

1. How does land grabbing happen?

Knowing the enemy

Most people know that land disputes and land grabbing are common in Uganda today. But what kind of disputes usually arise, and how does land grabbing actually take place? It seems obvious that we can fight land grabbing better if we understand how it happens and how often, who is most at risk, and how land grabbers are able to get away with it, despite the existence of courts, LCs and the police. However, surprisingly little is known about it, and responses to land grabbing (such as awareness raising, legal aid, training LCs) have often been proposed without first understanding the problem. LEMU therefore led a coalition of partnersⁱ to find out more.

Many of the findings were extremely disturbing: land grabbing is far more common than is usually suspected, even by those working in the field, and it is more abusive and violent than we knew. The clan and State (LC and magistrates) justice systems are very ineffective, and communities are turning a blind eye – or worse – to what is going on around them. Nonetheless, an understanding of how land grabbers go about their crimes has helped us to see what we must do to fight them. This paper gives a broad summary of our findings about how land grabbing happens. (More detailed discussions e.g. about the justice and land administration systems, are found in separate leaflets in this pack.)

Prevalence

Every village has many conflicts. Many studies have shown that disputes are commonⁱⁱ. LEMU's study found that widows comprise around 10% of households and over half have suffered attempts to grab land in Langoⁱⁱⁱ. Divorcees and separated women can also be up to 10% of households, and almost all suffer violations of land rights. It was impossible to quantify how many orphans fell victims to land grabbers. Many couples – especially the poor or elderly – also suffer land grabbing.

What kinds of 'land disputes' exist?

Genuine land disputes, where both parties believe they are in the right, are rare. Disagreements are usually solved easily by the customary authorities or LC1. This means that when 'disputes' arise which are not easily solved, they are usually deliberate attempts to grab land.

ⁱ Partners were NRC, LWF, Justice & Peace, ICU, LCF and Trocaire.

ⁱⁱ e.g. UBOS found that 15% of households had land disputes

ⁱⁱⁱ More details will be available in the full research report, available soon at www.land-in-uganda.org

How does land grabbing take place?

"Land grabbing" means deliberately and illegally taking away someone else's land rights – e.g. taking their land, or refusing to give them their legal inheritance. After hearing many stories of land grabbing in seven districts^{iv}, many common threads could be identified.

a) grabbing by gradual encroachment

Land grabbing does not always happen at once. Frequently, the grabber tests their targeted victim by first encroaching one or two metres into their field. This is often into a field left fallow, so the target may only discover it after several months or more than a year. Those who feel weak (e.g. the old, widows) don't want to antagonise their neighbour and keep quiet, feeling that it is better to 'compromise' for the sake of peace. The grabber is then encouraged and progressively takes more. If challenged, he (it is usually a man) asks to be allowed to harvest crops he has already planted – but he will quickly plant again unless the victim reclaims their land by planting on it themselves. A 'target' has to prove they are 'strong' to be safe. Grabbers can try repeatedly, over several years. Many are deterred by a permanent physical boundary such as trees, but where a grabber thinks that they can act with impunity, they may even cut down a line of trees along a boundary. Failure to respond to this adequately will usually lead to the whole field being grabbed very quickly.

b) grabbing by borrowing

Physical occupation of land is hard to defeat. A simple strategy for grabbing land is thus to identify a target and ask to borrow a field. Usually, it is in-laws asking from a widow. They then refuse to return the field and maintain a continuous presence on the land.

c) grabbing by seizing opportunities

Land grabbers take advantage of circumstances that favour them. They encroach just after the target has become vulnerable – e.g. immediately after a man dies, against a widow – and on to the most vulnerable land, that which is left fallow.

Grabbers can exploit any circumstance. A widow may have land grabbed by her in-laws because she refused to take a clan member as her new 'partner', because she was "responsible" for the husband's death, because she had no children, or had only girls. (None of these are reasons for losing land in the traditional culture.) They may claim 'she was never

^{iv} So far, LEMU has worked with partners in northern and eastern Uganda. It is hoped to find interested partners to extend this research to the south and west of Uganda.

properly married because bride price was not paid in full' – although in most societies in Uganda, marriage is deemed to happen after a celebration and bride price is rarely paid in full! These same circumstances may also be exploited by the father's clan members to deny children a claim to land.

Harder to spot are the cases where the grabber claims that the land was originally 'lent' to the target's family by their parent or grandparent. It was normal in the past to give land freely to a friend who wanted to settle in the village. Grabbers will come after the original parties have died and represent these gifts as 'temporary'. (One intended victim, a widow, challenged in court: "if the land was yours, why did you wait so many years until my husband died before claiming it?") Such 'fortuitous' timing is often a sign that the claim is really land grabbing.

