Precedence and other learning from 2008-2010 mediation cases

Signing of concent agreement in Kapelebyong sc, Airabet parish, Amuria district, 11 - 7 - 2012

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Written by : Liz Neate

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Land and Equity Movement in Uganda (LEMU)

Making land work for us all

Introduction

It is widely recognized that land rights and access to land for farming offer one of the only ways in which poverty can be alleviated in many countries throughout the world, and in this regard, Uganda is no different. Particularly in rural areas, such as northern Uganda, land provides essential livelihoods to families and communities. Ensuring fair and equitable access to this land in a way that is in accordance with the law therefore plays a significant role in economic development.

Ugandan land law considers land owned under customary tenure to be privately owned, but unlike freehold land, this ownership is not usually supported by any documents, and there is no central register to record land ownership and transactions. Rights to customary land, which is based on traditional routes of succession according to the initial settlers on the land are nonetheless enshrined in state law, which requires customary principles to be followed where customary land is in question. Furthermore, there are additional measures in the 1998 Land Act to ensure that women's land rights are protected over and above the customary practices where necessary. Land and Equity Movement in Uganda (LEMU) has worked with its partners and the Lango Cultural Foundation (LCF) to document customary land rights under the Principles, Practices, Rights and Responsibilities (PPRR) for the region, which also details appropriate land management methods, and offers guidance on documenting land transactions.

Where land disputes arise over customary land, individuals, organizations and communities may pursue a number of methods of redress, which may include mediation through NGO's like LEMU, a ruling made by the relevant clan, or resolution in the court system.

The cases which have been reported to LEMU since 2008 have been solved through one or a combination of these methods. Although the make up of the LEMU caseload cannot be taken as a reflection of the nature of all land disputes in Uganda, there are nonetheless a number of useful lessons and conclusions to be drawn from an analysis of over 200 reported cases. Furthermore, experience gleaned from these cases may be able to offer useful information for future disputes, particularly where cases are unusual, or result in rulings or decisions of note. Although they may not help us to predict the kinds of cases that will arise in the future, there are lessons to be learnt on how future disputes can be tackled, through precedents presenting a useful range of evidence-based lessons about the nature of land and land disputes faced by Ugandans. It is also useful to consider the ways in which customary land rights have sat alongside the other forms of land ownership in Uganda to date: the parity of status accorded to customary land rights has mostly, but not always been respected in the cases reported to LEMU.

Overall in the 2008-10 caseload, the vast majority (over 80%) of complaints reported are issues of encroachment, land grabbing, or disputes regarding sale or transfer of land (for example, sale without consent, disputes regarding balance payment, illegal sale etc.) There are also a number of incidences involving denial of rightful access, contested land gifts or administration of estates after the death of a landowner, and trespassing or squatting. Although each case is unique and presents new challenges, there are some unifying themes which can be drawn out.

The first lesson drawn from an initial overview of the caseload is that there is a need for consistency amongst approaches to customary tenure cases across Uganda. The PPRR document is helping to make progress towards this: the courts have made few judgments which clearly contravene its principles, and the wider that the content of the PPRR is known, there should be fewer cases of denial of rightful access or land grabbing within families.

The overall spread of cases is as follows:

	Resolution or significant progress to resolution made through LEMU mediation	Mediation underway but still pending	Mediation attempted but no solution reached: case still pending.	Successful court ruling	Successful clan resolution	LEMU registered the case but did not take any action	Outcome unknown – case referred to another body (often court) and no further report made.	Resolved administratively by LEMU: letter written to clan, courts, defendant, etc.	Totals
Reported by community or multiple individuals	1	1	2	1	0	0	3	0	**8**
Reported by male	32	26	13	1	4	10	39	6	**131**
Reported by female	36	11	8	1	1	5	16	1	**79**
Totals	**69**	**38**	**23**	**3**	**5**	**15**	**58**	**7**	**218**

Fig. 1: analysis of 2008-10 caseload by resolution and gender of case reporter.

