

## POLICY BRIEF

# Enhancing legal protection of communities affected by extractive industries in Uganda

August 2020

### EXECUTIVE SUMMARY

In the Albertine Graben and in the Karamoja sub-region, most of the land is held customarily. For common purposes as grazing or water fetching, communities often share ownership over parcels of land, which are called “communal land”. By nature, this type of ownership is not formalized in a registered land title.

Even though customary tenure is considered on an equal footing with the other types of tenures in Uganda, the legal and policy framework protecting such regime remains largely unimplemented. Consequently, and with the intensification of extractive activities, local communities are facing various land rights-related abuses, such as land grabbing, forced displacement, or unfair and inadequate compensation. Protecting communal land is crucial for communities, as it constitutes their primary source of livelihood. Regrettably, the existing structures of conflict management do not allow communities to adequately protect their land rights.

The aim of this policy brief is to start a reflection on the relevance and feasibility of preventive mechanisms to protect communities’ land rights in the context of extractive industries. In that regard, two key mechanisms of communal land management emerge from the field as promising strategies for legal protection: Communal Land Associations (CLAs) and Land Trusts.

Still, there is no “fit-for-all” solution. Each community is unique and the opportunity to engage in such initiatives must be carefully assessed depending on the circumstances.



## INTRODUCTION

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Over the last decade, foreign investment into the extractive sector has unprecedentedly increased in Uganda. In the Albertine Graben, the discovery of commercially viable oil deposits in 2006 has attracted many international leading oil companies. Meanwhile, the Karamoja sub-region has drawn a lot of attention for its mineral wealth, which includes gold, uranium, marble, limestone, lithium, cobalt and copper.

The extractive industry boom initially raised hopes among local communities, as companies were praised for corporate responsibility initiatives such as offering [scholarships to students](#) or [building health centres](#) in the Albertine Graben. The flip side of the coin is rather disenchanting, with **serious land rights abuses**.

This policy brief provides a fresh look at access to justice mechanisms in the context of extractive industries. [Experience has shown](#) that initiatives allowing communities to manage their communal land towards its most beneficial, equitable and sustainable use can provide suitable platforms for legal protection. This brief will especially focus on the opportunity of forming **Communal Land Associations** (CLAs) and **Land Trusts**.

## A LARGELY UNIMPLEMENTED LEGAL FRAMEWORK

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There are presently four types of land tenure systems in Uganda: mailo,<sup>1</sup> freehold,<sup>2</sup> leasehold,<sup>3</sup> and customary. The latter remains the most dominant form of land tenure, as it covers 75% of Uganda's total

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<sup>1</sup> Predominantly found in Central Uganda, it gives permanent ownership over land, while the rights of lawful and *bona fide* occupants to occupy and live on the land must be respected.

<sup>2</sup> Only accessible to Ugandan, this classic, individualised type of land tenure offers full power of ownership over the land (selling, renting, leasing, disposing by will).

<sup>3</sup> Also accessible to foreigners, this gives access to land through a time-bound contract in exchange of rent.

<sup>4</sup> FAO, [Gender and Land Rights Database](#)

<sup>5</sup> UCCA, [Handbook on land ownership, rights, interests and acquisition in Uganda](#) (2018).

land.<sup>4</sup> Under this system, land is owned and managed from generation to generation according to the communities' cultural norms and traditions. While customary land can be held individually, community members often share ownership over given areas of land – **communal land** – for common purposes like grazing, water fetching, or firewood collection.<sup>5</sup> By nature, customary ownership is not formalized through a registered title.<sup>6</sup>

The Constitution and the Land Act place customary land on an equal footing with the other types of tenures.<sup>7</sup> In practice, customary tenures are regarded and treated as **inferior**, and often converted into freehold.<sup>8</sup> In 2013, The National Land Policy (NLP) specifically called on the State to remedy this issue and establish a land registry system for registration of land rights under customary tenure<sup>9</sup>.

Regrettably, the legal and policy framework safeguarding customary tenure has so far **remained largely unimplemented**. The Government has not put in place the necessary structures and guidelines to administer and register land under communal tenure.

In Karamoja, District Land Boards (DLBs) and Area Land Committees (ALCs) are insufficiently funded to hold regular meetings or to carry out awareness raising sessions in the communities. In the Albertine Graben, they are often prone to land grabbing and corruption: new titles are still being issued over vast pieces of land occupied by hundreds of households without their knowledge and despite the safeguards in the Land Act.<sup>10</sup>

<sup>6</sup> [The Land Act](#), sections 4-8.