d) grabbing by excuses

Sometimes land grabbers don't bother to encroach slowly, but try and take a whole field, or several fields, at once. These cases are usually perpetrated by relatives or in-laws, because they rely on being able to make some excuse to "justify" why the victim should lose the land. Excuses are of two types. The grabber may claim that the behaviour of the victim denies them a right to their land. Widows will be accused of 'bad behaviour' (often meaning they have a boy friend, or fail to 'respect' their father-in-law properly). Children born outside marriage are chased away because "they are badly behaved". The excuse helps those keen to support the land grabber. These excuses, even if true, have no justification though, because customary land law never made land rights conditional on good behaviour! Widows are now allowed by customary law to take whatever boy-friends they want – but men from outside the clan cannot claim any of the land of the widow's family. Another common excuse is that the land grabber "has more need of land, because he has more dependants" than the widow. The flimsiness of this excuse is seen by reversing the scenario: would anyone allow a widow with many children to take over land from a brother-in-law without children? This is 'classic' land grabbing: using excuses which are irrelevant to land rights and which are only ever used against the vulnerable. (This is different from a needy brother-in-law who requests extra land from a widow who has few children – as a favour, not a right, and fully respecting her legal rights to the land.)

e) grabbing by compromise

Land grabbers know that most victims prefer going to the clan rather than to LC courts. Clan justice grew out of a situation where land was not scarce, and where it was important to maintain, or restore, social harmony. The most constructive way to solve disputes is often by arranging a compromise, but land grabbers take advantage by using the tactic of 'steal two acres, give one back'. Where a boundary

is not clearly marked (e.g. with trees), they encroach, with the intention of getting a compromise suggested putting the border in the middle of the 'disputed' strip. A victim may also be pressured to cede half their fields to their relatives or in-laws as a 'compromise'. They often accept, despite knowing their rights to all the land, because if the clan has not stood up for them, they see no alternative protection. Going to State courts against a clan member is not just expensive but socially unacceptable – and for the vulnerable, who need the goodwill of their community, such a breach is too high a price to pay.

f) grabbing by intimidation

The key to successful land grabbing is to make the victim give up. A variety of forms of intimidation are used, which rest on making the victim feel powerless, afraid, worthless and believing that the land grabber can act with impunity. Verbal abuse is the easiest. Old people are told they are 'already dead' ("how can soil fight for soil?"), women are insulted as inferior ("you are a mere woman"; "when you married, did you carry land to this place?"). The grabber demonstrates his power and impunity by physically stopping the victim from using their own land. Animals are deliberately grazed on the victim's crops. (Grabbers often own livestock: wealth is a form of power that grabbers exploit.) A grabber may slash the victim's crops, and build a house right up to the victim's own house. The aim is not just to deprive the victim of use of the land, but to show them that no-one will protect them, because the grabber is 'more powerful'. Since the perpetrator is rarely made to face justice, the victim usually gives up. (We found no cases of a perpetrator facing prosecution^v).

Such abuse is so 'normal' that it has deeply affected the self-worth of people, who accept it – because it is so rare for a community to stand up and defend them. (In one community in Katakwi, the clan tried to stand up for a woman, but the grabber "had them arrested", so they gave up the fight.) Land grabbing is predominantly thought of as an economic problem, but the social and psychological impact should not be underestimated.

More extreme intimidation, including the threat of violence, is also common – and actual violence is used by those most sure of their impunity. One village in Dokolo lives in constant fear of one individual, who has grabbed many people's land, because he is said to own a gun for hunting. The fear of witchcraft is deep and it is also widely exploited by land grabbers.

Individuals who are especially powerful use the police to intimidate. Using connections or money, they can have the victims (and those defending them) arrested. Such intimidation invariably ends any opposition.

^v Damage caused by negligence is a civil matter. Where it is "wilful" is a criminal offence.

g) grabbing by exploiting ignorance

Most adults are reasonably aware of their land rights. All the victims we spoke to knew that they had suffered injustice. However, grabbers can exploit the ignorance of children. Uncle-guardians of orphans exploit two forms of ignorance. The children often do not know exactly what land their parents owned; and children don't know land law, and can be made to believe that their uncles have a right to their land, especially if they are looking after them. (Customary law is clear. The land belongs to the children, the uncle has no claim on the land except to farm it in providing for his nephews.) If no-one in the clan stands up publicly to defend their interests, the children will inevitably believe their guardians' lies.

h) grabbing by exploiting dependency

Land grabbing is frequently perpetrated by the very people who should be the protectors of the victim, who use this dependency relationship to grab the victim's land. Orphans cannot take their guardian-uncle to court, however well they know their rights. The elderly cannot challenge their own family members on whom they depend. A clan member who presents himself as a 'protector' to a widow may use his position to steal her land, knowing she finds it hard to fight back. The dependency can be as much social as economic. Even a divorced woman who is young and strong finds it hard to make an enemy of her brother who is denying her right to a share of the parents' land. The poor and vulnerable rely in many ways on their wider communities, and, this dependency prevents them from taking cases to court against neighbours or clan members.

i) grabbing through using the justice system

Land grabbers rarely initiate cases in the clan court or at the LC1. They let the victim bring the case, but use their 'power' to defeat it. This can be done in many ways, most simply by bribery. (In every village in Lango most people accused the LCs and clan authorities of corruption, and both admitted openly to accepting bribes.) With 'power', bribery may not be needed, because the clan (and LCs) find it hard to judge against the powerful, e.g. a rich man on whose 'generosity' they depend for funerals. Many LCs and clans find against the widow whom they consider an 'outsider' of the clan and village, though she is really a member through marriage. The perpetrator is often a relative of a committee member or the LC hearing the case. Cases are often judged according to the evidence of 'witnesses', and LCs find in favour of the party bringing more witnesses, rather than on the quality of the evidence. Naturally, 'witnesses' can easily be bought, or, at least, hired.