The role of mediation in dispute resolution

Mediation comprises a large part of the LEMU workload. Furthermore, around 60% of the 2008-2010 caseload where mediation is attempted leads to a successful resolution, often with parties agreeing to, and signing a written agreement to make the agreement binding. Where the caseload is broken down to demonstrate the range of outcomes achieved, resolution by mediation is the most regular outcome. This high success rate demonstrates that disputes involving customary tenure are resolvable with input from an impartial organization like LEMU, whose mediators can clarify rights and responsibilities applicable to each case, offering reasoned judgment and legal advice.

Those cases where mediation is attempted and yet does not succeed fail for a number of reasons. One recurrent reason is failure to attend – usually on the part of defendants, but occasionally also on the part of complainants, and unfortunately failure in these cases is unavoidable since both parties need to be committed to reaching a solution if mediation is to be of any use. Similarly, some arranged mediation meetings have not been able to take place as a result of practical, unforeseeable reasons such as illness or fuel shortage. However, where a mediation meeting does take place between the parties but agreement simply cannot be reached despite the assistance of LEMU, cases tend then to progress to the court system to reach a settlement. The majority of cases classified in figure 1 as 'outcome unknown, referred to another body' are these kinds of cases. Referral to court is the only resolution where parties are not willing to back down or compromise.

A recent publication by the Northern Uganda Land Platform[1] recommended that mediation is not used in cases of land grabbing, since the process mostly involves criminal acts, and mediation ought to be used only for a dispute that can be settled where the sides agree: if a case arose through malicious intent, then it will not be settled amicably. This is both conceptually self evident and immediate referral to court in such cases could play an important part in discouraging future land grabbing, since it would be perceived that those exploiting other's vulnerability are taken more seriously to task than those making genuine mistakes.

Unexpectedly, this conclusion is not proven by the LEMU caseload, where although large number of land grabbing cases are resolved in the courts or through the clan structure, there are also number of cases involving land grabbing which have been successfully mediated. However, the Northern Uganda Land Platform report does not say that such cases can't be mediated, simply that they shouldn't be. When this is considered alongside the increasing size of LEMU's caseload (for example, the year on year increase in numbers of cases being recorded, but not acted upon), there is a clear case for taking a different approach to cases of malicious intent and focusing mediation resources elsewhere. This said, it is of course important to ensure that cases that are reported to LEMU as land grabbing must be carefully be heard and considered impartially before deciding on the most appropriate method of dispute resolution to establish where a dispute has arisen from intentional land grabbing as opposed to a genuine mistake. Indeed, there are potentially a number of other additional scenarios where malicious intent requires that an approach other than mediation be taken, and these will need to be assessed on a case by case basis rather than a blanket approach to cases of particular kinds. This approach is already embedded in LEMU's work, where each case is considered impartially, without regard to who reported it, to ensure that neither side is unduly supported or criticized.

Lessons from the caseload on the debate between customary tenure and formal land title

The Ugandan Government is keen to introduce registered freehold title to all land. Customary landowners do not currently require paper records of their land ownership to be able to assert their rights, and this lack of official records has been used as an argument in favour of the introduction of title to all Ugandan land. In this context, the sheer existence, number, and nature of disputes amongst the LEMU caseload could be used to attempt to show that the customary system faces numerous challenges which would be resolved by the freehold system. However, the lessons learnt from the LEMU caseload do not point necessarily to that conclusion. It remains the case that both customary ownership and freehold title are simply administrative methods in the implementation of land ownership – there are various advantages and disadvantages to each and neither presents a solution which would avoid land disputes altogether.

A number of dispute cases have arisen as a result of parties being unable to prove their ownership, or to prove the nature of transactions. The legal and administrative structures of Uganda have faced difficulties in making judgments in the absence of paperwork or recognized records. However, the courts have shown that they are content to make judgments in the absence of paperwork, relying instead on witness testimony and evidence as to current and previous land use as well as evidence of ancestral ownership[2]. LEMU similarly has experience in looking carefully at witness testimony and establishing sufficient case

[1] 'Charting the Way

[2] See for example - Okullu Ferdinando vs Abok David -02-CV-CA-008-2003 also Odyek Peter vs Ocen Celestin and others HCT–02–CV–CA–0022-2005

knowledge before reaching conclusions about the reliability of witnesses, taking into account vested interests and loyalties to come to an informed decision. However, the further use of sketch maps and recognized boundary treatments would almost certainly both reduce the disputes of this kind, but also ensure that judgments have a recognized, auditable basis on which to rely, rather than the balance of probability of witness testimony, which would likely reduce appeals as well.

