



Understanding and protecting our forest tenure rights and privileges

A guide to training of local community leaders in Uganda

Steve Amooti Nsita

Concepta Mukasa

Alice Tibazalika



Havilah Company Limited



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DOI: 10.17528/cifor/007488

Nsita SA, Mukasa C and Tibazalika A. 2019. *Understanding and protecting our forest tenure rights and privileges: A guide to training of local community leaders in Uganda*. Bogor, Indonesia: CIFOR.

Photo by Douglas Sheil/CIFOR
Landscape of Uganda

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We would like to thank all funding partners who supported this research through their contributions to the CGIAR Fund. For a full list of the 'CGIAR Fund' funding partners please see: <http://www.cgiar.org/our-funders/>

Any views expressed in this publication are those of the authors. They do not necessarily represent the views of CIFOR, the editors, the authors' institutions, the financial sponsors or the reviewers.

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Acronyms

CBO	Community-Based Organization
CFM	Collaborative Forest Management
CFR	Central Forest Reserve
CIFOR	Centre for International Forestry Research
CLA	Communal Land Association
LFR	Local Forest Reserve
NFA	National Forestry Authority
NFTPA	National Forestry and Tree Planting Act, 2003
NFTPR	National Forestry and Tree Planting Regulations, 2016
NGO	Non-Governmental Organization
NMC	Non-Governmental Organisations Monitoring Committee
PFO	Private Forest Owners Association

Acknowledgment

CIFOR's 'Global Comparative Study on Forest Tenure Reform' is funded by the European Commission and the Global Environmental Facility (GEF) with technical support from the International Fund for Agricultural Development (IFAD) and the United Nations Organization for Food and Agriculture (FAO). We would also like to thank Mr. Robert Esimu, Dr. Abwoli Banana and FAO for their helpful reviews and comments on earlier versions. This study forms part of the Program on Policies, Institutions and Markets (PIM), led by the International Food Policy Research Institute (IFPRI); and the CGIAR Research Program on Forest, Trees and Agroforestry (FTA), led by CIFOR. The opinions expressed in this paper represent the analysis of the authors and do not necessarily reflect the views of CIFOR, CGIAR or the financial sponsors.

What this guide contains

This guide will be used primarily by local community leaders to build the knowledge capacity of the local communities they lead. It covers the rights and privileges that local communities have in terms of ownership, management and use of forestlands.

Part 1 explains the technical terms as used in this guide. These terms are listed alphabetically.

Part 2 gives an outline of the guide, containing the following:

- The **introduction** presents the general background of forest rights and privileges in the main laws of Uganda.
- **Target groups** describes the stakeholders who will find this guide useful in their work with local community forest tenure.
- **Objectives of the training** describes the main reasons for conducting the training. For this training course, these are taken from the Global Comparative Study on *Securing Tenure Rights for Forest Dependent Communities* carried out by Center for International Forestry Research (CIFOR) over a period of 4 years (2015–2018).
- **Learning outcomes** describes what the one being trained (the learner) will be able to do at the end of the course. This will inform learners about the knowledge they will achieve, and enable the learning facilitator to make sure the content of the course is right for the learners.
- **Training materials** lists the materials needed to conduct this course. These training materials need to be prepared well in advance of the training.
- **Content** of the training lists the main topics covered in the course. Methods which the learning facilitator can use to make sure that learning takes place are proposed. These methods guide local community leaders who may not have been trained as teachers, but who are called to train the people they lead. The content also gives guidance on the minimum amount of time that will be needed for each main topic to ensure effective learning by the participants.

Part 3 expands on the topics and sub-topics listed in the Content section. These notes can be issued as a whole, or by extracting parts, as handouts to participants.

Part 1.
Explanation of key technical terms

Term	Explanation
bona fide occupant	As used in the Land Act, 1998, the <i>bona fide</i> occupant is a person who has been occupying land (public or private) and using it unchallenged by the owner for 12 years or more by the time the constitution became operational, i.e. by 1995.
bundle of rights	A collection of rights that includes the right to: <ul style="list-style-type: none"> • enter a specific forestland for various purposes • stop others from entering and/or using a specific forestland • make decisions about management and utilization actions, and implement those actions in line with the other laws of Uganda • transfer one's rights to another entity • benefit from forest products and services, for subsistence or commercial purposes • receive adequate compensation in cases of compulsory acquisition by government.
collaborative forest management	A mutually beneficial arrangement in which a local community or forest user group and a responsible body share roles, responsibilities and benefits relating to a forest reserve or part of it.
customary tenure	A system regulated by customary rules, customs, traditions and practices of a given community. Land under customary ownership can be registered giving the owner a certificate of customary ownership. The purpose is to add value to the land by legally documenting land ownership. Customary tenure may apply to land that is owned by an individual/family or land that is collectively owned, e.g. by a clan or a cultural institution.
discrimination	Treating different persons differently. This may be done along the lines of sex, race, color, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.
easement	A right to cross or otherwise use someone else's land for a specified purpose. Common examples of easements include the right of a property owner who has no access to a public utility (e.g. electricity grid, water mains, etc.) to use a particular segment of a neighbor's land to gain access to the utility; or the right of a government authority to run a sewer line across a strip of private land.
forest tenure	Refers to who owns forestland and who uses, manages and makes decisions about forest resources. Sometimes ownership is used interchangeably with tenure. However, tenure is typically about the way rights are administered rather than about the land itself.
forestland	Land that has been put aside for growing forest. The forest may be planted or naturally growing. Normally, there is a forest on the land, but it may also be land which has been put aside for future development of a forest.
former public land	Land previously administered under the Public Lands Act, 1969, before the coming into force of the Land Reform Decree, 1975. In practice, this is the land that is not owned by anybody under the four tenure types described in the Land Act, 1998, and so it falls under the administration of District Land Boards.
freehold tenure	A system where the owner has a registered land title to own the land forever, and has full powers to sell, lease, transfer and mortgage the land, in accordance with the laws of Uganda.
lawful occupant	As used in the Land Act, 1998, this could be any of the following persons: <ul style="list-style-type: none"> • a person occupying land basing on the repealed <i>Busuulu</i> and <i>Envujjo</i> Law of 1928; Toro Landlord and Tenant Law of 1937; and Ankole Landlord and Tenant Law of 1937 • a person who entered the land with the consent of the registered owner, e.g. he/she bought the land • a person who had occupied land as a customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title.
learning facilitator	The person who facilitates the learning of participants. The participants should actively take part in their own learning instead of the facilitator telling them everything.
leasehold tenure	A system where a person referred to as a 'tenant' owns land through an agreement with the owner of land known as 'landlord'. Under this system, the landlord allows the tenant to use the land for a specified period of time, usually 5, 49 or 99 years. In turn, the tenant pays the landlord an annual payment called rent. Leases are created and governed by contract.
local (forest) community	Includes households and persons living in a defined geographical area, in close proximity to a forest, and identified by common history, common culture or common residence, and may include all the residents of a village which shares a boundary with a forest (National Forestry and Tree Planting Regulations, 2016).

