion and iterative deliberation. The work was time-intensive and difficult, necessitating hours of meetings each week, most of which, due to the project's design, took place without LEMU's direct involvement.

This section first describes LEMU's efforts to identify the study communities and prepare them to begin the community land documentation work. It then describes the communities' experiences undertaking the community land documentation activities and details all short-term impacts of these efforts, according to the following subject headings:

- **Conflict resolution and prevention**, describing the boundary harmonization and boundary tree-planting process.
- **Intra-community governance**, detailing the Communal Land Association constitution-drafting process.
- **Conservation and sustainable natural resource management**, encompassing the land and natural resource management plan-drafting process.
- **Formal application and documentation**, encompassing communities' efforts to survey their land and apply for land documentation for their customary claims.

The section concludes by describing the various obstacles the study communities confronted as they worked to complete Uganda's Communal Land Association formation and land documentation processes. Of particular note is that while the project faced multiple obstacles, the single largest challenge LEMU faced was the loss of study communities over the duration of the project. Although they had volunteered to participate, communities began to withdraw from the project almost immediately. The most common cause for community rejection of the project was the influence of one or more elite or powerful individuals who – fearing loss of lands they had already appropriated in bad faith or a restriction of the amount of land available to claim in the future – took steps to cause opposition to the project within their communities. These individuals often worked to convince their fellow villagers that LEMU's underlying motive was either to steal the community's land or to identify free land that the Ugandan government could grant to investors. In other words, intra-community land grabbers convinced their neighbours to reject the project by persuading them that LEMU was plotting to steal the community's grazing land, and was therefore not to be trusted. This proved to

be a significant challenge, and threatened to seriously compromise the validity of the randomized control trial.

To preserve the integrity of the research design, LEMU quickly identified and added 14 more sites to the original group of 20 communities, for a total of 34 communities that initially volunteered 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 their Communal Land Association constitutions. Only five of these applied for Communal Land Association incorporation. Four of the remaining twelve communities were control communities. The other 22 communities rejected the project. This trend is in and of itself a finding that should be carefully considered in all future efforts to support community land documentation and protection.



Community members in an education-only community review the "How To" guide produced by LEMU.

## Project introduction: “Community” creation

Before undertaking community land documentation efforts in a given community, it was necessary for LEMU to spend many weeks identifying the owners of the grazing lands to be documented and establish an effective method of working with all adult owners (often more than 1,000 adults and their families, distributed across various villages, with various clan affiliations).<sup>67</sup> This process was complicated by the fact that not all owners held the same ownership rights to the lands in question: some held access rights, others use and access rights, and still others held full ownership rights.

To avoid disenfranchising villages or minority clans within each village, or privileging certain villages or clans over others, before beginning the community land documentation process it was necessary for LEMU to:

- Unite the various villages with ownership rights to the grazing lands;
- Understand which villages had use and access rights to the land in question and ensure that they were included in the land documentation activities; and
- Establish a mechanism for ensuring representation throughout the project activities for all of the clans with ownership claims to the land.

To achieve this, LEMU held at least six meetings in each community over a three-month period. These meetings were designed to prepare the “owner and user villages” to come together with their neighbours and decide upon strategies that would enable them to act as a coherent whole or single unit during the land documentation process. During these meetings, LEMU worked to ensure that all the villages involved understood and agreed on the need to take joint action to protect their communal lands. LEMU also took the opportunity to educate communities about their legal rights under the Land Act 1998 and to teach them about the full arc of the community land documentation process.

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<sup>67</sup> This task was made more difficult by the overlapping and nested social structures within these village units. In the past, clans (a customary family/tribal grouping) corresponded with villages; one clan would make up a village and would be the owner of that village’s nearby grazing lands. However, due to internal migration, violent conflict and other social factors, villages in northern Uganda are now generally composed of individuals from up to 20 different clans, making land ownership claims – and the customary leadership structures responsible for managing those claims – tangled and multifarious.

## Box 2. Defining “Community”

Defining each “community” proved to be an exceptionally difficult endeavour. In northern Uganda, each communal grazing land is generally shared by up to seven separate villages, each of whom have different degrees of ownership or use rights, depending on such factors as: proximity to the grazing land, past use, clan ties, and others. As a result, accurately identifying the authentic users and owners of each grazing land proved to be a significant obstacle to the project’s successful implementation. LEMU’s efforts to identify the members of each community were further complicated by:

1. The nested quality of rural social organization in Northern Uganda;
2. Overlapping inter-community definitions of authority, territory, and identity, linked to historical fractioning and division of social units;
3. Common areas shared between villages that self-identified as separate entities;
4. Differences between customary and administrative/state-drawn boundaries;
5. Ecological changes and infrastructure development; and
6. Competition over scarce natural resources that impacted villages’ desires to cooperate with one another.

Early in the project, some communities purposefully excluded certain villages from LEMU’s awareness, so as to legally claim more land for themselves. As the realities of who actually owned and used each grazing land came to light, LEMU’s field team had to continually configure and reconfigure its understanding of the study communities’ compositions and adjust its strategy to ensure that all villages with ownership and use rights were included in the land documentation process. Such miscommunications and manipulations aroused suspicion among those villagers who felt excluded from the process; some of these communities accused the project team of conniving with the villages nearer to the grazing land to sell the grazing lands for personal profit.

Once properly identified, it thereafter proved difficult to unify the various villages into one “community” group on the basis that they shared rights to a common grazing area. This challenge extended to every detail of the project: the various villages in a community often debated over where the project meetings would be held, which leaders could chair the meetings,

and which villages or clans the Community Support Persons should come from. Such decisions often became the subject of complex intra-community/inter-village power negotiations. In communities composed of more than two distinct villages, completion of community land documentation activities took much more time and energy (on the part of both community members and LEMU's field team). In communities composed of more than four separate villages, inter-village conflicts at times either fully stalled project efforts or led to the communities' rejection of the community land documentation work.

Moreover, despite having been invited in to support community land documentation, it often happened that at some point in the documentation process one village within a community would reject the intervention. In such instances, even if the rest of the villages in the community wanted to continue to seek documentation for their lands, it was not possible to move forward. Requiring that all relevant villages proactively accept the project before beginning activities proved to be an insufficient safety mechanism, as villages changed their mind mid-process.

To facilitate the community land protection process, LEMU asked communities to create:

- A mobilization strategy to ensure that all residents of all villages with ownership and use rights would be involved in relevant community meetings;
- A plan for how the villages would work together throughout the process;
- An established meeting space for project meetings, or a fair system of rotating the meeting location through all of the villages.

Although not an explicit component of the Communal Land Association creation process, LEMU deemed it necessary to devise an efficient method of ensuring full community participation and representation throughout the community land documentation process; it was simply not possible for the field team to work with and mobilize a community of over one thousand landowners on a monthly basis. To this end, LEMU supported the study communities to create "intermediary groups" of landowners to be responsible for driving the work forward.

To ensure equal representation within these intermediary groups, LEMU asked each clan in the community to select one man and woman as their intermediaries, emphasizing that the communities choose intermediaries who could be trusted to attend meetings, play an active role in the titling process, represent their clan's interests during debates, and mobilize clan members to participate in all land documentation activities. The intermediary groups were also tasked with ensuring that vulnerable groups (particularly women and members of minority clans) were actively included and involved in all components of the documentation process.

LEMU devised this system to ensure that the election of intermediaries would not lead to exclusion of the minority clan members. However, an unintended outcome of this strategy of equal representation was that this arrangement — two intermediaries from all clans, each clan having an equal voice — had the effect of making all clans equally powerful, sometimes unfairly. For example, within the intermediary group, clans that represented 5% of the community population were given equal voice with clans that represented 80% of the community population. The majority clans were not pleased with this arrangement. Moreover, those two representatives from the larger, majority clans had far more mobilization and communication work than the two members of the minority clans.<sup>68</sup>

The intermediary groups proved to be critically important. They successfully persuaded their communities to devote the energy necessary to successfully complete each step of the land documentation process, ensured the active participation of all clans in each community, and worked to counter propaganda spread by intra-community land grabbers seeking to sabotage the project. However, in some communities the creation of the intermediary groups inadvertently provoked power clashes with existing leaders/managers of the grazing land: some existing grazing land leaders felt that the intermediaries' role in the process threatened their authority.<sup>69</sup>

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**68** In the future, it may be preferable to shift towards a different system of selecting intermediaries; one possibility would be to establish the group in a manner that would be more representative of the size of each clan. Although this system has the potential to marginalize minority clans, this could be remedied by mandating that all decisions be made by full consensus, which would equalize the minority clans' power.

**69** Such findings point to the potential dangers of NGOs creating new groups within communities. These observations suggest that it may be preferable to identify the existing local land management and administration bodies, strengthen their capacity, and then work through them. Alternatively, it may be wise to support each community to craft an intermediary group whose composition incorporates all existing trusted land managers, as well as women, members of minority clans, and other vulnerable groups.

The election of the Community Support Persons (CSPs) in the five “paralegal” study communities built upon the intermediary group structures. In these five communities, the intermediary groups were given the task of selecting or electing one man and one woman from among the intermediaries to become the CSP for their community. LEMU left the selection process in the hands of the communities, but stipulated a few selection criteria: the CSPs should be literate, possess a high degree of integrity and honesty, not be currently working with another NGO or holding a government position, and be highly respected by community members. After the intermediary group had selected or elected their CSPs, LEMU then facilitated meetings to seek wider community approval for their choices. LEMU then held a two-day intensive training course for the CSPs, and thereafter provided them with monthly training and supervision designed to build their capacity.



Community Support Person training.

LEMU also equipped the CSPs with bicycles, cell phones, copies of Uganda’s Land Act 1998 and Regulations, project information leaflets, and other relevant information. The CSPs were instructed to use their cell phones to call LEMU at any time with questions or for help with any obstacles or challenges they confronted.

## Conflict resolution and prevention: Boundary harmonization

The boundary harmonization process encompassed the following activities: community mapping of the grazing lands to be documented; negotiation with neighbours to come to agreement of the limits of the grazing lands; conflict resolution when agreements could not be reached; and boundary demarcation, which was accomplished by planting “boundary trees” along the agreed limits of the grazing lands. Each of these processes, and their short-term impacts, are described below.

### Community mapping

Before beginning the boundary harmonization activities, LEMU supported communities to draw maps of their common grazing lands. These maps were designed to help communities to identify and catalogue all natural resources located within the grazing land and determine the clans and families with ownership, use or access rights to these resources.

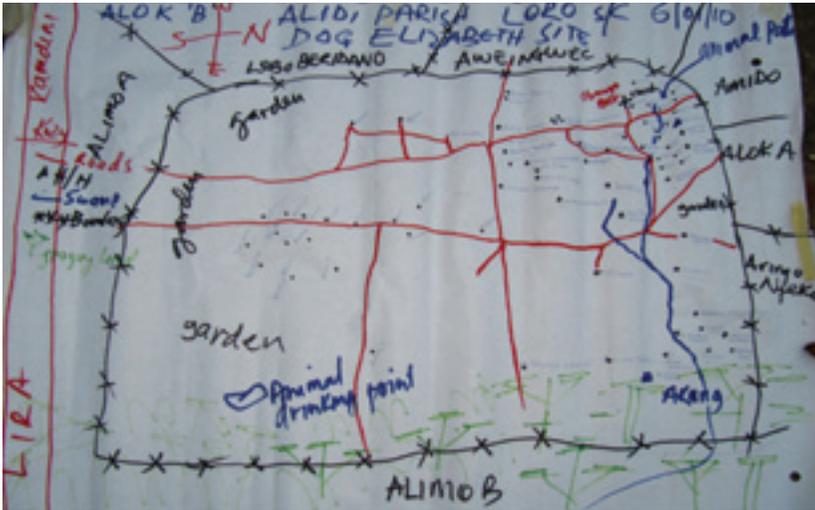
The mapping exercises were especially important in those communities where a great deal of the grazing lands had been encroached upon by the community members themselves. In such instances, the mapping served both to clarify the previous boundaries of the grazing land as well as identify the encroachers. Because the mapping created a public, visual representation of the encroachments and publically exposed the identity of the encroachers, the process caused intra-community conflict. In some instances the map-making process motivated encroachers to take action to undermine their community’s land documentation efforts.

The map-making process also aroused immediate suspicions.<sup>70</sup> Community members were hesitant to admit that any common grazing land remained, as they feared that by identifying their grazing land’s existence they would expose it to land grabs by local elites. Community members were concerned that drawing a map of their grazing lands and natural resources would make these resources “legible” to outsiders, and thus more vulnerable to bad faith appropriation.<sup>71</sup> This sentiment pervaded, even in communities that had welcomed LEMU and expressed a desire to better protect their lands. LEMU’s field team heard members of some communities make statements such as, “The map has been taken, expect the worst!”

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**70** The suspicions were exacerbated by a top-down mapping process; unfortunately, the initial maps were drawn not by the community as a whole, but by LC1s and customary managers of the grazing lands. These maps indicated all village residential areas, the community population and composition, and the location of all grazing lands, water sources, and other natural resources. However, because few community members were involved in this exercise, it led to suspicion; in many communities the LCs were threatened for “conniving with LEMU” to sell the community’s land. According to a focus group of elders, “The experience was not good ... because the community was suspicious as to why LEMU wanted us to draw the map.”

**71** James C. Scott, *Seeing Like State: How Certain Schemes to Improve the Human Condition Have Failed*, New Haven, Yale University Press (1999).



Map of Dog Elizabeth's communal grazing lands.

Positively, many months later, after harmonizing the boundaries of the grazing lands, communities re-drew their maps together, as a group. The post-boundary harmonization mapping efforts drew wide approval from community members. When undertaken in a fully participatory manner, the map-making experience proved to be a positive experience. Focus groups described how simply seeing their community land represented in map form was helpful. Focus group participants explained that the mapping “made those who did not know of the communal land boundaries became aware. This helped us to know the boundary of our land which we used not to know.” Similarly, focus groups indicated that the map-making helped them to feel a new sense of tenure security: a focus groups of elders reflected that, “We learned that a map helps to protect our land from outsiders.”

Such observations indicate that the mapping process should only be undertaken after all community members have understood and accepted the project, and trust has been established. The full community should then be convened for all mapping activities until the boundaries are harmonized, any and all land conflicts resolved, and boundary trees planted. Women and men should draw maps in gender-based groups to ensure that all voices are heard, and the maps should be publicly discussed to ensure that everything has been mapped fairly and accurately. In instances when it is necessary for community leaders to draw maps, all community members should be informed in advance of the reason for the exercise, and no map should be finalized without the approval of the whole community.

## Boundary harmonization negotiation and resolution of boundary conflicts

The boundary harmonization process was the most challenging component of the community land documentation process for all communities, as it forced communities to address and resolve all existing boundary disputes. The process not only unearthed every latent, unresolved land conflict related to the grazing lands — long dormant or festering for years — but also created new boundary disputes that flared up in response to the impending documentation efforts. Furthermore, the very exercise of drawing definite boundaries created a situation in which people were jockeying to claim as much land as they could before the boundaries were finalized.

*Every study community in Uganda had at least one boundary conflict. In total, LEMU counted 423 land conflicts among the study communities.*

LEMU observed that when intra-community conflicts arose, community cohesion and cooperation often weakened, and rumours 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. Meanwhile, 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 neighbours.

Every study community in Uganda had at least one boundary conflict. In total, LEMU counted 423 land conflicts among the study communities; 134 of those internal conflicts were in five of the communities that eventually rejected LEMU's services. These communities' high incidence of internal conflict was likely a significant factor in their rejection of the project. **The remaining study communities reported an average of 19 intra-community conflicts and 1.2 inter-community conflicts.**

Land conflict resolution was therefore a critical component of the community land documentation process, and a significant part of the field team's work. Anticipating the work involved in proactively addressing longstanding boundary disputes, LEMU trained community members in mediation and dispute resolution techniques before the start of boundary harmonization efforts. After the conflict resolution trainings, unless asked to intervene, the field teams left all but the full-service communities to negotiate boundaries with their neighbours on their own.

Interestingly, many of the full-service groups requested to be left to do this on their own, perhaps out of a desire to not “air their dirty laundry” in front of outsiders.

Communities tended to engage LEMU for conflict resolution support only (1) when faced with long-standing or particularly virulent land disputes, (2) when local leaders proved unable to confront the task, or (3) when their negotiation efforts failed and a boundary dispute erupted. In such instances, LEMU provided conflict resolution services to all non-control treatment groups, as the field team deemed it risky to deny communities mediation support in the face of a potentially violent conflict. When the situation warranted it, LEMU also called in clan leaders and government officials to support its dispute resolution efforts.

LEMU observed three main kinds of conflicts related to boundary harmonization:

- Intra-community conflicts that involved people living at the edges of the grazing land who had encroached across the border and planted their crops within the common areas;
- Intra-community conflicts that involved people who had moved into the middle of the grazing land and either built a home or cultivated farms; and
- Inter-community conflicts in which the location of the line dividing each community’s land claims or ownership rights was contested.



Community map showing the location of intra-community boundary encroachers.

LEMU observed that when addressing **intra-community** conflicts concerning community members who had encroached into the grazing lands without permission and in bad faith (by building homes and planting crops), communities generally arrived at three main resolutions:

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

LEMU observed that the communities knew exactly where the boundaries of the grazing lands lay, and the encroachers knew the rights of the community to eject them.

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.

Boundary conflicts involving people who had simply moved into the middle of the grazing lands were usually addressed by giving those families or individuals a deadline of 6–12 months by which they had to leave. LEMU observed that communities were fair and did not make decisions that rendered community members landless or dispossessed them of their only lands and home. In some instances, where the individual or family living within the grazing lands had no other land and had ended up there because of their vulnerable status such as widows, elderly men with no children, etc. – the community found and conceded alternative land at the edge of the grazing lands to them. For the families that were simply land-grabbers, encroaching despite having ample other lands, the community did not make such concessions, but simply maintained that they should leave after the agreed period.

*LEMU observed three main kinds of conflicts related to boundary harmonization:*

- *Intra-community conflicts that involved people living at the edges of the grazing land who had encroached across the border and planted their crops within the common areas;*
- *Intra-community conflicts that involved people who had moved into the middle of the grazing land and either built a home or cultivated farms; and*
- *Inter-community conflicts in which the location of the line dividing each community's land claims or ownership rights was contested.*

The **inter-community** boundary disputes tended to be based on deep and long-standing power struggles related to territory, resources, affiliation, and control. In such instances, LEMU observed that the communities arrived at a resolution by:

- Agreeing, more or less, with one community's definition of where the boundary lies;
- Splitting the difference between the described boundaries, with each community conceding half the land they believed to be theirs; or
- Locating and compromising on the colonial or administrative boundary.

LEMU observed that both intra-community and inter-community boundary conflicts were generally resolved by compromise; communities that were prepared to make concessions or compromises to swiftly resolve their boundary conflicts were able to move much 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 protect the remaining few hundred hectares. Their emotional focus was to protect the whole; communities who refused to compromise over a few hectares (or sometimes meters) tended to be more emotionally attached to the conflict, which at times, they continued to fuel as a way of hindering the other community's progress through the land documentation process.

For example, LEMU's field team mediated three boundary conflicts between four communities with overlapping ownership, and use/access rights to the same large grazing land. Each of these disputes had different roots, and therefore required different concessions, compromises, and resolution strategies:

- A boundary conflict between the communities of Teaduru and Okere was easily resolved because these communities were located in the same parish and therefore thought of themselves as "brother" communities. As such, they felt compelled to find a way to resolve their dispute and move forward amicably. Moreover, their boundary conflict was only over a small area of land, and each community felt that it would be less of a loss to compromise and lose some land than to fight with their "brother." They resolved their conflict by agreeing to use a relevant and pre-existing village boundary as their formal dividing line.

- The boundary conflict between the communities of Akwic and Teaduru also centred around a very small area of land – roughly 50 meters – and was resolved by reference to an existing boundary: an elderly man who had worked as the Parish Chief during the colonial era was called in to identify the boundary. He located the boundary by searching for the black stones that were laid down by colonial administrators at the time when Uganda was a British Protectorate.
- In contrast, the boundary conflict between the communities of Wilyec and Teaduru remains unresolved to this day – after more than eight months of mediation – despite the existence of a clear administrative boundary that divides the communities. The dispute endures because it is not truly about the land in question, but an outgrowth of an intra-clan war, inflamed by a few strong personalities. The same clan is spread between Wilyec and Teaduru, and the disagreement that caused the clan to split into two many years ago is at the root of the boundary conflict. In the years since their split, this intra-clan dispute has only deepened, and the two communities have sued each other over other matters. Despite various attempts at mediation – involving LEMU, the LC3 of Iceme Sub-County, the Sub-County Chief, the Area Land Committee, and the Chairman of the Grazing Lands for Iceme sub-county – the conflict remains unresolved and is now in court.<sup>72</sup>

**In sum, communities reported holding up to a dozen separate meetings with their neighbours – over a period of anywhere from two to ten months – to successfully harmonize their boundaries.** Positively, as a result of their efforts, communities successfully resolved a number of on-going land conflicts, some of which had been festering for generations. One community member reported to LEMU that as a result of resolving a longstanding land conflict in the village, “People who could not look one another in the face for years are now laughing together.”

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72 LEMU has continued to provide mediation and legal support for this conflict and others like it.

## Boundary demarcation: Boundary tree planting

Upon the successful harmonization of the boundaries of their communal lands, LEMU supported communities to document and mark agreed boundaries by planting trees as physical markers of these limits and to draw new maps to document the newly agreed boundaries of the common grazing land. Communities generally chose to plant the customary Omara-omara (jatropha)<sup>73</sup> tree around the perimeter of their grazing lands. LEMU observed that while men tended to dominate the harmonization negotiations, women most often undertook the physical labour of boundary tree planting. During this process, all families whose lands share a boundary with the grazing lands were present to supervise and approve the boundary tree planting along the edges of their property, watching vigilantly to ensure that their land claims remained intact.

*Communities will unquestionably need state support for the enforcement of their agreed boundaries over time. Government officials' support will be key in efforts to help communities to deal justly with encroachers and maintain all agreed and documented boundaries.*

In some instances, 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 moment of tree planting. LEMU observed that as the trees were being planted, some families tried to again defend their encroachment into the grazing lands and retract their agreement to the agreed boundaries.

Moreover, in the months following the boundary tree planting, some communities reported to LEMU that at certain points along the boundary, they have found boundary trees uprooted, which they promptly replanted. Noting this, one women's focus group described how, "The [boundary tree planting] process was fair. Conflicts were common, but the outcome was good. The whole community was involved. We feel satisfied. [However,] others still came up to disorganize the community even after boundary trees were planted."

Such instances likely point to the fact that seemingly-resolved boundary disputes and encroachments will likely emerge or re-emerge over time, despite the existence of the boundary trees and maps. As land scarcity continues to rise, encroachments will likely become more prevalent. As such, communities will unquestionably need state support for the enforcement of their agreed boundaries over time. Government officials' support will be key in efforts to help communities to deal justly with encroachers and maintain all agreed and documented boundaries.

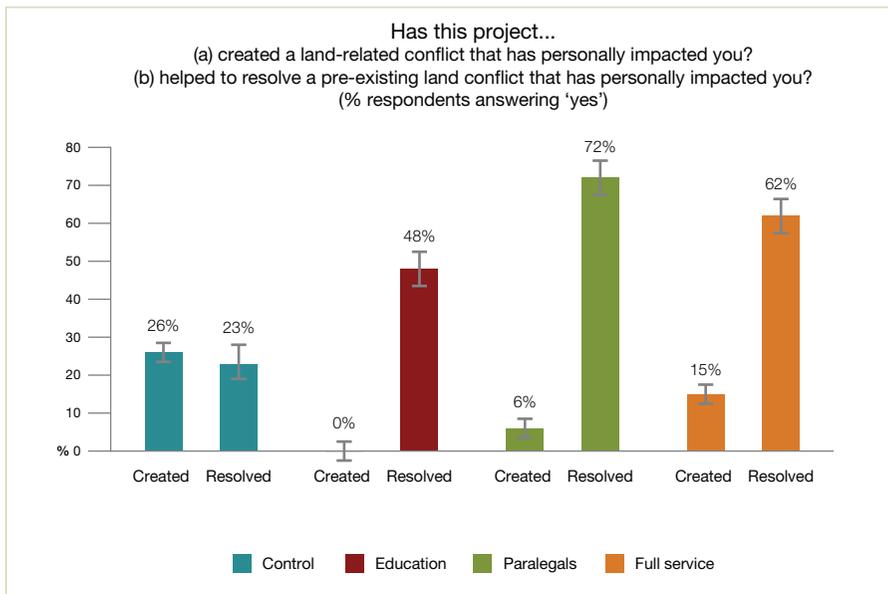
<sup>73</sup> This tree was selected because it is readily available and whole trees can grow out of branches stuck into the ground, making it easy to plant them in clean, fence-like lines.

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

### Creation and resolution of land conflicts

The data concerning the project's direct impact on community conflicts are positive and highly significant. When asked if the project had either directly resolved or created a conflict that personally impacted them, survey respondents indicated that the project activities resolved far more conflicts than it created.

**Figure 2: Project impact on community land conflicts**



Averaged across the three treatment groups, 62% of post-service survey respondents reported that the project had directly contributed to the resolution of a land conflict in their community. Notably, the data indicate that the paralegal treatment supported the resolution of land conflicts most effectively: a full 72% of respondents in the paralegal treatment group reported that the project had helped to resolve a pre-existing land conflict in their community. When asked to describe the conflicts that the community land documentation activities helped to resolve, most survey respondents spoke not of a personal land conflict, but of a community-level conflict. They reported that the project had:

- **Reduced land conflicts in the community by securing the communal grazing lands:** “It helped us to secure our community land;” “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;” “It helped remove people who had encroached on the community lands;” and “Some people were using the common land for selfish gains but now the problem is now solved.”
- **Reduced land conflicts with neighbouring communities:** “It has stopped neighbouring communities from rivalling;” “It helped to stop non-community members from grazing their animals on community land”; and “We had conflicts with neighbours, but because of the sensitization it has reduced tremendously.”
- **Taught land conflict resolution techniques that communities can use to address future disputes:** “It taught us how to solve land conflicts”; and “It taught us on how to settle land disputes among our community by planting trees on our boundary demarcations.”
- **Led to greater community unity and cohesion, which respondents also described as “reducing conflict:”** “It settled land disputes among community members by helping them have a common understanding;” “It made people understand the importance of coming together as a community and brought unity among members;” and “It settled land disputes among community members by helping them have a common understanding [about the boundaries] and planting boundary trees.”