It is particularly interesting to note that in one instance, the judge took into account the evidence of ancestral ownership to find in favour of the complainant, despite there also being a title in existence to show the complainant's ownership[3], demonstrating that the courts will look further than title (and therefore that freehold title is not a foolproof solution). Furthermore, the courts are not afraid to incorporate knowledge of traditional customs in their summing of evidence[4]. The LEMU caseload and other reported cases show that it is possible to administer the customary tenure system alongside documented title.

Freehold title in its standard form requires land or property to be registered to an individual. This is one of a number of difficulties inherent in amalgamating the practices of customary family land into a title. Customary land is managed by the head of the family for the benefit of the entire family. The head of the family is tasked with ensuring that there is sufficient land for future generations, and also for any family members that may return, such as widows, or divorcees:

[3] Dr E. K. Muwazi vs Mary Naiga Namisango: evidence of ancestral ownership (rather than title) made judgment in favour of appellant. Owner is absent but it is known that the land is his and he has left someone to look after it.

[4] Musulayimu Musoke vs Pjyinentos K. Nulumba: In the absence of children, there was some dispute regarding who was the appropriate heir. The court accepted that the heir was appointed in the Kiganda custom and in spite of the absence of papers because of the confirmatory witnesses, court agreed to the rightful heir.

> ***"All unmarried men, unmarried adult girls, with or without children, the children born by unmarried girls, Widows, who have not remarried, Widows who voluntarily choose to return to their parents homes, Orphans and all daughters who were once married but divorced and returned to their parents' homes have rights to land as individuals and the responsibility to manage land as head of family on behalf of all family members."***
>
> PPRR, Part 2.4 (page 39)

This position of responsibility therefore comes with power, and there have been a number of instances in the caseload of abuse of this power, where the head of the household refuses to allocate land to someone that is entitled to it. Some of these disputes have been resolved through mediation, where LEMU has successfully negotiated the upholding of family members' rights. Such negotiation may prove more difficult under freehold title, if customary land was held by registered title by the head of household;if this were the case, there would be no recourse where the family head mismanaged the land, as this would legally be in his power, regardless of his obligations under customary ownership. Cases of this nature would be particularly affected if the head of the family took the sole name on the title, as power would then be placed in the hands of one individual (usually a male head of household) with no checks and balances on the ongoing management of the land in the name of the family, and importantly, no method for redress. Furthermore, if titles were to be implemented on all customary family land, the legal requirement for customary tenure land to be administered in accordance with the customary fashion may be compromised. LEMU has also been asked to mediate where joint land owners are concerned about the impact of a title on their land[5], showing the existence of fear and suspicion of the titling system.

[5] Case L/A/36/2016

The role of the customary clan structure in dispute resolution

Contrary to what the numbers in figure 1 might suggest, the clan often has a role in LEMU mediation cases, with local leaders occasionally attending mediation, and witnessing border plantations in order to avoid future disputes: this is not reflected in the breakdown of figures as LEMU usually leads this process with clan input. There are also numerous situations where a case is reported to LEMU for assistance, and it is later requested that the matter instead be handled within the clan. Where the results of such disputes are then reported back to LEMU, they tend to show positive results, although there is only a very small sample of such cases in the 2008-10 caseload.

LEMU's policy paper 4 (Does customary tenure have a role in modern economic development?) showed that the strength of the clan system is in some instances weakening, and the caseload supports this conclusion to an extent. There are a number of cases reported where clan rulings are then not respected or upheld by the parties in dispute[6]; these cases tend to progress then to the courts for a decision. Given the courts responsibility to uphold the customs of customary tenure, this does not necessarily pose a problem for the ongoing administration of customary land.

However, despite the majority of clan decisions being respected, and also being taken in accordance with the PPRR, there have been instances in which the leaders' decisions did not warrant respect. These have included situations where the clan has attempted to extort funds from land sales[7], using their influence and local standing to grab land[8], or be complicit in doing so[9], and misinterpreting individuals' rights. In one case a widow was told by her clan that she had no right to own land as a woman[10] despite this judgment going against Section 27 of the 1998 Land Act, also quoted in the PPRR.:

> ***"Any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally, shall be in accordance with the customs, tradition and practice of the community concerned, except that a decision that deny women or children or persons with disability access to ownership, occupation or use of land…shall be null and void"***
>
> PPRR, Part 1,2. (Page 37)

This particular case was then heard in court which correctly upheld the widow's rights.