Term	Explanation
mailo tenure	The owner has a land title forever, with full powers to sell, lease or deal with it in any way, in accordance with the laws. Mailo tenure originates from the Buganda Agreement of 1900, where chiefs and other prominent families/people were given land when Uganda became a British Protectorate under indirect rule. This land is often encumbered by squatters, who are now legally recognized tenants of the land owner (Republic of Uganda, 2010; Land Act, 1998; Land (Amendment) Act, 2010).
minority group	A category of people who are different from the social majority. The differentiation can be based on ethnicity, race, religion, caste, gender, wealth or health, among others.
privilege	A special entitlement granted to a group or a person, usually provided for in the law, and can be revoked. For example, local communities may legally take dead wood and bamboo from a central forest reserve (CFR) free of charge. This privilege can be revoked if they take more than the dead wood. On the other hand, a right inherently belongs to all people, is not granted by anybody and is irrevocable. For example, the law does not give local communities the right to take firewood from the forest near them, but it aims to ensure that this privilege is enjoyed by local communities. The right to take firewood belongs to everybody but it is a privilege to take it 'free of charge' in a forest reserve.
protected area	As used in Uganda, protected areas include forest reserves, national parks and wildlife areas. These areas are normally gazetted for management by central and local governments on behalf of the people of Uganda.
registrable interest	An interest that can be registered in a land title under the Registration of Titles Act, namely, mailo, freehold, leasehold and sub-leasehold. It also includes a certificate of customary tenure and a certificate of occupancy.
responsible body	A body designated to manage, maintain and control a forest reserve or a community forest, and in the case of a private forest, the owner or person in charge of the forest. In the case of a private forest, the owner qualifies to be legally recognized as a responsible body if his/her forest is registered by the District Land Board. In the case of a community forest, the forest must have been declared in the Uganda Gazette by the minister. The other responsible bodies are National Forestry Authority, Uganda Wildlife Authority and District Local Governments. Forests owned by traditional/cultural leaders are designated as private forests by the National Forest and Tree Planting Regulations (NFTPRs).
rights	Legal, social or ethical principles of freedom or entitlement. They are the fundamental rules about what is allowed of people or owed to people. The rights are often written in the laws but they may also be according to long established custom. Rights cannot be withdrawn, even by law, but the enjoyment of the rights can be regulated by law.
tenure rights	A bundle of rights ranging from access and use rights to management, exclusion and alienation rights. In this guide, when bundled together, all these rights are collectively called 'forest tenure rights'.
tenure security	Tenure security refers to the degree of confidence held by people that they will not be arbitrarily deprived of their property rights, their access to resources, or the benefits they derive from their use of the forest. Security of tenure depends less on the nature of the rights that individuals and groups hold, and more on knowing that such rights will not be unreasonably contested, but if they are wrongfully challenged, they will be recognized and supported. Tenure security is examined through a legal lens but also takes into account people's perceptions.
traditional leader or cultural leader	A king or chief or similar traditional leader or cultural leader by whatever name, who derives allegiance from the fact of birth or descent in accordance with the customs, traditions, usage or consent of the people led by that traditional or cultural leader (Constitution Article 246 (3)).

Part 2.

Outline

1 Introduction

This guide deals with rights and privileges that local communities collectively have over different types of forestlands. It has been designed to apply to forestlands gazetted as central forest reserves (CFRs) and forestlands outside government protected areas, as provided for in the National Forestry and Tree Planting Act, 2003 (NFTPA). The Uganda Wildlife Act (1996) governs forests within national parks and wildlife reserves.

These rights normally include how forestland is owned, and who uses, manages and makes decisions regarding that land (e.g. decisions about who may benefit from the forest, how the forestland may be converted to other uses, and how the forestland may change hands). When bundled together, all these rights are collectively called ‘forest tenure rights’.

Like any other land, forestland may be owned and used in accordance with the Constitution of the Republic of Uganda, the Land Act (1998), as amended in the Land Amendment Acts of 2004 and 2010, the Land Regulations (2004), the National Forestry and Tree Planting Act, 2003 (NFTPA), the NFTPRs, the National Environment Act (1995), Guidelines for the Registration, Declaration and Management of Community Forests (2007), Guidelines for the Registration, Declaration and Management of Community Forests – Popular Version (2015) and any other environmental laws. These laws provide for the ownership of land on which forests are found, the management and administration of the land, the forest tenure rights and privileges, and their management.

The local community forest tenure rights and privileges are stated clearly in the laws of Uganda. However, research carried out by CIFOR on *Securing Tenure Rights for Forest Dependent Communities* in Kibaale, Lamwo and Masindi districts has shown that local communities have little knowledge of these. There is also a need for active participation of local communities in securing and maintaining their forest tenure rights. Looking into the future, the local community participants in the research could see an improved situation where forest tenure rights of local people were safeguarded through pro-active and innovative actions of empowered and well-informed local community members. An empowered and well-informed local community would be confident about the rights they have under the law, and be prepared to defend them.

Building the confidence of the local communities with respect to their forest tenure rights will involve equipping them with relevant knowledge on local community forest tenure. It will also involve training key stakeholders, particularly at the district level, including government and civil society officials, and local community leaders, who will in turn train local communities.

This training module has been designed in response to local community needs expressed during the consultations undertaken during the research.