If a land grabber loses a case in the lower courts, they can usually use the higher courts to their own advantage. They may institute their own case in the Sub-county Court or the Magistrate's Court – this tactic is so common that it is easy to believe that

whoever starts a case in a higher court (instead of with the clan or LCs) is more likely to be a land grabber than someone defending their rights. (Victims nearly always start at clan and then LC1. They only reach the Magistrate's Court on appeal or 'referral'^{vi} from a lower court.) Poor victims cannot follow a case to the Magistrate's Court where endless adjournments entail repeated transport costs. (The rich are rarely victims of land grabbing.) Apart from the cost, people have little trust in the justice in these Courts. Victims are the least able to present their cases properly, or they may lose on technicalities that they do not understand.

Is everything hopeless?

The situation is very serious. The justice system is in almost complete chaos at local level; social structures have broken down badly in many places; the social and economic consequences for the vulnerable are enormous. Nevertheless, a good diagnosis is the first step towards correct treatment. There are clues in the fact that many people do successfully defend their land rights against grabbers. What helps them win? How can we build on this to help more people win?

Assertiveness

People who assert their rights are far more successful at preventing land grabbing than those who try appeasement. The need to stand up to an encroacher immediately is one of the most important lessons that can be drawn. This is particularly important for widows, who should use all appropriate forums – the family, clan, courts.

Papers

People with 'papers' find it easier to defend their rights. Wills, maps, sales agreements are all respected by clans and courts, even if they do not constitute full legal proof of ownership.

Family support

Individual family members can help protect their relatives. Widows are more likely to have land rights respected if their fathers-in-law are alive, and divorcees or separated women are more likely to get land if their fathers are alive. Having a grown-up son nearby is good protection for a woman. Much depends on luck though: some family members are supportive, others are the violators.

^{vi} See the accompanying paper "Why is the legal system failing to protect people's land rights" for discussion of 'referrals' – where a judgement is ignored and a Court washes its hands of the case and 'refers' it.

Clan

Where a clan is strong, land rights violations are fewer. In Teso, where respect for the clan is stronger than in Lango or Acholi, widows were much more secure in their rights. In Lango, villagers would say that some clans in one village could be 'hot', and others 'cold'. (A 'hot' clan protects, a 'cold' one ignores violations.)

What can we take from this?

- All clans can be 'warmed up'. Pressure can be applied to the village leaders from higher up the clan hierarchy and from clan members. Clans need to give better justice and work better with State authorities to improve enforcement of their judgements. They also need to be proactive in protection, especially of widows and orphans.
- Clear boundaries help prevent gradual encroachment, and make a 'compromise' difficult to force onto a victim. These can easily and cheaply be established for everyone through local demarcation^{vii}.
- Efforts can be invested in helping everyone have some form of 'document'. Maps can be drawn with clan leaders and LCs; parents can make written records (and maps) when allocating land to children; sales, local mortgages and rental arrangements can be documented; and written wills can be encouraged.
- All clan authorities claimed they wanted to protect rights. They can be trained in correct customary law (agreed upon by the highest cultural authorities in Lango, Teso and Acholi), and in how and why to approach protection in a pro-active way. Clan leaders can also be trained in dispute resolution, discussing how to recognise the difference between an

innocent dispute (where compromise is a good solution) and attempted land grabbing (where compromise permits the 'steal 2 give 1 back' tactic).

- People can be helped to be more assertive:
 - o Increasing knowledge of their specific rights and of legal processes
 - o Sensitisation about land grabbing, and how to recognise it. (Sharing experiences of successful defence would be useful.)
 - o Land grabbing often succeeds by making the victim feel guilty, worthless and isolated to the point where they give up. This can be combated by creating networks of solidarity.
- Proactive protection can also come from the family and the wider community. They all need to be challenged: why are they not living up to their own culture's standards? (People say 'it takes a whole village to bring up a child'. It also takes a whole village to be silent for land grabbing from orphans to succeed.)
- Victims and village leaders (including LCs and clan leaders) can bring in the police by using the criminal law in response to intimidation, including the repeated use of livestock to destroy a victim's crops.
- Drastic improvements are needed in the quality of State justice services. Clan justice systems need much better integration with the State system. (*See the accompanying papers in this pack.*)
- Much has been learned about how to fight land grabbing in northern and eastern Uganda. Are the problems the same in other parts of the country? We need to extend this research nationwide, and to follow it with a national campaign against land grabbing.

^{vii} See "How to minimise land conflicts" at www.land-in-uganda.org