LEMU's experience has shown that there are occasions where disputes involving individuals from different clans are particularly hard to handle, with a tendency for clans to support their own side when offering testimony, rather than telling the truth. There are therefore instances where relying on witness testimony is not possible. In addition, there may be many more similar cases which don't come to LEMU's attention due to respect for the clan's decision, and lack of understanding about one's own rights, or fear of producing testimony against one's own clan and facing repercussions. LEMU has previously recommended that clan leaders should be subject to legal responsibility for protecting women's land rights, and this would also assist in preventing clan leaders from abusing their position of influence and power to promote vested interests.

However, despite some instances of abuse of power or protection of vested interests there is often a positive clan role in mediation and upholding previous decisions[11], so it often remains an appropriate forum for land

[6] L/A/65/2010, L/A/03/2010, L/A/31/2010

[7] L/A/009/08

[8] L/A/025/08

[9] L/A/004/08

[10] L/A/004/08

[11] L/A/82/2010

dispute resolution. The clan structure itself offers an important role in the implementation of customary land practices, although there remains room for improvement, through the adoption of consistent practices as set out in the PPRR.

The role of the courts in dispute resolution

A very limited number of cases from the 2008-10 caseload have been reported as successfully resolved in court. However, this is a little misleading: whilst mediation remains the most prevalent method of dispute resolution, referral to the courts is often the next step after unsuccessful mediation, or a first stage in cases where the parties don't wish to seek compromise. However, the outcome of such cases is not always recorded, and when breaking down the caseload, very few are noted as 'successfully resolved by the courts' with many referred to court having to be listed as unknown; as a result, the courts are involved in more cases than may be suggested by the breakdown table above. Looking forward, LEMU needs to establish a strategy for referring cases to court on the basis of experiences to date. By looking at the past caseload, earlier referrals of certain cases should help to direct resources to where they are most needed in order to achieve better outcomes.

In addition to the rulings referred to in the caseload, there are a number of high court judgments which have resulted in important decisions and precedent set. The judgment of Judge Stephen Musota in August 2011[12] showed that the LC1 court should be the court of first instance in relation to land disputes and this remains the case. Cases that were held before this judgment in inappropriate courts have had their decisions nullified and ordered to be reheard, and it is therefore crucial that such cases are heard in the appropriate court in the first instance in order to minimize costs and ensure expediency. Of LEMU's caseload, those cases heard in court are predominantly firstly held in the LC1 court, although there have been some instances where this has not been possible. In one instance the LC1 passed a case to the police, who would not handle it[13] (although on one occasion they did pass judgment[14]), and in others the LC1 said that he could not handle the case[15]. There is therefore a clear need for LC1's to be made aware of their responsibilities, and also to be trained appropriately in matters of land law where necessary. The higher courts should endeavour not to inappropriately hear cases where they have not first been heard at the LC1. Additionally, at least one case was not heard because the LC2 requested a large sum of money in return for hearing the case, which the complainant could not afford[16]. In this instance, the resolution was instead found through LEMU mediation. Unfortunately, there are also a number of cases where decisions made by the courts have not been respected by the parties involved, leading to further dispute and uncertainty[17].

In general, the courts involved in the LEMU caseload have appropriately upheld the rules of customary tenure in accordance with the PPRR[18], although in some rare instances they appear to have ruled against rightful customary ownership[19], and in another, the need for consent in the sale of family land was not noted[20]. However,

[12] High Court of Uganda, Mbale. 16/08/2011: cases HCT-04-CV-CR-0007-2011 through to HCT-04-CV-CR-0012-2011

[13] LEMU case: L/A/76/2010

[14] LEMU case: LA/62/2010

[15] LEMU cases: L/A.06/2010, L/A/73/2010

[16] LEMU case: L/A/68/2012

[17] LEMU cases: L/A/47/2010, L/A/054/09, L/A/091/2012, L/A/81/2010

[18] For example Okello Albino Ayella vs Barnabas Oryema (HCT–C2–CV–CA-023–2003): the court held that both parties in dispute had rights over the land as their fathers had cultivated it together, which is consistent with customary ownership where "children born to married parents have land rights to the land of their father".