2 Target groups

This guide is designed to be used to train local community leaders who wish to advocate for the collective forest tenure rights and privileges of the communities they lead. In turn, the guide can help community leaders and other actors at sub-national levels to educate local communities about their collective forest tenure rights and privileges. The guide can also be used by other people in the community who are keen to know and understand the nature of rights and responsibilities accorded by the law to local communities. To this end, the guide can be used by government officials and civil society organization to train local people.

3 Training objectives, outcomes and materials

3.1 Training objectives

The overall objective of this guide is to build the capacity of local communities to secure and protect their forest tenure rights and privileges, as enshrined in the relevant national legal instruments.

Specifically:

- to introduce the participants to the provisions of the main laws that deal with forest tenure for local communities
- to discuss the rights and privileges of the local community enshrined in the laws
- to discuss the institutional arrangements within which the participants can work to ensure their local community rights and privileges on forestlands are secured and maintained.

3.2 Training outcomes

After the training, the participants will be able to:

- identify the key provisions in the law that deal with the local community rights and privileges regarding forestlands
- discuss the implications of the legal provisions to the ownership, management, use, and decision making regarding forestlands in their areas
- identify the actors with whom local communities can work to secure and maintain their forest rights and privileges
- put in place robust community institutions that are able to champion the local community forest tenure rights.

3.3 Training materials

This training should be conducted in the classroom. The training materials needed include the following:

- a PowerPoint projector, if available and if the venue has reliable electricity supply
- flip chart and pens; content on the flip chart should be carefully prepared in advance of each of the training sessions
- Copies of the relevant laws for reference, including:
 - Land Act, 1998; Land Regulations, 2004; Land Amendment Acts of 2004 and 2010
 - NFTPAs; NFTPAs
 - other laws, especially the National Environment Act, 1995; Wildlife Act, 1996; Water Act, 1997, among others
- handouts: excerpts from the laws should be photocopied well in advance for use during group discussions. Detailed notes in Part 3 of this guide can also be issued as handouts.

4 Content of the training

The content summarized below is intended to guide the learning facilitator. It can, and should, be adapted to the specific target group and resources available.

Main topics and sub-topics	Suggested approach, methods and equipment	Time (hours)
i. Introduction <ul style="list-style-type: none"> • Basis of the training • Objectives and learning outcomes 	The learning facilitator or some other official briefly narrates the background to the training course and outlines the objectives and learning outcomes described above using a PowerPoint projector or flip chart.	0.5
ii. Rights and privileges <ul style="list-style-type: none"> • What are rights and privileges? • What the Constitution of the Republic of Uganda says 	Starts with a presentation by the learning facilitator. Where there is reliable electricity, a PowerPoint projector may be used, if available. Otherwise, flip charts can be prepared in advance and used. The learning facilitator should also have copies of the Constitution available for participants to refer to. The presentation should be interspersed with questions to encourage participants to bring in their experiences.	1.0
iii. What the Land Act, 1998 says <ul style="list-style-type: none"> • Customary land rights • Leasehold land rights • Freehold land rights • Mailo land rights • Lawful occupant, bona fide occupant, tenant by occupancy • Utilization of land according to various laws 	The learning facilitator issues copies of the excerpts of the relevant sections of the law and asks the participants to discuss in groups to tease out the rights to land that are relevant to local community forest tenure. Then, the group results are presented in plenary for discussion by others. Each group is given one land tenure type. The group discussions should not take more than an hour and the plenary another hour. There should be copies of the complete Land Act for reference purposes, and enough flip chart sheets for use during discussions and presentations.	2.0
iv. What the Forestry Laws say <ul style="list-style-type: none"> • Private forests • Community forests • Collaborative forest management (CFM) 	As above, but discussions in groups should take about 0.5 hours and 1 hour for presentations and discussion in plenary.	1.5
v. Governance arrangements for community institutions <ul style="list-style-type: none"> • Communal land associations (CLAs) • Community-based organizations (CBOs) 	While the processes for CLAs and CBOs have been mentioned during the laws discussed above, the emphasis here will be placed on the governance of these community institutions. The learning facilitator can lead the participants in discussing the issues involved through a gapped flip chart presentation, accompanied by specific questions to guide the discussion. The questions could include: <ul style="list-style-type: none"> • How are the constitutions or articles of association of the CBOs worked out? Are the provisions known and understood by all the members? • Who is a member of the community institution (CLA, CBO, etc.) and who is not? • How is representation¹ on the governing committees worked out? Is it decided with the full understanding of the issues at stake? • How is accountability to all members achieved by the governing committees? • How can governance of community institutions be improved? 	2.0

¹ Representation includes how community representatives for the governing committees are chosen, how long they will represent the community, how they are replaced, how they give feedback to the community they represent, etc.

Main topics and sub-topics	Suggested approach, methods and equipment	Time (hours)
vi. Summary of local community rights, privileges and responsibilities over forestlands	<p>Roleplay brings together the various aspects of the training. The aim is to see how the local community can defend their rights.</p> <p>The characters can include:</p> <ul style="list-style-type: none"> • executive committee of a CBO with some members scheming with a wealthy person • wealthy person who wants to open a ranch/coffee plantation by clearing part of the forest • local council chairperson who is a member of the CBO but not on the executive committee • a district forest officer • chairperson local council (up to 5 councillors) <p>This should not take more than 15 minutes. Another 15 minutes can be spent discussing issues raised.</p> <p>The learning facilitator now distills out the local community rights and privileges for each of the forest tenure types discussed above.</p>	0.5
Course evaluation	<p>This session should be designed to assess learning on the basis of the learning outcomes. Using cards, each participant is asked to write at least three things they learned, and things they did not understand, one on each card. The cards are pinned on a display board and discussed together to draw lessons.</p>	0.5
Total		8

5 Training program

This training course is designed to be conducted in 1–1.5 days, depending on the target group and resources available, which ultimately have a bearing on the time allowed for discussions. The content above should be turned into an annotated training program to fit the circumstances of specific training events. Annex 1 shows an example of an annotated training program. At the end of each training event, the learning facilitator will present a summary of the main outcomes, including any recommendations that the participants may wish to make.

