

# COMMUNITY LAND JUSTICE IN UGANDA: *TOWARDS MEANINGFUL HARMONISATION*

A publication of Land and Equity Movement in Uganda

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**Land and  
Equity Movement  
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*Making land work for us all*

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## Introduction

Uganda's northern region was traditionally inhabited by communities with predominantly pastoral lifestyles. As the country began developing administrative structures in the region, most clans found themselves settled into agro-pastoral communities. The elders found it imperative to demarcate areas of land to fit different uses, with areas for family settlement and cultivation clearly separated from other areas for communal use. Land was either demarcated by the leaders of a particular settlement or by the dominant clan for the benefit of everyone else in that area. Today, these common lands are shared by multiple villages and mainly used for grazing cattle, hunting, gathering fruits and wild foods, firewood, building materials, traditional medicines, and recreation. In regions like Lango, it is common to find these communal lands located adjacent to wetlands, which form part of the communities' common resources and provide water for domestic use.<sup>3</sup>

Under customary tenure<sup>4</sup>, land is held either by individuals, families, or communities. The *Land Act* (1998)

provides ways in which communal land owners may register their interest and obtain documented proof of ownership. The *Act* does not, however, provide a systematic dispute resolution structure for communal land. Instead, it leaves communal land justice to the gaps in the parallel system between traditional clan governance and the formal courts. Although the 2013 National Land Policy mentions harmonizing the roles of clans and that of formal courts in customary land justice, it does not address the distinct concerns community land presents.

The purpose of this paper is therefore to analyze the efforts of communities have attempted in getting their lands back from illegal grabbing and to present practical options which may go a long way in helping both courts and communities register successes in community land justice. It suggests ways to realize the 2013 Uganda National Land Policy's mission to harmonize the administrative roles of traditional land managers and formal courts.

## LEMU's Experience

LEMU's intervention in Lango sub-region has shown that almost all community lands and their adjacent wetlands are in dispute. As it stands, only 2 out of 87 communities that have expressed interest in working with LEMU are conflict

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<sup>3</sup>The origin is derived from dialogues held with elders of several communities who were asked to recall the past of the communal lands.

<sup>4</sup>The Constitution of the Republic of Uganda recognizes four coexisting tenure systems, namely; customary, mailo, freehold and leasehold. Customary tenure is the most predominant in Uganda.

free. The rest feature conflict of varying degrees—mainly arising from wetland misuse (typically cultivation, brick making, sand minding, and reclamation), blocking of cattle pathways or community water sources, cultivation and settlement on the communal grazing land, and in several instances leasing, sale, or land grabbing. In fact, in an estimated 70% of the communities LEMU works in, certain individuals are actively denying the community’s land rights by encroaching and claiming part or all of it as privatized, personal property—resulting in endless disputes within the community. These encroachers typically act in bad faith<sup>5</sup> and frustrate any attempt to resolve the conflict, leaving communities powerless since mediation, alternative dispute resolution (ADR) outcomes are non-binding and Local Council court decisions are rarely enforced. Thus, the vast majority of community-initiated attempts to resolve the disputes are unsuccessful.

Out of the 87 communities<sup>6</sup> LEMU has been invited to work with, almost all have been to LC courts regarding the

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<sup>5</sup>“**Land grabbing**” is understood as the illegal and opportunistic act of depriving someone of land rights; while “**bad faith**” describes the dishonest or obstructive way someone approaches the dispute resolution process. See J. Akin (2014), “*Power & vulnerability in land dispute resolution: Evaluating responses to domestic land grabbing in northern Uganda*”. A publication of the Northern Uganda Land Platform.

<sup>6</sup>“**Community**” or “**Communal Land Site**” is defined for the purposes of this paper as **a collection of villages that share rights to a common resource (grazing land, wetland, etc.)**. LEMU finds that the number of villages in a given community may range from two (2) to twelve (12) or more. In order for communities to come together and secure their land rights, it may be advisable for them to obtain a: 1) Communal Land Association/Certificate of Customary Ownership/Title for the land and/or 2) Wetland User License (since wetlands are held in trust by Government).

conflict and at least 5 have gone ahead to the Magistrates courts. Community cases are brought to court in one of the following ways:

- a) by referral from LCIII courts (when the LCIII courts rule in favor of the community but the perpetrator refuses to leave the land);
- b) when a handful of community members sue the perpetrator(s); and
- c) when the encroacher sues community members, who become defendants in the case.