<sup>7</sup> [Constitution of the Republic of Uganda](#), art. 237; The Land Act, art. 2-3; [National Land Policy](#) (NLP, 2013) sections. 3.9; 4.3.

<sup>8</sup> NLP, *ibid*.

<sup>9</sup> NLP, statements 30(a); 40 (a).

<sup>10</sup> Sections 6 and 7 of the Land Act provide that the ALC [must carry out an investigation](#) and draft a report to advise on whether the application should be approved.

<sup>10</sup> CRED, [Up against giants: Oil influenced land injustices in the Albertine Graben in Uganda](#) (2019).

The Government has not provided much effort to raise awareness among local communities on the importance of demarcating and registering their land. It is only in December 2019 that the Ministry of Land, Housing and Urban Development (MLHUD) has started a process of systematic land demarcation in the Albertine Graben, thanks to civil society efforts. In Karamoja, there is no comprehensive organized database on the status of land ownership.<sup>11</sup>

In this context, communal land is often regarded as “**open access territory**” **whereby everybody, and thus nobody, owns the land.** It makes it largely exposed to **land grabbers** in the context of the extractive industries boom, with the passive – and sometimes active – collusion of non-diligent DLBs officials. In 2014, hundreds of residents were forcefully evicted from Rwamuntonga village in the Albertine Graben to pave way for the construction of an oil waste treatment plan. It turned out that a local businessman had previously obtained a freehold title from the DLB over the whole village, while a significant portion fell under the residents’ customary ownership.<sup>12</sup>

In 2013, the NLP emphasized the importance of protecting customary owners in areas where minerals and oil were discovered, therefore promoting the **restitution of land rights once extractive activities end.**<sup>13</sup> This can be achieved through long-term lease with communities for the duration of the project. Yet, the Government and extractive companies often opt for compulsory land acquisition to ensure long-term access to the project areas<sup>14</sup>, making further restitution of land impossible.

Through these compulsory acquisition processes, local communities experience delayed and/or inadequate compensation,<sup>15</sup> despite the constitutional right not to be compulsorily deprived of land without payment of **prior, fair and adequate compensation.**<sup>16</sup> Mining industries shall further pay compensation for any damage they cause to the surface of land or to any crops.<sup>17</sup> It is the DLB statutory duty to compile, maintain and yearly review rates for compensation, but numerous districts in Karamoja have not yet started this process. Some communities are facing unfair compensation rates; others receive no compensation at all.

Furthermore, companies should consult with all those who might be affected by the project **before starting their activities.**<sup>18</sup> However, in Karamoja, communities have for instance witnessed companies arriving on artisanal mining areas without having been duly informed.<sup>19</sup> Women’s position in these processes **is even more precarious.** Extractive industries often neglect traditional gender relations in household and community fora, where women always come second in the access to land. Left aside in the decision-making processes, women have a limited voice to express their needs and expectations, however crucial the status of the land they cultivate is to them.<sup>20</sup>

## COMMUNAL LAND MANAGEMENT STRATEGIES FOR LEGAL PROTECTION

**Existing structures of conflict management** do not provide adequate protection against these issues. Local communities can barely access Courts of Law due to long distances, prohibitive costs, widespread corruption and ineffective procedures. Local leaders, appear and consider themselves powerless, traditionally

[declines to back down in oil refinery compensation case](#); Global Rights Alert, [Acquisition of land for the oil refinery](#) (2015).

<sup>17</sup> Mining Act, Section 82.

<sup>18</sup> [UN Guiding Principles on Business and Human Rights](#) (2011) Principle 18(b).

<sup>19</sup> UCCA, *Handbook on land ownership* (n 5).

<sup>20</sup> ASF, [Digging for power: Women empowerment and justice amidst extractive industry developments in the Albertine and Karamoja, Uganda](#) (2019).

<sup>11</sup> ANARDE, *The status of land registration and land ownership in Karamoja* (forthcoming).

<sup>12</sup> CRED, *Up against giants* (n 10); The Albertine Watchdog, [Land grabbing, a new slavery in 21<sup>st</sup> century Uganda](#) (2017).

<sup>13</sup> NLP, Statements 30 and 39.

<sup>14</sup> Total, Tullow and CNOOC’s chose this option in the Albertine Graben. See [Land Acquisition and Resettlement framework](#) (2016).