In contrast, averaged across the three treatment groups, **only 7% of post-service survey respondents reported that the project had directly contributed to the creation of a land conflict in their community.** When asked to describe the community-wide conflicts that the project had directly helped to create, respondents tended to describe three situations:

- LEMU was a land-grabber scheming to steal the community’s grazing lands (“LEMU takes away peoples land” and “There is a belief that LEMU wants to grab communal land which belongs to specific people”);
- The community land documentation work brought underlying anger to the surface and caused the community to reclaim grazing lands from encroachers, thus creating conflict (“LEMU has incited the people to grab my land” and “The affected people who are cultivating communal land feel hated”); and

- The project’s focus spurred land grabbers to more aggressively claim grazing lands in advance of any demarcation and documentation (“There is a family which is claiming that the communal land belongs to their grandfather and this has caused conflict” and “Two families started claiming communal land after the LEMU project”).

Importantly, a full 26% of respondents in the control group reported that the project had directly led to a conflict in their community. This response 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 accompanying conflict resolution and mediation support.<sup>74</sup>

### Potential areas of future concern relative to tenure security

The overall goal of community land documentation is improved land tenure security. By supporting communities to document and protect their lands, LEMU hoped to contribute to the strengthening of community members’ actual and perceived sense of tenure security. However, the short-term impacts on tenure security show mixed results.

Overall, in the study communities that successfully harmonized their boundaries, the resolution of long-standing land conflicts appears to have had a positive impact on land tenure security. Focus groups in these communities tended to describe the process positively, stating: “We felt satisfied. All the community members and different clan representatives were present [for the boundary harmonization], sitting together in a meeting and planting boundary trees. It was fair, and the outcome was good: the rights of all were protected!;” “The outcome is good: now no more outsiders can cut our trees from the communal land;” and “We feel good because we now know our boundary well and we are also

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<sup>74</sup> Now that this research has concluded, LEMU is addressing the situation by providing legal support to the control group.

aware of land rights.” In contrast, in the communities who failed to harmonize their boundaries, the boundary harmonization exercise tended to elicit a sense of frustration and disappointment.<sup>75</sup>

Unfortunately, at the time of the post-service survey, due to the lack of a District Registrar in Oyam District, the study communities had not yet been able to complete the community land protection process and had therefore not been issued documentation of their land rights.<sup>76</sup> Likely as a result, when the post-service data is analysed against the pre-service data, the results indicate little to no change in tenure security across treatment groups.<sup>77</sup> When asked, “Are you confident or unsure that you will be able to maintain your current rights to shared common areas?” the percentage of respondents that replied that they felt either “very unsure” or “somewhat unsure” increased for all treatment groups.

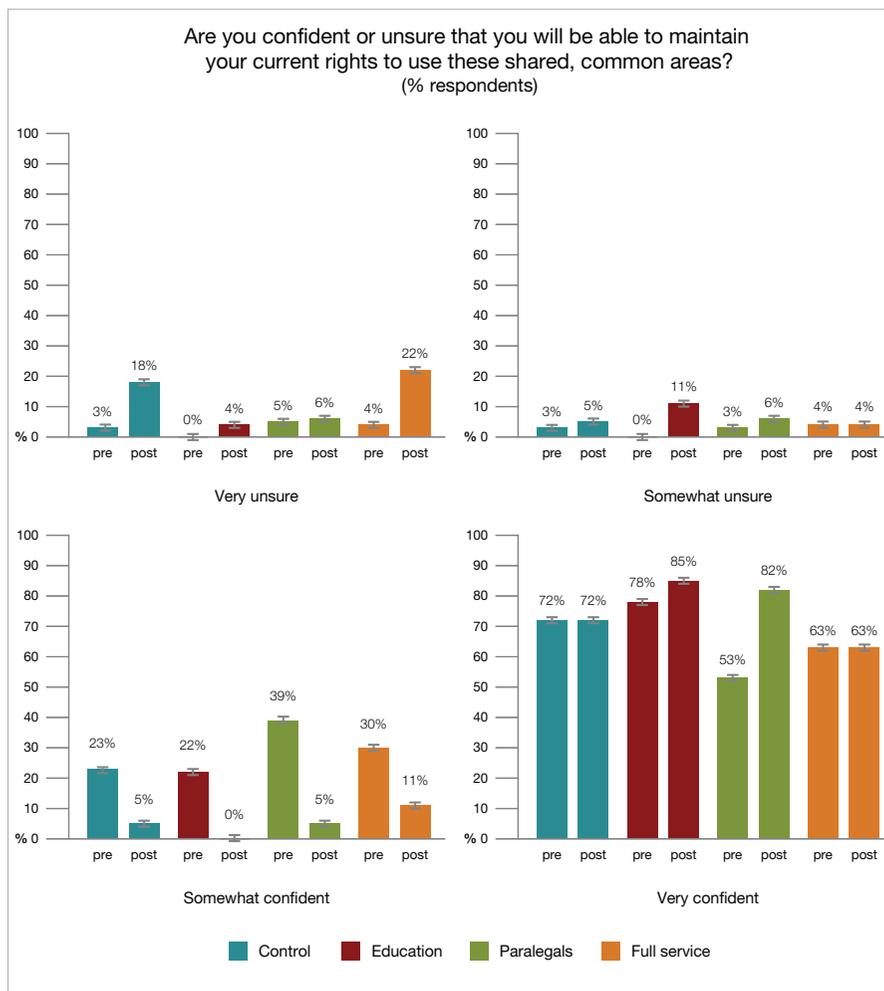
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**75** Some groups that failed to complete the boundary harmonization activities reported that they nevertheless found the exercise worthwhile. For example, one focus group explained: “The people who did the work were good and peace loving. It was peaceful and uniting, and the outcomes have been very good because it has reduced unlawful encroachment into the community land.”

**76** As explained in greater detail below, for those communities who persevered successfully through the community land documentation process, the greatest impediment to their success has been the Ministry of Land’s failure to appoint a District Registrar to Oyam. The lack of a District Registrar fully stalled forward movement and impeded communities’ ability to submit applications for formal title to their common grazing lands.

**77** This is particularly evident when looking at the overlapping error bars. The majority of bar graphs in this report show the percentage change between the pre- and post-service respondent data. 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). C.D. Schunn, “Statistical significance bars (SSB): A way to make graphs more interpretable,” (Unpublished manuscript, 1999).

**Figure 3: Confidence regarding ability to maintain current rights to shared common areas**



These results are likely due to the impact of the yet-to-be-completed community land documentation activities; the data illustrate that it is critical to see the boundary harmonization and documentation processes through to their successful completion. One possible explanation for the decrease in respondents' perceived tenure security is that, as explained above, the very act of starting the documentation process exposed existing land conflicts and 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.

*If not seen through to the successful issuance of a CCO or Freehold Title for community land claims, the community land documentation process may actually open up new conflicts, further expose communities to opportunistic elites, and increase tenure insecurity.*

If not seen through to the successful issuance of a CCO or Freehold Title for community land claims, the community land documentation process may actually open up new conflicts, further expose communities to opportunistic elites, and increase tenure insecurity.



Community members negotiate and mark the limits of their communal grazing land.

## Main findings

1. **Map-making is not a neutral activity.** In Uganda, the mapping exercises exposed all bad faith appropriation of community lands. As such, map-making 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 are planted or markers are placed. Moreover, mapping efforts identify a community's common areas and natural resources, and thus may make these resources more vulnerable to exploitation. To protect against this, mapping should only be undertaken once full trust has been established, and measures should be taken to ensure that the maps are kept safely by trusted community members.
2. **The boundary harmonization process not only unearthed every latent, unresolved land conflict related to the grazing lands — long dormant or festering for years — but also created new boundary disputes that flared up in response to the impending documentation efforts.** The very exercise of drawing definite boundaries created a situation in which people were manoeuvring to claim as much land as they could before the boundaries were finalized. 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 neighbours.
3. The results of the boundary harmonization exercises provide strong proof that **community land documentation is not merely about demarcation. Rather, boundary harmonization efforts are conflict-resolution exercises, and should be treated as such.** Facilitating agencies should proactively prepare for land conflict resolution to be a central component of community land documentation work. Facilitators should craft curricula and trainings designed to support open, non-violent communication during boundary negotiation, 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 model for community members how to resolve all local land conflicts, including family-level land disputes.

4. **The boundary harmonization process resolved many more conflicts than it created.** 62% of post-service survey respondents reported that the project had directly contributed to the *resolution* of a land conflict in their community, while only 7% reported that the project had directly contributed to the *creation* of a land conflict in their community. In the study communities that successfully harmonized their boundaries, the resolution of long-standing land conflicts appears to have had a positive impact on land tenure security.
5. **Once begun, community land documentation processes should be seen through to their successful completion.** If boundary conflicts are not fully resolved and harmonization efforts are left incomplete, the documentation process may contribute to increased conflict and tenure insecurity in the region. 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. They should also provide extensive conflict-resolution support throughout, until all land conflicts are successfully resolved.
6. **Communities will require state support for enforcement of agreed boundaries over time.** As land scarcity continues to rise, encroachments may become more prevalent. Government officials' support will be essential to efforts to help communities to deal justly with encroachers and maintain all agreed and documented boundaries.



Community members planting boundary trees to demarcate the agreed limits of their communal grazing land.

## Intra-community governance and land administration

### Drafting and adoption of community constitutions

Under Uganda's Land Act 1998, communities seeking to form Communal Land Associations must draft a constitution to govern all community land administration and management.<sup>78</sup> Although the Land Act states that "The officers elected...shall be responsible for preparing a constitution for the association,"<sup>79</sup> LEMU determined that to best ensure intra-community equity and justice over the long term, the full community should be involved in the constitution-drafting process.

As a result, the process of drafting Communal Land Association constitutions was necessarily iterative and lengthy, as it called for the transcription of previously unrecorded customary rules and hinged on full community engagement in the discussion and production of multiple drafts.

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**78** *Land Act 1998*, Section 17; accompanying Regulations *Third Schedule*, Regulation 81 (Contents of a Model Constitution of a Communal Land Association). The regulations set out the following: "Matters to be contained in a Constitution of an Association:

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

**79** *Land Act 1998*, Section 17.

To ensure that the constitution-drafting process was participatory, grounded in custom, representative, and transparent, LEMU, along with the intermediary groups and the CSPs, undertook intensive community mobilization efforts. Largely due to these efforts, a range of stakeholders, including women and youth, were fully engaged in the constitution drafting debates. Across all study communities, more people actively participated in the constitution and natural resource management plan drafting process than all of the other project-related activities.

The constitution-drafting process included the following steps:

### **Box 3: Communal Land Association constitution-drafting process**

1. The intermediary groups and all interested community members first compiled an initial draft of their community's existing norms and practices by brainstorming or "shouting out" all of the community rules that participants could remember, without comment, discussion or censor.
2. The intermediaries then took this brainstormed document back to their clans and villages for discussion, elaboration and clarification. These various clan/village drafts were then combined into one complete community-wide **first draft constitution**.
3. LEMU's field team then provided legal education concerning relevant sections of the Ugandan Constitution and national laws related to land use, women's land rights, inheritance law, human rights, and sustainable natural resource management. Throughout this process, LEMU stressed that communities could include any and all of their local rules in their constitutions, so long as these rules did not contradict Ugandan law.
4. The communities then sat together to review the compiled first drafts of their constitutions. In the process, LEMU supported community members to:
  - Add any rules they thought were necessary;
  - Modify or remove rules that no longer suit the community's purposes; and/or
  - Make all changes necessary to ensure that their draft constitution did not contradict the Ugandan Constitution or other national legislation.

LEMU directed communities to exclude any rules that could not be agreed upon by full community consensus. The resulting list of rules became their **second draft constitution**.

5. LEMU then collected the communities' second draft constitutions and reviewed them to ensure that the provisions were in alignment with the laws of Uganda. LEMU informed communities of any changes necessary to ensure alignment with national law and supported communities to make these changes. To facilitate full participation in the amendment process, LEMU typed up and photocopied the second draft constitutions for wide circulation throughout the study communities.<sup>80</sup>
6. Next, the communities came together as a whole to review and discuss their second drafts until agreement and unanimous acceptance of every rule was reached. The list of accepted rules became the **third draft constitution**. LEMU then reviewed this draft to verify that the constitutions covered the necessary provisions outlined in the Regulations and did not contradict Ugandan law.
7. Finally, after the third draft had been fully reviewed, discussed, and agreed upon, the community convened and formally voted to adopt it as the constitution of their Communal Land Association.

LEMU's Guidebook to Community Land Protection included instructions on the process communities should follow as they write their constitutions, as well as what these constitutions should include. Parts of these instructions are excerpted below.

<sup>80</sup> To this end, at first the intermediary group and the leadership of the grazing lands were instructed to distribute these draft rules in churches, at boreholes, at the trading centers, etcetera. However, this effort proved futile, as the majority of community members were not literate. Instead, the community leaders simply kept the copies with the Interim Committee Secretary and invited anyone who wanted to read them to seek a copy from the Secretary, or have it read to them.

## **Box 4: Writing a constitution for a Communal Land Association (Protecting your community's land, LEMU 2010)**

### **Writing your rules for the constitution of the Association**

You need a set of written rules, called the constitution of your Association. You can start with your customary rules, but you can make any new rules you want or change any old rules, as long as the members agree. If you find it hard for many people to discuss the rules together, you can choose a few people to discuss them first, but the rules must then be approved of by all the community members in a meeting. You should keep minutes of this meeting to prove that the members agree to the rules. Make sure that you also have a signed attendance list of this meeting. The rules of the Association must be checked by the Registrar. (If needed, the Registrar can help you in drafting your rules.)

### **Why do you need a constitution for a Communal Land Association?**

The Land Law requires that when a community wants to form a Communal Land Association, it must draft a constitution to help regulate their activities. This will help avoid confusion and conflict among Association members. It is important to have a law in place that sets out everyone's rights and gives responsibilities to the Association officers, restricts the officers' powers, creates clear penalties for breaking the rules of the Association, and clearly states how the communal land should be managed. A constitution also allows an Association to be registered as a 'legal person' capable of being sued and suing others.

### **Who should write the constitution? How should the constitution be written?**

The constitution must be written and agreed on by all community members. When writing a constitution, everyone's rights must be respected – that means that the constitution must carefully ensure the protection of the rights of men, women, widows, orphans, children, outsiders, and all individuals who currently use the land that will be owned by the Association – including the use and access rights of neighbouring communities! If community members find it difficult to sit together to draft their constitution, they can elect representatives from every clan represented in the community to do so. The community may also select leaders of the Association or an Executive Committee to draft the constitution. However, before it is finalized, the constitution must be presented for approval before all the members of the community. The community has the power to change this draft of their constitution before it can be approved by the

majority of the community members. The final draft of the constitution must be approved by all members of the community, or at least by a majority. The law states that the Registrar of Titles in the District may help the community draft and adopt its constitution.

**What should be included in the constitution of a Communal Land Association?**

Your Association’s constitution may include any rules you like, but it must not violate the Constitution of Uganda or any other national laws. When writing your constitution, there are important points that you must note and include, which are listed and explained below. These points do not cover everything that your community may choose to include in your rules; it is only a starting list. Feel free to add more rules that are necessary to your community. What is important is that the community rules should cover every problem that the community thinks may arise in the future and state how the problems will be resolve ... A constitution is subject to amendment, so if the community wants to change something in its constitution, it is free to make such changes as long as the people follow the procedures for changing the rules set out in the constitution.

LEMU anticipated that a thorough and inclusive process would take at least four months. Indeed, **communities required an average of six months of weekly or bi-weekly meetings to move from a first draft to a third and formally adopted final draft.** Reflecting the time intensive nature of this work, one focus group reported that, during the time period of the intervention, there was a “Constant holding of meetings.”

By the end of the study period, seven of the study communities had successfully adopted their constitutions. When instructing communities about how to prepare for the constitution adoption process, 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, the constitution could not be formally adopted. However, LEMU observed an average of only one-quarter of community members attended the adoption meetings. Community leaders reported to LEMU that those members unable to attend had informed them that they were in agreement with the content, based on their participation in writing the various drafts. The leaders also reported that the non-present individuals’ most significant concern was making sure that their names were listed as members of the Communal Land Association in the

final document. LEMU made sure that the lists of Communal Land Association members were fully comprehensive and included at least the male and female heads of every household in the community. However, 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 various rules as well as the adoption process itself.

To document and support the validity of the constitution-adoption process, LEMU took photographs and recorded the names of all individuals who had formally voted to adopt the Communal Land Association constitution.



Community members participate in a discussion about their Communal Land Association constitution.

LEMU observed that the process of turning the first drafts of the constitutions, many of which were quite rudimentary, into second, third, and final drafts proved to be particularly invigorating and interesting for community members; communities took the process seriously and engaged in authentic, animated debate. This was partly due to the fact that the drafting process provided communities with the opportunity to discuss local rules for the first time in living memory: members of all the study communities reported that their community's rules, norms and practices had never before been publicly debated. Moreover, the process allowed communities the space and time to question the purposes of the existing rules and to decide whether to keep or alter each rule to reflect community needs.

Describing the process, an elders' focus group explained how, "All the community members sat down and made the rules as a group. [The rules were] democratically made as people were allowed to discuss and agree on every rule. Everyone's opinions were heard and used." Another group of elders reported: "Community members suggested and adopted the rules together as a group. All the members participated in the process. The opinions of the people were listened to but only good ones were adopted." Similarly, a focus group of youths explained that: "It was democratic, everyone's opinions were listened to," while one women's focus group described how, during the meeting, "You just raise up your hand and suggest the rules [to be adopted]."

*Members of all the study communities reported that their community's rules, norms and practices had never before been publicly debated.*

Post-service focus group participants explained that the constitution-drafting process was extremely difficult for them, but that they eventually managed to move their discussions forward. One women's focus group explained that, "The constitution process was the hardest ... because most of the laws written were not coordinating with people's current use of the land." They reported that they only succeeded in reaching agreement when "new laws were put [in] to replace the ones causing conflicts." Notably, a group of community leaders described that during the constitution-drafting process, "Some people were suggesting rules that would favour them at the disadvantage of others" and that this caused conflict until the community decided to adopt "only rules and regulations that favoured every member of the community."

Yet the constitution-drafting process proved to be insurmountable without LEMU's direct involvement. While LEMU assisted the full-service communities through the minutiae of this process, it left the education-only and paralegal

treatment communities to complete the constitution-drafting process on their own, supported by relevant monthly legal education and capacity building trainings. Unfortunately, **every one of the education-only and paralegal treatment communities failed to move past a second draft constitution without LEMU's support.** It should be noted that although LEMU supported communities to complete their third draft constitutions, each rule formalized in the documents reflects a full community consensus; rules that could not be agreed upon by full consensus were eliminated before the final draft.

A central finding is therefore that the **Communal Land Association constitution outline set out in the Land Act 1998 Regulations' Third Schedule is too complex and extensive for rural communities to successfully complete on their own.** While communities did their best to establish the rules in alignment with the subject headings set out in the Regulations, their rules often lacked the kind of detail necessary for a formal legal document. For example, when called to establish procedures for the election and impeachment of office bearers, many communities simply wrote, "Elections will be carried out" but did not provide procedures for election or specify the leadership positions to be elected. Furthermore, LEMU observed that asking community members to reflect on entirely new concepts such as "dissolution of the association" provoked extreme debate and complicated what were otherwise clear discussions. For example, one community's first draft asserted that their Association "would never be dissolved because we will always keep cattle."

LEMU's field team worked hard to address these gaps by generating community discussion of communities' existing governance systems. Yet, despite months of legal education, the communities reported to LEMU that they were "stuck," did not know what kind of details to add, and needed LEMU's assistance. After refusing requests for help and allowing the communities to struggle for more than three months, LEMU noted their lack of progress as a finding and then stepped in to support all communities to arrive at a third and final draft.

A second central finding is that **the process of transcribing customary norms and practices into written rules proved to be conceptually difficult for communities.** LEMU observed that when simply asked to "shout out" existing rules and norms, community members could easily articulate local rules for land and natural resources administration. However, all ease ended when communities tried to record their rules according to the mandates of the Land Act 1998: LEMU observed that complex concepts that community members had debated confidently suddenly became bewildering when trying to capture them in written form. Low literacy levels in the community only intensified the difficulty of this exercise.

To address these difficulties, LEMU found it necessary to keep the constitution-drafting process very flexible at the beginning, allowing as much space and freedom as possible for communities to capture their unwritten rules and practices in whatever form best suited their capacities. Only after the communities had fully discussed and recorded their existing rules did LEMU guide community members to address additional topics laid out in the Regulation's Third Schedule in subsequent drafts.

A third key finding is that **the process of transcribing previously unwritten rules must be very deftly handled, as what is not captured may be, by omission, negated, or inadvertently prohibited.** The shift from oral to written rules runs the risk of failing to capture community practices that are so fully taken for granted that they do not even occur to people as being "rules." For example, communities repeatedly failed to list mundane substances, such as mud or gravel, as important resources necessary to housing construction that needed to be regulated.

**Most critically, more inclusive rules and practices that benefit vulnerable community members may be (intentionally or unintentionally) omitted if the beneficiaries of such practices are not present to remind the group of their existence.** To address this, LEMU found that it was necessary to take direct action to ensure that vulnerable groups were included in the constitution-writing process and that unspoken practices were not erased in the process of transforming unwritten rules to written rules. For example, even though women's land rights are protected by a variety of customary edicts and practices, the articulated rule is generally that "land passes through the male bloodline." LEMU therefore found it necessary to actively lead communities to discuss such issues in depth to ensure that the transition from oral to written did not undermine — by omission — more inclusionary practices.

## Election of Communal Land Association Executive Committees

In preparation for the elections of Executive Committees (and as required by the Regulations Third Schedule), the communities included provisions governing how these elections will be conducted in their Communal Land Association constitutions. Unfortunately, none of the study communities were able to elect their Executive Committees during the project period because Uganda's Land Act 1998 mandates that the election be conducted in the presence of a District Registrar of Titles. Despite multiple formal requests by LEMU for the appointment of a Registrar in Oyam District, one has not yet been appointed to date. Consequently, both the elections and the completion of the Communal Land Association Registration and Certification process remain stalled, awaiting government installation of a Registrar or appropriate Ministry of Lands official to oversee and facilitate these procedures.

It remains to be seen how the communities will compose their Executive Committees. Some communities reported that they will not change the leadership of their community lands, but will simply confirm the current members of the Grazing Land Committee as the new Executive Committee. Other communities have reported that they plan to use the opportunity to replace the untrusted or incompetent Grazing Land Committee members. It is likely that the communities' first Executive Committees will be composed of both trusted and credible members of existing customary bodies as well as a few female and youth representatives, as set out in the Land Act 1998 and the communities' Communal Land Association constitutions.

## Findings: Impacts on local governance

The study communities' rule changes concerning intra-community governance evince significant shifts in community conceptions of democracy, leaders' downward accountability, and the equitable administration of community lands and natural resources. Specifically, the constitution-drafting process appears to have made three key impacts on local land governance: first, the constitution-drafting process appears to have strengthened the enforcement of existing customary rules for sustainable management of the communal grazing areas. Second, there appears to have been some transfer of decision-making authority from local customary and state leaders to the community members themselves. Third, in the communities where there was weak

leadership, community members instituted new mechanisms to hold leaders downwardly accountable and improve leadership. Furthermore, the communities' constitutions reflect community members' increased awareness of Ugandan law, and a newfound intent to align local penalties for infractions with state laws and institutional remedies. These trends are described below.

### Strengthening and enforcing customary rules

Across all study communities, focus group discussions conducted prior to project implementation revealed fairly consistent sets of unwritten customary rules governing local grazing lands. Focus groups described rules that generally revolved around:

1. Prohibitions against encroachment designed to maintain the sanctity of the common area for community use, such as: “no individual or family farming within the common grazing lands;” “no planting trees in the grazing land;” and “no building homes within the grazing land.”
2. Regulations concerning the use of the common areas (who may use the land and resources, at what times of year community members may practice certain activities, etc.). For example, communities had different rules for grazing land use during the rainy season and the dry season, and some communities prohibited hunting, beekeeping, and “traditional rituals.”
3. Prohibitions designed to ensure the sustainable use of common natural resources, including the strong mandate that while it was permissible to gather firewood for household use, it was prohibited to cut down trees in the grazing land to make charcoal for sale.<sup>82</sup>

Focus groups explained that these rules served various purposes, namely: to protect the grazing lands and prevent encroachment; to prevent animals from destroying families' farms and crops; to protect and promote the health of cattle; to promote sustainable natural resource management; to prevent and reduce conflicts and disputes; and to make sure that community members

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<sup>82</sup> When asked if the rules had “always been like this” or if they had changed; 72% of focus groups explained that their rules have always been the same, while 28% explained that indeed they had changed. The most frequent explanation for the change was the 1980's Karamojong cattle rustlers' theft of all cattle in the Lango region, 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.” Groups also explained that the violence waged by the Lord's Resistance Army (LRA) further undermined local practices and rules. They described that “People used to follow the rules but when the Lord's Resistance Army rebels came, some leaders were killed, the books which contained rules were destroyed, so we just have to sit and discuss the rules afresh.” Another group said, “We had rules but the rebels came and things got disorganized, the community is just making the rules now.”

acted responsibly. Focus groups explained that these were their rules simply because they were “handed down by our forefathers.” One focus group explained, “the rules are like this because the old generation looked and planned ahead so that we in the future can have access to the land.”

These skeletal rules were what most communities “shouted out” during the brainstorming session that became the first draft of their Communal Land Association constitutions, and therefore were largely incorporated into their final constitutions. Indeed, **post-service focus group participants reported that beginning the process by shouting out their existing rules helped to strengthen many of their “old rules,”** which they regarded as a very positive development. Furthermore, LEMU observed that during the participatory and prolonged “remembering” process, **communities took the opportunity to reinstate old rules that were no longer being followed or enforced.** These trends were evident across communities. When asked what “old rules” has been strengthened, post-service focus groups tended to cite more elaborate, detailed, and robust versions of the grazing land rules described by the pre-service focus groups. The reinvigorated and remembered “old rules” included:

- **Rules against an individual 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.”
- **Rules against “outsiders” using common grazing lands and natural resources:** “No outsider is allowed in the communal land;” “No outsider cuts trees from our community land;” “No foreigners should enter the land.”
- **Rules against 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.”
- **Rules prohibiting boundary violations or encroachment into the grazing lands:** “No one should encroach on ancestral land.”
- **Rules mandating the sustainable use of communal resources:** “[No] 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.”

- **Prohibitions against harming cattle:** “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;” “No playing sex with animals.”