Part 3.
Detailed notes

6 Introduction

6.1 Basis of the training course

Local communities have rights and privileges that have been written in the laws governing forestlands. The rights include how forestland is owned, and who uses, manages and makes decisions regarding that land (e.g. decisions about who may benefit from the forest, how the forestland may be converted to other uses and how the forestland may change hands). Like any other land, forestland may be owned and used in accordance with the Constitution of the Republic of Uganda, the Land Act (1998), as amended in the Land Amendment Acts of 2004 and 2010, and the Land Regulations (2004), the NFTP, the NFTPAs, the National Environment Act (1995), and any other environmental laws. These laws provide for the ownership of forests and the lands on which forests are found, the management and administration of the forestland, and forest tenure rights and privileges.

The forest tenure rights and privileges of the local community are stated in the laws. However, one of the persistent findings of the research carried out by the project on *Securing Tenure Rights for Forest Dependent Communities* is that the local communities have little knowledge of their rights and privileges contained in these laws. As a result, the forests have continued to degrade because local communities see little benefit in investing their time and money in forest management. Consequently, this training guide has been designed to address this gap, with the aim of enabling local communities to demand and protect their rights over forestlands.

7 Forest rights and privileges

7.1 What are rights and privileges?

Rights are legal, social, or values of freedom or entitlement. They are the fundamental rules about what is allowed of people or owed to people. Rights are often written in the laws, but they may also be according to long established custom. In most cases rights are indisputable or cannot be annulled. On the other hand, **privileges** are special entitlements granted to a group or a person, usually provided for in the law, and can be revoked. For example, local communities may take dead wood and bamboo free of charge from a CFR. This privilege can be revoked if they take more than the dead wood. On the other hand, a right inherently belongs to all people, is often embodied in the law, and is irrevocable. For example, the right to take firewood for cooking belongs to everybody, but it is not a right to take it free of charge. The law may provide for a privilege to local people to take firewood for domestic use free of charge in a CFR. In a private forest, on the other hand, the privilege may be based on an agreement (often unwritten) with the forest owner and the communities. This means that in the case of CFRs, the National Forestry Authority (NFA) must make sure the local people have firewood, but the NFA can opt to sell it to the people, or to allow them to take it for free. In both cases, firewood collection may be regulated through an agreement with the local communities that establishes the days for the collection, how much may be collected by each family and which species may be cut for firewood.

The forest tenure rights are provided for in the laws of Uganda and described below.



7.2 Constitution of the Republic of Uganda

Uganda's Constitution is the supreme law from which all other laws draw their authority. The constitution states the following in terms of local community forestland rights and privileges:

Article 26: Every person has a right to own property either individually or in association with others. This is the constitutional basis for rights to land and the forest resources thereon. It is the basis for the right to own private forests and community forests as provided for in the NFTP.

Article 33: Women have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities. In the case of community forests, this means that all women in that community have the same rights as men. In the case of private forests, a wife has the same right as her husband over the forest. In CFM processes, women have the same voice as men.

Article 33: Persons with disabilities have a right to respect and human dignity, and the State and society shall take appropriate measures to ensure that they realize their full mental and physical potential. This means that persons with disabilities have the right to equal treatment. They should not be discriminated against in any decision-making process on account of their physical disabilities.



Article 36: Minority groups have a right to participate in decision-making processes, and their views and interests shall be taken into account in the making of national plans and programmes. For example, as long as they are Ugandans, people who have moved into an area from elsewhere and integrated into the local community have the same rights in a community forest or CFM process as people who were born in that area.

Article 21: A person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability. The implication of this is that community forest or CFM processes must treat all people equally.

Article 237:

- Land in Uganda shall be owned in accordance with the following land tenure systems – customary, freehold, mailo and leasehold.
- Land under customary tenure may be converted to freehold land ownership by registration.
- Any lease which was granted to a Uganda citizen out of public land may be converted into freehold.

Some of the advantages and disadvantages of each tenure system are shown below:

Land Tenure Type	Advantages	Disadvantages
Customary	<p>The procedure of obtaining a certificate of customary ownership is less complex than the procedures for leasehold and freehold types. Any person, family or community holding land under customary tenure can apply to the area land committee for a certificate of customary ownership in the prescribed form. The committee publicizes the application and if there is no counterclaim, the committee recommends that the District Land Board issue the certificate.</p> <p>A person has as much right on the land as a title holder (Section 8 of the Land Act).</p> <p>Provides for communal ownership and use of land.</p> <p>Can be converted into freehold.</p>	<p>Without a certificate of customary ownership, the land can be grabbed if someone fraudulently obtains a title over it.</p> <p>The rights may be limited by the restrictions imposed as a result of customary rules and regulations.</p>
Leasehold	<p>In case of former public land, you may have full rights over the land, but the leasehold may be subject to conditions attached by the Land Board. In case of a sub-lease, the conditions may include those agreed between the holder of the full lease and the one seeking the sub-lease.</p> <p>Can be converted into freehold.</p>	<p>You hold the land for a specified period of time.</p> <p>The terms of ownership are agreed between the one giving the lease and the one obtaining the lease.</p> <p>Requires a lengthy and relatively expensive procedure.</p>
Mailo	<p>Land is held in perpetuity (permanently).</p> <p>Permits the separation of ownership of land from the ownership of developments on land made by a lawful or <i>bona fide</i> occupant.</p> <p>Can be converted into freehold.</p>	<p>This could disadvantage the land owner, especially when the <i>bona fide</i> or lawful occupant obtains a certificate of occupancy (Section 33 of the Land Act).</p>
Freehold	<p>Confers full powers of ownership and use of land in perpetuity.</p>	<p>The freehold could be subject to conditions.</p> <p>Requires a lengthy and relatively expensive procedure to be completed.</p>

Land ownership under customary tenure is open to land grabbing when someone obtains a title (leasehold or freehold) fraudulently. It is therefore safer to convert it to freehold tenure. Similarly, land granted to communities out of former public land should be converted into freehold land to strengthen the ownership.



Article 237: The lawful or *bona fide* occupants of mailo land, freehold or leasehold land shall enjoy security of occupancy on the land. This implies that as a tenant by occupancy, the tenant can engage in forestry activities on the land as long as he/she fulfills the other provisions of the constitution, such as paying the lawful rent to the registered owner.

