

# **Is the clan justice system ready to assume a greater role in land administration, as provided for in the 2013 Uganda National Land Policy?**

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## Introduction

As a result of consistent lobbying of policy makers to support customary land tenure administration by Land and Equity Movement in Uganda (LEMU) and traditional institutions, the 2013 Uganda National Land Policy states that:

- (a) *Government shall recognize and harmonize the traditional customary system with the formal statutory system in land administration; and*
- (b) *To restructure and re-engineer the land administration system, Government will take measures to... (iii) Re-design the hierarchy of the land rights administration to enable traditional customary institutions to operate as the tiers of first instance in respect of land held under customary tenure.*<sup>1</sup>

The time has therefore now come for LEMU to analyze its experience in working with the clans in mediation to assess whether or not the clans are able to contribute effectively to the implementation of the above provisions of the National Land Policy (NLP) in their role to “*determine and mediate*”<sup>2</sup> on land justice and as the court of “*first instance*”.

### LEMU's experience in working with clans

It is a common position of land and women's rights practitioners that clans in Uganda are:

- 1) discriminatory against women;
- 2) afraid and easily corrupted;
- 3) abusive when they enforce discipline by caning and other methods;

- 4) ignoring their own customary laws, despite the fact they have been written down;
- 5) not accountable between clan actors; and
- 6) providing parallel land justice to the state system.

This paper will explore only the first point on clan's discrimination against women. If this is true, one has to ask, *how will clans administer land justice to women and children?* To gather information as to whether clans are discriminatory or not, LEMU, in this information leaflet, reflects upon its experience in working with the clans since 2008. From its work in Lango and Teso, LEMU finds that clans tend to exhibit the following behaviour:

### 1. Clans may make decisions in support of women –

In some cases, clans do make decisions that uphold the rights of women and children as per the *Principles, Practices, Rights, and Responsibilities of Land under Customary Tenure* (PPRR) book<sup>3</sup>, although they do not usually quote the PPRR provisions. The problem comes when the opposing party then defies the clan and either: a) rejects the clan's decision but also does not appeal; or b) reports the case to LEMU or to court. In such cases, it seems the appeal or reporting the case to LEMU is not an attempt to get justice, but rather to defeat it and to frustrate the clan's decision. In some instances, perpetrators threaten the clans who, out of fear, may withdraw. When clan decisions are not accepted, the tendency for the clan is to give up and advise the winning party to try and find justice (and the authority to enforce decisions) elsewhere.

<sup>1</sup> S.101 and 102, Uganda National Land Policy (2013)

<sup>2</sup> S.88 and 89 of the *Land Act*, CAP 227

<sup>3</sup> Available for the peoples of Lango, Teso, Acholi, Kumam, and (forthcoming) Bunyoro

## 2. Clans may make decisions that discriminate against women and vulnerable groups –

LEMU has found some decisions that are consistently discriminatory, but the discrimination is often hidden behind the reasoning that “the witnesses of the person said to have land rights are more in number.” From our analysis, such discrimination seems to be based on clan consideration of which party in the dispute has closer and stronger ties to the clan. If the land conflict is between widows and brothers in law, the family seems to consider the brother in law of closer relationship than the widow; hence the thinking that “blood is thicker than water”. Women are therefore vulnerable because they are linked to the clan justice system by water, not blood, especially if she has a new man in her life (usually known as an inheritor) from outside the clan. If the conflict is between children born out of marriage, children born to widows, children born to unmarried girls and children born in marriage, the consideration seems to favour children born in marriage to the other children.

- If the conflict is over land given as a gift to an institution such as schools, health centers, or churches<sup>4</sup> and the family members of the deceased who gave the land as a gift, the clans seem to side with the family rather than the institutions because the family is perceived to have a closer relationship to the clan than the institution. If this were not the case, why then does the conflict between

the institutions and the families where their ancestors gave land as a gift remains unresolved by the clans, even when S.12 (e) of the Lango PPRR book is clear that *“Land that was donated, sold or given before the documentation of this PPRR must not be reclaimed by any relatives from the person/ people/institution to whom it was donated, sold or given if the person, family members who donated, sold or gave the land are already dead and cannot give evidence”*.

- Because clans view the family members to be closer relatives, they discriminate against people and institutions which they consider are not “as close” and, in the process, do not pass decisions according to the PPRR.

## 3. Clans may connive with the land grabber as a form of “discipline” against women who have “misbehaved” –

In a meeting with 41 widows and 7 children, the widows confessed that “very few clans love widows; they turn your children against you so you may be chased from your land”. Testimonies are given in workshops of Land and Equity Movement (LEMU) of land conflicts against widows which sometimes start immediately as a revenge act after a widow refuses to do a favour such as giving dowry of her daughter to be used for marrying a wife by a distant relative or a widow refusing to accept to be inherited. In such cases, women report that the clans do not intervene, despite repeated reporting of the land rights abuse by the woman to the clan.

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<sup>4</sup>For example, LEMU found in its 2014 study of faith based institutions in Lango sub-region that *“all the six (6) faith-based institutions reached in Lango are experiencing land disputes. The Anglicans and the Catholics pointed out that over 60% of their churches in Lango region are faced with Land disputes.”*

## Conclusion

In any of the instances quoted above, whether from discrimination, revenge, greed or not, the clans are often unable to deliver justice. This leaves clans able to determine only those cases where the land conflict is genuine conflict, and not land grabbing conflict—which LEMU's 2008 land grabbing research finds is actually the most common type of case.

This means that for the clans to be effective in administering justice, the state and those who work to support the clans need to:

1. Be aware of the genuine difficulties that clans are facing in determining and mediating land cases.
2. Understand and apply customary land rights of different persons correctly.
3. Be informed and record the traditional clan structures and hierarchy and the people currently filling those positions.
4. Facilitate the clans and parties to the conflict to draw the origin of their land rights in a family or community land rights tree and use this tool to analyse land rights, vulnerabilities of the parties, relationships of parties, clan discrimination and who could be called as witnesses.
5. Use land rights, "warning signs" exhibited by either party that demonstrate intent to deny land rights, and the power-vulnerability dynamics at play between the parties as criteria for revealing whether a given dispute is genuine or a deliberate land grabbing attempt.
6. Identify when the clans themselves are discriminatory and when their decisions are simply ignored by land grabbers.
7. Agree on how to deal with clans who are discriminatory.
8. Agree the best way for the state and practitioners to support the clans to enforce their decisions.

If these considerations are not made now, the implementation of above quoted sections of the National Land Policy will have minimal impact in delivering justice, especially to vulnerable women and children.

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*Making land work for us all*