The process of writing multiple drafts of the constitutions appears to have strengthened these existing rules both by making them clear and known to all, and by establishing enforcement mechanisms, known penalties, and greater accountability for both community leaders and residents alike. Elders across all communities tended to be pleased by this development. One focus group of leaders explained, “We are using our old rules. Our old rules are better now because we all understand them.”

When asked to list the “new rules” formalized in their constitutions, focus groups listed the following provisions:

- **No outsiders may use the common areas without permission:** “No outsiders are allowed to the communal land to use for commercial purpose like firewood, charcoal” and “Outsiders who want to use the land need to consult and have respect, otherwise trouble awaits them.”
- **Safe storage of land title documents:** “Our land title should be kept in the bank.”
- **Increased land rights for women:** “Women have a right to own land” and “that the widows, divorced women and girls to use the communal land.”
- **Increased accountability of local leaders, democratic elections:** “Leaders are to be replaced/re-elected after every five years.”
- **Inclusivity:** “The common land belongs to every one [in the] community of every generation to come as long as the family members of a particular house hold are registered members.”
- **The sanctity of the newly planted boundary trees:** “No one should remove away the boundary trees planted. If he/she does, then one’s goat should be confiscated from him/her.”
- **New monitoring and surveillance of who is using the common areas:** No using community land resources like cutting down of palm trees without community land authority” and “The neighbouring communities should only use a specific route to take their animals through our communal land and animals [should] only take water and not [bring their animals] for grazing.”

- **Leasehold agreements to be signed for use of lands:** “People must sign agreements to lease land to individuals.”<sup>83</sup>

The new rules – particularly those limiting outsiders’ or neighbours’ use and calling for leasehold agreements – may be seen as the study communities’ response to the changing realities of land scarcity and the increasingly commodification of land in rural Uganda.

### **Increased community decision-making authority**

LEMU also observed that the constitution-drafting process supported some **transfer of decision-making authority from local customary and state leaders to the community members themselves**. The data substantiate this observation: pre-and post-service survey respondents were asked if their community had changed the rules or introduced rules for the governance of local grazing lands over the past twelve months and, if so, who was responsible for any changes made. Positively, the majority of post-service survey respondents who reported changes to community rules reported that the rule changes were made predominantly by the full community together, not by leaders acting on their own authority. Across the three treatment groups, post-service respondents reported that when changes were made to rules, they were made by the community as a group 100% of the time in the full-service group communities, 92% of the time in the paralegal communities, and 95% of the time in the education-only group.<sup>84</sup>

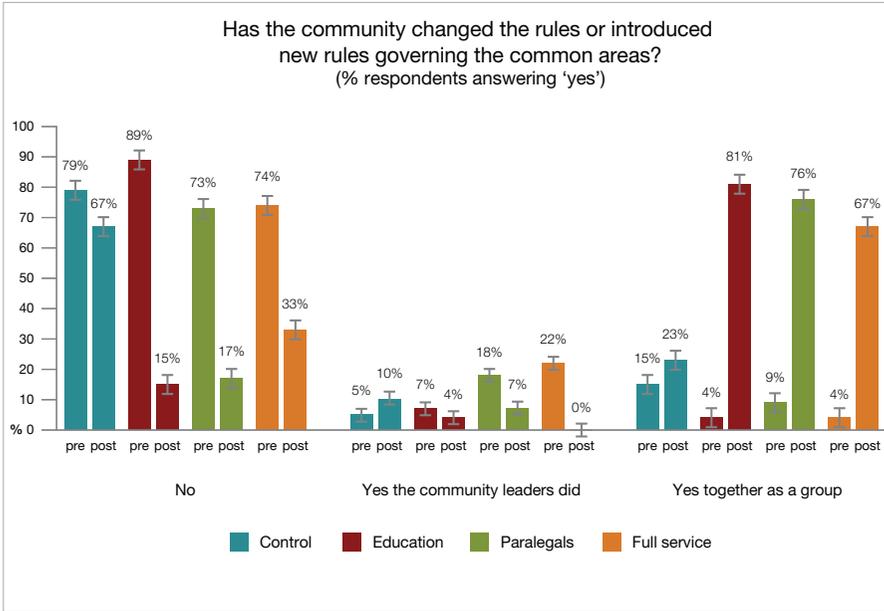
The data indicates that the constitution-drafting process was highly participatory. This finding is particularly positive, as one foreseen danger in leaving the education-only and paralegal treatment communities to complete the activities on their own was that a small group of elites and leaders could have dominated the process, marginalizing women, youth and other vulnerable groups.

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**83** Notably, the post-service focus groups’ reports of both their newly invigorated “old rules” and the new rules created tracks the actual content of the completed Communal Land Association constitutions. This may be an indication of the participatory nature of the constitution-drafting process and the overall degree of community awareness of the content of the final documents. (See Appendix C for the translation of one of the final adopted Communal Land Association constitutions (the originals are written in Luo, the local language, to ensure that all community members can understand and abide by them).

**84** These figures were determined by calculating, out of the combined total “yes...” responses, the percentage of responses reporting that decisions were taken by the community “together as a group.”

**Figure 4: Responsibility for changes to rules governing the common areas<sup>85</sup>**



This shift in rule-making responsibility away from individual leaders to the community itself is corroborated by survey respondents’ answers to a variety of other questions. When asked “Who has the right and responsibility of determining the rules governing land and natural resources?” an average of 84% of post-service treatment group respondents reported that the whole community as a group and/or the governing council has the right and responsibility for making new rules to govern the use of the common areas, as opposed to an average of 66% of pre-service treatment group respondents. Similarly, when asked, “Who has the right and responsibility of determining whether or not to let others use common areas?” an average of 80% of post-service treatment group respondents named “the community as a group,” compared to an average of 30% of pre-service respondents, an increase of more than 200%. Furthermore, in response to the question, “Who has the right and responsibility of monitoring or overseeing the

**85** These bar graphs show the percentage change between the pre- and post-service respondent data. Particularly important to understand is that because the exact same individual respondents were interviewed in both surveys, the data indicate the 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.

use of common areas and natural resources found in these areas?” an average of 72% of post-service treatment group respondents chose “the community as a group,” compared to a combined 38% at baseline.

The Communal Land Association constitutions also reflect this trend. For example, one community’s constitution mandates that, should any of the community’s rules be amended, a general meeting of all members must be called, and anyone proposing to alter the constitution “should 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 ... Members who have ratified and approved this [change] should be more than one half of all members ... who have duly signed the resolution document.”<sup>86</sup>

To assess the validity of these data, post-service focus groups were asked whether, in the past year, their communities made any changes to how community decisions are made, and, if so, what these changes were. For the most part, focus groups reported that project decisions are now 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. For example, focus groups explained 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;” “Decisions are [now] made together as a group, not by a few individuals, and conflicts are resolved harmonically in the presence of every member and neighbours;” and “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.” Other focus groups described how: “People can now decide only in a general meeting organized for the whole community;” “People now work together. Everyone is now involved in the process of decision making and rules and regulations;” and “The decision making is now by consensus, but in the past leaders would make decisions even without the consent of the community members.”

It remains to be seen if such impacts will extend beyond the project activities; continued research and monitoring are necessary to determine whether future community rule-making and rule-amendment processes adhere to the structures established in this study.

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**86** Importantly, the fact that rules may be amended with only a majority vote may pose a problem in the future. Assuming that 100% of all community members are made members of the Communal Land Association, this allows for rule changes despite strong internal divisions – a rule change could be made with a full 49% of community members in opposition. Critically, should not all community members become Communal Land Association members, a minority of the community could change the community rules, which could have significant negative impacts.

## Increased accountability mechanisms for leaders

LEMU also observed that **community members leveraged the constitution-drafting process to institute new mechanisms to hold their leaders downwardly accountable and to improve leadership.** In pre-service focus groups, community members reported that while managers of the grazing lands may have been elected at one time, term limits were rarely set. As a result, a leader might remain in place for more than 20 years, despite poor performance, corruption, or ineptitude. The insecurity brought about by the recent violence in northern Uganda appears to have exacerbated this situation. Indeed, when pre-service focus groups were asked about the main causes of disunity and lack of cooperation in their communities, the most prevalent response attributed the disunity to corrupt leaders and/or a lack of good leadership. For example, one focus group described how, “The things that prevents our community from working together are competition for leadership, abuse of office by leaders ... [and] electing weak leaders. This is a disease.”

In response, LEMU observed that the constitution-drafting process provided community members with the opportunity to publicly voice their dissatisfaction with their leader(s) and air grievances. Indeed, some communities leveraged the Communal Land Association constitution-drafting process to address disappointment with their leaders, indirectly challenge their leaders’ conduct (the first draft of one community’s constitution mandated that “leaders should not be drunkards” and should not “shout at community members”), and institute mechanisms to hold their leaders accountable to good governance.

Specifically, as noted above, **communities instituted term limits, periodic elections for their leaders, and criteria for impeachment in their new Communal Land Association constitutions.** For example, one community’s constitution mandates that: “The community reserves the right to remove officials of the grazing land if they violate the following offenses: theft; witchcraft/sorcery; being corrupt; incompetence in office (ineptitude); having carnal knowledge of animals (bestiality); conspiracy against the community (sabotage); committing murder/killing; cutting/injuring cattle; [and] raping a woman.... Any act deemed by the community to be an offense warrants dismissal/removal.”

To assess the impacts of such changes, post-service focus groups were asked if their communities had made any changes to improve leadership related to land and natural resources in their community over the past year. Focus groups explained: “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!”

Furthermore, when asked, “In the future, how will your community make sure that your leaders are acting fairly and in the best interests of your community in relation to land management?” focus groups explained that: “If the leaders are not acting in the best interest of the members, they will be replaced. Anybody in leadership who does not attend meetings regularly will be removed” and how, “In [the] future, if the leader is not performing to the interest of the community and in relation to the set rules, he/she will be punished according to the rules.”

Positively, community action to hold leaders accountable appears to go beyond constitutional provisions and may be counted as a direct impact of project activities: a few months after the conclusion of the intervention, one community took immediate action to dismiss the customary manager of their grazing land when it was discovered that he had secretly allowed some community members to encroach into the community land even after the boundary harmonization map had been created and boundary trees planted. Publicly decrying his actions as a breach of their constitution, the community held a general meeting in which the manager 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. Although this caused a fair degree of local conflict, all encroachers withdrew and a technical survey of the community’s lands was successfully completed.

Finally, it is noteworthy that the study communities’ constitutions both provide local penalties for infractions and stipulate that government laws be used to enforce community rules. This is an important shift in communities’ manner of addressing or dealing with offenders, as the change is indicative of communities’ gradual acceptance of state laws and institutional remedies. The new local penalties represent significant progress from those articulated in first drafts of the constitutions, which tended to mandate that, in cases where the offender’s mistake could not be redeemed by payment of a fine, he or she would be killed. It is important to note that this shift occurred after careful

facilitation by the LEMU project team: LEMU allowed communities to freely brainstorm what punishments they would levy on those who did not comply with the community rules, and then later helped them to identify and omit those punishments that were discriminatory, criminal, and/or unconstitutional.

In the future, communities will likely need significant follow-up support and assistance in the implementation of their new governance protocols and enforcement of their constitutions. This assistance is imperative, particularly in the first years after constitution-adoption.



LEMU staff meet with Oyam District officials to discuss how to protect community lands.

## Main findings

1. Members of all study communities reported that **the constitution-drafting process provided the opportunity to publicly discuss and evaluate community rules and norms for the first time in living memory.** Throughout the exercise, community members argued against rules they felt to be arbitrary and discriminatory, and advocated for the inclusion of rules that would protect their interests.

2. **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.** The findings indicate that the constitution-drafting process:

- Created an opportunity for communities to reinstate and strengthen customary rules no longer being followed or enforced, both by making these rules clear and known to all and by establishing enforcement mechanisms, known penalties, and greater accountability for both community leaders and residents alike.
- Affected a transfer of decision-making authority from local customary and state leaders to the community members themselves: during the constitution-drafting process, decisions usually taken by leaders acting on their own authority were made by the community as a whole.
- Created the opportunity for community members to institute new mechanisms to hold local leaders downwardly accountable and improve leadership: as a direct result of the constitution-drafting process, communities instituted term limits, periodic elections for their leaders, and criteria for impeachment.
- Helped to align local custom and practice with national law; community members took steps to change local penalties for infractions so that they no longer contravened the Ugandan Constitution.

Such shifts warrant further investigation: **if the Communal Land Association constitutions are implemented and enforced over time, the community land documentation process may be leveraged to promote democracy building and good governance at the local level.**

3. To achieve such outcomes, civil society and government facilitators should:
  - **Ensure full community participation in the constitution and management plan drafting processes by taking steps to support the active involvement of women, youth, and other vulnerable groups.**
  - **Handle the transition from oral to written rules delicately.** The process of writing down previously unwritten rules and practices may change them. The discussion of existing rules must be deftly managed to ensure that the transition from oral to written does not undermine more inclusionary practices.
  - **Allow communities to base the form and content of their rules on existing custom, norms, and practices.** A community's constitution should be modified only as necessary to ensure that the rules:
    - » Do not contravene the Ugandan Constitution and relevant Ugandan law;
    - » Establish equal rights for all community members, including women, youth and other vulnerable groups;
    - » Protect the existing use and access rights of all stakeholders;
    - » Include provisions specifying that particularly important and weighty decisions must be made by consensus or supermajority vote, rather than by local leaders acting alone;
    - » Are approved by consensus or super-majority vote by all households in the community.
  - **Ensure that the constitutions include provisions for annual review and amendment.** To avoid the potential calcification of customary rules that writing them down might imply, a yearly review of community rules should be instituted, with clear amendment procedures and the requirement that rules be changed only after full consensus or super-majority vote.
4. **What is not captured in the constitutions may be, by omission, negated, lost, or inadvertently prohibited.** Critically, rules and practices that benefit vulnerable community members may be (intentionally or unintentionally) omitted if the beneficiaries of such practices are not present in meetings to ensure their inclusion in the final Communal Land Association constitution. To address this, it is necessary to take direct action to ensure that members

of more vulnerable groups - particularly women - are included in the constitution-drafting process and that such practices are not erased in the process of transforming unwritten rules to written rules.

**5. Communities require legal and technical assistance to successfully complete final versions of their Communal Land Association constitutions.** Every education-only and paralegal treatment community was unable to move past a second draft constitution without support from LEMU's field team. While communities did their best to establish the rules in alignment with the subject headings set out in the Regulations, their rules often lacked the kind of detail necessary for a formal legal document. Legal support is necessary to ensure that community bylaws address all necessary topics, such as procedures for election and impeachment of leaders. A legal review is also necessary to ensure that Communal Land Association constitutions do not contravene the Ugandan Constitution and other national laws.



LEMU staff converse with men and elders after focus group meetings.

## Conservation and sustainable natural resource management

### Drafting land and natural resource management plans

The Land Act 1998 sets out very extensive suggestions for what should be included in the Communal Land Association's constitution and a separate land and natural resource management plan. Under the Land Act 1998, common areas must be managed according to a common land management scheme agreed upon by Communal Land Association members.<sup>87</sup> Section 25 then details what must be included in a common land management scheme:

#### Box 5: Suggested 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 those locations 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;

<sup>87</sup> Land Act 1998, Section 24 (1–3, 5).

- 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; and
- Any other matters as the members of the Communal Land Association may think fit to include.”<sup>88</sup>

However, LEMU observed that throughout the constitution drafting process, **community members instinctively combined the contents of the Communal Land Association constitutions with the intended contents of the “common land management scheme.”** This combination was a natural consequence of the fact that the vast majority of communities’ existing rules concern natural resource use and management; in the minds of the community members, there was no separation between rules governing community natural resource use and rules governing management of the grazing lands.

After observing this trend, LEMU determined that communities should be allowed to continue in this process, as to do otherwise would be an artificial separation of what was clearly one coherent body of customary rules. As such, the process of drafting natural resource management plans was fully integrated into the constitution-drafting process described above; communities discussed and agreed on how best to manage their natural resources as part of the process of analysing their community rules. As a result, the Communal Land Association constitution and common management scheme merged into one comprehensive document divided into separate sections concerning 1) land governance and 2) natural resource management.<sup>89</sup>

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<sup>88</sup> *Land Act 1998*, Section 25.

<sup>89</sup> See Appendix C for an example.

## Findings: Impacts on community natural resource management

The communities' final rules for natural resource management plans represent significant shifts in community protocol. At the inception of the intervention, the general community perception was that the communal grazing lands were for grazing and, as such, the first drafts of the Communal Land Association constitutions tended to focus only on those rules concerning livestock. However, as a result of inclusive community reflection and discussion, the final draft constitutions were evenly balanced between regulating rules governing the grazing of livestock and rules regulating the use and collection of water, plant, and mineral resources.

Analysis of the resulting rules indicates **communities' clear concern with conservation and the sustainable use of natural resources**. In the completed Communal Land Association constitutions, five discrete trends are notable. These trends largely relate to the limiting and monitoring of natural resource use within the grazing lands.

First, communities tended to leave some natural resources - building materials, grass, white ants, water, herbs, firewood, and medicinal plants - for open, unmonitored use, largely by women and families for non-economic goals. Indeed, the sections of the constitutions addressing the management of natural resources all begin with a list of the various **resources in the grazing lands that may be accessed freely and without obtaining permission by community members** from the Grazing Land Management Committee or the Adwong Bar (customary manager of the grazing lands).

Women's participation was critical to generating comprehensive lists of these resources. Indeed, LEMU observed that once women became more involved and engaged in the constitution-drafting process, they articulated the need for rules to govern use of the "small" resources found in the grazing land (i.e. resources of no monetary value). As noted by a field team member: "At first, the communities were not thinking beyond the very obvious resources; some were "too obvious to talk about," like thatch – the sticks for their roofs. Then, when we asked the women to list everything they get from the grazing land, that's when they began mentioning activities such as collecting firewood, making crafts and brooms, gathering clay for making pots, charcoal burning, gathering sand and stones for building, brick-making, fetching water from the well, fishing, gathering papyrus, bird hunting, collecting yams, mushrooms, and wild fruits, playing ground for children and youth, and keeping bees."

Second, the constitutions also generally detail all the **natural resources that may not be gathered freely in large amounts**, for which permission must be sought and payment made. These resources include sand, stone, palm poles, and firewood, among others. The constitutions also list the payments that must be made to the Communal Land Association if these resources are sold to non-community members. While individual families may gather these materials to build their homes, anyone seeking to collect and sell large amounts of natural resource material from the communal areas for personal profit must be granted permission by the Communal Land Association and must pay associated fees to the Association.

Community members reported that before the intervention, customary rules governing the use of various natural resources were often ignored; focus groups reported, “People would just do anything they wanted.” Positively, the new constitutions mandate that people seek permission for extensive gathering of community natural resources. Such rules have the potential to control deforestation and excessive resource extraction. Describing this trend, focus groups described how, “Everyone is to enjoy the wealth in the community land without destroying its value;” “Resources of the communal land are not used recklessly; we are valuing the future children, that is why we are [now] regulating the use of resources;” and “We now have borders of the communal land. There is respect within the community and by our neighbours, as they don’t just access our land. Our natural resources are now protected from mismanagement.”

Third, **the constitutions mandate rules for the management of livestock within the grazing lands**. The constitutions limit the type and numbers of livestock that families may graze on the communal areas, and stipulate that livestock owners are personally liable for any destruction caused by their animals’ aberrant behaviour. Rights of way for animals are also provided for, and penalties assigned in cases where human activities block animals’ designated paths.

Fourth, **the constitutions address the use and access rights of neighbouring communities**. Some communities’ constitutions acknowledge that their neighbours have use and access rights, and allow this use to continue freely, but prohibit their neighbours from having any decision-making powers within the Communal Land Association. However, although LEMU counselled communities to fully allow all previous use rights to continue and to enshrine these rights in their constitutions, some communities used the constitution drafting opportunity to restrict and limit their neighbours’ access. The communities that limited their neighbours’ use of resources generally felt that their neighbours had been using their grazing lands illegitimately, as encroachers, without historical precedent or permission. These communities therefore used the constitution-drafting process to stop encroaching neighbours’ free access, levying fees to non-members who seek to access community lands and graze their animals.

One analysis may therefore be that as a result of harmonizing the boundaries of their grazing lands and drafting constitutions to regulate land use, **communities became more vigilant about keeping their natural resources for their own community members' benefit and took action to more tightly restrict "outsiders" use and access.** Further research and monitoring is necessary to observe the long-term impacts of the enforcement of such restrictions on inter-community relations and conflict.

**Fifth, all of the communities' constitutions set out rules prohibiting further fragmentation of the community grazing lands.** Each community created its own unique penalty system to be administered should anyone be found planting crops or building a home within the grazing lands.

Likely due to the lengthy and participatory nature of the constitution-drafting process, it appears that many of the constitutions' natural resource management rules were commonly known throughout the communities; across treatment groups, an average of 73% of post-service survey respondents reported that their community had adopted new rules or strengthened old rules about land and natural resources in the past year.

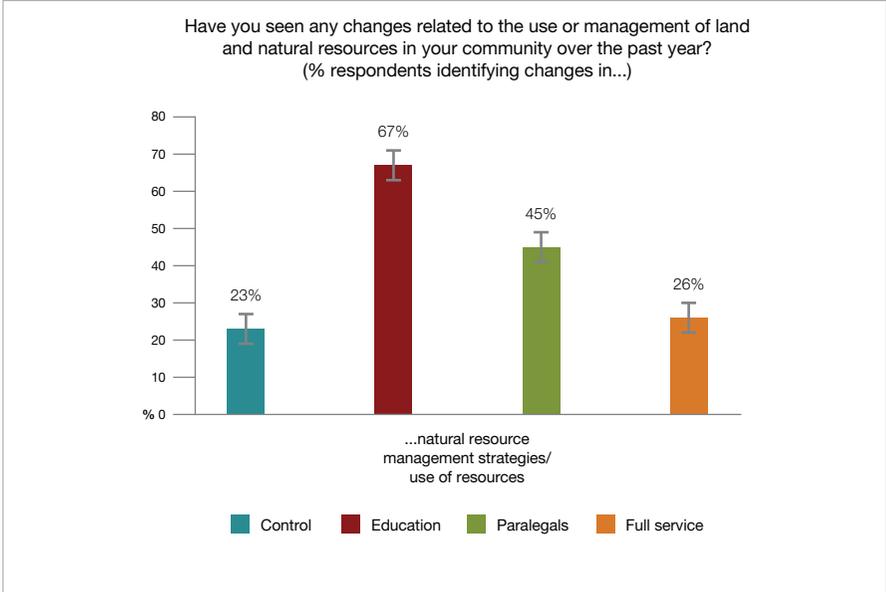
Indeed, when asked what new rules their communities had established to regulate the sustainable use of natural resources, focus groups were able to articulate many of the rule changes. For example, one focus group explained: "The community has come up with changes in managing the resources and accessing 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, and members [must] seek permission to use resources from the common land, [as a way of] guarding against over-exploitation." Similarly, other focus groups reported that they now have new laws that place "restrictions on using communal land for selfish gains" and that 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."

The short-term impacts of such changes were immediately noted by community members; when asked in the post-service survey what changes they had observed in their communities over the course of the previous year, an average of 46% of treatment group respondents reported observing changes related to the use or management of land and natural resources, compared to 23% of the control group.<sup>90</sup>

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<sup>90</sup> Interestingly, the education-only group more frequently reported observing changes in their communities' land and natural resource use and management than the paralegal or full service group. Additional research is necessary to determine the cause of this outcome.

**Figure 5: Observed changes in community land and natural resource management**



Further monitoring and research is necessary to gauge the full impact of these rule changes over time. It will also be necessary to provide support and assistance to communities for the implementation and enforcement of their land and natural resource management plans.<sup>91</sup>

<sup>91</sup> LEMU continues to provide support and assistance to communities for the implementation and enforcement of their land and natural resource management plans.

## Main findings

1. **Community members naturally combined the contents of the Communal Land Association constitutions with the intended contents of the Common Land Management Schemes.** To accommodate this, the natural resource management plan-drafting process was fully integrated into the constitution-drafting process, resulting in one comprehensive document divided into separate sections concerning 1) land governance and 2) natural resource management.
2. **Women's active involvement in the constitution/natural resource management plan drafting process improved the documents' comprehensiveness and helped communities to re-conceptualize their grazing lands as useful not only for grazing, but also for community survival.** Once women became involved in the rules-making process, they began pressing their communities to include rules concerning all non-grazing uses of the common lands, including: firewood, plant resources, water and wild food collection, fishing, hunting, and bee-keeping, as well as various other uses.
3. **The natural resource management plan drafting process prompted communities to craft new rules to conserve natural resources and to "remember" and reinforce old rules prohibiting fragmentation of communal lands and promoting sustainable natural resource use.**
4. **The natural resource management plan drafting process appears to have led communities to become increasingly vigilant about monitoring and enforcing limits on outsiders' extraction of community resources.** The resulting new rules do not generally impede outsiders' use of community natural resources, but rather allow communities to better control, monitor, and tax such activities to ensure sustainable use and community profit.
5. **Some communities' rules limit their neighbours' use and access rights.** As a result of harmonizing the boundaries of their grazing lands and drafting constitutions to regulate land use, some communities became more vigilant about keeping their natural resources for their own community members' benefit; writing rules down and seeking documentation appears to have resulted in tighter restrictions on "outsiders'" use and access.

## Communal Land Association incorporation and land documentation processes

Under the Land Act 1998, communities must lodge their application for formation of a Communal Land Association with the District Registrar.<sup>92</sup> The District Registrar is thereafter responsible for: 1) convening a meeting at which community members must “determine whether to incorporate themselves into an association;” 2) overseeing the election of the Association’s Executive Committee; 3) certifying that the final Communal Land Association constitution “provides for a transparent and democratic process of management of the affairs of the association;” and 4) ultimately issuing a Communal Land Association’s certificate of incorporation.<sup>93</sup>

As explained above, despite LEMU making multiple requests over a three-year period that the Ministry of Lands, Housing and Urban Development appoint a District Registrar to support the study communities’ Communal Land Association-formation process, a Registrar has not yet been appointed. In the absence of the required District Registrar, LEMU led the communities through those aspects of the Communal Land Association-formation process that they could complete without a Registrar’s supervision or approval.

By the end of the study period, five communities had completed their constitution- and natural resource management plan-drafting process and were ready to apply for formal incorporation as Communal Land Associations. LEMU also supported the study communities to prepare an application for formal documentation of their land rights. This process is described below.