7.3 The land laws

The main land laws referred to in this section include the Land Act, 1998 and amended versions of 2004 and 2010, and the Land Regulations of 2001 and 2004. The laws state that land in Uganda may be owned as customary, leasehold, freehold and mailo land (Section 2). Section 3 confers on the owner the rights under each land tenure system as follows:

7.3.1 Customary land

The owner of customary land has the right to:

- lease the land or a part of it
- permit a person to use the land or a part of it for a given period of time
- mortgage or pledge the land or a part of it
- subdivide the land or a part of it
- create, or alter or discharge any easement, or third party right applicable to the land or a part of it
- sell the land or a part of it
- transfer the land or a part of it to any other person in response to an order of a court or a land tribunal
- dispose of the land by will.

7.3.2 Leasehold land

The landlord (called lessor) grants another person (called lessee) exclusive possession of land. Conditions (e.g. period of the lease, how it may be used, public rights, etc.) are agreed between the lessor and lessee in conformity with the law. Where the land is not owned by any person under the four land ownership types in the Land Act (usually referred to as ‘public land’), the landlord is the District Land Board.

7.3.3 Freehold land

Gives the owner **full powers of ownership** of land in perpetuity (permanently). The rights include but are not necessarily limited to the following:

- using and developing the land for any lawful purpose
- taking and using produce from the land
- entering into any transaction in connection with the land, including but not limited to selling, leasing, mortgaging or pledging, subdividing, creating rights and interests for other people in the land, and creating trusts of the land
- disposing of the land to any person by will.

7.3.4 Mailo land

The land is owned in perpetuity (permanently). The owner has the right to exercise all the powers of ownership as those exercised by the owner of land held under a freehold title. However, this is a legacy of the colonial days. Today, it is only possible to get a title on land that is already mailo land, but existing mailo land can be sub-leased.

7.3.5 Lawful occupant, *bona fide* occupant, tenant by occupancy

A **lawful occupant** is a person:

- occupying land by virtue of the repealed Busuulu and Envujjo Law of 1928, Toro Landlord and Tenant Law of 1937, or Ankole Landlord and Tenant Law of 1937
- who entered the land with the consent of the registered owner, and includes a purchaser
- who had occupied the land as a customary tenant but when the leasehold was obtained, the tenant was not registered as such or he/she was not compensated. This pre-supposes that the land was originally held by customary tenure before it was converted to leasehold tenure.

A ***bona fide* occupant** is a person who, before the coming into force of the 1995 Constitution:

had occupied and utilized or developed any land unchallenged by the registered owner or agent of the registered owner for 12 years or more, or

had been settled on land by the government or an agent of the government, which may include a local authority. Persons resettled on registered land may acquire registrable interest in the land on which they are settled, but this is a privilege rather than a right.

A **tenant by occupancy** is a lawful or *bona fide* occupant. He/she is required to pay the registered owner an annual nominal ground rent as determined by the District Land Board. He/she may apply to the registered owner for and be issued a certificate of occupancy. Thereafter the tenant by occupancy enjoys similar rights to those of a leaseholder, except that the land owner may impose conditions within which the rights are exercised.



7.3.6 Utilization of land according to various laws

A person who owns or occupies land shall manage and utilize the land in accordance with the NFTP, Mining Act, National Environment Act, Water Act, Uganda Wildlife Act, and any other law in force in Uganda.

All rights to the water of any natural spring river, stream, water course, pond or lake or under land, are reserved to the government. All lands are subject to all existing public rights of way which are reserved to, and vested in the government on behalf of the public. Herein lies the practice of easements.

7.4 The forestry laws

The law that specifically provides for local community forest tenure is the NFTP, and the associated NFTPAs. The land may be held collectively by the community, or individually by community members. In this case, local community forest tenure covers forests held through communal land associations (CLAs) as provided for in the Land Act (1998), those on family land holdings, and those which are owned by virtue of a license issued to local communities in protected areas. The forestland is held in accordance with the land tenure systems enshrined in the Land Act, 1998 (customary, freehold, mailo and leasehold). These tenure types provide for full ownership of land but the land has to be managed in line with the relevant laws. The rights and privileges that are provided for in the NFTP are described below.

7.4.1 Community forests

Community forests are those found on former public lands where community members enjoy equal rights (as in the case for Alimugonza Community Forest in Masindi District), or they may be on customary lands (as in the case of Orom-Gogo Community Forest in Lamwo District). When the community agrees to manage the land as a community forest, they form a community-based organization (CBO), such as a CLA, through which they can manage and use the forest resources.

An area becomes a legally recognized as community forest upon declaration by the minister in the official gazette. Before declaration, the minister is required to consult with the District Land Board and the local community. The minister also needs the approval of the District Council of the district where the forestland is located. The declaration must also specify a responsible body² for the community forest. Typically, the responsible body can be a registered CBO representing a forest adjacent community, specific forest user group, CLA as provided for in the Land Act 1998, cooperative society, farmers' group, or any other non-governmental organization (NGO) that draws its membership from the local community, and is recognized under the laws of Uganda. Upon declaration, the responsible body takes over the rights of **management, maintenance and control** of a community forest on behalf of the community. The NFTPFA also grants the responsible body the right to **generate revenue and invest it in sustainable management of the community forest and the welfare of the local community**. The community, through the responsible body, can change land use or ownership only with the approval of the District Council by resolution, and the written consent of the minister.

Areas that can be registered as community forests include:³

- former public land, now administered by the District Land Boards
- land designated as 'fragile ecosystem' in accordance with the Environment Management Act, 1995 and its subsidiary legislation
- areas to be planted as community managed plantations
- areas that are communally held and used collectively under customary tenure (often but not always under the guardianship of traditional or cultural leaders as defined in Section 3 of the Institutional or Cultural Leaders Act, 2011)
- communally used woodland and pastoral areas.



² In the case of a community forest, the responsible body is the community institution put in place by the community itself to manage the forest on its behalf.