[19] LEMU case: L/A/011/09

[20] LEMU case: L/A/63/2010

on appeal at the high court, one case was successfully ordered for retrial partly due to the failure of the first court to take into account the rules regarding family land[21], demonstrating the existence of an appetite for properly implementing customary law.

A further point of law that may give rise to some conflict stems from a ruling in the high court holding that trespass is a continuous tort[22] and that cases of trespass are therefore not time limited; for as long as the tort continues, a case can be brought to court, regardless of when the tort commenced. The passing of twelve years (and use of the limitation rule) would not nullify a claim against an alleged trespasser, as it might, say, a thief, or an intention to sue. As a result, this ruling has some potential to conflict with the PPRR practice on absence from land. The relevant sections of the PPRR detail that if land is reasonably thought to be 'virgin' or unclaimed land, and under this impression an individual then settles on this land for some significant period of time, they gain a rightful claim to the land. However the high court ruling suggests that they might then have a charge of trespass to answer if the previous land owner challenges their presence. Since they would be trespassing, a court unfamiliar with the PPRR might rule against the new settlers, whereas the PPRR would recognize their claim to the land. At a superficial level, there are therefore some remaining conflicts between the application of law in the high court and customary practices, although in practice many cases would most likely be more clear cut than this: the PPRR clause is concerned with migration which left the land unused many years ago, and with no intention on the part of departees of returning. The High Court ruling relating to trespass is more likely to concern trespass in a shorter timescale, where a departure during a shorter time would be understood by neighbours and others to be temporary, so those taking the land unlawfully would almost certainly be aware of their trespass, rather than being under the impression that the land was unclaimed. As a result, in practice the conflict may not ever actually arise, but the principle demonstrates the importance of Local Councils and High Courts being well versed in the terms of PPRR in order that rulings are made in accordance with it and correctly distinguish between the subtleties affecting these cases.

There are a number of instances where courts have lost papers and files[23], or come up against forged papers[24]. Unfortunately, besides courts retaining official copies of land transaction papers, there is no easy solution to avoid this happening, but courts should remain vigilant toward the possibility of it taking place and endeavor to take appropriate measures.

There is a clear need to ensure that all levels of court are in full comprehension of their responsibilities and a clear and consistent approach is required. For example, the caseload contains a number of cases that have been handled differently when one party does not present themselves at court; in some cases it has simply passed to the next court[25]; on another occasion, the non-attendee simply saw the case ruled against them[26]. A clear, accountable, transparent process where all parties receive the same treatment would make progress towards greater respect for court rulings.

LEMUs experience with vulnerable groups

Widows and divorced women

Some groups are known to be susceptible to particular vulnerability when it comes to land rights. The PPRR makes it explicitly clear

[21] Raymond Otucu and Ayo Otwii vs Tom Okwir James and many others. (HCT–02–CV–CA–029–2007)

[22] Raymond Otucu and Ayo Otwii vs Tom Okwir James and many others. (HCT–02–CV–CA–029–2007)

[23] For example, LEMU case: L/A/018/2010

[24] For example, Otile Charles vs Onedo Beneyokasi (HCT–02–CV–CA–0045–2007): dispute over land previously purchased: found that defendant forged documents to suggest that he bought more than he actually had.

[25] LEMU cases: L/A/039/08, L/A/54/2010

[26] LEMU case: L/A/065/09, Alfonse Alele vs Opio Otim (HCT–02–CV–CA–0013–2008)