### Applying for Communal Land Association incorporation and formal land documentation

A fundamental principle of LEMU’s work is that there are no universal solutions and that each client – be it an individual, family, or community – should be educated about the full array of land protection options available to them and left to choose the option they feel best suits their needs. Accordingly, LEMU informed communities about the four approaches they could take to protect their grazing lands, as well as the benefits and drawbacks of each approach. These options included: 1) taking no action to document their customary land claims; 2) a purely local option, comprised of drawing informal maps and

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<sup>92</sup> Land Act 1998, Section 16.

<sup>93</sup> Land Act 1998, Sections 16 - 18.

planting boundary trees; 3) seeking a Customary Certificate of Ownership (CCO); or 4) seeking a freehold title.<sup>94</sup> The excerpt below, from LEMU's Guidebook to Community Land Protection, succinctly outlines these options and encapsulates the basic messages taught to the communities.

### **Box 6: Community land documentation options (Protecting your community's land, LEMU 2010)**

#### **How can communities protect their land?**

The law of Uganda states that if you own land according to custom, even if you do not have any documentation, you own your land and have the same rights over it as people who have titles to land. The law recognizes that a village can own land together, for example, sharing a grazing land, or several villages could own land together. If desired, you can take action as a community, which may help you protect your rights and prevent conflict over your communal land. You can obtain papers, which may help you prove your rights to your land, but they will not change your rights over the land. You do not get more rights by obtaining papers, and you cannot lose rights by not obtaining papers.

There are four choices: (a) to take no action; (b) to create a local solution; (c) to acquire a Certificate of Customary Ownership (CCO); or (d) to get a freehold title to your lands. Your community should sit together and carefully consider the best for your situation. The best choice will vary according to the different communities. No single choice is best for all.

- 1. You can create a purely local solution.** As a community, you can come together and agree exactly where the boundaries of your common land are, and then mark them by planting trees or in any other way you choose. You could draw a simple map showing the land boundaries, and the owners of neighbouring fields could sign to show that you have all agreed. If different villages all use the same land, you would need to come together to agree who the land belongs to. The land may belong to several villages together. There may also be other villages who are allowed to use the land in some situations, even though the land does not belong to them. All of this should be written down and signed by the leaders of the different villages to avoid any future disputes.

<sup>94</sup> For a full explanation of how LEMU explained the various community land protection options, see LEMU's guide for communities at: <http://namati.org/work/community-land-protection/Phase-One-Findings-and-Reports>.

You could also make sure that you have a committee of people to manage the land. You could meet to make sure that everyone knows the rules about how the common land can be used and what happens if people break the rules. You could write these rules down to make sure that no one can argue about what the rules really are.

- » **Advantages:** You do not have to pay any money for this. It can help reduce conflicts within your village because everyone will know the boundaries of your common lands and what the land use rules are. This will help local leaders (for example, the *Adwong Bar*, clan leaders, and LCs) to solve disputes correctly. If you have a dispute, the maps and the papers could be used in the Sub-County Court and the Magistrate's Court as evidence. Because it is a criminal offence to cut boundary trees, you can call the police if people try to encroach by cutting them down. You do not need to change any aspects of how you manage your land.
  - » **Disadvantages:** The papers you write yourselves are not a very strong proof in court if someone from outside the village claims your land or if someone else processes a title for the same land.
2. **You could get a Certificate of Customary Ownership (CCO).** You can get a Certificate from the Government, which serves as proof that you own the land. You first need to make your community an official Communal Land Association. It will cost the community 35,000 Ugandan Shillings to make your community's rules official and then to obtain the certificate. You don't need to survey the land. You can use your own maps and mark the boundaries with trees. The land stays under customary rules and customary law, so there is no change to the way disputes can be resolved. The same individuals can still solve your disputes (the clan leaders or the LC2 court).
- » **Advantages:** It is not expensive; you only pay once. You obtain the Certificate from the Sub-County and everything is done within the District. It is easy to make changes to the Certificate. The CCO is an official paper so it is hard for anyone else – both from inside and outside the village – to claim that the land is theirs.
  - » **Disadvantages:** Although a CCO is not expensive, you have to devote some time into making your community a formal Communal Land Association with written rules...and to obtain the CCO. A CCO is strong proof of ownership, but it might not always be considered as good as a title.

3. **You could get a freehold title.** A title is the strongest proof possible of ownership. If you have a title, it is very difficult for anyone else to claim your land. If your community wants to get a loan, you can often use a title as security with a bank. You will need to get your land surveyed by a surveyor and to meet their costs. Before obtaining a title, your community needs to form an official Communal Land Association, just like for a CCO.
  - » **Advantages:** This is the strongest proof possible of your ownership. Because the land is surveyed and an official map is kept by the Land Registry, there should be no doubt about your boundaries even if marker stones are taken or moved. Everyone recognizes a title as proof, so it is easier to sell your land, rent it out or to use it as security for a loan, because everyone will know that you really own it.
  - » **Disadvantages:** The title itself is not very expensive, but surveying the land is expensive. If you want to make any changes to the land, you will have to pay again for a new survey and have a new title processed in Kampala. Customary law no longer applies on titled land, and only Magistrates can hear cases for titled land. You have to be very careful about your title. If someone (for example, your management committee) sells your land, even if they have no right to do so, then the law states that the buyer can keep the land if they did not know the committee was acting illegally. (With a CCO, however, the sale would not be valid and the land would remain yours.)

After providing comprehensive explanations of each option, LEMU left each study community to discuss which land documentation strategy community members wanted to pursue. To ensure a robust and authentic decision-making 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.

At the inception of project activities, LEMU's suggestion that communities might seek to apply for a freehold title aroused intense suspicion; communities were concerned that the title would be granted in LEMU's name, or that having a title would inform the Ugandan Government of existence of their grazing lands, making it easier for state officials to grab their lands or tax them. A further concern was that their communities did not have a safe place to store

the physical title documents, which led to concerns that a corrupt leader could sell the common grazing lands for personal profit without community knowledge. **However, by the end of the study period, all of the communities that had successfully completed their constitutions and harmonized their boundaries chose to seek freehold titles.** This trend was due largely to the fact that the most successful communities were those that felt the highest degree of external threat to their land claims. Therefore, these communities sought the most protective form of community land documentation.<sup>95</sup>

Due to the absence of a District Registrar of Titles, the communities were not able to submit their Communal Land Association-formation requests to the Oyam District government, as mandated by the Land Act 1998.<sup>96</sup> Although LEMU petitioned that the communities be allowed to submit their requests either to other relevant district officials or to the nearby Registrar for Lira District, these appeals were denied, and the Communal Land Association incorporation and community land documentation process hindered.

### Surveying the grazing lands

Although the communities had not yet been incorporated into Communal Land Associations, LEMU began working with a surveyor to survey those five communities that had submitted their incorporation applications. LEMU made this decision after receiving reports that the suspension of the community land documentation process (due to lack of the Registrar) had allowed new land conflicts and boundary encroachments to ignite. Seeking to prevent new land conflicts by formalizing the agreed boundaries of the grazing lands, LEMU identified an appropriate government surveyor and contracted with him to survey the communities' grazing lands.

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<sup>95</sup> This trend is explained further below in Section IV.

<sup>96</sup> *Land Act 1998*, Section 16. "Meeting to form association and elect a managing committee. A group of persons who wish to form themselves into an association may apply to the district registrar of titles to become an association under the Act. The district registrar of titles shall, on receipt of an application, convene a meeting of the group of persons."

Unfortunately, by the time LEMU and the government surveyor began the physical surveys, after just two months of absence from study communities, a variety of new encroachment-related conflicts had erupted. For example, when the surveying team arrived in one community, it found that some community members had newly encroached into the grazing lands. Other community members, seeking to protect the agreed boundaries, had been arrested because of serious fights that broke out between community members and the encroachers. When LEMU and the surveying team arrived, 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. **This instance indicates that although the project achieved great success in empowering the study communities to protect their land rights, this success did not match the strength and determination of intra-community encroachers.**

To date, the surveyor has performed on-field surveys on two of the five communities' grazing lands that chose to seek a freehold title. Survey work in the other three communities is awaiting resolution of the boundary-related dispute between the communities of Wilyec and Teaduru. While waiting for the District Registrar to be appointed, the communities' lands were marked with survey stones by the surveyor, so that the lengthy process of acquiring title may continue.



Community members demarcate an agreed boundary of their communal grazing lands.

## Main findings

1. Although LEMU educated the study communities about a range of community land documentation options, By the end of the study period, all of the communities that had successfully completed their constitutions and harmonized their boundaries had chosen to seek freehold titles, as they faced significant external threats to their land tenure security.
2. In the two months between the time that communities successfully harmonized the boundaries of their grazing lands and the time the government land surveyor arrived to take the requisite measurements, a number of boundaries had been re-contested. One finding may be that the strength and determination of intra-community encroachers exceeded the communities' ability to effectively defend the agreed boundaries of their grazing lands. Positively, after fighting and arrests around the re-contested boundaries subsided, cases were dismissed and boundaries were reinstated with the help of the police, based on the Communal Land Association constitution. In the future, communities will likely need consistent state support to help them to defend the agreed boundaries from powerful local encroachers.

## Impediments and obstacles confronted

Overall, community members' keen sense of land tenure insecurity in northern Uganda negatively impacted LEMU's efforts and significantly hindered project activities: extreme suspicion and fear prompted many of the study communities to withdraw from the project. The roots of communities' suspicions were often linked to rumours and fears that the government or outside investors were plotting to appropriate shared grazing lands, and that LEMU was an agent of such actors, undertaking an elaborate ploy to appropriate their lands by posing as an NGO working to protect them.

In addition to community fear, LEMU observed that a community's successful completion of the requisite community land documentation activities was often impeded by various inter-related factors. Specifically, communities tended to struggle when:

- Community leaders were weak, corrupt, or engaged in power struggles;
- Elites interfered with or sabotaged a community's process to ensure that the land remained undocumented;
- The community lacked internal cohesion and consequently failed to cooperate;
- An intractable boundary dispute consumed the community's attention, to the exclusion of all other land documentation activities.

These factors are briefly explored below.<sup>97</sup> Together, they combined to cause many of the original study communities to reject LEMU's support and cease all project efforts. As a result, LEMU was obliged to continue to identify and add new communities to the study until April 2010, after which it was judged that the new communities would not be able to complete the project activities within the remaining project time frame. The new communities were also randomly assigned to a treatment group. However, despite LEMU's best efforts, of the originally identified 37 communities, only 11 remained with the project by its end, three of which were control communities receiving no services.

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97 See Appendix B for detailed descriptions of the study communities' experiences.

## Weak or corrupt leadership and power struggles between leaders

LEMU observed that the strength of community leadership had a strong impact on the community's capacity to successfully complete the community land documentation activities, independent of the level of legal support provided. Across all study communities, the most pernicious threats to community efforts were those influential leaders who, for personal reasons, mobilized their communities to reject the project or no longer attend LEMU meetings. **Without exception, when a community 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.**<sup>98</sup> For example, in one full-service community, the *Adwong Bar* used his influences to ensure that LEMU did not return to help the community, allowing him to continue to appropriate land in bad faith, despite community members' clear embrace of the project.

In contrast, LEMU observed that communities fortunate to have motivated, dedicated, and trusted leaders progressed well through the activities, even when provided only legal education support. For example, one education-only community's success was due to the dedication of its leaders, who consistently mobilized and supported community members to work towards documentation and protection of their grazing lands. This community's success was furthermore heralded by the strong support of the Sub-County Chairman of the Land Committee, the Sub-County Chairman of the Grazing Land, local clan elders, the local Grazing Land Committee, local LCs, and parish leaders. These leaders often actively provided support in between LEMU's monthly education meetings and generally did their utmost to help the community move forward.

LEMU also noted that community leaders must not only be strong and well respected, but that relatively good cooperation *between* various community leaders is essential, as 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. This remained true even if other influential leaders supported and encouraged the work. In every community, there are multiple leaders with overlapping spheres of power: the LC1, the *Adwong Bar*, local clan leaders, and oftentimes higher-level Parish and sub-county officials. LEMU observed that for a community to successfully progress through the land documentation process, the full host of leaders needed to be in support.

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<sup>98</sup> It is important to note that LEMU's efforts were at times hindered by the fact that they were introduced to a community by corrupt or "untrusted" leaders. As per proper government protocol, LEMU's field team entered the communities with the permission of the LC1, often in conjunction with the *Adwong Bar*, the customary manager of the grazing lands. However, these leaders were not always honest: in some instances, the field team unwittingly allied themselves with leaders who were themselves feared land grabbers.

### Elite interference or intra-community sabotage

LEMU observed that if a threat to a community's land comes from within the community itself (local encroachers or local leaders and elites who seek to obstruct the process to claim land for themselves), even the full support of a legal and technical team may not be enough to prevent community rejection of or failure to complete community land documentation activities. Relatedly, the *absence* of an outside threat also appeared to have 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.<sup>99</sup>

Internal encroachers' ingenious and varied efforts to sabotage the documentation efforts – leaving land undocumented and vulnerable to exploitation – were often highly effective. Indeed, the interference of an influential local or regional elite who opposed the project had the power to stall project activities for months at a time or to fully sabotage community success. These elites were often acting to preserve their own investments or interests – against the expressed interests of the broader community. For example, one community, after energetically participating in all project activities for seven months, withdrew from the project when a civil servant, whose brother was the *Adwong Bar*, convinced his brother and other community members from the dominant clan to reject the project for fear that the project would give equal rights to other minority clans over community land.

Community withdrawal due to elite interference was a significant problem: 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. In some cases, communities welcomed the project, rejected it, invited LEMU back, and then rejected the project again. In an attempt to remedy these situations, LEMU held meetings with trusted community leaders to gain their support for the project and help in "re-mobilizing" the community. While this tactic often worked well for a time, it was usually successful only until the elite doubled his or her demobilization efforts.

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<sup>99</sup> In contrast, LEMU 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. See Section IV below for a full discussion.

Although LEMU had no choice but to leave when asked to (violence was occasionally threatened), rejection by elite power holders put LEMU in the unfortunate position of discontinuing work with the communities most in need of its legal support: the field team's departure often meant that the community would ultimately lose more land to elite appropriation. Communities struggled with these power dynamics, but generally proved unable to overcome negative elite interference.

In a few instances, the intra-community “demobilizers” were actually the most vulnerable individuals in the community: internally displaced persons (IDPs) from northern Uganda's recent conflict who had settled on community grazing lands when they relocated out of nearby refugee camps. Throughout northern Uganda, IDPs have settled in large groups on the grazing lands of communities to which they do not historically belong. In one study community, the IDPs, fearing that a strong, united community with documented claims to their grazing lands would expel them from their new homes, worked hard to impede land protection efforts. They threatened witchcraft, spread malicious rumours and used other aggressive tactics to intimidate community members and drive them to reject the initiative. The community persevered through the process despite the intimidations until the threats became frighteningly severe, at which time they apologetically asked LEMU to leave and not come back.

**These trends strongly indicate the need for active government support to communities facing elite or IDP appropriation of their lands.** Such support should include the prosecution of elite encroachers, mediation interventions for community-IDP conflicts, and the immediate provision of executive or judicial support to communities struggling to protect their land claims.<sup>100</sup>

### **Lack of internal community cohesion and cooperation**

Conversely, LEMU observed that regardless of the level of legal services support provided, communities that had a high degree of internal friction and division were less able to make progress. Generally, the project did not cause this disunity; in these communities, pre-service focus groups often frankly and openly described their community's lack of internal cohesion as a pre-existing dynamic. For example, entrenched historical grievances or longstanding disputes between villages sharing a grazing land often made it difficult for a the “community” to work collaboratively.

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**100** However, because of community members' high level of suspicion concerning government intervention in land matters, this support should be provided only upon community request and in a manner that aligns with and is driven by the community's articulated goals and strategy.

The number of villages in a “community” also impacted a community’s ability to collaborate: 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>101</sup> Decisions about the logistics of monthly meetings 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.

Conversely, 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 community cohesion, leaders’ support for the project, and community participation in community land documentation activities. Indeed, it appears that **robust community cooperation and widespread participation are lynchpins of successful land documentation efforts**. Moreover, one finding from the post-service focus group discussions was that **focus groups frequently mentioned increased “community unity” as the greatest success of their community land documentation efforts**. Focus groups explained that, as a result of working on the project activities, “[their] community became united unlike before – now the community works together. Because of the help from LEMU, the process went well because it created unity among the community members;” “Everything was done in harmony. People responded in big numbers to attend community meetings; members were united, and cooperated during the process;” “Coordination among members has greatly improved;” “There is unity amidst the community as everyone knows the rules set by the community;” “There is peace;” “[The process] has increased love among community members;” and “It has improved love and harmony among all clans sharing the community land.”

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**101** LEMU noted that communities that had more than three villages sharing one grazing land generally did not progress as well as smaller communities, due to the large number of people involved and the long distances people had to travel to attend community meetings. Smaller communities (made up of only one village each) were able to remain united and work through fairly complicated intra- and inter-community land disputes until the final months of the project. However, when a community felt a strong sense of threat to its land claims, size and distance did not matter; community fears of external forces were enough to unite them to work in cooperation.

### Intractable boundary disputes

Some communities' land documentation efforts were ultimately sabotaged by a neighbouring community's desire to impeded land documentation. In such instances, the neighbouring community refused to agree on a boundary, or otherwise made an effort to exacerbate or inflame an existing boundary conflict, so as to ensure that the community could never complete its community land documentation process and apply for a title to its grazing lands.

For example, as described above, two paralegal treatment communities remain embroiled in a significant boundary conflict concerning a disputed boundary line between their grazing areas. Although the land at issue is a few hundred meters, one community is adamantly unwilling to agree to sharing the land, split the land in half equally, or accepting the administrative boundary as the dividing line. LEMU attempted mediation on two separate occasions, bringing in sub-county officials and the Area Land Committee. The conflict's continuation appears to be driven by a strong-willed and powerful Vice-*Adwong Bar*, who appears committed to maintaining the conflict. The *Adwong Bar* eventually filed a lawsuit in the Lira Chief Magistrates' court.

### Lack of key local government land officials

Most critically, for those communities who successfully persevered, the greatest impediment to community land documentation has been the Ministry's failure to appoint a Registrar of Titles to Oyam District. Despite multiple formal requests over a three year period by both LEMU and the District of Oyam, the national government has to date not appointed a Registrar nor assigned a Registrar from another District to serve the Oyam communities. As a result, although by the end of the study period five communities desired to be incorporated as Communal Land Associations and were ready to survey their lands, due to the lack of a District Registrar of Titles, none of them have been able to complete their Communal Land Association incorporation process.

## Main findings

- 1. Lack of leadership.** Communities that struggled with weak leadership, leaders amenable to the influence of outside elites, and/or leaders who covertly opposed the land documentation efforts were frequently unable to successfully complete community land documentation activities.
- 2. Local elite interference and the need for government support.** The presence of feared or influential local elites who opposed the project often had the power to stall project activities for many months or to fully sabotage community efforts. In such instances, even the full support of a legal team may not be enough to prevent bad faith appropriation of community grazing lands: active government support is necessary. Such government support should include the prosecution of elite encroachers, mediation interventions for intra-community conflicts, and the immediate provision of executive or judicial support to communities struggling to protect their land claims.
- 3. Intra-community conflict.** Communities with a high degree of internal division were less able to progress through the community land documentation process, regardless of the level of legal support provided. Conversely, communities that had a high degree of internal cohesion tended to successfully complete the work, even in the presence of other obstacles. Unhealthy or dysfunctional communities that struggle intractable boundary disputes, internal discord, and/or weak pre-project cohesion may not be able to successfully progress through community land documentation processes, irrespective of how much support they receive. In such situations, the process may become a pawn in intra-community conflicts of power. Robust community cooperation and widespread participation appear to be key to successful land documentation efforts.
- 4. Potential for exacerbating conflict.** 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. Supplemental conflict resolution training, community-building, and leadership-enhancement activities may need to be provided before a community can undertake land documentation efforts.

- 5. Lack of a District Registrar.** For those communities who persevered successfully through the process, the greatest impediment to community land documentation has been the Ministry of Land's failure to appoint a District Registrar to Oyam. The lack of a District Registrar fully stalled forward movement and impeded communities' ability to submit applications for formal title to their common grazing lands.



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

## 4. Optimal support for successful community land documentation



Community members pose for a photo after marking the agreed boundaries of their communal grazing lands.

## 4. Optimal support for successful community land documentation

The following section details the cross-national findings<sup>102</sup> relative to the question “How to best support communities to successfully follow formal land documentation processes to protect their customary land claims?” Within this question were three secondary queries:

- Is there a correlation between the level of assistance provided and community progress through the mandated community land documentation processes?
- Is there a correlation between the level of legal assistance provided and communities’ effectiveness in overcoming obstacles faced?
- Is there a correlation between the level of legal assistance provided and community participation in community land documentation activities?

The resulting cross-national findings, derived from pre- and post-service survey responses and a comprehensive statistical analysis of the data, are described below.

This section first outlines the study communities’ progress through Uganda’s community land documentation process by treatment group. Next, it details the various cross-national and Uganda-specific findings relative to the impact of service provision on community progress.

The data indicate that the paralegal model of service provision proved to be the most successful, due to two main factors: the empowering effects of allocating the responsibility for completing all community land documentation activities to the community itself, and the comparatively weaker ability of outside professionals to effectively address intra-community conflicts impeding community progress. However, the Uganda-specific findings indicate that a host of community-specific dynamics may weigh more heavily on community progress than the degree of legal support provided, including whether the community is facing an external or internal threat to its land claims; how many villages the community is composed of; the degree of internal dysfunction; the presence or absence of one or more individuals determined to sabotage community progress; and other factors detailed below.

The section concludes with an analysis of the findings relative to the correlation between the level of legal assistance provided and communities’ effectiveness in overcoming obstacles as well as the correlation between the level of legal assistance provided and community participation rates.

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**102** A cross-national analysis was necessary to ensure statistical significance of the findings.

## Overview of community progress by treatment group<sup>103</sup>

### Full-service group progress

By the project's completion, only two out of the five original full-service treatment communities remained engaged in the project, actively working towards formal community land documentation. The rest of the communities rejected the initiative. One finding from the full-service communities is therefore that **the level of services provided may be less relevant to whether a community completes the community land documentation process than intra-community dynamics** (trust, cohesion, cooperation, strong leadership) and the existence of internal or external threats to common lands.

For example, one full-service community rejected the project, after months of stalling and little progress, despite community members' apparent enthusiasm for the project work. LEMU noted that this behaviour was possibly due to the fact that the *Adwong Bar* (customary manager of the grazing lands) 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. Although members of the minority clans in this community told LEMU that they still very much wanted to proceed, the *Adwong Bar* told LEMU not to return, and asked the Parish Development Committee to inform LEMU that the community was not interested in continuing with the project. After community leaders clearly instructed LEMU to leave, LEMU had no choice but to cease project activities - leaving the less powerful community members unprotected against the potential bad faith appropriation of their lands - and wait for the community to request that LEMU return.

Conversely, one of the full-service communities requested LEMU's help, then immediately rejected the initiative, fearing it was a ruse to appropriate the community's communal grazing land. After local government leaders convinced the community that LEMU's aims were indeed altruistic, the community called LEMU back eight months later. Despite starting the community land documentation activities later than the other study communities, with LEMU's support this community was one of the first to harmonize its boundaries, finalize and adopt a constitution and land management plan, and successfully submit a Communal Land Association application to the Registrar for incorporation. The community's success can be

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<sup>103</sup> For a complete summary of each community's experience, see Appendix B.

attributed not only to LEMU's provision of full legal support, but also to the deep sense of threat felt by residents, who feared that their neighbours were encroaching into their grazing lands. The fact that only one village had ownership rights to the grazing land being documented (which meant that ownership claims overlapped with members' own organic sense of community) likely also made the process easier.

### **Paralegal group progress**

The paralegal communities were by far the most dedicated and committed to the project. Four of the paralegal communities were able to successfully complete the Communal Land Association formation process.

When the study communities were randomly sorted into treatment groups at the start of the project, four of the communities were first grouped together, and then randomly assigned as a group to the paralegal treatment. This grouping was done because these communities own separate parts of one vast grazing land, each bordering at least two of the others, with many of the boundaries hotly disputed. LEMU foresaw that any differences in legal support between these communities would likely create problems and possibly result in privileging one community's boundary claims over another's during boundary dispute resolution efforts.

The communities' conflicts with one another over the dividing lines of their vast grazing lands likely made an impact on their determined perseverance through the community land documentation activities. LEMU observed that these four communities were driven by fears that if they failed to complete the community land documentation process, their neighbours would succeed in claiming more than their allocated share of the large grazing lands. **These communities' commitment to seeking formal documentation for their grazing lands underscores the finding that when presented with an external threat to their land claims, communities will work hard to complete land documentation processes, even in the face of significant obstacles.** Furthermore, each of these four communities was composed of only one village, which had a positive impact on the community's strong cohesion and capacity to complete the work.

In contrast, despite having the strongest paralegals in the group, the fifth paralegal community was hindered by the presence of belligerent IDPs, who, as described above, ultimately sabotaged the community's progress with threats of violence and witchcraft. This community was also composed of five separate villages, which made cooperation difficult.

It is important to note that the paralegal communities' Communal Land Association constitutions were not sufficiently detailed to support successful Communal Land Association incorporation applications. As such, after recording what the community had been able to accomplish without full legal support, LEMU stepped in to help these communities complete the third and final drafts of the constitutions.<sup>104</sup>

### **Education-only group progress**

The experiences of the education-only communities illustrate that **even if a community is highly motivated and able to complete all of the boundary harmonization and constitution-brainstorming work on its own, it will very likely not be able to successfully complete the third and final drafts of its Communal Land Association constitution without technical legal support.**

Three of the education-only communities rejected the project. The two remaining education-only communities either had faced or were facing significant external threats to their grazing lands, and thus worked rigorously to complete the project activities on their own. One community had previously experienced an external threat that led to a significant loss of land: promising to build needed infrastructure as a gift to the community, an elite villager residing abroad had tricked the community into partitioning off land for a school and clinic, then claimed this land as his own. This community's grazing lands were also under threat by a neighbouring community, whose residents had increasingly been using the land without permission. The second education-only community had recently lost half of its grazing lands to a top District Official and former Army General, who suddenly proclaimed the land to be his and ordered the villagers to remove their cattle. After accepting this loss, the community was determined to secure documentation to protect what grazing lands remained.

However, despite working hard, both of the education-only communities stalled in the middle of the constitution-drafting process and were unable to complete their second drafts without LEMU's help. As in the paralegal treatment communities, LEMU deemed it appropriate to note the communities' stagnation as a research finding, and then step in to provide the legal support needed to help the communities complete the third and final drafts of their constitutions.