Ongoing conflicts concerning common lands have been known to result in criminal acts including threats, fraud, malicious damage, robbery, arbitrary arrests, and murder. Apart from these more visible impacts, community land disputes continue to silently affect the daily economic livelihoods of users, who have been forced to either find alternative sources of firewood, water, and grazing, or seek redress from available justice avenues both from the Local Government, the customary leaders and Civil Society Organizations. The problem with these avenues, however, is that current LC I and II courts are not recognized as legitimate by appellate courts, their decisions are rarely enforced, and community land cases typically involve disputants from

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multiple villages (beyond an LC I's or even an LC II's jurisdiction). Similarly, clans—unlike with family land cases—can rarely claim jurisdiction because communal lands are often owned by members of many different clans; any clan arbitrators may therefore be likely to side with members from “their own” clan.

When it comes to wetlands abuse, communities are even more disadvantaged as wetlands do not belong to them—rather, they are vested in the government. This means that in cases of conflict, the best communities can do is complain to the state structures in charge and in the event that the state fails to act, then the communities lose an integral part of their shared resource.

### Legal Capacity

To be able to sue, one must have legal capacity either as a natural person or a body corporate. This is nearly always guaranteed for disputants in family land disputes, yet is a significant obstacle for community land owners seeking to defend their communal claims.

Ugandan law provides for communities to be registered as legal bodies through the law of Communal Land Associations in the 1998 *Land Act*. Yet to LEMU's

knowledge, no single community in Lango (or in northern Uganda!) has been successfully registered as a Community Land Association or any other legal entity<sup>7</sup>, which means that all communities do not currently have the capacity to sue or be sued as a unified body. The common practice is that a couple of community land owners take up the suit on behalf of the community (where the community are the plaintiff) or the encroacher sues a handful of community members who are most persistent in condemning their behavior (who are then the defendants).

### Representative Suits

By not having legal capacity to collectively sue or defend their rights, the available legal option given the nature of ownership of communal land is by suing or defending under representative suits. A “representative suit” is when a group of people with common interest who do not have the capacity to sue or be sued as a legal entity, may sue or be sued through designated representatives.<sup>8</sup> The law, however, stipulates that this may only be done with permission of court—and in practice, courts have insisted that leave to bring a case or defend in the representative capacity should be sought first before, but not during, the pendency

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<sup>7</sup>Examples of other legal entities include trusts, cooperative societies, condominium associations, and community based organizations.

<sup>8</sup>Order 1, Rule 8 *Civil Procedure Act*

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of the case. Failure to comply with this rule renders the whole suit defective and may be thrown out.<sup>9</sup>

Secondly, law states that when such leave is obtained from court, it must be made known to all defendants or plaintiffs; which means that, for LEMU's subject communities where the adult population is an average of 2,000 people scattered in over ten villages, the representatives must advertise the order. This poses a question of the efficiency of gazetting in relation to rural communities? Besides, this is a very costly endeavor in terms of money and time for the community members who, in most cases, have already sacrificed greatly in bringing the case to court. This makes the process very expensive and renders the community totally dependent on their lawyers in complex suits regarding issues of rights on communal lands, which are very intricate and require prior study into not only customary tenure but the rights involved under communal land ownership—something in which few advocates have proficiency.

### **Recommendations**

The 2013 Uganda National Land Policy outlines strategies to strengthen traditional land management and

administrative institutions, which require government to recognize traditional institutions and ensure the enforcement of the decisions of these institutions while according full judicial backing of traditional institutions as forums of first instance. To make this a reality, we propose the following:

### **Short Term**

#### **Communal Land Committees:**

Under customary tenure in Lango Subregion, the traditional administrative bodies of communal lands consist of the nine-member *Adwong Bar* Committee who are elected by the community members. In family land conflicts, the clans are best placed to attempt to resolve these conflicts. With communities, however, the dynamics are different; there are several clans involved. Therefore, in place of the clan(s) heads convening to resolve community land conflicts, we recommend that the *Adwong Bar* committee should take up that role. For communities that do not have an elected *Adwong Bar* in place, the clan leaders of all clans that use that land would be the ones to be given the opportunity to jointly hear this case as the forum of first instance. We recommend that the court work together with either the *Adwong Bar* committee or the assembly of relevant clan heads to agree that if any community land case is

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<sup>9</sup>*Henry B Kamoga and 5 Others versus Bank of Uganda (quoting Tarlogan Signh versus Jaspal Phaguda)*

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brought before court, just like the court recommends mediation in all civil cases, the court should recommend that the case be handled first by these traditional structures. Where the matter is not resolved at that level, then appeal would lie with the Land Tribunals and, then to the formal courts, who should then refer to the proceedings as far as matters of facts are concerned.