³ Guidelines for the Registration, Declaration and Management of Community Forests – Popular Version (2015)

Some challenges found in community forest tenure and how they can be handled

By mid-2017, the processes of establishing community forests recognized under the NFTP had been completed for six forests in Uganda, save for declaration in the Uganda Gazette. Two were in Lamwo and four in Masindi districts. By the close of 2018, the communities were still waiting for the official gazette declaring the community forests. In the process of establishing these forests, it was noted that:

- When former public land is identified by the community, it can be hijacked by individuals who are able to move secretly and faster in registering the land than the communities. Therefore, once the land is identified, community leaders should move quickly to lodge their intentions to form a CLA with the district registrar, who is authorized by the Land Act to guide the CLA formation process.
- Corruption remains the biggest obstacle to the security of community forests. This can lead to hijacking of the benefits by wealthy and politically connected individuals. In order to deal with this, it is important that the communities elect honest people into positions of leadership, and work out a constitution/articles of association that will minimize betrayal by the leaders. The constitution/articles of association should include good governance principles and provisions that facilitate transparency and accountability of the community leaders.
- There is some gender imbalance in benefit sharing which needs to be considered. In most cases, women harvest subsistence/low-value products, such as firewood and medicinal herbs, while the men harvest high value/commercial products, such as charcoal, timber and poles. It is advisable for a percentage of the income received from commercial activities to be remitted to the group treasury for the benefit of all members.
- Women and other vulnerable members of the community usually fail to raise the membership/annual subscription fees needed to become members of the CLAs, and therefore fail to benefit from the community forests. Therefore, all members of the community should automatically be members of CLA, with membership/annual subscription fees being deducted from their benefits.
- Because there are usually fewer women in the CLA, their participation in the group leadership and therefore decision making is limited. Women should be empowered to vie for leadership positions and to contribute ideas in meetings. This empowerment can also include entrenching quotas for women in the constitution/articles of association. Men should also be educated on the importance of including women in the decision-making processes of the communities.

Other challenges are also applicable to private forests and therefore discussed under the section on private forests.

7.4.2 Private forests

A private forest is one situated on land owned in accordance with the Land Act, 1998, or on land in respect of which a license has been granted. The land or license may be owned by an individual or a family, or it may be owned by a registered private company even when it is customary land (e.g. clan land or under the control of traditional/cultural institutions). The land should also have been registered with the District Land Board as forestland. For a legally recognized private forest located in a forest reserve, the forest is the property of the licensed owner, but government still owns the land on behalf of all Ugandans. If the forest is not registered, it is still privately owned but not recognized within the legal definition of private forests in Uganda.

Private forests may be natural or planted. Private natural forests owned by individuals or families are typical in Bunyoro, Toro and Buganda sub-regions, but they can also be found elsewhere. Clan lands are typical in the Acholi sub-region but can also be found in Buganda and other areas of Uganda.

Box 1. Regulation 108: Obligations of the responsible body

1. The responsible body shall ensure that:
 - b. the boundary of the land for afforestation or reforestation for purposes of carbon sequestration are clearly defined;
 - c. a management plan is developed for the area involved;
 - d. the programme is managed in an open, transparent and responsive manner;
 - e. the ownership of property rights to carbon services from the trees and land shall be clearly defined in the agreement between the person and the owner of the land;
 - f. at the relevant time, provision is made for updated legislation that establishes a framework for carbon credits, carbon accounting or emissions trading;
 - g. suitable mechanisms are established for the development of technical specifications and monitoring systems;
 - h. subject to availability of funding, an up-to-date database of the forests area under the programme and the rates of carbon sequestration is maintained and research commissioned to establish the viability of the programme;
 - i. the local community provides alternative land for a carbon buffer stock to be developed in case the afforestation or reforestation fails; and
 - j. any adverse impact likely to arise as a result of the programme is explained to the community likely to be negatively impacted.
2. The responsible body shall ensure that the fees payable for the boundary markings are paid before the afforestation or reforestation programme commences.

Box 2. Regulation 73: Rights of private forest owners

The owner of a private forest shall have the right to:

- a. buy, sell, transfer, exchange, lease, mortgage a forest or enter into an agreement in accordance with these regulations;
- b. sell or otherwise collect stumpage from other forest users and dispose the forest belonging to him or her;
- c. request from the authority or the district forestry officer support to prepare a management plan; and
- d. access available incentives in his or her own right or in association with other persons.

Private forest owners (PFO) have been given the full bundle of rights, but some of the rights are regulated within the framework of national legislation. For example, a PFO, as a responsible body, has to work within the National Environment Act, fulfill obligations listed in Regulation 108 of the NFTPAs (Box 1), and can enjoy the rights outlined in Regulation No. 73 (Box 2).



The PFO has the rights of **access and use, management, and harvesting and owning forest products**. The owner of a registered private forest **can mortgage or transfer** his or her interest in the registered area, but this requires the permission of the District Land Board, on the advice of the district forestry officer. Where the District Land Board permits the mortgage or transfer, the mortgagee or transferee must take on all the benefits and obligations of the former owner. The private forest or part thereof **can be deregistered** but it requires the written permission of the District Land Board and on the advice of the district forestry officer.

Registering the forest increases the security of tenure of the forest and the land on which the forest stands. This is value addition. Because of this increased tenure security, opportunities are increased for financing forest management, e.g. carbon sales, loans and/or grants from financing and development cooperation agencies, banks etc., payment for ecosystem services, such as carbon capture, water conservation, and conservation of endangered species.

Challenges in acquiring private forest ownership and how they can be handled

A number of processes have been undertaken to establish legally recognized private forests since 2003 when the NFTP became operational. During these processes, it has been found that:

- The process from start to the end (registration of the forest) is demanding, and the district officials are often not well financed to do the work as quickly as is desirable. One way of dealing with this is for the PFOs to organize themselves into associations that can prepare bankable projects for funding by various financing and development cooperation agencies. A project designed by the PFOs themselves, and supported to implement the registration process, would help to expedite the process.
- The NFTP requires that a management plan is prepared and approved by the District Council. This requires money which some PFOs may not have, or are unwilling to commit to the process. Again the PFO associations can help to mobilize investment finances. In addition, the associations could design and advocate for a simple format and procedure, especially for community and smallholder forests.
- Some PFOs suspect that their land will be grabbed by government once the forest is registered. Others fear that registration might lead to taxation, even when the forests are not making money.

This is not a legitimate fear because a certificate of registration actually increases the security of tenure of the forestland. Where expenses are in excess of income, there is no tax levied. To dispel these fears, community education on the interpretation of the tax law is needed.