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<sup>104</sup> LEMU did not offer this support until after the post-service survey research was completed.

## Control group progress

None of the control communities in Uganda made progress towards completion of even one step of the community land documentation process. While LEMU supplied the control communities with copies of all relevant Ugandan law and Luo-language versions of LEMU’s “how-to” guidebook, these materials alone proved to be insufficient to ensure even minimal progress. The control communities’ inability to undertake the requisite community land documentation activities points to the need for culturally competent and sensitive facilitators to educate rural villagers about how to protect their land claims and then provide a range of legal and technical support throughout, until the documents are issued.<sup>105</sup>

## Impact of service provision on community progress

### Cross-national statistical analysis

To enhance the observational data, both a cross-national statistical analysis and a non-statistical Uganda-specific analysis were undertaken to assess the impact of service provision on the communities’ progress.

To ensure parity in the cross-national statistical analysis, the three nations’ different national land documentation processes were simplified to an index of the four core non-administrative components that communities in all three nations were required to complete. These four stages were:

1. Creation and election of an intermediary group or coordinating committee;
2. Boundary harmonization with neighbours;
3. Drafting and adoption of community rules for local land administration; and
4. Drafting and adoption of community land and natural resource management plans.

The resulting cross-national statistical analyses 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.

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**105** In Liberia and Mozambique, however, where the legal procedures are simpler than the process set out in Uganda’s Land Act (1998), various control communities were able to make fairly significant progress on their own.

**Statistical analysis of treatment impact across all three nations<sup>106</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.

These relatively surprising outcomes support two main 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, communities appear to integrate and internalize the legal education more thoroughly, address intra-community obstacles more proactively, and claim greater “ownership” over the land documentation process than when a legal and technical team completes the work on behalf of the community. A corollary finding may be that if full support is given, communities may underestimate their capacity to do the work independent of external support.

Indeed, in all three countries, the field teams observed that in the full-service group, community members appeared to believe that the lawyer would “do it for them” and as result were generally more passive and less motivated than community members in the paralegal and education-only treatment groups. For example, at a meeting one day, residents of a full-service community were clearly enjoying a lively debate concerning the second draft of their community constitution when a nearby political rally was scheduled to start. At this point, the community stopped their debate, left to join the rally, and told LEMU, “You just finish it for us!” Such observations indicate that even when community land documentation work is compelling, engaging, and accepted as necessary to promote land tenure security, if the work is led by an outside NGO, a community may see the final responsibility for the desired outcomes lying with the NGO, and not the community itself.

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**106** For detail on how these figures were calculated, see Appendix A, Statistical Analysis of Impact of Service Provision.

The paralegal communities' relatively higher rate of completion may be also be due in part to the finding that outside professionals may either inadequately address, fail to perceive, or inadvertently exacerbate intra-community tensions. As described in detail below, when the greatest obstacles to community progress come from within a community, outside professionals not intimately familiar with the complex social and political nuances of village life may accidentally aggravate conflicts or act in a manner that does not best serve the inter-personal dynamics at play.

**Second, the cross-national data indicate that carefully trained and supervised paralegals may be the most effective and efficient method of supporting community land documentation efforts.** Paralegals appear to do this by:

- Fostering empowerment: allowing the process to be more internally driven created a sense of community ownership over the community land documentation work;
- Increasing community participation: having trusted community members integrally involved in the project and able to work on a daily basis to educate people about the land documentation process and mobilize communities members to attend meetings helped galvanize community participation in land documentation efforts;
- Creating a local “expert”: allowing the community to drive the process forward in the time between the field teams’ visits (and remain even after the communities’ land documentation efforts are complete).

However, the field teams in all three nations found that **community-based paralegals often have very low initial capacity and need frequent training, supervision, and support by a legal and technical team.**

### **Uganda-specific non-statistical analysis**

The country-specific data from Uganda, although not analysed statistically, present a different picture than the cross-national data. The Uganda data show similar completion rates for all three non-control treatment groups, taking into account where the education-only and paralegal groups would have stopped had LEMU not supported them to finalize their Communal Land Association constitutions.

### Non-statistical analysis of treatment group impact in Uganda

- Control Group: average completed 0% of the process.
- Legal Education-Only Group: average completed 44% of the process (on their own).
- Paralegal Group: average completed 42% of the process (on their own).
- Full-Service Group: average completed 47% of the process.



Community members witness the planting of boundary trees.

**Table 1: Comparative analysis:  
Communities' capacity to complete project activities**

<b>Community</b>	<b>Interim Committee Elected</b> <small>(1 possible point)</small>	<b>Boundaries harmonized/ boundary tree-planting</b> <small>(2 possible points)</small>	<b>Constitution drafting and adoption</b> <small>(4 possible points)</small>	<b>Submission of application for a Communal Land Association</b> <small>(1 possible point)</small>	<b>Land survey</b> <small>(1 possible point)</small>	<b>Total Points</b> <small>(9 possible pts)</small>
<b>Arec/ Adokoboi</b> <i>(Full Service)</i>	YES (1)	YES (2)	Successful adoption (4)	YES (1)	No	8/9 = 89%
<b>Okeng</b> <i>(Full Service)</i>	YES (1)	YES (2)	Successful adoption (4)	YES (1)	Yes(1)	<b>9/9=100%</b>
<b>Cuke</b> <i>(Full Service)</i>	No	No	No	No	No	0/9 = 0%
<b>Apala</b> <i>(Full Service)</i>	No	No	No	No	No	0/9 = 0%
<b>Akwic</b> <i>(Paralegal)</i>	YES (1)	YES (2)	Successful Adoption (2) (needed LEMU support to get past 2nd draft)	YES (1)	No	6/9 = 67%
<b>Okere</b> <i>(Paralegal)</i>	YES (1)	YES (2)	Successful Adoption (2) (needed LEMU support to get past 2nd draft)	No	No	5/9 = 56%
<b>Teaduru</b> <i>(Paralegal)</i>	YES (1)	No	Successful Adoption (2) (needed LEMU support to get past 2nd draft)	No	No	3/9 = 33%
<b>Wilyec</b> <i>(Paralegal)</i>	YES (1)	No	Successful Adoption (2) (needed LEMU support to get past 2nd draft)	YES (1)	No	4/9 = 44%
<b>Dog Elizabeth</b> <i>(Paralegal)</i>	YES (1)	No	No	No	No	1/9 = 11%
<b>Olamadek</b> <i>(Education-Only)</i>	YES (1)	YES (2)	1st draft completed (1)	No	No	4/9 = 44%
<b>Awangi</b> <i>(Education-Only)</i>	YES (1)	YES (2)	Successful Adoption (2) (needed LEMU support to get past 2nd draft)	YES (1)	Yes (1)	7/9 = 78%
<b>Atop/Atur</b> <i>(Education-Only)</i>	YES (1)	No	No	No	No	1/9 = 11%
<b>Mantwon</b> <i>(Control)</i>	No	No	No	No	No	0/9 = 0%
<b>Akot</b> <i>(Control)</i>	No	No	No	No	No	0/9 = 0%
<b>Wigweng</b> <i>(Control)</i>	No	No	No	No	No	0/9 = 0%
<b>Aber Abwot</b> <i>(Control)</i>	No	No	No	No	No	0/9 = 0%

Together, analysis of the cross-national data and the Uganda-specific outcomes in the study communities lead to seven main conclusions relative to the project's implementation in Northern Uganda.

- 1. Once a community embraced the need for community land documentation activities, the amount of legal support provided made a strong impact on community progress through community land documentation.** For those communities who fully accepted the project and worked diligently to complete the land documentation activities, those receiving full legal support were able to progress much more quickly than those receiving paralegal or education-only support. The full service communities' rapid process was due specifically to the constitution-drafting assistance LEMU provided between the communities' various drafts.
- 2. While LEMU generally observed that the higher the level of support provided, the more easily and quickly communities were able to complete the processes, this was not the case in communities with a high degree of internal dysfunction.** In such communities, the provision of full service support did not appear to make a significant positive impact on community progress, and may in fact have hindered it. In communities struggling with internal conflict, various community factions often manipulated LEMU's support to further their agendas or simply rejected LEMU's assistance entirely. In some instances, the mere presence of outside professionals asking questions about common grazing lands may have hastened community rejection of the land documentation process.
- 3. If a community feels a strong sense of external threat to its common lands, it will work very hard to complete community land documentation activities – regardless of the level of support offered.** Seven of the eight non-control group communities that persevered through the community land documentation process faced an external threat to their lands. Analyses of these communities' experiences indicate that if a community had experienced or is currently experiencing an external threat to its land claims – such as a boundary conflict with a neighbouring community or an elite outsider's bad faith appropriation of common lands - the community generally embraced the land documentation activities. In such situations, the external threats were perceived to be so great that the community deemed it worth the risk of trusting an outside NGO for support protecting their grazing lands. Notably, LEMU observed that the communities facing an external threat to their lands unanimously chose to seek a freehold title, as it offered the strongest possible legal protection.

4. LEMU observed that the *absence* of an outside threat had a strong negative impact on the study communities' progress, even when they were facing equally severe or more immediate internal threats to their grazing lands. Because communities were so afraid of losing land to outsiders, when threats to its land were "only" internal, they often rejected the community land documentation process, preferring to remain with the "known" internal threat rather than taking the risk of trusting an outside NGO. This trend was exacerbated by internal encroachers' incentive to ensure that their communities rejected the project, leaving the communal lands undocumented and vulnerable to continued encroachment.
5. The fewer the number of villages sharing a grazing land, the more easily a "community" can work together to document its common lands. Communities composed of one or two villages were more able to work together to successfully complete community land documentation activities than communities made up of three or more separate villages. These larger communities, joined together solely because of their shared rights to a common grazing land, did not always have a clear sense of common identity. Because they lacked strong pre-existing ties and established cooperation systems, coordination proved challenging. In contrast, when the ownership claims to a grazing land were held by a single village, residents' pre-existing sense of identification as a distinct "community" allowed community members to more easily unite around the project activities.
6. Due to the technicality of the legal process outlined in the Land Act 1998 and its regulations, LEMU found that communities unquestionably need legal and technical support at certain times in the community land documentation process. Specifically, LEMU observed that communities require legal assistance to finalize their draft constitutions; promote and ensure women's participation in the community land documentation process;<sup>107</sup> interface with government officials to request Communal Land Association incorporation; and seek a CCO or freehold title for their grazing lands.
7. The Ugandan control communities' failure to complete any of the community land documentation process support the conclusion that merely providing "sensitization" via legal guides or intermittent education is insufficient: targeted capacity building and specific legal and technical assistance are necessary for communities' successful completion of Uganda's community land documentation process. Merely knowing one's legal rights does not appear to equate with the concrete ability to successfully pursue them.

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107 LEMU's role in ensuring women's active participation in the community land documentation process is described in detail below.

Together, these findings present a fairly complex picture. In sum, the provision of paralegal support appears to best support community progress through the Communal Land Association-formation process, when provided with supplemental targeted legal support during constitution-drafting efforts, boundary conflict mediation, women's mobilization, and during formal interactions with government agencies and actors. However, due to the low number of communities that ultimately persevered through the community land documentation process, additional research is necessary to confirm and elaborate upon these conclusions.

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

As described above, LEMU's observation of the study communities' experiences led to the conclusion that a variety of factors weighed more heavily on community capacity to complete the project activities than the level of legal services provided. Leaving aside the proven need for legal support during land dispute mediation and constitution-drafting exercises, LEMU observed that a community's successful completion of the community land documentation activities tended to depend strongly on five inter-related factors, each of which was observed to make a significant difference in a given community's success:

- The strength or weakness 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 (internal or external);
- The degree of internal community cohesion/cooperation or disunity; and
- The presence or absence of an intractable boundary dispute.

In Liberia and Mozambique, these factors were also identified as critical to community progress. To determine if there was a positive correlation between the level of legal assistance provided and communities' effectiveness in overcoming these obstacles, a series of cross-national statistical tests were conducted.<sup>108</sup>

Statistical analyses of the correlation between the level of assistance provided and communities' effectiveness in overcoming intra-community obstacles (the joint effect of each of these obstacles/factors in combination with level of legal service support provided) illustrate a very unexpected finding: when faced with

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<sup>108</sup> See Appendix A for the full statistical analysis.

an intra-community obstacle that impedes progress, the statistical significance of the impact of providing full legal support was 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.** Moreover, the cross-national statistical analysis clearly 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.

However, cross-national statistical analysis of each factor (analysed on its own, not in correlation with the level of service provided) found that while each of these factors impact a community's ability to successfully complete the land documentation activities, **the degree of legal services provided had the most influence on the community's success during the community land documentation process.** This finding correlates with LEMU's observation that once a community embraced the need for community land documentation activities, the amount of legal support provided made a very strong impact on community progress through community land documentation.

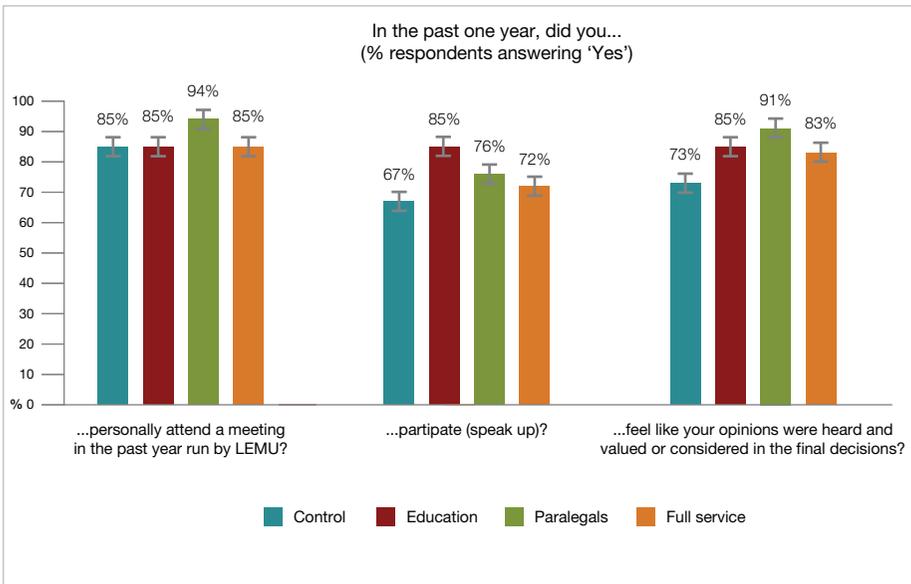
### **Correlation between the level of legal assistance provided and community participation rates**

When randomly selected post-service survey respondents throughout the study communities were asked about their meeting attendance and participation, their reported rates of meeting attendance are astoundingly high; across the three treatment groups, an average of 88% of survey respondents reported participating in at least one meeting run by LEMU.<sup>109</sup> Notably, the paralegal group respondents reported attending project-related meetings more frequently as well as "feeling heard" more often than other groups' respondents, while education-only group respondents reported speaking up in meetings most frequently.

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**109** As previously explained, it is important to note that the post-service survey data do not include responses from the communities where the project was rejected midway through the process.

**Figure 6: Community attendance and participation in meetings<sup>110</sup>**

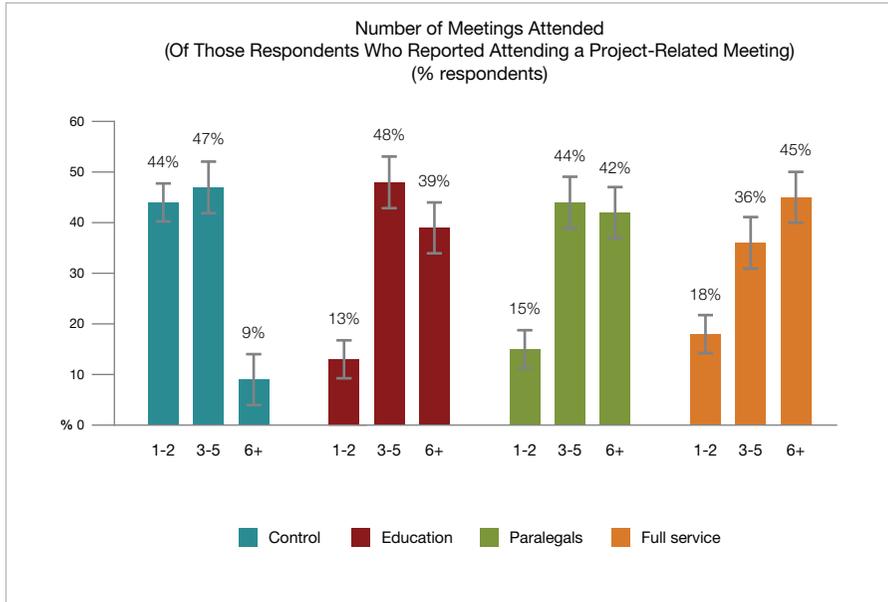


Here, the positive impact of the paralegals’ (CSPs) improved mobilization skills are evident; while 85% of the control, education-only, and full-services respondents reported attending at least one project meeting, a full 94% of respondents in CSP-led communities reported attending a meeting. This improved outcome was likely due to the paralegals’ constant presence in their villages, allowing them to more easily mobilize their communities, disseminate project information, and confront negative rumours. They were also able to work on a daily basis to educate people about the community land documentation process and mobilize community members to attend meetings – while at church, when socializing with their neighbours, at markets or in drinking spots, for example – opportunities that LEMU’s field team simply did not have.

**110** It is important to note 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. In addition, 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.” 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. C.D. Schunn, “Statistical significance bars (SSB): A way to make graphs more interpretable,” (Unpublished manuscript, 1999).

LEMU also asked those community members who reported attending a project meeting how many project-related meetings they had attended.

**Figure 7: Number of meetings attended<sup>111</sup>**



Respondents who reported attending meetings indicated that they had attended a surprisingly high number of meetings: 87% of the education-only group, 86% of the paralegal group, and 81% of the full-service group respondents reported attending more three or more meetings. This finding appears to indicate that across the various treatment groups communities were highly – and similarly – engaged. This finding correlates with LEMU’s observation that once involved, community members participated energetically in the land documentation process, particularly in the constitution-drafting debates.

<sup>111</sup> It is not clear what meetings the control group’s numbers concerned, as leaders in these communities reported not being able to convene even one successful community land documentation-related meeting. Further research is necessary to clarify this data.

In sum, the data indicate that the provision of paralegal support may be the optimal level of assistance during community land documentation processes. However, the Uganda findings indicate that facilitators should undertake a nuanced analysis of each community's situation, and, building upon the elected paralegals' strengths, gauge how best to provide targeted additional legal and technical support. Furthermore, given the level of conflict surrounding encroachment into community grazing lands in Northern Uganda, LEMU found that it was necessary to closely supervise each community's work to demonstrate to all community members – and individuals seeking to appropriate community land in bad faith – that the land protection efforts are being supported by a team of lawyers who have the capacity to take legal action. Further research and observation will likely be necessary to build upon these initial understandings and help to refine the provision of support to communities working to document and protect their grazing lands.



Community members pose for a photo after marking the agreed boundaries of their communal grazing lands.

## Main findings

1. Cross-national statistical analyses 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.**
2. The cross-national data indicate that **the paralegal model of service provision proved to be the most successful.** In Uganda, paralegal assistance appears to have:
  - Helped communities address intra-community obstacles that outside technicians or lawyers failed to recognize or resolve (the data indicate that the paralegal treatment supported the resolution of land conflicts most effectively, with 72% of respondents in the paralegal treatment group reporting that the project helped to resolve a pre-existing land conflict in their community);
  - Increased attendance at community meetings;
  - Fostered empowerment and create a sense of community ownership over the community land documentation work by allowing the process to be more internally driven; communities appear to integrate and internalize the legal education more thoroughly, address intra-community obstacles more proactively, and claim greater “ownership” over the land documentation process than when a legal and technical team completes the work on behalf of the community.

However, it should be noted that the field teams in all three nations found that community-based paralegals often have very low initial capacity and need frequent training, supervision and support by a legal and technical team.

3. In Uganda, **while LEMU generally observed that the higher the level of support provided, the quicker communities were able to complete the processes, this was not true for communities with a high degree of internal dysfunction.** In such communities, rather than helping to resolve intra-community conflicts, the provision of outside legal and technical support may entrench or inflame intra-community conflict, with opposing factions manipulating the field team’s support to further their agendas. In contrast, when the bulk of the community land documentation work or responsibility fell on the community itself, there was less opportunity for such manipulation to occur. These findings indicate that outside professionals may either inadequately address, fail to perceive, or inadvertently exacerbate intra-community tensions.

- Cross-national statistical analyses also indicate 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.
4. The Ugandan communities' experiences indicate that a host of community-specific dynamics may weigh more heavily on community progress than the degree of legal support provided, including:
- **Whether the community is facing an external threat to its land claims:** when a community had faced or was currently facing a specific external threat to its lands, it worked diligently to complete the process, regardless of the degree of legal support provided. The communities facing an external threat to their lands unanimously chose to seek a freehold title, as it offered the strongest possible legal protection.
  - **The absence of an outside threat, coupled with the existence of internal threats to community grazing lands:** if the threat to a community's land is coming from inside the community itself (local encroachers who seek to obstruct the process to ensure continued opportunity to claim land for themselves), hardworking paralegals and even the full support of a legal and technical team may not be enough to address the intra-community challenges, and the community land documentation work may be rejected.
  - How many villages is community is composed of: **the fewer the number of villages sharing a grazing land, the more easily a "community" can work together to document their common lands.** When the ownership claims to a grazing land were held by a single village, residents' pre-existing sense of identification as a distinct "community" allowed community members to more easily unite around the project activities.
  - The presence or absence of one or more individuals actively working to sabotage community land documentation efforts.
5. **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 experiences of

the paralegal and education-only communities illustrate that **even if a community is highly motivated and able to complete all of the boundary harmonization and constitution-brainstorming work on its own, it will very likely not be able to successfully complete the third and final drafts of its Communal Land Association constitution without technical legal support.** Communities unquestionably need legal and technical support at certain specific times in the community land documentation process, including:

- 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 constitutions;
  - Implementing a women's empowerment/participation strategy and convening special women-only meetings to ensure women's full participation in 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.
- 6.** The Ugandan control communities' outcomes clearly support the conclusion that merely providing "sensitization" or intermittent education is insufficient: **knowing one's legal rights does not appear to equate with the concrete ability to successfully pursue them.** At the most basic level, before being able to take action to document their community lands, communities need to be supported to understand, interpret, and leverage laws that formally protect their land rights. They also need periodic legal education and capacity-building training support to successfully document these rights.

## 5. Protection for the rights of women and other vulnerable groups



Women attend a community meeting to discuss their community's constitution.

## 5. Protection for the rights of women and other vulnerable groups

Growing 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>112</sup> Research has found that as land becomes scarce, customary leaders and families shift from more flexible, negotiable systems of land holding to more rigid, discriminatory interpretations of land rights. Indeed, in some communities in Uganda, families are reinterpreting and “rediscovering” customary rules that function to weaken women’s land tenure security.<sup>113</sup> In practice, this puts those with weaker land claims – including women, orphans, pastoralists, and other vulnerable groups – at a greater risk of losing their land.

Under community land documentation schemes, land and natural resource management is devolved to the 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 and other vulnerable groups may lose land to land-grabbing relatives, in boundary disputes with elites community members, and other situations characterized by power asymmetries.

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 resource 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 Communal Land Association constitutions; and the drafting, finalization, and adoption of land and natural resource management plans?
- 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?

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

**113** 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).

*The process of drafting and revising community rules for land and natural resource management may open up an authentic space for women and other vulnerable groups to question rules that disadvantage them and advocate for rules that strengthen their land rights and tenure security.*

The following section begins by detailing LEMU's efforts to foster women's active participation in the community land documentation process. It then describes the relative success of such efforts according to the level of legal services treatment provided. The section then outlines the various impacts of the constitution drafting process on women's substantive and procedural

rights. It concludes that the process of drafting and revising community rules for land and natural resource management may open up an authentic space for women and other vulnerable groups to question rules that disadvantage them and advocate for rules that strengthen their land rights and tenure security.

## **Fostering women's participation in community land documentation activities: Holding "women's conferences"**

Throughout the intervention, LEMU employed a variety of strategies designed to increase women's participation, including:

- Electing female intermediaries and paralegals and training them to mobilize women to attend project meetings;
- Scheduling project meetings in places and at times that women could more easily attend, such as holding meetings on Sunday afternoons when women are free from their work;
- Sending community leaders and paralegals door-to-door to request that women attend project meetings;
- Proactively requesting that husbands to bring their wives with them to meetings;
- Having a few women cook lunch for the whole community at the meeting venue to ensure other women's attendance; and
- Reading individual women's names over local radio and asking them to personally attend the next project meeting, among other strategies.

Despite these efforts, women's attendance at meetings remained low for the first six months of project activities. When women did attend meetings, they tended to sit at the back and remain silent. It was not until the inception of the constitution-drafting process that LEMU understood the reason behind women's low turnout and lack of participation at meetings: although the grazing lands are central to a variety of activities critical to families' livelihoods and survival, community perception was that the grazing lands were used only for grazing, a primarily male activity. It was therefore assumed that the project related only to men. Yet women use the grazing lands on a daily basis to collect basic household necessities such as firewood, building materials, wild fruits, white ants, herbal medicines, honey, mushrooms, and other resources.

LEMU therefore deemed it necessary to hold women-only meetings to proactively address issues related to women's use of the grazing lands and to motivate women to participate in all community land documentation activities. To this end, in August of 2010, LEMU held a series of "women's conferences," during which two or more women from each treatment community were trained about the importance of their participation in project activities. At the conferences, LEMU worked with the women to help them to understand: 1) that community grazing lands provide a wide range of resources necessary for their families' daily subsistence; and 2) how women's participation in the forthcoming work of drafting the Communal Land Association constitutions was critical to preserving women's use and access rights to the grazing areas and ensuring sustainable natural resources use.