<sup>15</sup> CRED, *Up against giants* (n 10); UCCA, *Handbook on land ownership* (n 5); Edward Ssesika, [Govt](#)

not solving instances involving mining or oil industries.<sup>21</sup> LC chairpersons are seen as partial and easily bribed, political interests often over-riding their decisions.<sup>22</sup>

While it is necessary to address these obstacles, it is critical to **strengthen preventive mechanisms** protecting communal land, especially when where losing one's land means losing one's means of livelihood.

### **Communal land associations (CLA)**

A CLA is a group of people registered into a legal entity which sustainably holds, uses and manages common land to improve the welfare of the community.<sup>23</sup> For time immemorial, communities in Uganda have owned parcels of land communally. But the process of registering CLAs was initiated in 1998, when it was prescribed by the Land Act.

Under the Land Act, the group must elect up to 9 members to form its managing committee, which lays down the CLA's Constitution. The committee then applies to the District Registrar of Titles to be **incorporated as a fully-fledged legal entity**. (Sections 17 and 18). Once issued a certificate of incorporation, the managing committee gets the mandate to sue and the liability to be sued in the corporate name of the association, and to **hold land for and on behalf of all members of the association** (Section 19). After the association is registered, it can apply for a **Certificate of Customary Ownership**. With such a certificate, the CLA can **undertake any land transaction**. (Sections 4 to 8).

[Experience in the Albertine Graben](#) revealed that forming **CLAs** allows to articulate for legal provisions protecting communal land with the reality on the ground. It is also

<sup>21</sup> Local Council I, III and V officials, traditional leaders, religious leaders or anyone in a position of leadership in the community who is called upon to solve issues.

<sup>22</sup> CRED, [Securing communal Land and Resource Rights in the Albertine Region of Uganda](#) (2015); CRED, *Up against giants*.(n 10); ASF, *Digging for power* (n 20).

<sup>23</sup> MLHUD, *Guidelines for formation of Communal Land Association*.

increasingly used in Karamoja.<sup>24</sup> Its benefits must however **be put into perspective**, as decentralised institutions lack capacity to properly implement land laws and generate communities' distrust. A CLA may still bring considerable advantages to communities, as such mechanism has the potential to:

- Promote **democracy and good governance** at the local level. If duly consulted by the managing committee when drafting the CLA's constitution, community members have a unique opportunity to discuss and evaluate their customary norms. They can decide on enforcement mechanisms and foster the governance body's accountability.
- Enhance **legal protection for women and other vulnerable groups**,: while the Land Act already requires that at least one third of the managing committee members shall be women,<sup>25</sup> the interest of marginalized groups can be further emphasized in the Constitution to avoid perpetuating discriminatory practices.
- Legitimate **local mechanisms to mediate disputes** arising over the use of communal land.
- Empower communities to **lease out land to investors at the most favorable terms, in a way that is beneficial to the community at large**.
- Motivate communities to **sustainably manage and conserve their natural resources**.<sup>26</sup>

However, **disempowerment risks** exist. For example, the Land Act currently allows incorporation of CLAs with the approval of only 60% of the landowners, which might leave 40% of the community unsatisfied, if not marginalized through the process.<sup>27</sup> Experience shows that for any CLA to be sustainable, its members must share a common culture, and above all, **a common interest**. Communities lacking internal

<sup>24</sup> Over 313 CLAs were created in Karamoja so far (ANARDE, *The status of land registration and land ownership in Karamoja* (forthcoming), see note 11).

<sup>25</sup> Section 16(4)

<sup>26</sup> Namati, LEMU, IDLO, *Protecting community lands and resources, Evidence from Uganda* » (2013).

<sup>27</sup> Moreover, the law grants the management committee power to draft the constitution but does not set any quorum for the meeting convened for its approval. In LEMU, *Risks in the land act as regards registration of communal land* (2017).



cohesion or entrenched in long-standing disputes are usually less able to work collaboratively towards the development of land management initiatives. **The number of villages** engaged in a CLA may also affect its ability to progress, as it multiplies risks of conflicting interests.

CLAs bear a high degree of technicity for communities who are used to customarily manage their lands. Legal aid service providers have therefore a strong role to play in **empowering future members**, as CLAs can be solid **platforms for initiating change, not only around land rights but around any other human rights issues**.

### *Land trusts as complements to CLAs?*

Alongside the formation of CLAs, the NLP called on the Government to “provide for registration of customary land held under trusteeship by traditional institutions or cultural leaders on behalf of communities in the names of trustees.”<sup>28</sup> **A Land Trust** is a private agreement in which a party – the trustee – holds property for the benefit of another party – the beneficiary. The main advantage of this mechanism is its **flexibility**: as a contract, a trust is revocable and the beneficiaries may easily terminate it or modify its content.<sup>29</sup>

The Trustees Incorporation Act (Chap. 165) requires that a contract – the trust deed - is drafted to establish the customary rights, powers and obligations of both parties. As such, the trustees do neither own or manage property personally. Their power and function are limited to what the beneficiaries consented and the trust deed instructs. The trustees may apply to the MLHUD for a certificate of registration as a corporate body.