that widows and divorced women have land rights, and they often have a choice on where to exercise these. Furthermore, Section 27 of the Land Act 1998 makes it clear that the rules regarding customary tenure are to be followed when regarding such land, unless it is the case that this results in discrimination towards women, amongst others. Despite this, there remains a body of cases reported to LEMU where widows and divorced women have struggled to enforce their rights. For example, amongst those cases that are reported to LEMU by widows, there is a notably higher incidence of land grabbing than other types of dispute, and these often occur within the family itself. There has been a good rate of success on these cases of land grabbing from widows through LEMU mediation, although some cases still go to court. This suggests that when outside, impartial intervention takes place, where parties are reminded of widows' rights, they often do concede. This implies that it may be ignorance (willful or otherwise) of rights that lead to these transgressions, and a recognized body stepping in and reminding parties of rights may be all it takes to resolve the case. Unfortunately, LEMU experience has shown that such cases often arise from a willful abuse of the vulnerability of such groups. Where such abuse is undertaken by clans but followed up by LEMU intervention, the clan members involved in attempted land grabbing then give up their attempts to grab land, out of shame, when they are exposed to an outsider such as LEMU who knows the responsibility of the clans. This is maybe one of the most important functions of LEMU: reinforcing the rights and responsibilities of vulnerable individuals and groups.

Although interventions by LEMU have been successful in enforcing rights in a number of these cases, usually by revealing the greed of the perpetrators, the continued existence of such rights abuses presents a significant problem, particularly where cases are not reported. It is therefore particularly important that people are aware of their rights so that they know when they are being denied their rightful land and when they should seek resolution[27]. In addition, it is important that the structures, powers and responsibilities of the clans is known, both so that people are aware when it is appropriate to seek assistance from the clan, but also in order that they can expose wrongdoing or discrimination, and lessen such incidences through shaming the perpetrators.

Of those cases in 2008-11 involving widows that underwent mediation, which did not succeed, reasons for failure varied from the defendant not turning up, to failure to agree, and some of these cases went on to be pursued in court instead. Those cases that are more likely to go to court initially are cases where widows contest land sales, land gifts, or are denied access to land. Promisingly, the courts have demonstrated recognition of the importance of protecting widows' rights[28].

Although there are fewer cases of divorced women reporting to LEMU, these cases tend to be denial of access and land grabbing, although also one case of contested land sale where divorced woman's permission ought to have been sought.

Internally Displaced Persons (IDP's) and returnees to land.

The rights of IDPs are recognized in the PPRR: IDPs are able to reclaim their land even after a long absence, and equally, those hosting IDPs on their land are not permitted to remove them provided they remain due to an ongoing fear of return to their own land. Although there are a few cases in the caseload involving IDPs, in the majority, the IDP status of the party or parties is actually incidental, for example where there is a dispute between husband and wife over division of their joint land, and they also happen to be IDPs. However, there are three cases of note where IDP's returned to their land to find others using it[29].

[27] See for example LEMU case:: L/A/064/09

[28] LEMU case: L/A/007/08

[29] LEMU case: L/A/060/09, L/A/23/2010

In each of these cases, the PPRR allows that the IDPs should be allowed to return to their land:

> ***" b) The people living on the land of the IDPs must vacate the land for the owners either voluntarily or on request by the IDPs."***
>
> PPRR, Part 4,9

Additionally, there are cases[30] where IDPs have been temporarily given land on which to settle and they then later refuse to leave, as well as one in which the person responsible for taking care of land in another's absence refused to leave it on the owners return[31]. Land grabbing has also taken place in shorter absences from land[32]. One of these was resolved to the stage of agreement of compensation, which was then not paid, whilst the other was resolved administratively with the help of LEMU. There are no clear trends in these cases, with IDPs being both wronged and also in the wrong.

In one case the LC2 ruled that the temporary caretaker of land was entitled to remain despite the agreement having been temporary, since the initial owner had stayed away so long that he could no longer lay claim to it[33]. The judgment (that the returnee had been away so long that he no longer had claim to the land)[34] was also upheld at LC3 despite the returnee being an IDP and therefore this right should not have been removed. This case therefore contravened the PPRR as well as the judgment detailed above on trespass as a continuous tort[35], (see extract above) .

Other lessons learnt

There are a number of cases where institutions have encroached on land without permission or recompense. In LEMU's caseload, this has included commercial organizations, but also some public bodies including prisons, churches and schools. This case group is worth further discussion - if there were particular processes in place for dealing with cases involving institutions this sort of problem it may take place less as a result of deterrence.

There are a number of cases in the caseload that relate to disputes over historical land transactions. These range from retracted land gifts, unpaid balances on agreed transactions, and the acceptance of a temporary gift that is then not returned. The PPRR speaks clearly on this: where there is no record of the terms of a land gift and the giver has died, then it is assumed to be permanent. This only varies in the case of IDPs, but the courts and the PPRR are clear on this, so the number of cases ought to reduce in the future as the PPRR becomes more widely known.