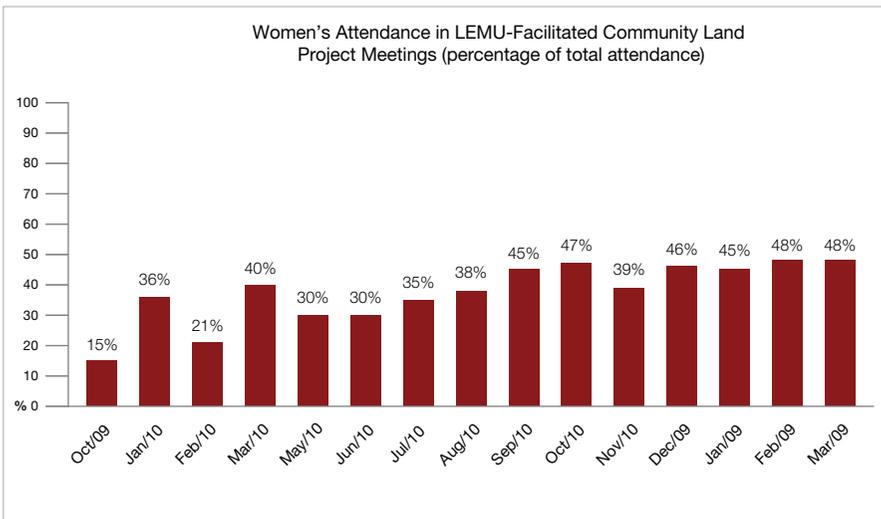


Women pose for a photo with LEMU staff after a Women's Conference.

## Women's participation in community land documentation activities

The women's conferences proved to be a turning point in women's participation in project activities. Once women began to feel that their input in the process was valued and important, they began to attend the wider community meetings in larger numbers: after the conferences, women's participation equalled or exceeded men's. The chart below illustrates these increases.

**Figure 8: Women's attendance in LEMU-facilitated community land project meetings**



The women's conferences also gave women greater confidence in self-advocacy at project meetings: after the conferences, LEMU observed women voicing their opinions and advocating for their interests more often during community discussions. As a result, during debates about the content of the second drafts of the Communal Land Association constitutions, women argued successfully against the inclusion of rules that would serve to discriminate against them.

## Correlation between legal treatment provided and women’s participation in community land documentation activities.

In Uganda, female survey respondents’ reported rates of meeting attendance, verbal participation, and sense of feeling “that their opinions were heard and valued” indicate an exceptionally high rate of women’s participation in community land documentation efforts.

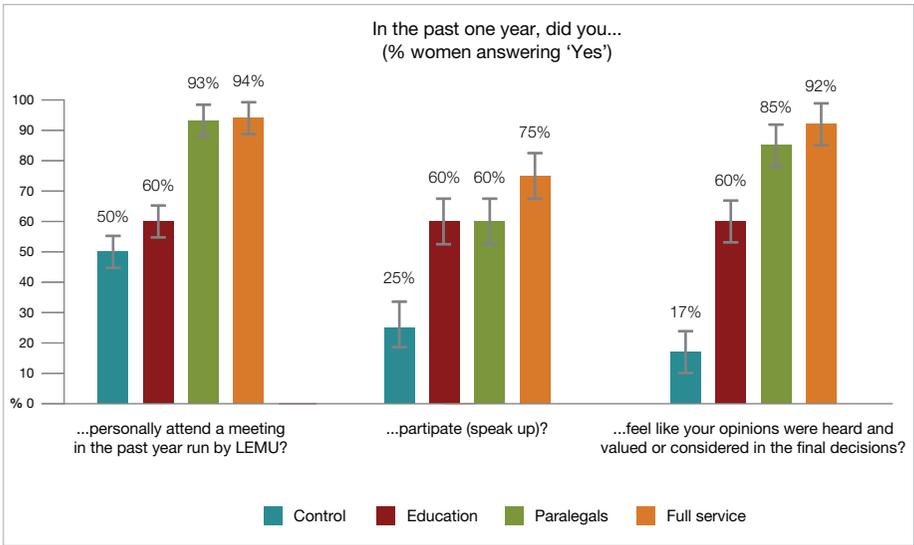
First, **over 90% of female survey respondents in the paralegal and full-services treatment groups reported attending project meetings.** Moreover, of those women who answered that they had attended a meeting run by LEMU in the past year, 60% of full-services community women, 51% of paralegal community women, and 33% of education-only community women reported attending four or more meetings.<sup>114</sup> This data indicate that the more legal support provided by legal and technical professionals, the more women participated in project activities.

LEMU’s full-service support also appears to have most effectively ensured women’s verbal participation in community land documentation activities: **a full 75% of full-service treatment women reported speaking up in a meeting, and a full 92% of the women who voiced their opinions in the full-service community meetings felt as though their ideas were heard and valued.** Similarly, 60% of paralegal treatment female respondents reported speaking up in community meetings, and 85% of those who spoke up reported feeling as though their opinions were heard and valued. However, of the 60% of education-only women who reported speaking up, only 60% of them reported feeling heard. It may therefore be hypothesized that paralegal support is the minimum support necessary to ensure that women participate meaningfully in community land documentation activities.

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<sup>114</sup> Cross nationally, the paralegal treatment had a slightly higher impact on the number of project meetings each female respondent attended: cross-nationally, 56% of female respondents in the paralegal group communities reported attending three or more meetings, in comparison to 47% of full service female respondents and 46% of education-only female respondents.

**Figure 9: Women’s reported attendance and participation rates in project meetings**

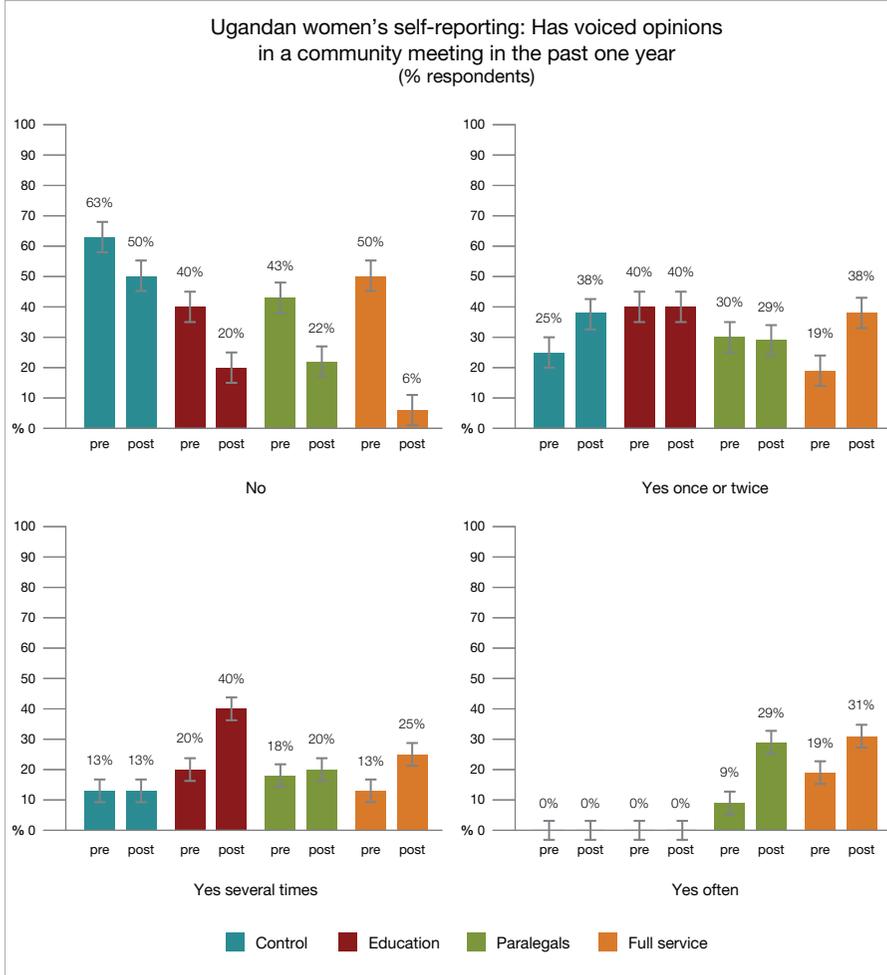


The female survey respondents were also asked *how often they had spoken up* in community meetings over the past year. Here, the Uganda data indicate significant reductions in the number of women reporting that they never voiced their opinions during community meetings, with corresponding increases in the percentage of women reporting speaking up “several times” or “often.” These data underscore the conclusion that **paralegal and full services support most effectively increased women’s verbal participation during project meetings.**

Cross-national statistical analyses of women’s attendance and participation at community meetings confirm these results: across all three countries, women’s treatment group participation rates were significantly higher than women’s participation rates in the control group. However, only the paralegal treatment showed a significant increase in women’s reported participation as compared to their reported participation in the year before the project began. Women in the paralegal treatment communities also achieved slightly higher rates of attendance and verbal participation than all other treatments during the intervention.<sup>115</sup>

115 See Appendix A for the full statistical analysis.

**Figure 10: Women’s reported verbal participation in community meetings over the past year**



In sum, across all analyses of treatment impacts on women’s participation, the paralegal treatment proved to be the most robust. The paralegals’ success in increasing women’s participation in project activities was likely due to their constant presence in their communities, their greater knowledge of women’s schedules, and their ability to mobilize their communities on a daily or weekly basis.

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

After the communities had brainstormed the first drafts of their constitutions, LEMU instructed the study communities that their constitutions could include any rules they best saw fit, so long as they did not contravene national law. LEMU then dedicated a great deal of time and energy to teaching communities about women's land rights in Uganda, as set out in the Ugandan Constitution and the Land Act 1998, as well as the customary rights explicitly documented in the "*Principles, Practices, Rights and Responsibilities of Customary Land Tenure in Lango Region*" (PPRR).<sup>116</sup> LEMU then left communities to discuss their rules and arrive at second and third drafts of their constitutions.

Analysing the constitutions, LEMU noted that the constitutions include an average of 11.6 provisions protecting or promoting the rights of women. These provisions both strengthen women's substantive rights to community land and natural resources as well as establish women's procedural rights to participate in community land and natural resource management.

### Impacts on women's procedural rights

Analysis of the study communities' experiences leads to the conclusion that, if well-facilitated, the community land documentation opens up a meaningful space for women to actively participate in discussions and decisions concerning land and natural resource management.

Most notably, all of the third draft Communal Land Association constitutions allocate a seat on the Executive Management Committee to a woman leader whose duties, according to the constitution, include "collecting women's views" and representing these views at management meetings. For example, one community's constitution states that the "Functions of the Women Leader" are: "Ensuring 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."

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<sup>116</sup> As described above, LEMU had in the past worked with the clan heads and the Paramount Chief of the Lango Clan to transcribe all existing customary rules relating to land inheritance and use (agreed to be clan rules by full consensus) into an official written document signed onto by all relevant clan leaders. See the "Principles, Practices, Rights and Responsibilities (PPRR) of Customary Land Tenure in LANGO Region," available at [land-in-uganda.org/documents.htm](http://land-in-uganda.org/documents.htm).

While this allocation of a seat on the Communal Land Association management committee may have been included to align with the Land Act's mandate that at least one-third of Communal Land Association officers must be women,<sup>117</sup> it is likely that it also reflects important changes in community members' conceptions of women's "place" in land and natural resources governance decisions.<sup>118</sup>

Before the intervention began, most participants in pre-service women's focus groups reported that they generally attended community meetings. However, more than half of the women explained that they were afraid to speak up at community meetings for fear of being belittled or mocked both by men and other women, or because shyness or an internal sense of inferiority kept them from contributing their ideas. 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."

Notably, a few women in each focus group described freely sharing their opinions during community meetings. These women explained that they speak up frequently to make the point that they have important things to contribute and to prove to men that they should listen more to women. These women explained, "We speak freely because the men think we have weak ideas, so we speak out to prove them wrong."

However, after being involved in the community land documentation process, women in post-service focus groups of treatment communities consistently described that they felt that they were able to participate in community meetings, and that their opinions and ideas were taken seriously and included in their community's final decisions. In stark contrast to the pre-service focus groups, women explained: "Our opinions were used to make final decisions;" "At the end of the day, the written document represents our opinions, too;" "We feel our opinions were heard and often used in the final decision; whereas others' ideas were left out;" "We were all considered the same [as the men] when giving views;" "When a community meeting is held and women also participate meaningfully, our ideas are respected;" and "Yes, we have the opportunity to participate and our opinions are always taken."<sup>119</sup>

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**117** *Land Act 1998*, Section 16: "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."

**118** However, the constitutions' provision for one "woman leader" do not appear to fulfil this one-third mandate. Further advocacy will likely be necessary.

**119** Such changes were not reported in the control communities.

While this change in may have been due in part to LEMU's emphasis on women's participation, this shift may also have been the direct result of the fact that women's active involvement in the constitution-drafting process increased the resulting documents' comprehensiveness. If the women had not been present to list all of the natural resources they gather daily for the grazing lands to build their homes, feed their families, care for their children's health, etc., the community would likely not have created rules to ensure these resources' sustainable use. It may be that because women's contributions proved prescient, they showed men, by example rather than mandate, that their participation was crucial to improved natural resources management. It may be that, because the women's comments related to those natural resources considered "the domain of women" (including resources like mushrooms, honey, and white ant hills), their comments did not threaten traditional gender roles, and as a result men were able to listen to the women's contributions and accept their recommendations without feeling as though their interests were threatened.

### **Impacts on women's substantive rights**

The constitution-drafting process proved to be the centerpiece of LEMU's efforts to support communities to establish local protections for the land rights of women and other vulnerable groups. **By creating the opportunity for communities to publicly reflect on and discuss their existing rules (and the underlying reasons for these rules), the constitution-drafting process provided an opportunity for women to actively question and challenge discriminatory customary norms and practices.** Indeed, as a result of such extensive community debate and LEMU's careful facilitation, all of the final, adopted Communal Land Association contain a variety of substantive protections for women's land rights. These provisions that do so in three main ways:

1. The constitutions affirm that all female community members — including unmarried daughters, wives, and widows — are considered equal members of the Communal Land Association with the same rights to land and natural resources as male members. The constitutions do this by specifying that only "natives" may be automatically considered Communal Land Association members, but then go on to 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. In doing so, these provisions widen the definition "native" from only those "born there" to include those who have married into the community.

2. 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. One example of such provisions is as follows:
 

“Deceased Member: a) his wife inherits his membership rights; b) if he has no wife, his children become his heir; and c) if he has no children, the grandchild born to his son or to his daughter who has returned home inherits his membership rights.”<sup>120</sup>
3. The constitutions carefully detail the resources that women gather from the grazing lands, and establish that all community members have the right to continue to collect these resources freely and as needed, thus ensuring that women have permanent and open access to the grazing lands and the natural resources they depend upon for their livelihood.

Most notably, the constitution-drafting process appears to have re-invigorated community members' understanding of existing customary protections for women's rights. Many of the protections enshrined in the *“Principles, Practices, Rights and Responsibilities (PPRR) of Customary Land Tenure in LANGO Region”*, clearly made their way into the final constitutions. For example, the PPRR sets out:

1. **Land rights of head of family.** All Married men, Unmarried adult girls with or without children, married women, the children born by un-married girls, Widows who have not remarried, Widows who voluntarily choose to return to their parents homes, Orphans and all daughters who were once married but divorced and returned to their parents' homes have rights to land as individuals and the responsibility to manage land as head of family on behalf of all family members.
2. **Land rights of unmarried girls and of orphans.** a) It shall be assumed that all girls will be married and move to get land rights from their marital homes, but when it is unlikely that a girl will marry, or the moment a girl has a child out of marriage, the head of family must allocate land to the girl to respect her land rights and her as a head of family. b) It shall be assumed that the land or orphans shall be protected by a relative appointed by the clan but where there is no appointment made or where the appointed person abuses the land rights of the orphan, the land rights of the family land shall pass to the orphan as head of the family to manage and protect customary land for him/her on behalf of the family and the clan.

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**120** It should be noted, however, that although this community's constitution affirmatively establishes that female community members are considered full members of the Communal Land Association, this provision describes a “member's” inheritance as if members were solely male.

3. **Land rights of widows and their protection.** a) A widow becomes a head of family over the land which was allocated to her at marriage and when her husband still lived. b) At the last funeral rite of the husband a widow must make her choice known to the clan in writing or in the presence of trusted clan members and members of the LC 1 executives. A widow may choose if she wants to return to fathers land or remain in her marital land with or without a man in her life. c) Widows who voluntarily leave their marital homes to get married in another clan must appoint one of the children as the head of family and leave the land to her/him or leave the land to the clan of her husband if she has no children or if the children are young. d) Women who are separated with their husbands and return to their fathers land or remarry in another clan must leave the land to her husband or the clan of the husband. e) Women who are separated from their husbands but who are not divorced have the right to return to her land in her marital home. The husband and the clan must return the land to them. f) A divorced woman who returns to her parents or re-marries to a man of another clan shall leave the marital land of the former husband to her children and their clans.”<sup>121</sup>

A close read of many of the final constitutions shows that community members followed the principles set out in the PPRR and included them in local rules for their Communal Land Association. For example, one community’s constitution reads:

### **Box 7: Community definition of eligibility for Communal Land Association membership**

The natives of Wilyec shall be the following categories of people:

- Any person born in any of the six clans, and must have been born here in Wilyec.
- All widows in the six clans identified.
- A wife inheritor, or a man eloped by a woman is not a member, but if he is still resident in Wilyec, he is free to use the grazing land, within the confines of the law.
- Women who have returned back to their clans located here in Wilyec

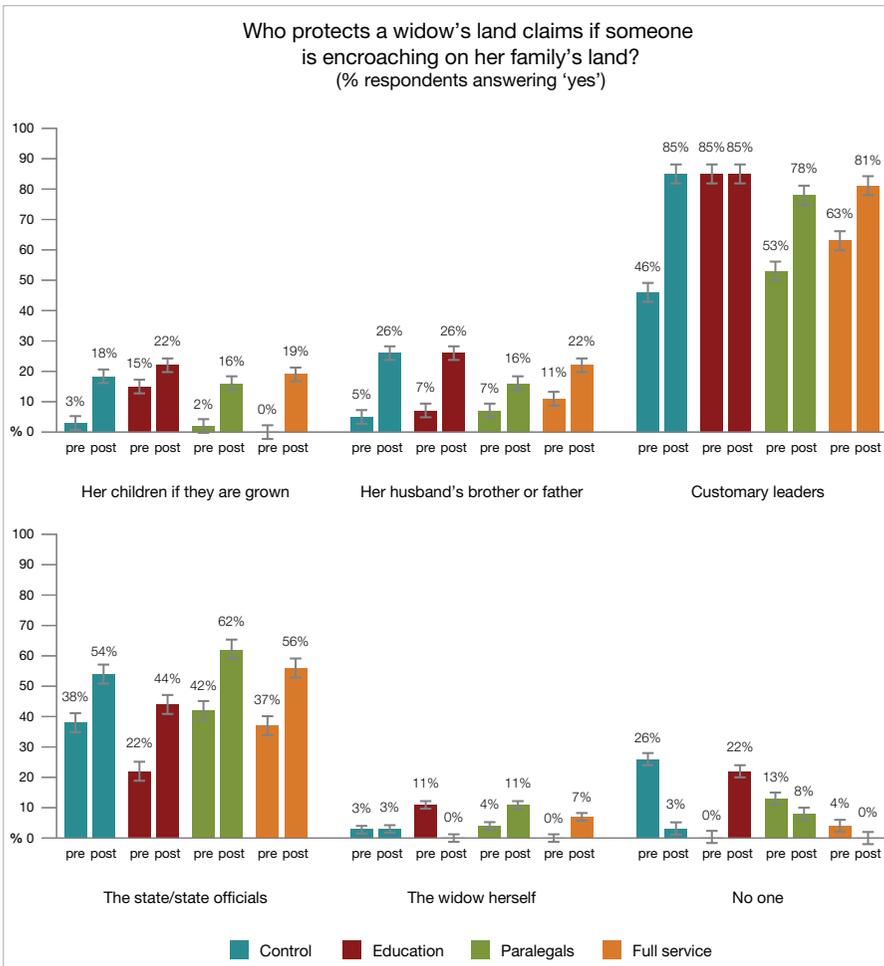
121 Principles, Practices, Rights and Responsibilities (PPRR) of Customary Land Tenure in LANGO Region,” at 39-41.

- Individuals/any individual who will buy land in Wilyec, or who will have built his house on a piece of land offered to him, shall become a member of the association if he has indicated his interest by registering to become a member.
- Any disabled person who is hailing from Wilyec shall not be discriminated against; he/they all shall be eligible to membership...
- Members shall be all the households hailing from the six clans of Wilyec...
- Youth who have become independent of their parents, and are staying on their own shall register as members, even if they are single/without husband or wife.
- Individual disability shall not bar anybody from becoming a member provided he/she is registered.
- Orphans left on their own in their parents' homes shall become members of the Grazing Land.

The contents of the PPRR and community's inclusion of many of the principles contained within indicate that **custom does not necessarily undermine or weaken women's land rights**. To this end, customary leaders may be important allies in the enforcement of women's land rights, as the data indicate that communities consider customary leaders primarily responsible for the protection of women's and widows' land rights.<sup>122</sup>

<sup>122</sup> To be fully understood, the strength of a woman's land rights should be contextualized by the dedication of those around her to protecting them: in rural contexts, where access to the formal justice system is difficult, the security of a woman's land rights depends on her husband, in-laws, brothers and the customary leaders in her village.

**Figure 11: Who protects a widow’s land claims when they are threatened?**



Importantly, the above data illustrate the importance of working with customary leaders to support their role as protectors of women’s land rights. Rather than marginalizing customary leaders as a destructive part of a legal paradigm that does not protect women’s land rights, these leaders should be recognized for the important role they can play in protecting women’s land claims. Special training for customary leaders has the potential to help to build their capacity to fulfil this responsibility.

Interestingly, when asked what new laws their communities had passed to protect women’s rights, men’s focus groups frequently described that they had passed “many” new rules concerning women’s land rights in their communities.

For example, the male elders in one community explained:

*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.*

However, women's focus groups often answered that they had not been given any "new" rights to land. This difference of opinion may be attributed to the fact that the long lists of "new" women's rights described by the men's focus groups were not actually new rights, but merely the community's local adoption and incorporation of the formal rights set out in the Ugandan Constitution and the customary rights set out in the Principles, Practices, Rights and Responsibilities (PPRR) documented by the Lango Cultural Foundation. While some of the men considered these rules new, it appears that the women were well aware that these were their existing rights under both custom and formal law.<sup>123</sup>

As such, one conclusion may be that women's active participation and self-advocacy during community debates did not manifest in any "new" rights but rather 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.

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**123** Women's pre-service focus groups described that under customary practices of allocation and inheritance, women have relatively strong land rights. These groups explained that, in theory, customary practices are egalitarian because they result in men and women having equal secure land claims: "Both the men and the women have the same rights to land in this community because when a man dies, the land remains in the hands of the widow"; "When a woman gets married into the clan, she is given some piece of land"; "The men and women have equal rights because if a woman gets married, she belongs to that clan and therefore has full rights"; and "Men and women have the same rights. The women who separate from their husbands and return to their maiden homes are given some land however her children, if she returned with any, have no rights because they belong to their father's clan."

If these provisions are properly enforced, in rural areas where access to the formal justice system is difficult, **community land documentation efforts that include participatory constitution-drafting exercises may in the short term lead to greater land tenure security and access to natural resources for women than individual land titling.**

Yet while the inclusion of such provisions in the community constitutions is a laudable step forward and analysis of the communities' constitutions and the field teams' observations indicate positive trends, 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.



Women attend a community land protection meeting.

## Main findings

1. If well-facilitated, the process of drafting and revising community rules for land and natural resource management may open up an authentic space for women and other vulnerable groups to question rules that disadvantage them and 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 have the potential to negatively impact community land documentation;
  - Planning community land documentation meetings to take place at convenient times and locations, 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 indicate that the more legal support provided by legal and technical professionals, the more women participated in project activities. The data also show that the education-only and full-service treatments were generally less successful at promoting and ensuring women's participation in community land documentation activities.
4. Most communities' 1st draft rules included provisions that directly contravened national protections for women's land rights. A process of cataloguing, discussing and amending local norms is fundamental to the adoption of intra-community mechanisms to protect women's rights.
5. The active involvement of women and other vulnerable groups in the constitution drafting debates appears to have strengthened women's procedural and substantive rights in their community.
  - Procedurally, community members' perceptions that land is "men's business" shifted as a result of the process, women's opinions appear to have been taken seriously during discussions, and all of the resulting

Communal Land Association constitutions include provisions that women must have elected representatives on governing bodies responsible for community land and natural resource management.

- Substantively, communities adopted provisions to strengthen and protect women’s land rights. These provisions appear to contribute to:
  - » 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 both with national laws that protect women’s land rights as well as the customary rights written out in the Lango Cultural Foundation’s Principles, Practices, Rights and Responsibilities (PPRR).

**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. To this end, customary leaders may be important allies in the enforcement of women’s land rights, as the data indicate that communities consider customary leaders primarily responsible for the protection of women’s and widows’ land rights. Customary leaders have indicated that they are open to shifting local practices to align with national laws.

**7. In rural areas where access to the formal justice system is difficult, community land documentation processes that include constitution-drafting exercises may in the short term lead to greater land tenure security and access to natural resources for women than individual land titling.**



## 6. Findings and recommendations



Women take notes at a meeting concerning community natural resource management and conservation.

## 6. Findings and recommendations

In Uganda, growing population density, increasing land scarcity, and the 1998 Land Act's legalization of a land market have combined to create a situation of intense competition for land, in which land grabbing, boundary encroachments, and elite appropriation of common lands are rampant. As a result, there is a high rate of tenure insecurity in northern Uganda, a prevalence of intra-community land conflict, and a rapid loss of common grazing lands, which community members rely upon for their subsistence and survival. In this context, protecting the common lands that rural communities rely upon for their daily subsistence and survival is increasingly urgent.

Yet more than a decade after Uganda's Land Act 1998 was approved, not one Communal Land Association has been incorporated, nor one freehold title or certificate of customary ownership issued to a community to protect its communal land claims. To address this need, the Community Land Protection Initiative investigated how to best support communities to take action to protect their common lands.

The investigation's central finding is that **community land protection efforts should combine the *technical* task of mapping and documenting community lands, the *peace-building* work of land conflict resolution, and the *governance* work of strengthening local land and natural resource management.** Cross-national analyses of the data indicate that when these efforts are joined, community land documentation activities present an exceptional and rare opportunity to create positive change that extends beyond documentation for customary, communal land claims.

Indeed, LEMU's experiences implementing the Communal Land Association formation components of the Land Act 1998 lead to the observation that community land protection efforts may help to:

- Resolve long-standing land disputes and reduce future land conflict;
- Improve governance and establish local mechanisms to enhance community leaders' downward accountability;
- Strengthen protections for the rights of women and other vulnerable groups;
- Motivate communities to conserve and sustainably manage natural resources;
- Align community norms and practices with national law; and

- Promote legal empowerment<sup>124</sup> and build community capacity to take active steps to protect their lands and resources.

To achieve such impacts, the processes must be very carefully facilitated, and should be pursued only in those communities that proactively seek out support and are capable of fully completing all community land documentation activities.