- For family forestlands, women often feel that they have no say in their management and therefore the benefits accrue to men. Actually, the rights of women and youth are stated clearly in Uganda's Constitution and the Land Act, and therefore, just like other agricultural activities in a home, family members need to work together and ensure equitable benefit sharing in order to get the best out of the family forest. Community education is essential for this.
- Being vulnerable groups, women and youth, in many cases, lack capital to participate as investors in private forestlands, and so fail to benefit from forestry as an economic activity. When operationalized, the Tree Fund enshrined in the NFTP A should be designed with affirmative action in favor of women and youth in mind. In addition, women and youth should be encouraged to join/form village savings and loan associations in order to pool resources for investment in forest utilization. For example, they may be able to invest in beekeeping in family woodlands.

7.4.3 Collaborative forest management

CFM is a partnership between a local interest group or community living beside a government forest reserve, and the government authority responsible for the management of forest resources in the reserve. Currently, the government authority is the NFA for CFRs or local governments for local forest reserves (LFRs). Development of CFM started in 1999, at about the same time as the forest sector reform process was launched, and before the NFTP A became operational. Since then, 49 CFM agreements had been signed by 2015, covering an area of 63,704 hectares in 20 CFRs, such as Budongo (Masindi/Buliisa Districts), Bugoma (Hoima District), Kihaimira (Kibale District) and Itwara (Kyenjojo/Kabarole Districts), Lwamunda (Mpigi District), Nawandigi (Butambala District), all over Uganda (National Forestry Authority, 2017⁴).

The power to enter into CFM arrangements with local communities is given by the NFTP A (Section 15), which says that:

“A responsible body⁵ may enter into a collaborative forest management arrangement with a forest user group for the purpose of managing a central or local forest reserve or part of it in accordance with regulations or guidelines issued by the Minister.”

This partnership includes a process for sharing power among stakeholders to make decisions and exercise control over the resource, based on negotiated relationships, rights, responsibilities and returns. The process of developing the CFM arrangements is conditional upon guidelines issued by the minister. According to the guidelines,⁶ the climax of the CFM development process is a CFM agreement.

4 National Forestry Authority, 2017. Records on Collaborative Forest Management (unpublished).

5 National Forestry Authority in the case of CFRs; local governments in the case of local forest reserves.

6 As in footnote No. 5 above



Ready to negotiate CFM arrangements

The act does not specifically grant any rights to the collaborating communities in a CFM arrangement. To this extent, CFM is not a right but a privilege, because it is the responsible body⁷ that decides whether to share benefits and management obligations. Once the responsible body has taken the decision to enter into partnership with the local communities, the privileges are negotiated with the responsible body and written in a CFM agreement and CFM plan. Typical privileges for CFM communities are:

- planting of trees in CFR land under license
- collection of fuelwood, fibers, craft materials, forest foods and other non-timber forest products (NTFPs), but under the supervision of NFA
- beekeeping
- support for development of livelihood options on their individual/family lands outside the CFR, but only if NFA has the resources. This includes linking the communities to other financing and technical cooperation agencies.

The importance of this is that in CFM arrangements, communities get only the privileges that they successfully negotiate with the responsible body.

The NFTPAs also make an allowance for the local communities (not necessarily within the CFM arrangement) to **cut and take free of any fee or charge, for personal domestic use in reasonable quantities, any dry wood or bamboo** from a forest reserve or community forest.

Some challenges found in CFM and how they can be handled

- The Act does not guarantee any rights to the collaborating communities in a CFM arrangement, a legal provision with respect to CFRs and LFRs only. Customary rights apply only outside government protected areas. When the NFTPAs come up for review, the use rights of communities should be included in the provisions for CFM, since local communities depend on resources from the forests in their localities for their well-being. That is when they will feel duty bound to protect these forests, even when they may not have ownership rights.

⁷ As in footnote No. 5 above

- The process of completion of the CFM process is very long (often lasting years), leading to loss of interest by the community members. The time can be considerably shortened if adequate resources are made available. In addition, the process should be devolved to the NFA Ranges⁸ in case of CFRs, but it can remain at the district level in the case of LFRs.
- Negotiating benefits needs expertise for fair benefit sharing. However, most communities lack negotiation skills, leading to uneven benefit sharing, with the communities coming out with the low-value non-timber products as the benefits. Community partners need to focus on building skills among community institutions for meaningful negotiations with government institutions.

7.5 Governance arrangements for community institutions

For the voice of the communities to be heard in order to secure and protect their forest tenure rights, it is important that they organize themselves in legally recognized community institutions. The institutions may be in the form of CLAs, other forms of CBOs or NGOs.

Section 39 of the Land Act safeguards the rights of women. Every spouse is expected to enjoy security of occupancy on family land. The security of occupancy means a right to have access to, and live on family land. The spouse has a right to use the family land and give or withhold his or her consent to any transaction referred to in Section 39, which may affect his or her rights. This is especially important for private forests.

7.5.1 Communal land associations

CLAs are CBOs formed under the provisions of the Land Act. They are formed by community members who wish to own and manage their land communally.

Forming CLAs

According to the Land Act, 1998, a CLA may be formed by any group of persons for any purpose connected with communal ownership and management of land (Section 15). The land managed through CLAs may be owned under any of the four land tenure types or it may be former public land when permission is granted by the District Land Boards.

The rights and privileges are not specifically stated in the Land Act but rights and privileges of members will normally be found in the Constitution of the CLA, which is provided for in Section 17 of the Land Act. The 3rd Schedule in the Land Regulations, 2004) gives guidance on what may be contained in a CLA, for example:

- rights to which a member is entitled
- rights of members to use property of the association
- what happens to the rights and property of the person whose membership is terminated
- the purpose for which the land may be used and the procedure to be followed in connection with the physical division of the land into individually owned plots
- whether members may undertake transactions with their rights and to whom
- what happens to a member's rights on death
- procedure for election of officers, their terms of office, their powers
- powers of members in relation to decisions made by the officers
- powers of members to remove all or any of the officers.

The CLA arrangement is often used to set up community institutions for the management of community forests.

⁸ A Range is the name given to a regional administrative and management unit of NFA. It combines a number of central forest reserves, often scattered across many districts.

Areas of common land use

According to the Land Act, 1998, The CLA, when requested by the community, must set aside one or more areas of land for common use by members of the group (Section 23). The purposes for which land may be set aside for common use include:

- grazing and watering of livestock
- hunting
- gathering of wood fuel and building materials
- gathering of honey and other forest resources for food and medicinal purposes
- such other purposes as may be traditional among the community
- using the land communally.