LEMU's learning.

LEMU was one of the 5 NGOs whose data was reviewed by the Northern Uganda Land Platform mediation research. LEMU also hosted a group of donor grantees to its Apac programme. From the research and the visit, the LEMU mediation team learnt a number of lessons relating to the ways in which they offer mediation support and this has brought in changes in their strategy and approach. This includes ensuring that there are always two mediators present, the avoidance of legal or technical jargon in letters, and being impartial before coming to a judgment. The team also ensure that they fully investigate land rights by drawing a family tree of members of both parties to understand the relevant relationships, and drawing a process tree of the assistance both parties have approached for help before coming to LEMU. The investigation assists LEMU to know what documents should exist, how deep the conflict has reached, who to invite as witnesses and most importantly, what land rights exists. At the end of the investigation, LEMU writes a

[30] LEMU case: /A038/08, L/A/002/08

[31] LEMU case: L/A.79/2010

[32] LEMU cases: L/A/51/2012, L/A/60/2010

[33] LEMU cases: L/A/71/2010

[34] LEMU case: L/A/23/2010

[35] Raymond Otucu and Ayo Otwii vs Tom Okwir James and many others (HCT–02–CV–CA–029–2007)

legal opinion and shares this with all of the stakeholders involved in the mediation and if the opinion is accepted agreements are then drawn. If it is not accepted, then LEMU will give advice regarding the next stages but will at this stage side with the person the legal opinion says has land rights, even where they were not the first to report the case to LEMU. This approach ensures credibility and independence.

In the short and medium term, LEMU meets all the parties involved in each conflict to workshops which inform them on land rights and responsibilities, the difficulties of getting land justice in the current parallel justice systems and encourages them to settle their differences. They are also requested to stop land grabbing against women and children in their communities.

Some of the caseload records from 2008-2011 have not been updated where cases have been closed, court rulings made, or a decision has been taken to cease mediation. Although the casework itself is a LEMU priority over record keeping, a more complete set of records would provide an invaluable resource for LEMU and for others land practitioners in the future, potentially revealing further trends, themes and lessons from the cases currently labeled 'pending' or 'unknown'.

Recommendations

- **The customary law itself is not the problem – problems arise where customary laws are not respected or properly implemented. Therefore there is a need for clear, transparent and accountable process with widely recognized processes and methods: increase legitimacy and legibility and some of the cases are less likely to come: strong institutions will make people realize they can't get away with contraventions. This would also mean people trust the process and potential for fewer protracted cases. There is also a need to ensure the clans are aware of their responsibilities, an ongoing role for LEMU and other practitioners.**
- **There is a need for better records of land transactions: sketch maps of customary ownership and transaction records. Certificates of Customary Ownership would also help to prevent (or at least resolve sooner) land grabbing/encroachment disputes, if policy makers agree to change the current CCO implementation into a process starting with recognized boundary demarcation, recording of land rights and eventual recording of land transactions. This, over time, would reduce land disputes.**
- **In the meantime, LEMU should continue to contribute in the way it has – investigating land rights, understanding the different stakeholders approached for justice, hearing testimonies of both parties, writing legal opinion based on the PPRR and relevant state laws and giving advice and support to those coming to the office. LEMU should also continue to give general education on land rights under customary tenure, especially to institutions that hear land cases, including Local Council courts.**
- **LEMU should (with input from stakeholders) establish a strategy for the best methods for referring cases to court, as well as for establishing which cases are best heard in court. This may include those that are unsuitable for mediation due to malicious intent.**

Boundary tree planting in Tuber sc. Achuna parish, Otumoi village, Soroti district 14 - 6 - 2012

Precedence and other learning from 2008-2010 mediation cases

For more information on land OR on LEMU's work, please contact: LEMU
Plot 93 / 95 Bukasa Road. Namuwongo Estate, P.O. Box 23722,Kampala - Uganda.
Tel. : +256 - 414 - 576 818; Mob : 0772 856 212
Email : lemu@utlonline.co.ug; Website : www.land-in-uganda.org

Land and Equity Movement in Uganda (LEMU)

Making land work for us all