This section summarizes the study's seven main findings and sets out recommendations for policy and implementation. The policy section addresses the framework of national legislation and regulations, and may be most useful for Ugandan policy makers and those involved in advocacy. The implementation section includes practical recommendations for state and civil society agencies working to facilitate community land protection efforts in the field.

It is important to reiterate that the following conclusions are necessarily preliminary. Due to the absence of a District Registrar in Oyam District, none of the study communities have been able to successfully complete the Communal Land Association incorporation process and apply for a CCO or freehold title for their common grazing lands. Indeed, **the greatest impediment to the study communities' successful community land documentation efforts has been the Ministry of Land's failure to appoint a District Registrar to Oyam.**

The findings are therefore offered with caution and with the understanding that continued research and monitoring are necessary. Additional investigation is also necessary to determine the long-term social and economic impacts of documenting community land rights.<sup>125</sup> Moreover, continued engagement is required to understand how to best support community efforts to safeguard harmonized boundaries, implement their newly adopted Communal Land Association constitutions, and to discern what additional assistance is necessary to ensure that documented community land claims are truly protected over the long-term.

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**124** Legal empowerment may be defined as the process of people 1) learning about the substance of their legal rights; 2) understanding how to pursue the tangible actualization of these rights; 3) attaining the practical capacity and skills to successfully pursue these rights; 4) gaining an emotional and psychological understanding that they have the right to demand that their legal rights be protected and enforced by the state; and 5) successfully using legal knowledge and skills to take action to attain their objectives.

**125** To undertake these activities, Namati and SDI will join together to implement the Community Land Protection Program. See <http://namati.org/work/community-land-protection/> and the afterword, below.

## Main findings

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

In Uganda, the process of harmonizing the boundaries of the communal grazing lands both unearthed latent, unresolved land conflicts – long dormant or festering for years – and ignited new boundary disputes that flared up in response to the impending documentation efforts. The very exercise of drawing definite boundaries created a situation in which people were manoeuvring to claim as much land for their families as they could before the boundaries were finalized.

Boundary harmonization was therefore the beginning of serious intra- and inter-community conflict, even in communities that previously reported no boundary disputes and generally peaceful relations with their neighbours. However, while the potential for conflict was significant, communities' desire to obtain delimitation 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.

As a result of community efforts, the boundary harmonization process resolved many more conflicts than it created. Furthermore, post-service focus groups and survey respondents reported that **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.**

To support the peaceful resolution of local land disputes, facilitating agencies must prepare for land conflict resolution to be a central component of all community land documentation work, and should provide extensive conflict resolution and mediation training before a community begins boundary harmonization efforts. Facilitating agencies should also stand ready to support the 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 for how community members may approach the resolution of family-level land conflicts.

Critically, **communities will require state support for enforcement of agreed boundaries over time.** As land scarcity continues to rise, encroachments into community grazing lands will likely become more prevalent. Government officials' support will be essential to efforts to help communities to deal justly with encroachers and maintain all agreed and documented boundaries. This support should include prosecution of elite encroachers, mediation, and other executive or judicial action necessary to protect community land claims.

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

LEMU observed that community land documentation processes that include comprehensive processes for cataloguing, discussing, debating and amending community rules, norms and practices have the potential to foster participatory rule-making and democracy, and establish accountability mechanisms for local leaders.

Members of all study communities reported that **the Communal Land Association constitution-drafting process provided the opportunity to publicly discuss and evaluate community rules and norms for the first time in living memory.**

The Communal Land Association constitution-drafting process gave communities the space and time to reflect publicly 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. 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. This process fostered significant shifts in various facets of local governance and sustainable natural resources use in the study communities. The Ugandan communities' experiences indicate that the constitution-drafting process:

- Created an opportunity for communities to strengthen and enforce customary rules for local land and natural resource management. It did this by making these rules clear and known to all, and establishing enforcement mechanisms and known penalties, thereby increasing community leaders' and residents' accountability for following the agreed rules.
- Affected a transfer of decision-making authority from local customary and state leaders to the community members themselves. During the process, decisions about land and natural resource management usually taken by leaders acting on their own authority were made by the community as a whole.
- Created the opportunity for community members to institute new mechanisms to hold local leaders downwardly accountable and improve leadership. As a direct result of the constitution-drafting process, communities instituted term limits, periodic elections for their leaders, and criteria for impeachment.
- Helped to align local custom and practice with national law. Community members took steps to change local penalties for infractions so that they no longer contravened the Ugandan Constitution.

Such shifts warrant further investigation: if the Communal Land Association constitutions are implemented and enforced over time, the community land documentation process may be leveraged to promote democracy building and good governance at the local level.

### **3. The community land delimitation process appears to foster sustainable land and natural resource management and conservation.**

During the process of drafting their rules for land and natural resource management, communities created new rules and revived customary rules that function to conserve local natural resources.<sup>126</sup> LEMU observed that the drafting process of natural resource management plans prompted communities to both craft new rules to conserve their resources as well as “remember” and reinforce old rules that promote sustainable natural resource use. The resulting plans include rules that promote and enforce conservation of key resources like firewood and building materials, sustainable animal husbandry, and other protections.

**The natural resource management plan drafting process appears to have led communities to become increasingly vigilant about monitoring and enforcing limits on outsiders’ extraction of community resources.** LEMU observed that almost every community’s natural resource management plan included rules to strictly regulate the use of community natural resources by ‘outsiders’ (non-community members). The resulting new rules do not generally impede outsiders’ use of community natural resources, but rather allow communities to better control, monitor, and tax such activities to ensure sustainable use and community profit.

Notably, women’s active involvement in the constitution/natural resource management plan drafting process improved the documents’ comprehensiveness and helped communities to re-conceptualize their grazing lands as useful not only for grazing, but as necessary for community survival: once women became involved in the constitution-drafting process, they began petitioning their communities to include rules concerning all non-grazing uses of the common lands, including: firewood, plant resources, water and wild food collection, fishing, hunting, and bee-keeping, among other uses.

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**126** The study communities naturally combined the contents of the Communal Land Association constitutions with the intended contents of the land and natural resource management plans. To accommodate this, the process of drafting natural resource management plans was fully integrated into the constitution-drafting process, resulting in one comprehensive document divided into separate sections concerning 1) land governance and 2) natural resource management.

#### **4. If well-facilitated, the community land documentation process may strengthen the land rights of women and other vulnerable groups.**

The findings indicate that if well-facilitated, the process of drafting and revising community rules for land and natural resource management may open up an authentic space for women and other vulnerable groups to question rules that disadvantage them and advocate for rules that strengthen their land rights and tenure security. **The findings suggest that the involvement of women in the constitution-drafting discussions led directly to changes in women's procedural and substantive rights.**

Most communities' 1st drafts of their rules included provisions that directly contravened national protections for women's land rights. As such, LEMU found that the process of cataloguing, discussing, and amending local norms is fundamental to the adoption of intra-community mechanisms to protect women's rights.

Procedurally, LEMU observed that women's involvement in the community land documentation activities allowed for their genuine participation in community land and natural resource management decisions. Moreover, the constitution-drafting process appears to have shifted community members' perceptions that land is 'men's business.' As a result of such shifts, the study communities' constitutions include provisions that women and youth must have elected representatives on the permanent governing bodies responsible for community land and natural resource management.

Substantively, the constitution-drafting process provided an opportunity for women to actively challenge discriminatory customary norms and practices and argue for the inclusion of stronger protections for women's land and inheritance rights. Women's contributions to the constitution-drafting discussions appear to have contributed to:

- The strengthening of women's existing land and natural resource 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 both with national laws that protect women's land rights as well as the customary rights written out in the Lango Cultural Foundation's Principles, Practices, Rights and Responsibilities (PPRR).

As such, in rural areas where access to the formal justice system is difficult, if implemented and enforced, **Communal Land Association constitution-drafting exercises may in the short term lead to greater land tenure security and access to natural resources for women than individual land titling.**

An important related finding is that 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 created space for a dialogue in which it was possible to strengthen women's existing land rights within customary legal constructs. Moreover, customary leaders have indicated that they are open to shifting local practices to align with national laws. To this end, customary leaders may be important allies in the enforcement of women's land rights, as the data indicate that communities consider customary leaders primarily responsible for the protection of women's and widows' land rights.

### **5. Carefully trained and supervised paralegals may be the most effective and efficient method of supporting community land protection efforts.**

Cross-national statistical analyses 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. The data indicate paralegals had a significant, positive impact on communities' capacity to complete the land documentation activities. In Uganda, paralegal assistance appears to:

- Help communities address intra-community obstacles that outside technicians or lawyers cannot recognize or resolve (cross-national statistical analyses show that the communities in the education-only and paralegal groups had more success in overcoming intra-community obstacles than the communities in the control group and the full-service group)
- Increase attendance at community meetings; and
- Foster empowerment and create a sense of community ownership over the community land documentation work by allowing the process to be more internally driven;

Moreover, the data 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, communities appear to integrate and internalize the legal education more thoroughly, address intra-community obstacles more proactively, and claim greater "ownership" over the land documentation process than when a legal and technical team completes the work on the community's behalf.

A paralegal-driven process may also be less costly than the full-service approach, as the model allows a few professionals to supervise multiple community-based paralegals. However, community-based paralegals often have very low initial capacity and need frequent training, supervision and support by a legal and technical team.

**Importantly, the data indicate that rather than helping to resolve intra-community conflicts, the provision of outside legal and technical support may entrench or inflame intra-community conflict.** While LEMU generally observed that the higher the level of support provided, the more easily and quickly communities were able to complete the processes, this was not true for communities with a high degree of internal dysfunction. In such communities, opposing factions often manipulated the field team's support to further their agendas. In contrast, when the bulk of the community land documentation work or responsibility fell on the community itself, there was less opportunity for such manipulation to occur. These findings indicate that outside professionals may either inadequately address, fail to perceive, or inadvertently exacerbate intra-community tensions.

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

The research suggests that a highly motivated community may be left to perform much of the community land documentation work alone, according to its own timing needs, local knowledge, problem-solving abilities, and inherent understanding of its particular context. LEMU observed that when prompted and trained by LEMU's field team, communities were able to: elect and form intermediary groups, harmonize their boundaries, resolve some land conflicts, draw participatory maps, and compile the first drafts of their Communal Land Association constitutions with minimal technical assistance. However, LEMU's experiences indicate that due to the technicality of the legal process outlined in the Land Act 1998 and its Regulations, communities unquestionably need legal and technical support at certain specific times in the community land documentation process, including:

- Introduction of the land documentation process and provision of legal education and capacity building concerning: the community's legal rights to their land, the process to follow to formally document those rights, and how to successfully complete the necessary community land documentation procedures. The control communities' outcomes clearly

support the conclusion that merely providing “sensitization” is insufficient: knowing one’s legal rights does not appear to equate with the concrete ability to successfully pursue them. At the most basic level, before being able to take action to document their community lands, communities need to be supported to understand, interpret, and proactively leverage laws that establish their rights.

- Mediation and conflict-resolution support during significant land conflicts or boundary disputes that communities are not able to resolve on their own.
- Provision of legal support and technical assistance during the completion of a community’s second and third drafts of its Communal Land Association constitution.
- Creation and implementation of a women’s empowerment and participation strategy, in particular the convening of special women-only meetings to ensure women’s legal knowledge, empowerment, and full participation in all community land documentation activities.
- Support during 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.

Furthermore, it is necessary that a legal team closely supervise each community’s work and demonstrate to all community members – as well as any individuals seeking to appropriate community land in bad faith – that their efforts are being supported by a team of lawyers who have the capacity to take legal action.

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

LEMU’s experiences clearly illustrate that communities facing external threats to their land will work diligently to complete the community land documentation activities, regardless of the degree of legal support provided. Yet when the threat to a community’s land is coming from inside the community itself (local encroachers who seek to obstruct the process to ensure continued opportunity to claim land for themselves), hardworking paralegals and even the full support of a legal and technical team may not be enough to address the intra-community challenges, and the community land documentation work may be rejected.

Indeed, LEMU's observations illustrate that **communities that struggle with elite sabotage, intractable boundary disputes that cannot be resolved through intensive mediation, internal discord, and weak leadership may not be able to successfully progress through community land documentation processes, irrespective of how much support they are offered.** The presence of feared or influential local elites who opposed the project often had the power to stall activities or to fully sabotage community efforts. Similarly, peri-urban communities and communities with little or no internal cohesion, or a highly transient population, may not be appropriate for community land delimitation initiatives.

Should a dysfunctional community initiate land delimitation 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, it is necessary for facilitating NGOs or government agencies to 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. Efforts to document community land should not begin until all internal conflicts and weaknesses that might impede community progress or lead to further conflict are fully resolved. Supplemental conflict resolution training, community-building, and leadership-enhancement activities may need to be provided before a community can undertake land documentation efforts. The experiences of those communities that withdrew from the project illustrate that a community can only undertake the difficult work required to document their lands from a place of unity, cooperation, and dedication.

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

## Recommendations for policy-makers

Based on its experiences working to implement the Communal Land Association incorporation elements of Uganda's Land Act 1998, LEMU respectfully suggests the following policy and regulatory changes.

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

- **Recruiting and installing District Registrars in every district or allowing for a regional Registrar authorized to travel to surrounding districts to certify Communal Land Associations when necessary.** Across Uganda, the majority of districts are currently lacking a Registrar; this must be immediately remedied to ensure that community land documentation processes can be completed. Alternatively, the Communal Land Association process could be overseen and completed at the sub-county level or by the District Recorder, which would make the process both more cost-effective and more easily accessible for rural communities.
- **Training and remunerating local land officials, particularly district-level administrators and Area Land Committee members, as they are key actors necessary to the Land Act's proper implementation.** Throughout the course of the study, LEMU found that local land officials were not well-trained on how to implement many of the Land Act's mandates, including those for Communal Land Association formation. Annual training sessions for all district land officials should be immediately instituted. Furthermore, Area Land Committee (ALC) members are not paid for their work, despite performing an important role in various administrative processes set out in the Land Act. This has resulted in Area Land Committee members failing to vigorously carry out their functions and/or demanding high fees to be paid by the communities and families that engage their services. By failing to pay the Area Land Committees, the government is fostering rent seeking and impeding the full implementation of the Land Act.
- **Simplifying the Communal Land Association constitution framework and allowing that it be merged with the Common Land Management Scheme.** LEMU observed that the suggested contents of Communal Land Association constitutions (as outlined in the Regulations' Third Schedule) are too complex for rural communities to successfully complete without the support of trained legal professionals. Moreover, the contents of the study communities' pre-existing local rules more closely mirrored the Land Act's suggested content for the Communal Land Association's Common

Land Management Scheme.<sup>127</sup> Communities should therefore be allowed to merge the two documents into one: a Communal Land Association constitution that includes sections concerning community land and natural resources management rules. In addition, a single document with loosely defined sections would make it easier for communities to convert their existing community oral rules into a formal legal document.

- **Allowing for the use of Global Positioning System (GPS) devices to map and document community land claims.** Due to Uganda's extremely low numbers of licensed surveyors, the cost of surveying land is exceptionally high. This cost makes applying for a Freehold Title for common lands financially untenable for rural communities; the financial burden of hiring a licensed surveyor essentially prohibits poor rural villages from seeking a Freehold Title for their land. The regulations should be changed to eliminate the requirement of a technical land survey in the community land documentation process, and instead allow trained district officials to use GPS technology.
- **Providing and allowing for simultaneous community land titling and wetland licensing.** LEMU found that almost all grazing lands in Oyam District are either adjacent to wetlands or have wetlands contained within their boundaries. However, because wetlands are vested in the state, any Ugandan may enter and use them. Unlicensed wetlands are therefore a source of potential insecurity, vulnerability, and conflict for rural communities. It is therefore important to document a community's rights to both their grazing lands and the wetlands contained within. The process of documenting rights to community lands should therefore allow for Communal Land Associations to jointly seek a title or CCO over their grazing lands as well as a license for all adjacent or internal wetlands. Such efforts will necessarily include the involvement of Uganda's National Environment Management Authority (NEMA).
- **Changing the Certificate of Customary Ownership (CCO) and Freehold Title application forms to allow for incorporated Communal Land Associations to complete them more easily.**<sup>128</sup> These forms should be changed to allow for and require the name of the Communal Land Association to be registered on a CCO or freehold title for community lands, and eliminate the listing of the individual names of elected Communal Land Association officers. This revision is urgently necessary for two reasons: first, because the officers are elected, non-permanent managers, the title or CCO

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<sup>127</sup> *Land Act 1998*, Section 25.

<sup>128</sup> *Land Act Regulations First Schedule*, Forms 1, 4.

document will become inaccurate after every election cycle and require a costly and time-consuming change of title; second, allowing a few individuals' names to appear on the title may more easily facilitate corruption and illegal sale of community land. The Communal Land Association's chosen name for itself should be put on any subsequent titles or CCOs, and all individual names eliminated.

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

- The law should ensure that Communal Land Associations are formed after consensus by all common land owners. The Land Act 1998 currently allows that only 60% of the landowners of a common area must approve incorporation into a Communal Land Association.<sup>129</sup> Even if a full 40% of the community does not want to form a Communal Land Association, the process may still move forward, potentially marginalizing those dissenting owners and weakening their ownership interests. The Act should therefore be amended to stipulate that all landowners must approve the Communal Land Association formation and have their families' names included on the list of association members. However, in the instance that encroachers and those seeking to appropriate community land in bad faith are impeding Communal Land Association formation, the Act should provide for immediate and swift appeal to approved mediators. These appeals may be an opportunity for civil society actors and government officials to support weaker community members against more powerful intra-community land grabbers.
- The Land Act 1998 should require that community constitutions are written by the whole Association (not only the officers) and adopted by a process other than simple majority vote. Currently, the Land Act gives the Communal Land Association's elected officers responsibility for drafting the constitution.<sup>130</sup> The Land Act also permits the constitution to be adopted by a simple majority vote.<sup>131</sup> Consequently, even if 49% of a Communal Land Association's members disagree with a constitutional provision, it may still be adopted. This has the potential to marginalize members of minority or more vulnerable groups and may foster inequity. Instead, constitutions should be drafted by the whole community and

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**129** *Land Act 1998*, Section 16.

**130** *Land Act 1998*, Section 17 (1,2)

**131** *Land Act 1998*, Section 17 (6,7)

adopted by supermajority vote, consensus, or other methods best suited to the community's composition and structure.

- **Establish a mandatory check by the District Registrar to ensure that all neighbouring communities' authentic rights of use and access have been properly enshrined in a community's Communal Land Association constitution.** This check may be accomplished through discussion with parish or sub-county officials with intimate knowledge of local communities' overlapping ownership, use and access rights, and by calling all neighbours to an open hearing to ensure that no one's use rights are being eliminated through the documentation process. This is particularly important in those regions where pastoralist groups' land claims overlap with farming communities.
- **Establish more stringent safeguards for transactions of a Communal Land Association's communal lands.** Section 19 of the Land Act currently establishes that a Communal Land Association's managing committee may not transact community land "unless a majority convened for the purpose approve the specific transactions which are the subject of the meeting."<sup>132</sup> The vagueness of this provision may allow for the management committee to convene any configuration of Communal Land Association members (i.e. not 100% of community rights holders or Communal Land Association members) and seek the approval of only a simple majority (50%) of this select group. Such vagueness may create the opportunity for corruption and bad faith land transactions by the Communal Land Association management committee.

To remedy this, the Land Act should mandate that *all* community residents with rights to the communal lands to be transacted are convened, and that a supermajority (at least 66%) of all rights holders must approve the transaction. Additional safeguards to ensure the full participation of all rights holders may be necessary. If the meeting was improperly called, or a supermajority of all rights holders did not vote in favor of the transaction, it should be found null and void on its face. In addition, transactions of Communal Land Association lands should be verified by government officials to ensure that they were approved by all rights holders, and, if not, should be deemed null and void. In any challenge arising from a potentially bad faith transaction of communal land, the burden of proof should be placed on those entities or individuals who acquired the land, not the community rights holders.

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**132** *Land Act 1998*, Section 19. "Where land is held on a certificate of customary ownership or a freehold or leasehold title by the managing committee on behalf of an association, no transactions of any kind in respect of the land or any part of the land shall be entered into or undertaken or concluded by the managing committee unless a majority convened for the purpose approve the specific transactions which are the subject of the meeting, and any transaction which is concluded which does not comply with this subsection shall be null and void and shall give rise to no rights or interest in the land."

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

- Communities require government support throughout the land documentation process. To best support community land protection and documentation efforts, local and regional officials may be trained to:
  - » Provide legal education to improve communities' awareness of their land rights and develop their capacity to complete administrative and judicial procedures to secure their land claims;
  - » Provide mediation and conflict resolution support during boundary harmonization efforts;
  - » Witness tree-planting or other kinds of ceremonies documenting agreed boundaries;
  - » Supervise all GPS/surveying and boundary demarcation activities;
  - » Provide support during Communal Land Association constitution-drafting processes and help to check that these documents align with national law; and
  - » Answer community land documentation-related questions and provide technical support on an as-needed basis, among other supports.

This assistance should be request-based, rather than mandatory, as requiring state oversight will likely stall or impede community progress.

- **Provide active government support to communities in their struggles against elite appropriation of customary lands.** Rural communities in northern Uganda face multiple threats to their customary lands, but receive little support from government agencies when struggling against these threats. State officials should actively protect communities during struggles with local or regional elites who are seeking to either encroach into a community's grazing lands or appropriate large parts of the land for themselves and their families. Such actions are criminal (theft) and should be treated as such by government officials. Government support should come from both the executive and the judicial branch. State support for court challenges for violations of customary and community land ownership is particularly important, as is the creation of legal precedent that enforces the strength and sanctity of community and customary land ownership.

- **Provide long-term government support for local land and natural resource management after the community land documentation process is complete.** Such assistance might include:
  - » **Supporting implementation and enforcement of Communal Land Association constitutions.** Necessary enforcement support will likely be in two main areas: removing encroachers and penalizing illegal resource extraction from the grazing lands. In such situations, communities should be able to seek recourse from the police and through the national court system, as theft and corruption are criminal acts under national law. In the event that the “land grabber” is a government official or has ties to powerful local government figures, the central state may need to step in to enforce the community’s property rights.
  - » **Providing technical support for intra-community land and natural resource management.** To help communities sustainably and equitably manage their lands and natural resources, government officials may provide technical support, land dispute resolution assistance, and capacity building trainings for community leaders, Communal Land Association officers, and community members.
  - » **Acting as a check against abuse of power by community leaders and Communal Land Association officers.** Communities may need support addressing corruption, mismanagement, and unjust actions taken by local officials. Upon a community’s request, state officials should monitor and supervise community land management bodies to ensure that the elected officers are 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 Communal Land Association 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.

This government assistance should be made readily available and accessible via mobile clinics and other means of bringing state support directly to rural communities.

## Recommendations for implementation and practice

Rural communities in northern Uganda face multiple threats to their customary lands, but receive little support from either government agencies or civil society when struggling to deflect these threats and address the resource and power imbalances that lead to land tenure insecurity. Whether the threats come from Internally Displaced Persons, elite villagers, or government officials, communities need help protecting their land claims. However, government officials and civil society organizations should not approach a community with a defined idea of what action it should take to protect its lands; communities should be presented with various options and facilitated to select the course of action that they consider most appropriate for their circumstances. If a community decides that it wants to form a Communal Land Association and pursue either freehold title or CCO documentation for its lands, the following recommendations suggest how government or civil society agencies may most effectively provide such support.

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

**2. Carefully assess whether the community is an appropriate candidate for land documentation.** Once a community has requested support documenting its lands, an assessment should be carried out to determine: existing conflicts and threats; how trusted leaders are; whether the community is likely to be easily demobilized or to otherwise reject the project; and if strong community cohesion exists to facilitate successful cooperation. All underlying intra-community weaknesses or tensions should be proactively addressed before beginning Communal Land Association formation activities.

**3. Let the community drive the content, pace, and progress of the community land documentation process.** The process of documenting community land represents an important moment of transition for communities and should therefore both be grounded in local practice and allow for a slow, organic, and community-driven shift towards the formal and the documented. While communities need legal and technical assistance to successfully complete land

documentation efforts, they should be left to do much of this work on their own, according to local knowledge and skills. To support community-driven processes, facilitating agencies should:

- **Train selected community members as “paralegals” or “community support persons” to support their communities throughout community land documentation processes and liaise between their community and a legal and technical support team.** To ensure that strong leaders are selected, it may be necessary to create flexible criteria for paralegal candidates: LEMU observed that mandating that all paralegals be literate tended to weaken the candidate pool and exclude individuals who might have been better suited for the leadership and conflict-resolution aspects of the work, such as trusted community leaders.
- **Let communities define themselves.** Defining a “community” is a complex political process with associated socio-cultural implications at the local level. 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. As such, communities should be supported to define themselves after extensive, highly participatory discussions. The processes should ensure that community members 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.
- **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, etcetera) 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.
- **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 the community support persons/paralegals.** NGOs supporting this work should make communities and their leaders responsible for requesting legal and technical support on an as-needed basis. 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 constitutions, record debates, and keep all of their work in one place. Such workbooks can provide templates and examples of what the various final 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 to improve their drafts until they reach the standards necessary for Communal Land Association incorporation and formal land documentation.

**4. Ensure that all community land documentation activities are done publicly and comprehensively.** Careful and methodical verification of all information about community land ownership and use claims is necessary. At the inception of all community land documentation work, the entire community should be convened to identify trusted leaders to work with, elect a diverse intermediary group, draw maps, take an inventory of on-going land conflicts (internal and external) and gather all other necessary and pertinent information. This information should be solicited publicly and crosschecked by all relevant stakeholders, including neighbouring communities. Discrepancies should be ironed out publicly and transparently resolved. If not pressed to do this, leaders and local elites may try to use the documentation process to their advantage – or intentionally stall or subvert the process – if they perceive it to be against their interests.

**5. Encourage full community participation in all community land documentation activities, taking care to include all stakeholders.** Attendance at meetings does not always equate with participation during meetings, particularly when intra-community power imbalances privilege the opinions and concerns of some groups over others. As such, civil society and government facilitators should proactively take measures to ensure that women, youth, members of minority clans, and other groups that are generally marginalized from decision-making processes feel comfortable and confident speaking up during community land documentation efforts. To ensure a fully inclusive process, facilitators may employ such strategies as 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. Work with the community's trusted leaders and build their capacity.