### **Using a Customary Land Rights Tree**

Researchers calculate that 98.8 percent of land plots in greater northern Uganda are owned without any supporting documents.<sup>10</sup> It is therefore not surprising that state courts and law enforcers often face difficulty in determining ownership and assessing land rights of disputants.

Through years of experience in mediation and work with clan-based community structures, LEMU has found that drawing a “Land Rights Tree” diagram—depicting how the land changed hands over time and came to be community or family land—is a simple, but effective form of documented customary evidence. By tracing how land was cleared, given, purchased, inherited, or leased, it is possible to clarify the land rights of all parties using the Principles, Practices, Rights, and Responsibilities (PPRR) of

land under customary tenure.<sup>11</sup> LEMU therefore recommends that court and law enforcement enlist the support of clans and disputants to draw Land Rights Trees to prove land rights in all cases over customary family or community lands.

### **Amicus Curiae (Friends of the Court)**

A continued working relationship between CSOs and courts is another recommendation to consider. Could formal courts in the region establish a relation where CSOs who work directly in land do all the “leg work” and research, then submit a legal opinions and analysis of the case based on customary land rights (using a Land Rights Tree, as described above) to court? This system may also appropriately address delays as well as the opportunity and financial costs associated with Magistrates’ locus visits, thus reducing court case backlog.

### **Long Term**

#### **Traditional Leaders Suing**

The traditional or cultural leader is a corporation sole with perpetual succession and with capacity to sue and be sued and to hold assets or properties in trust for itself and the people

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<sup>10</sup>Burke, C. and D. Kobusingye (2014). “Securing Women’s Land and Property Rights in Northern Uganda (West Nile, Acholi, Lango, Teso and Karamoja).” Oxfam Research Study.

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<sup>11</sup>See the *Principles, Practices, Rights, and Responsibilities (PPRR) for Land under Customary Tenure* for Acholi, Kumam, Lango, Teso, and (forthcoming) Bunyoro subregions. Developed in partnership with Ker Kwaro Acholi, Kumam Elders’ Forum, Lango Cultural Foundation, Iteso Cultural Union, Bunyoro Kitara Kingdom, Action Aid, LEMU, and Norwegian Refugee Council.

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concerned.<sup>12</sup> This law gives traditional leaders power to hold property for the people concerned. Could they not then be in position to sue grabbers of communal land in that capacity? If the

perpetrator disregards the opinion of the *Adwong Bar* Committee, we recommend that an appeal should lie with the clan heads or apex traditional institution of the users of that communal land.<sup>13</sup>

### Conclusion

Achieving community land justice is a concerted effort of all stakeholders involved, including the communities that own and depend on these lands for their livelihoods. It is therefore important that they, and their traditional governance structures, be made a part of the solution. Giving communities a mandate to resolve their conflicts transfers substantial conflict resolution powers into their hands, especially now that the National Land Policy envisions harmonizing customary efforts with those of formal courts. This is precisely where Uganda's judiciary can innovate and make this vision a reality for the millions of Ugandans living under customary tenure today.

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<sup>12</sup>Section 7 of *The Institution of Traditional or Cultural Leaders Act* No. 6 of 2013. Note however that Traditional or cultural leader in the Act means king or a similar traditional leader or customary leader by whatever name called who derives allegiance from the fact of birth or descent in accordance with customs traditions, customs, usage or consent of the people led by the traditional or cultural leaders. This definition may be limiting to the Apex institution but not clan leaders.

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<sup>13</sup>It is not yet clear whether it is even possible for the office of the Won Nyaci, the Paramount Chief of Lango who is the corporate body, to prosecute a case involving land disputes.

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