Created in 2017, **Rupa Community Development Trust (RUCODET)** represents more than 35.000 beneficiaries over seven parishes in Rupa sub-county.<sup>30</sup> It has the mandate to **hold, manage and protect communal land for and on behalf of all the beneficiaries**. Among its missions, it registers land on behalf of the

trustees; engage with investors interested in undertaking mining projects and representing the community’s interests in negotiation processes; spearheads the social, economic and cultural development of the community by investing the proceeds from mineral resources into schools, scholarships, health facilities etc.<sup>31</sup> Its board includes several sub-county CLAs’ representatives, making the two mechanisms complementary.

Land Trusts provide communities with **greater bargaining powers** and **uniform terms of engagement** with mining companies in terms of compensation rates, benefit-sharing arrangements and access to royalties. Through negotiations with the mining company Sunbelt Ltd, RUCODET obtained 1.8 billion shillings of compensation on behalf of the trustees for the damages caused to the land surface by the company. The trust has also negotiated a corporate social responsibility package, including school and university sponsorship for local students.

The RUCODET experience could inform a countrywide model of engagement with investors, including for learning from its flaws. It has faced management and transparency issues. Many trustees complained of not having been consulted in either the process of payment of surface rights or the signature of agreements with investors.<sup>32</sup> Furthermore, there is no legal requirement for equal gender representation in the board (as opposed to CLAs management committees), so that this is up to board members to **ensure equal gender representation and dynamics** throughout their work.

This highlights the land Trusts **board members’** limited capacities on efficient, transparent and accountable management, as well as on technical aspects of compensation procedures. Equally important, **the membership** needs to be strengthened on those same aspects, to be able to hold the leadership accountable.

<sup>28</sup> NLP Section 4.3(41)(vii).

<sup>29</sup> Trocaire, [The step by step guide to Customary Land Registration in Uganda](#).

<sup>30</sup> [VSF Activity report](#), 2018.

<sup>31</sup> RUCODET’s Constitution.

<sup>32</sup> Minutes of Rupa community consultative meeting at Lorukump village, 24/10/2019.

## RECOMMENDATIONS

Bearing in mind the broader context in which they evolve, CLAs and Land Trusts are appropriate strategies for legal protection of communities impacted by extractive industries. In order to make these mechanisms both legitimate and achievable for local communities, **ASF recommends:**

### To the Government:

- To support local communities in systematic demarcation and registration of land in areas of extractive potential;
- To proactively support tenure security initiatives in areas impacted by extractive industries;
- To ensure that DLBs and ALCs have the capacity and funds to offer a quality service, including the use of adequate tools and technologies for land registration;
- To ensure that all DLBs compile and yearly review compensation rates for surface rights, as provided by law;
- Ensure that resident Registrars of Titles are appointed in areas impacted by extractive industries to support communities willing to create CLAs.

### To investors

- To opt for long-term leasing and renounce to compulsory land acquisition wherever possible, in order to allow

restitution of land after extractive activities end;

- To engage into free, prior and informed consultation with communities on the extractive operations-related risks;
- To pay adequate compensation to owners for any disturbance of surface rights.

### To stakeholders facilitating communal land management initiatives

- To raise awareness among local communities around CLAs and Land Trusts.
- To assist local communities to form and register functioning and democratic CLAs;
- To strengthen Land Trusts management structures and ensure their transparency, accountability and integrity;
- To enable trusts members to keep their leadership accountable.
- To ensure equal gender representation and inclusion of vulnerable groups in the formation, management and functioning of CLAs and/or Land Trusts.
- To assess whether a given community is an appropriate candidate before trying to undertake communal land management initiatives, addressing all underlying communal weaknesses or tensions first.

## ASF SUPPORTS ACCES TO JUSTICE IN UGANDA

With support of the **Belgian Development Cooperation**, ASF is implementing a program in Uganda aimed at "contributing to sustainable development goals by improving access to justice".

This policy brief results from contributions of Nathalie Vandeveld, Elisa Novic and Romain Ravet. ASF is deeply grateful to Frank Tumusiime (ANARDE) and Bashir Twesigye (CRED) for their insightful opinion and feedback.



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