LEMU found that communities' capacity to successfully complete land documentation processes was directly related to leaders' integrity, management abilities, commitment to the project, and mobilization skills. Community land documentation efforts should identify which community leaders are trusted and then liaise with the community through these individuals. Community leaders may need special training and capacity building to support their roles throughout the community land documentation process. In addition, it may be necessary to:

- **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 activities. Yet LEMU observed that the community land documentation activities created conflicts of power and authority between leaders. Efforts should be made to proactively address potential power struggles between community leaders and 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 communities to invite regional officials to support their land documentation efforts. LEMU observed that strong, unified regional leadership (both customary and state) ensured community confidence in the community land documentation process and furthered progress. Such leaders are particularly helpful in the event of intractable land and boundary disputes.

**7. Help communities create balanced, inclusive intermediary groups.** A serious drawback of working with existing community leadership structures is that they are likely to be composed entirely of male elders and may not include members of minority clans and other stakeholder groups. To ensure that the community land documentation process is not fully dominated by existing leaders and community elites, facilitating agencies should support the election of diverse intermediary groups. LEMU found that the intermediary groups worked best when they included both existing managers of community grazing

lands as well as a diverse group of strong, competent representatives of all community interest groups, in particular youth, women, and members of all clans. These individuals may then be given the responsibility to:

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

**8. Ensure that all relevant groups' ownership, use, and access rights to the land being documented are protected, and that members of those groups are actively involved in the community land documentation process.** Before beginning work with a community, it is necessary to carefully assess which groups have ownership rights to a given piece of land and which groups have use and access rights. Communities should acknowledge and preserve any existing reciprocal land use sharing agreements with neighbours. Strong interventions by the field team may be necessary to ensure that representatives of the villages with use and access rights are involved in all project activities, and to guarantee that all pre-existing, good-faith land rights and claims are protected. Strategies for protection might entail including land sharing provisions in Communal Land Association constitutions, or drafting inter-community Memoranda of Understanding (MOUs) to record such agreements for posterity. Government officials processing community land documentation applications should also verify that all neighbouring 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 neighbouring villages to an open hearing.

**9. Recognize that boundary harmonization and demarcation processes are conflict resolution exercises and conduct them accordingly.** Recognize that boundary harmonization and demarcation processes are conflict resolution exercises and conduct them accordingly.

- **Ensure that communities 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. LEMU's 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 are 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.
- **Provide extensive conflict resolution and mediation training before a community begins boundary harmonization efforts.** Facilitators should train and support communities to employ a range of compromise strategies and mediation and dispute resolution tactics, such as agreeing to share the land, dividing the land down the middle evenly, or allowing disputed regions or households to choose — either as a group or individually — where they feel they most belong. Facilitating agencies should stand ready to support the resolution of particularly intractable land conflicts and to call in local government officials as necessary.
- **Allow communities as much time as they need to arrive at authentic boundary agreements.** LEMU observed that some of the study 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 the underlying boundary conflicts. As a result, the same conflicts ultimately flared up again, jeopardizing the entire community land documentation process. Such instances indicate the importance of carrying out boundary harmonization efforts genuinely, so as to avoid hasty agreements that may later be contested.

**10. 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 amend local rules to improve intra-community governance, foster participatory rulemaking, and establish accountability mechanisms for local leaders. To achieve such outcomes, civil society and government facilitators should:

- **Begin the process of drafting Communal Land Association constitutions at the lowest level of intra-community governance (the village, or in clan groups), and then merge these rules into an agreed set of community rules through rigorous debate and discussion.** Such a two-tiered process may help to ensure a transparent and participatory process and create multiple opportunities for community members to reflect publicly on existing or proposed rules.
- **Ensure full community participation in the constitution and management plan drafting process.** Civil society and government facilitators should actively create the opportunity for women and other vulnerable groups to challenge rules that they feel to be arbitrary and discriminatory, or to argue for the inclusion of rules that protect or promote their interests.
- **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 resource uses, claims, or practices that are not included in a community's constitution 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 community members do not consider them to be formal 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 land and natural resource management plan should address.
- **Allow communities to merge their constitutions and land and natural resource management plans into one document.** The field teams observed that the majority of community rules concerned land and natural resource management; it was a false distinction to ask communities to divide their Communal Land Association constitutions from their natural resource management plans. As described in the policy recommendations above, one document with loosely defined sections appears to simplify the process and make it easier for communities to convert their existing community rules into a formal legal document.

- **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 Ugandan Constitution and relevant national law;
  - » Establish inclusive substantive and procedural rights for all community members, including women and members of vulnerable groups;
  - » Protect the existing use rights and rights of way of all stakeholders;
  - » Include provisions to ensure that leaders are held downwardly-accountable to their community, and manage land and natural resources equitably and justly;
  - » Include provisions that particularly important and weighty decisions should be made by supermajority vote, rather than by Association officials; and
  - » Have been approved by all households in the community by consensus or super-majority vote.
- **Ensure that the constitutions include provisions for annual review and amendment.** To avoid the potential calcification of customary rules that writing them down might imply, facilitators should support communities to establish an annual review of the community's constitution. The constitution should set out clear amendment procedures and the requirement that rules be changed only after consensus or super-majority vote.
- **Ensure that the Communal Land Association officers are a diverse and representative governing body.** Facilitating NGOs and the District Registrar should monitor the election of these governing bodies to ensure that the elections were participatory, transparent, and fair, and that the positions were not captured by elites. The officers should be composed of existing managers of the grazing lands, as well as youth, women, and members of all relevant stakeholder groups. Communities might also create parallel "watchdog" groups to monitor the officers' decisions and actions.

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

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

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

- Carry out a gender analysis and craft strategies to proactively address gender inequities that have the potential to negatively impact community land documentation activities;
- Plan community land documentation meetings to take place at convenient times and locations, after women have completed their house and farm work;
- Convene special women-only meetings to help women identify and advocate for their interests in the broader community meetings;
- Support communities to elect female representatives as the Communal Land Association officers;

- Provide paralegal support; the data indicates that paralegal support may be the “lowest” degree of external intervention necessary to ensure women’s robust participation in community land documentation activities;
- Recognize that custom need not contradict national laws on women’s rights; in rural contexts where customary leaders are often the central arbiters of justice, their role as protectors and enforcers of women’s land rights is critical. To ensure increased protections for women’s land rights, facilitators may need to:
  - » Teach men and customary leaders about national laws that guarantee women’s rights;
  - » Support communities and leaders to remember customary rules that served to protect women’s and other vulnerable groups’ rights; and
  - » Help men and community leaders to reinvigorate customs that emphasize men’s and leaders’ role in protecting the rights of women and other vulnerable groups.<sup>133</sup>

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.

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**133** Focus groups held with community leaders indicate that they are open to learning more about national laws that protect women’s rights and shifting their practices to align with such laws.

While further investigation is necessary, the data illustrate that if well-facilitated, community land documentation exercises may result in impacts that go beyond increased land tenure security. Communities' desire for documentation and protection for their land claims motivated them to engage in authentic discussions and make real changes that may prove 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 use.

It is too soon to know whether community land documentation and protection efforts will enhance rural communities' land tenure security in the long term. While paralegal support is emerging as a promising and empowering model, continued monitoring and provision of legal support will be critical to understanding how to best support community efforts to implement their newly-adopted Communal Land Association constitutions and protect their grazing lands from encroachment or appropriation. Additional research will also be necessary to determine the long-term social and economic impacts of documenting community land rights.

While there are many remaining challenges to overcome, efforts to implement community land documentation legislation bring us closer to understanding both how to best support communities to document and protect their lands, as well as how governments may most effectively adopt and implement sound legal and regulatory community land protection frameworks. Once a community has successfully documented its land claims, the hope is that the community may then work hand-in-hand with government agencies and local organizations to fully leverage its lands for locally driven development, prosperity, and human flourishing.



Women perform a ceremonial dance to indicate their gratitude for LEMU's community land protection support.

## Afterword: The Community Land Protection Program

Going forward, the Land and Equity Movement in Uganda is partnering with Namati, a new international organization dedicated to expanding the field of legal empowerment, and with the Sustainable Development Institute (SDI), and Centro Terra Viva (CTV) to launch the 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 endeavours 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, gender 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 community rules 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 issue while expanding the audience of actors invested in protecting communities' customary land claims.

Through such combined efforts, we aim to support genuine and lasting community empowerment; community sovereignty over land and natural resources; intra-community governance that fosters equity, justice, and accountability for leaders and community members alike; investor-community partnerships that result in locally-defined prosperity; and community stewardship of the earth.

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The Constitution of the Republic of Uganda 1995 (as amended).

The Land Regulations, 2004.

## Appendix A

### Statistical analysis of impact of service provision<sup>134</sup>

Tai Young-Taft, PhD  
July 2011

#### 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:

- Creation and election of a coordinating or interim committee,
- Boundary harmonization,
- Establishing formal rules for community land administration, and
- Establishing a land and natural resource management plan.

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<sup>134</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:

- The strength/unity or weakness/disunity 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;
- The degree of internal community cohesion and cooperation; and
- 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:

- » How well are local government officials protecting community land rights?
- » How well are local government officials helping individual families protect their land rights?
- » How well are local government officials protecting the rights of widows and children?
- » How well are local government officials making sure the people benefit from resources extracted from the area?
- » How well are local government officials making sure that the people are consulted when the government sends investors to the area?
- » How well are local government officials hearing land cases and resolving them?
- » 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 associated 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 that 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:

- » Has attended a community meeting in the past year,
- » Has combined with others to raise an issue to a community leader in the past year,
- » Has contributed to community development projects in the past year,
- » Has contributed to environmental protection and prevention of forest fires,
- » 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 significant, 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.

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. Women's meeting attendance and voicing of opinion in community meetings

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.

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  $-0.08$  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  $0.08$ , 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  $-0.06$  coefficient. If we then ask women how many different types of people protect women's land claims, relative to the possible responses

- Her children if they are grown,
- Her husband's brothers or father,
- The state/state officials,
- The traditional leaders,
- The widow herself,
- The customary leaders,
- Other,

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’ by-laws/constitutions and land and natural resource 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 by-laws/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.

## Appendix B

### Brief summaries of the study communities' experiences

#### Progress of full-service treatment communities

**Okeng:** Okeng is composed of one village made up of 69 households. Despite inviting LEMU to help document the community's grazing lands, once the community land protection efforts began, Okeng very quickly rejected LEMU's support, suspecting that LEMU's underlying intention was to steal its land. To remedy the situation, the Parish Development Committee Chairman called a village meeting in Okeng, during which he explained the project objectives and asked the community to accept and invite LEMU back. His efforts were successful, and the Okeng community thereafter reinitiated community land documentation activities. Although Okeng re-joined the project a full eight months after its inception, 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 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 neighbouring 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 neighbours' encroachment, during a discussion of whether to continue to allow their neighbours to use their grazing lands, one resident noted, "If we stop the neighbours 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 neighbours." 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 surveyed 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 is composed of two villages made up of a combined 38 households. 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 remained necessary to spend a significant amount 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 resource 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 Communal Land Association 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 intra-community 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 (\$2 USD) each for their physical labour in clearing the boundaries for the surveyor. Angry that she had missed this payment, she began spreading false rumours 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.

**Apala:** Apala is composed of four villages of a combined 378 households. Apala rejected the project in late November 2010, after months of stalling and little progress. There were three central 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 confiscated the money for his own personal gain. 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 same *Adwong Bar*, which cast an immediate suspicion upon the LEMU field team. Perhaps because of this distrust, Apala was particularly opposed to the election of an intermediary group and demanded that LEMU meet only with the full community.

Second, one of Apala's villages 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 legitimate 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. As a result, turnout at meetings fluctuated widely.

In April 2010, community leaders told LEMU not to come back again until they were invited. 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. 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 is composed of one village made up of 84 households. 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 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 community members feared for their lives and withdrew from the project.

**Akwic:** Akwic is composed of one village of 72 households. 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 District Registrar. Akwic also chose to seek a Freehold Title and 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. It is of note 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 all water sources and natural salt licks.

**Okere:** 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 was also an encroacher. When it became clear that all encroachers would be indeed forced to leave the grazing lands, she set about demobilizing her community with the same energy she had initially dedicated to mobilizing it. Although the majority of Okere's community members voted to adopt their Communal Land Association constitution, this CSP and 13 other encroachers aggressively disputed the provision prohibiting encroachment. There therefore undertook efforts to impede the community land documentation process from moving forward. Its progress stalled, the community has for the moment 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 unified as 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. Teaduru eventually filed a lawsuit in the Lira Chief Magistrates' court concerning the boundary.<sup>135</sup> The surveying of the community lands will commence when the court has made a declaration regarding the boundaries.

Notably, 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 resource 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 after month on how to write the constitution the

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<sup>135</sup> The court has heard the matter once, with one visit to the site of the boundary. LEMU hired an advocate to assist them in the matter, because Wilyec requested legal assistance.

community remained unable to produce a workable second draft. After watching Awangi try hard but struggle 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 neighbouring 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>136</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 1998 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 their efforts to harmonize their boundaries. Unfortunately, internal boundary disputes remain unresolved to date. If requested, in Phase II LEMU will begin

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<sup>136</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.

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 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 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 neighbours 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 were 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.



Community members begin the process of planting boundary trees to demarcate their communal grazing lands.

## Appendix C

### Example Communal Land Association constitution

#### **Okeng Communal Land Association constitution adopted 12th January 2011 Central Morweh's land and natural resource management plan**

**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
- 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:

- a) The natives of Okeng. The natives of Okeng shall be the following persons:
  - Natives of Okeng Village.
  - All those persons born in Okeng Village.
  - Those who are married in Okeng Village.
  - Those who are buried in Okeng Village.
  - Widows.
  - A woman who has not produced a child, or unmarried, but has stayed for a long time in Okeng is a member.
- b) People who have bought land, or those who have been offered land, and immigrants shall become members upon payment of registration fee.
- c) Aliens whom the people of Okeng will grant permission to use their grazing land shall observe these regulations:
  - Show their interest in writing to the leaders of the committee that oversees the community land.
  - Accept to register as members.
  - Accept to follow the rules and regulations of the community grazing field.

- 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 30,000=
  - » Monthly fee of 15,000=
  - » Weekly fee of 4,000=

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 committee reserves the right to accept or reject the request. The committee shall forward its resolution to the General Meeting.

## 6. Membership fee

Members who are the natives of Okeng shall pay membership as stipulated below:

- a) 2,000= per household.
- b) 1,000= per household for single occupants.
- c) Members coming from outside shall pay 5,000=.
- 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.
- i) Members should benefit from/use the community land equally.
- j) 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.

- k) 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.
- l) There shall be no cultivation of the grazing land.
- m) 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:

- Chairperson
- Vice Chairperson
- Secretary
- reasurer
- Publicist
- Security Officer
- Women's Leader
- Youth Leader
- Elder (Male or Female)

b) Office bearers shall be elected at the General Meeting.

Elections shall run as follows:

- 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.
- Election shall be by lining up behind the nominated candidates.
- The candidates shall be nominated, and should be seconded by two other members.
- Each position shall be contested by at least two people.
- All office bearers shall be determined through electoral process.
- Approved candidates shall conduct open campaign before the people of Okeng. Elections shall be conducted in only one day.
- The quorum for election shall be  $\frac{1}{2}$  of the members with voting rights.
- Only the members who are 18 years and above shall be eligible to vote.
- Election of leaders shall be after three years of service.

- 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**

The people of Okeng Note En Kuc reserve the right to elect leaders of the Community Grazing Ground.

- Overseeing the operations of the grazing field.
- Soliciting for funds from any organization that can help improve the performance of the grazing field.
- Supervising the leaders of the grazing field.
- Protecting the grazing ground in conformity to the community's expectations.
- Monitoring the financial operations of the grazing field.
- Ensuring that the grazing field project is not stalled/does not fail.
- Liaising with the government and other offices.
- Signing minutes (of meetings).
- Signing cheques.
- Utilizing and keeping custody of the community's stamp (seal).
- Any other duty assigned by the community.

### **11. The functions of the vice chairperson**

- He should perform all the functions of the chairperson when the chairperson is absent.
- Should perform all duties delegated by the chairperson.

### **12. The functions of the secretary**

- Writing minutes of all meetings.
- Keeping of records.
- Recording all revenues accruing to the community's coffers.
- Keeping in safe custody the map of the grazing field.
- Counting the number of trees planted in the boundaries of the grazing field.

- f) Convening meetings in case the members are disgruntled with the chairperson or his vice.
- g) 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.
- h) Should sign the minutes.
- i) Should use official stamp.
- j) Co-ordinate with the treasurer and help him execute his duties.
- k) Any other duty assigned by the chairperson.

### **13. Functions of the treasurer**

- a) Keeping financial records.
- b) Presenting financial accountability to the members.
- c) Signing the community's bank cheques.
- d) Keeping the community's bank accounts.
- e) Keeping the community's finances, collecting dues accruing from the grazing field
- f) Any other duty assigned by the community.

### **14. Functions of the publicist**

- a) Should disseminate adequate information to all members.
- b) Organize venue for meetings.
- c) Should inform members about any malpractice in the grazing field.

### **15. Functions of the security officer**

- a) Protecting residential areas.
- b) Protecting the community's property.
- c) Maintaining security.
- d) Informing people about any malpractice in the grazing field.
- e) Ensuring that the rules and regulations of the grazing field are followed.

### **16. Functions of the women leader**

- a) Ensuring that the women are making affective use of the grazing field.
- b) Educating/sensitizing women at meetings.
- c) Advising women on matters that concern them in the grazing field.
- d) Reconciling women in cases of any conflict.
- e) 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**

- a) Collecting views of the youth.
- b) Educating the youth about the regulations of the grazing field and those of the government.
- c) Advising the youth.
- d) Gathering from the youth, the problems affecting them and forwarding those problems to the community.
- e) Any other duty assigned to him.

### **18. Functions of the elders**

- a) Settling disputes and misunderstandings.
- b) Advising the community.
- c) Conducting meetings to elect the chairperson of the grazing field.
- d) Ensuring that the elections are successful
- e) Advising on effective way of livestock keeping.
- f) Counselling, guiding and educating children.
- g) Gathering and uniting all the clans in Okeng.
- h) Any other duty assigned to them.

### **19. Expected qualities for leaders of the grazing field**

- a) Trustworthiness and dedication to service.
- b) Liaising/keeping contact with the people.

- c) A person who is not temperamental.
- d) A person who is not a witch.
- e) A person who is not a thief.
- f) A person who does not defraud public property.
- g) A person who helps the needy/poor.
- h) A person who is literate (knows how to read and write).
- i) A person who is sane.
- j) A person who has insight/common sense.
- k) A person who is not quarrelsome and likes conflicting with people.
- l) A person who is not a cheat/corrupt.
- m) A person who is not spiteful/scornful.
- n) A person who does not consume opium/narcotics.
- o) A person who does not have carnal knowledge of cows.
- p) A person who is not a saboteur/conspirator.
- q) A person who is not heavily indebted in a manner that risks sequestration of the community's land.
- r) He should not be a person convicted in a court of law (tried and jailed for a criminal offence).
- s) A person who is not sexually immoral.

## **20. Remuneration of workers of the grazing field**

- a) There shall be no remuneration of workers of the Grazing Field.
- b) The committee should have income and expenditure budget, which should be approved by the community before it is enforced.
- c) The leaders reserve right to implement approved public expenditures and give accountability to the community members in accordance to the existing resolutions.
- d) 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 ½ of the members)

- a) If they engage in stealing.
- b) If they engage in witchcraft.
- c) If they are corrupt.
- d) If they fail to discharge their duties.
- e) If they commit bestiality.
- f) If they commit acts of sabotage/conspiracy.
- g) If they commit murder.
- h) If they inflict injury on cattle.
- i) And any other offence deem worthy of dismissal/removal from office.

## 22. Financial regulations

- a) How to generate revenue in the community's coffer.
  - Membership fee.
  - External funding like donations from philanthropists.
  - Fund raising.
  - Funding from government.
  - Money accruing from sales of public assets/resources.
  - And any other legitimate sources of raising revenue.
- b) Financial Expenditure
  - The community should approve financial expenditure before any money is spent.
  - All payments, transactions, or sales shall be done in writing, and this process shall be implemented by the committee, upon approval by the community.
  - The treasurer shall present books of accounts to the public after every three months.

- The community shall invite an auditor to audit the community's books of accounts once every year.
- The community reserves the right to outline how they expect to use any money that accrues to its pool.

### **23. Bank (keeping public funds)**

- a) Where possible, public funds should be kept in a bank agreed by the members.
- b) The chairperson, treasurer, and the secretary should sign before any withdrawal from the bank is made.
- c) Any two can sign for withdrawal of money, but the chairperson must first sign as principle signatory.
- d) Bank statement should be brought before the members after every three months.

### **24. Meetings**

- a) To be held:
  - Every month, and
  - In case of any emergency.
- b) Convening a General Meeting shall be as follows:
  - Quarterly (Four times a year, after every three months).
  - 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:

- a) The constitution of Community Grazing Field shall be amended/changed at Okeng General Meeting, which is held after every three months.
- b) The community Grazing Field committee shall give public notice for the meeting one month in advance.
- c) 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.

- d) 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.
- e) Any member who is discontented with a particular provision in the constitution should forward his/her case to the Chairperson of the Grazing field.
- f) The Chairperson should summon his committee and put it in writing, how the community expects the law to be amended.
- g) After the committee has received this complaint, it will forward it before the General Meeting.
- h) 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.
- i) The members should agree collectively, the date for amending the constitution, if it is found to be necessary.
- j) 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 analyse 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.
- k) 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.
- l) Members who have ratified and approved this law should be more than  $\frac{1}{2}$  of all members of Okeng who have duly signed the resolution document.

## 26. Instituting/dissolving the association of the community grazing ground

- a) Members reserve the right to resolve at once that the group/association be dissolved.
- b) Issues that may warrant dissolution of the group:
  - When there is no unity.
  - When there is unmanageable tension/conflict.
  - When there is irrepressible practice of witchcraft/sorcery.
  - If the group is dividing people instead of ushering peace.
- c) Settlement/Disposal of Assets in case of Dissolution of the Group:
  - Members should equally distribute the land and other assets/resources there-in.
  - 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.
  - Equal sharing of proceeds shall be applicable only to registered members.
  - 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.
  - Members should give ample time for sending information to members who are far away, preferably seven days, two weeks (14 days), one month.
  - This message/notice should be circulated by the chairperson.
  - Information shall be circulated through the following media:
    - » Telephone.
    - » Radio.
    - » Newspapers (news papers read throughout Uganda).

- d) Before distribution/sharing of community property, members should first meet to determine the procedure of how the said properties shall be shared.
- e) The committee shall then disclose the detail of the procedure before all members.

### **27. Conflict resolution/settlement of disputes in the community grazing field**

- a) The elected committee will hear/settle all disputes in the grazing field.
- b) 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.
- c) If the committee feels that the magnitude of the case is beyond its ability to settle, they may refer it to the General Meeting.
- d) 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.
- e) If the accused person refuses to adhere to the opinion of the General Meeting, the community should subject him to a trial.
- f) 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.
- g) Notice should be served to the accused/defendant, and he or she should be given time as follows:
- h) 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.
- i) Anybody who will fail to respond to court summons three times shall lose the case as per the laws governing the community grazing field.

### **28. Penalties to be administered to offenders or those convicted of breaking the community's rules.**

- a) Penalties shall be levied according to the offense committed.
- b) He/she shall be forbidden completely from using the grazing field, or temporarily suspended from using it.

- c) He/she shall be fined according to the offense committed, and the fine should be above 5,000/= /10,000=, 8,000= for minor offenses, 50,000= for major offenses payable to the committee.
- d) The offender shall negotiate a settlement with the aggrieved person.
- e) The offender shall also be cautioned by the committee.
- f) The offender may also be sentenced to community service in the grazing field.
- g) If the offense is financial loss, the culprit should first reimburse the lost funds, and thereafter face fine.
- h) If the offender is a committee member, he or she may be removed from the committee.
- i) The committee reserves the right to levy as many as two or three different fines if they deem it necessary.

### **29. 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.

### **30. Guidelines for using resources in the grazing field (management plan)**

- a) Resources that the members get from the Grazing Field.
  - Spear grass.
  - Local herbs.
  - Building poles for members.
  - Bird hunting reserve.
  - Water source.
  - Fishing.
  - *Opobo* plant used as fastening strap, and edible fruit.
  - Clay soil for pot making.
  - Firewood.

- Red stones for building.
  - Building sand.
  - Mango Trees.
  - Edible berries.
  - Mushroom species.
  - Reserve for edible fruits.
- b) Categories of animals that shall be reared in the Grazing Field
- Cattle
  - Sheep
  - Goats
- c) Each member or each household has the right to graze the following number of livestock in the Grazing Field.
- 30 head of cattle
  - 50 herd of goats
  - 50 flock of sheep
- d) Fragmentation/Division of the Grazing Field
- The Grazing Field shall not be fragmented/divided in smaller units.
  - 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.
  - 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.
  - 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.

- e) Members agreed that the Animal Tract leading to the Grazing Field should be three fold:
- The motor/truck alley stretching from the sand mines.
  - The route toward Okwanga Swamp.
  - The route that passes through Amwan John's home to Okwanga Swamp.
- f) Hunting
- Hunting is permitted in the Grazing Field.
  - The hunter should obey the constitution of the republic of Uganda.
  - 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.
- g) Trees (Functions of Trees).
- Providing food, such as sweet berry, mangoes, black berry, vine.
  - Firewood (Dry twigs/logs).
  - For Building.
  - Curative herbs (herbal medicine).
  - Firewood shall be acquired by fetching as in the traditional practice, and shall not be for sale.
  - No tree stem shall be sold.
  - Tree stems (poles) for building shall be used only by the members.
  - It is agreed that some types of trees shall be used for making beds/chairs.
  - 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.
  - 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.

#### h) Minor Resources in the Grazing Field

- Sand/Stone
  - » 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.
  - » The committee reserves the right to give/sell sand/stone according to that person's interest.
  - » Any member who brokers a sale shall be paid a commission of 2000= or more, depending on the magnitude of work done.
  - » The community members shall cut spear grass for thatching houses, but not for sale.
- Matters relating to Termite Mound (Anthill)
  - » People will do light-baiting of white ants following the guidelines agreed earlier.
  - » Harvesting mushrooms shall also follow the earlier guideline.
  - » New anthills should preferably be taken by members who are without.
  - » Anybody who fights over anthills commits an offense. Such a person shall be fined by the committee.
  - » Any member who has many anthills is permitted by law to offer them to other members.
  - » Nobody is permitted by law to perform healing/cleansing ritual in the Grazing Field.
  - » 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, 5,000, 20,000, 2,000 shillings depending on the magnitude of the offense.
  - » 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.
  - » The committee members reserve the right to do anything that they deem necessary for the safety of their grazing field.



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