Section 25 of the Land Act further states that the area set aside for common use shall be used and managed in accordance with the terms of a **common land management scheme**. The scheme confers the following basic rights that the community using common land has:

- the right to make reasonable use of the common land, jointly with all other members of the group, in accordance with the terms of the scheme
- the right to gather wood fuel and building materials and harvest the resources of the common land in accordance with the terms of the scheme
- the right to exclude nonmembers of the group from the common land, other than those nonmembers who have been permitted to enter and use the common land.

However, the community is also required to carry out the following basic duties, among others, which the community may agree to:

- comply with, and assist in the enforcement of the rules set out in the scheme
- bear a reasonable and proportionate share of any expenses or losses incurred in using and managing the common land
- support the establishment and management of a fund for the purposes of carrying out activities on, and improvements to, the common land
- not transfer any rights to occupy or use or gather the produce of any common land to any person except in accordance with the rules of the scheme
- comply with any decisions of the association or any dispute settlement body established by the association.

The full process of forming CLAs is outlined in Sections 15–21 of the Land Act, 1998 and the Land Regulations, 2004 (Regulations 74–90 and the associated schedules).

7.5.2 Community-based organizations

According to the Non-Governmental Organisations Act, 2016 (NGO Act), CBOs are registered by the National Bureau for Non-Governmental Organisations on the recommendation of the District Non-Governmental Organisations Monitoring Committee (NMC), and the Subcounty Non-Governmental Organisations Monitoring Committee.

The Subcounty NMC issues guidelines for establishment and operation of CBOs. The guidelines include provisions for constitution making. Of particular importance in constitution making are issues of choosing representatives for the governing body (or executive committee) and accountability of the governing body to its members. Members in their constitution must carefully consider how there will be equitable representation and feedback by the elected representatives. The CLA model in Schedule Three of the Land Regulations (2004) provides a good starting point for the formulation of the CBO's constitution.



8 Summary of local community forest tenure rights

8.1 Constitution of the Republic of Uganda

- Every person has a right to own property either individually or in association with others.
- Women have the right to equal treatment with men.
- Persons with disabilities have a right to respect and human dignity.
- Minority groups have a right to participate in decision-making processes.
- Discrimination on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability is prohibited.
- Every person has the right to own land in accordance with customary, freehold, mailo and leasehold tenure systems, in accordance with the laws of Uganda.
- The lawful or *bona fide* occupants of mailo land, freehold or leasehold land shall enjoy security of occupancy on the land.

8.2 Land Act, 1998 and the Associated Revisions and Regulations

- Freehold and mailo land tenures give the owners the full bundle of rights, but easements must be respected by all rights holders.
- A CLA may be formed by any group of persons in accordance with this act for any purpose connected with communal ownership and management of land.
- The CLA model constitution provides guidance on how members' rights can be incorporated in the CLA constitution.
- The area set aside for common use must be used and managed in accordance with the terms of a common land management scheme with the associated rights.

8.3 NFTP, and the Associated NFTPRs

8.3.1 Private forests

PFOs have been given the full bundle of rights to the forests, but some of the rights are regulated within the framework of other laws like the Land Act, Environment Act, and the Water Act, among others.

8.3.2 Community forests

- Rights of management, maintenance, and control of a community forest by a community institution which executes decisions made by the community members, and which has been gazetted by the minister as the responsible body for the community forest.
- Right to generate revenue and invest it in sustainable management of the community forest and the welfare of the local community.
- The responsible body could change land use or ownership, but only with the approval of the District Council by resolution, and the written consent of the minister.

8.3.3 Collaborative forest management

- The NFTP states that CFM **may** be implemented in CFRs and LFRs.
- The collaborating communities can only exercise the privileges they are able to negotiate with the responsible body⁹, and which are enshrined in the CFM agreements and the associated work plans.

9 NFA for CFRs and Local Governments for LFRs

Annex 1. Annotated program for training local communities in forest tenure rights and privileges

Date and Time	Topic	Facilitator	Notes
8.30 am	Arrival and registration	Main facilitator	
9.00 am	Opening remarks	Organization undertaking the training	Invite one of the local government officials to officially open the training workshop
9.15 am	Introduction to the training	Main facilitator	Background and training objectives
	What are rights and privileges?	Main facilitator	Flip chart papers
10.00 am	Our rights and privileges –explaining the tasks	Main facilitator	<p>Group work. Participants given the relevant pages of the detailed notes to work out what their rights are. Copies of the laws to be available for those who want to dig deeper:</p> <p>What common types forestland ownership are there?</p> <p>What can you as an individual do or not do on those lands?</p> <p>As an individual, what can or can you not do with forest products on those lands?</p> <p>Apart from you, what can other members of the community do or not do?</p> <p>Separate the actions that you consider are your legal right, those you can only do by license/ permission, and those which are acceptable by local custom/ tradition.</p> <p>What are the challenges and how can we overcome them?</p>
10.30 am	Coffee break		
11.00 am	Our rights and privileges		Group work. Each group selects a chair and secretary
1.00 pm	Lunch break		
2.00 pm	Our rights and privileges	Main facilitator	Group work continues
3.00pm	Our rights and privileges		Presentations in plenary and discussions
4.00 pm	Summary of local community forest tenure rights and privileges	Main facilitator	
4.30 pm	Closing remarks	Organization undertaking the training	

This guide is designed to be used primarily by local community leaders to train the communities they lead. These leaders include district and lower Local Government officials, local council members, civil society staff working at community level, and executive committee members of community institutions, among others. The guide responds to a need for the active participation of local communities in securing and guarding their forest tenure rights through pro-active and innovative actions of empowered and well-informed local community members. The need was identified in the Global Comparative Study on Securing Tenure Rights for Forest Dependent Communities carried out by the Center for International Forestry Research (CIFOR) over a period of 4 years (2015–2018). An empowered and well-informed local community would be confident about the rights they have under the law, and be prepared to defend them. And building this confidence with respect to their forest tenure rights involves equipping them with relevant knowledge. This guide is designed to provide the training needed to build this confidence.

The guide has been designed to apply to forestlands gazetted as central forest reserves (CFRs) and forestlands outside government protected areas.



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